

A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
FOR
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King *RICHARD II.*
TO
The Reign of King *GEORGE II.*

IN SIX VOLUMES.

With two Alphabetical Tables to the Whole.

The THIRD EDITION, with ADDITIONS.

L O N D O N:

Printed for the Undertakers,

JOHN WALTHOE Sen. and Jun. THOMAS WOTTON, CHARLES BATHURST, JACOB and RICHARD
TONSON, and the Representatives of JOHN DARBY, Deceased.

And also for

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THE PREFACE.

THE favourable Reception which the First Impression of this WORK has met with from the Public, is a sufficient Recommendation of it in general; but perhaps it may not be unacceptable to the Reader to point out some of the particular Uses and Advantages of it.

COLLECTIONS are chiefly intended for the Preservation of separate Pieces, which by being scatter'd up and down, are often in length of Time either quite lost, or hard to be come at: this indeed is a Care not worth bestowing on those which are of little or no Use; but the Pieces here preserv'd are evidently such, as a Collection of them must appear at first sight very beneficial to all studious Inquirers into the Laws of this Nation, especially into that principal Branch of them, which concerns the Life and Liberty of the Subject: for since the Laws of *England* are in a great measure grounded upon immemorial Customs and Usages, the Precedents and Examples of former Times must be singularly useful, if not absolutely necessary to a right understanding of them. And tho' Criminal Cases do very much depend upon *Statute Law*, either the Crimes themselves, or the Punishments of them, being for the most part declar'd by Act of Parliament; yet the Method of Practice in the Trials of those Crimes is in the main govern'd by *Common Law* Rules, and consequently not to be known, but by the Usage in former Cases: and even in those Instances, which fall under the Direction of the Statute Law, the best Expositor of those Statutes is the constant received Practice, ever since they were made, *optima legum interpretres consuetudo*^a.

THE Professors and Students of the Law will not be the only Persons, who may receive Benefit from this WORK: here will be Matter also of Instruction and Entertainment to all, who are delighted with History, or inquisitive after the Transactions of the former or present Times; many Parts of History will here be illustrated and set in a true Light; the Reader may here see, as it were, with his own Eyes, not needing to trust to the Representations of others, which are often full of Partiality or Prejudice, according to the Party and Disposition of the Historians. But the Nature of this Work admits not of such Turns and Disguises, as other general Accounts are but too justly chargeable with; the following TRIALS being plain Narrations of Sayings and Facts, for the most part published by Authority of the respective Courts, or by indifferent Hands; where it happens to be otherwise, the Reader is inform'd of it in the Title at the Head of the Trial.

SUCH as are taken with fluency of Style, or luxuriancy of Fancy, may here be entertain'd with a variety of eloquent Speeches and learned Arguments on many very important Subjects; tho' it must be own'd, intermixed with some others, which do not altogether deserve that Character.

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AND since *Scotland* is now become a Part of this Kingdom, it has been thought proper to insert some of the Proceedings in that Country, in which (to do that Nation Right) are discover'd great Learning and Eloquence: and it must be admitted, that very considerable Advantages are there allowed to the Prisoner, which we in *England* do not enjoy; he has what Counsel he thinks fit, and a Copy of the Charge in his own Language; his Counsel are permitted to inspect the Depositions against him before he is brought to his Trial; and they are so little in haste to dispatch a State-Prisoner, that the Trial often lasts some Months.

To form a
right Charac-
ter of the
Judges,

ANOTHER Use of this WORK, will be the doing Justice to those JUDGES and COUNSEL, who respectively presided or practis'd at these Trials: the Names of such as behav'd impartially on the Bench, without prejudicing the rightful Prerogatives of the Crown on the one hand, or betraying the legal Privileges of the Subject on the other; without bearing hard upon the Innocent, or shewing any unallowable Favour to the Guilty, will by this means be remember'd with Honour, and left upon Record to their lasting Praise and Commendation.

BUT it has not always been the good Fortune of *England* to have the Bench adorn'd with such excellent Persons; the Reader will in the Course of these TRIALS light upon certain Periods, wherein the Judges, who ought by the Duty of their Place to be the great Barrier^b, and to act impartially between Prince and People, have notwithstanding deliver'd Opinions in direct contradiction to the known fundamental Laws of the Nation, and as far as in them lay, sacrific'd the Constitution and Liberties of the Kingdom to the Pride and Ambition of an arbitrary Monarch. This generally ended in the Downfall of such Judges, and the Ministers, whose Tools they were; the Politics of those Times not being arriv'd at that Height, to know how to influence the representative Body of the Nation: for what need could Ministers have to corrupt the *Interpreters* of the Law, if the *Makers* of it were intirely at their Devotion?

OTHERS there have been, (as the Reader will have too frequent occasion to remark) who, regardless of Right and Wrong, and all the solemn Oaths they had sworn, have under colour of Law, but yet in open defiance of natural Justice, made no scruple to murder the Innocent, and by foul unwarrantable Practices to acquit the Guilty, just as they receiv'd their Directions from, or thought it would be best pleasing to those above them: to such a monstrous Pitch of bare-fac'd Iniquity were they arriv'd, that they stuck not to determine the same Point different ways at different times, making the Law a mere Nose of Wax, but usually turning it to the Destruction of the Person tried before them^c. These Volumes will impartially transmit their Memory to Posterity, with that Reproach and Infamy, so deservedly attendant upon TRAITORS and MURDERERS; and this not by general Characters, which are scarce to be rely'd on, being oft according to the Inclinations of the Writer, but by real Facts; their Behaviour will here appear just as it was, in its own true Colours: by which the Reader, without the help of Names, will easily distinguish the calm and sedate Judge, willing to hear and receive right Information, and desirous to determine according to Truth and Justice, from the hectoring Bully, who, without any regard to the decency of his Character, uses his Authority to no other End, than to silence Reason and Truth, and by Blustering and Clamour to worry the Innocent to death.

And Counsel: THE like Distinction will readily occur with respect to those, whose Office was at the Bar.

SOME he will find, pressing nothing illegal against the Prisoner, nothing hard and unreasonable (however in strictness legal) using no Artifices to deprive him of his just Defence, treating his Witnesses with Decency and Candour; being not so intent upon convicting the Prisoner, as upon discovering Truth, and bringing real Offenders to Justice; looking upon themselves, according to that famous Saying of Queen *Elizabeth*, not so much retained *pro Domina Regina*, as *pro Domina Veritate*^d.

THESE will appear in a different Light from others, who with rude and boisterous Language abuse and revile the unfortunate Prisoner, who stick not to take all Advantages of him, however hard and unjust, which either his Ignorance, or the strict Rigour of Law may give them; who by Force or Stratagem endeavour to disable him from making his Defence; who brow-beat his Witnesses as soon as

^b See Sir Francis Winnington's Speech, *Trials*, Vol. III. p. 222.

^c Sir John Hawles's Remarks. See *Trials*, Vol. IV. p. 206.
^d 3 Co. Inst. 79. *Trials*, Vol. IV. p. 176.

they

they appear, tho' ever so willing to declare the whole Truth; and do all they can to put them out of countenance, and confound them in delivering their Evidence: as if it were the Duty of their Place to convict all who are brought to Trial, right or wrong, guilty or not guilty; and as if they, above all others, had a peculiar Dispensation from the Obligations of Truth and Justice. Such Methods as these should be below Men of Honour, not to say Men of Conscience: yet in the Perusal of this Work, such Persons will too often arise to view; and I could wish for the credit of the Law, that that great Oracle of it, the Lord Chief Justice *Coke*^e, had given less reason to be number'd among this sort.

THE Gentlemen of that Profession, whether imploy'd in criminal Prosecutions or civil Actions, are not to blame for doing their best in sifting out the Truth, and making all just Observations in favour of their Clients; yet if after having done so, they should at last find the Merits of the Cause to lie on the other side, I am sure it would be no Disparagement to them to desist from attempting any thing to the prejudice of Truth and Justice: for how just and reasonable soever it may be to undertake the Defence of a Cause while nothing appears but that it may be right; yet when in the Course of the Evidence it proves manifestly otherwise, it is then high time to desert it; for they must needs think, that no Fees or Retainers will be a just Excuse, either in this World or another, for being wilfully instrumental in promoting Injustice and Wrong: and tho' it be no part of their Province to determine either the Law or the Fact, the former of which belongs to the Court, and the latter generally to the Jury; yet if either the one or the other be misled by the artful Turns and Insinuations of the Pleaders, or any material Truth suppress'd or misunderstood by his baffling of the Witnesses, the Guilt will, and ought to lie at his door.

A FURTHER Advantage of this Collection is, that it will afford frequent Opportunities to the careful Reader of observing the Excellency of our Laws, and the Advantage an *Englishman* thereby enjoys above his Neighbours. When I meet with an Author extolling our Laws above those of other Countries, and representing us upon that, as well as other accounts, as the Envy of all around us, I presume it is meant chiefly with regard to criminal Procedures: for as to CIVIL SUITS, when I consider the Tediousness and Delays of such Suits, necessarily arising from our Methods and Forms of Law; the various Offices, and sometimes Courts they must pass thro', before they are finally decided; the exorbitant Fees to Counsel, whereto the Costs recovered bear no proportion; the Duties arising to the Crown from many Incidents in every Cause; and above all, the Nicety of special Pleadings, whereby the justest Cause in the World, after having with great Trouble and Expence been conducted almost to a Period, may thro' the mistake of a Letter (often occasion'd by an Attorney's Clerk) be irretrievably lost, or at least turn'd round to begin again, and that not without payment of Costs to him, who has all the while been the unjust Invader and Detainer of another's Property: when these things, I say, are consider'd, it is hard to imagine, that any one can in good earnest believe, we have in this respect any great matter to boast of.

NOR can I suppose they are our ECCLESIASTICAL COURTS, which make us the Envy of our Neighbours: the petty but chargeable Suits, which are there often instituted to the no small Damage of both sides, only to indulge the private Passions of those who institute them; the constant Practice of denouncing Excommunication for the minutest Contempts^f, (a Punishment originally design'd only for such flagrant Vices, as render'd a Man unfit for Christian Communion, which formerly was greatly dreaded, but is now by these means slighted and despised;) and the pecuniary Commutations avowedly permitted for Penances^g, are things, which will not allow me to make any such Supposal.

THE Excellency therefore of our Laws above others, I take chiefly to consist in that part of them, which regards CRIMINAL PROSECUTIONS: here indeed it may with great Truth and Justice be said, That we have by far the better of our Neighbours, and are deservedly their Admiration and Envy.

THIS might be made to appear in many particulars. In other Countries the Courts of Justice are held *in secret*; *with us publickly*^h and in open view: *there* the Witnesses are examin'd in private, and in the Prisoner's *Absence*; *with us* they are produced face to face, and deliver their Evidence in open Court, the Prisoner him-
self

^e See the Trial of Sir Walter Raleigh, N^o 18. Vol. I.

^f Cr. Car. 196, 199. Mo. Rep. 540. Latch. 174. 204.

^g 2 Co. Inst. 489. 620. 2 Rol. rep. 584. *Godolph.*
Abridg. p. 89.

^h 2 Co. Instit. 103

To show the
Excellency of
the English
Laws.

(Civil Suits.)

Ecclesiastical
Courts.)

As to Crimi-
nal Prosecu-
tions.

self being *present*, and at liberty to cross-examine them: *there* the Judges determine both Law and Fact; *with us*, if the Fact be denied by the Prisoner, it must be tried by twelve Men of his own Rank and Condition, ¹ who are *sworn* to go according to Truth and Evidence, and are therefore call'd a *Jury*; to any of these the Prisoner may except for just Cause, and in capital Cases to a large Number without Cause: and unless this Jury declare him guilty of the Charge, the Judges can proceed no further against him. If the Prisoner be a Peer of the Land, his Trial on all Indictments for Treason, Felony, or Misprision of either, must be by other Peers not fewer than twelve. In *other* Countries, *Racks and Instruments of Torture*^k are applied to force from the Prisoner a Confession, sometimes of more than is true; but this is a Practice which *Englishmen* are happily unacquainted with, enjoying the benefit of that just and reasonable Maxim, *Nemo tenetur accusare seipsum*: in *other* Countries the Criminals are often executed *in private*; *with us* always openly and *in public*, it being necessary to answer the end of Justice, that a public Example be made of Offenders in order to deter others from the like Crimes; but where the Trial and Execution are in private, it not only defeats the end of Justice, but affords an Opportunity of secretly destroying innocent Men, which must needs expose the Subject to a variety of Fears and Dangers inconsistent with the Liberties of a free People.

THESE are great and noble Privileges, which we may justly value ourselves upon, and should be very unworthy of, if we did not highly prize them.

Particularly in
cases of High-
Treason.

IN Cases of HIGH-TREASON the *English* Subject has peculiar Advantages: This is a Charge of a general nature, and therefore more difficult to make a Defence to^l; it subjects the Offender to a severer Punishment, than other Crimes; the Crown is more nearly concerned, by reason whereof the Prisoner has a more powerful Adversary to contend with: this is the fatal Engine so often employ'd by corrupt and wicked Ministers against the noblest and bravest Patriots, whose laudable Opposition to their pernicious Schemes those Ministers are very ready to construe into Treason and Rebellion against the Prince; thereby confounding their own and the Prince's Interest together, as if the one could not be oppos'd without the other. Our Ancestors therefore thought this a Case, wherein the Subject needed more than ordinary Assistance; lest therefore too great a Latitude should be left to the arbitrary Determinations of a Judge, who is the Creature of the Crown, they took care to particularize the several Species of Treasons by an express Law^m: and to guard against all forc'd Constructions and Innuendos, it was by the same Law farther provided, that all Treason should be prov'd by some manifest plain Act or Deed; and that no innocent Person might be in danger of suffering thro' the Perjury of a single Witness, it was afterwards providedⁿ, that none should be convicted without two positive Witnesses.

NOR does our Law excel others only in defending the *Life* of the Subject against any injurious Attacks, but also in its care and concern for the *Liberty* and Freedom of his Person.

And in the
Provisions for
the Liberty of
the Subject.

HOW absolute soever the Sovereigns of other Nations may be, the King of *England* cannot take up or detain the meanest Subject at his mere will and pleasure^o: it is one of the Privileges confirm'd by *Magna Charta*^p, that no Man shall be restrain'd of his Liberty, but by the Law of the Land; that is, says Lord Coke^q, by Indictment or Presentment of good and lawful Men, or by the King's Writs out of his

¹ Fortescue de Laud. Leg. Angl. cap. 27 & 28.

^k Ibid. cap. 22. *This was the Practice of the antient Civil Law. See the Fragments of Julius Paulus, lib. 5. Sentent. recept. Tit. 14. de quaestionibus habendis: Si suspicione aliqua reus urgeatur, adhibitis tormentis de fociis & sceleribus suis confiteri compellitur: — Reus evidentioribus argumentis oppressus repeti in quaestionem potest, maxime, si in tormenta animum corpusque duraverit.*

See also a whole Title in the Digests de quaestionibus, Lib. 49. tit. 18. See Instances of those who endured these Tortures in Valer. Max. lib. 3. cap. 3. & lib. 8. cap. 4. But so absurd and unreasonable a Practice was this, that even the Antients, among whom it was in use, had no good Opinion of it, as appears from l. 1. §. 23. of the said Title de quaestionibus: Res est fragilis, & periculosa, & quæ veritatem fallit; nam plerique patientiâ, sive duritiâ tormentorum ita tormentum contemunt, ut exprimi eis veritas nullo modo possit; alii tantâ sunt impatientiâ, ut in quovis mentiri, quam pari tormenta, velint; ita fit, ut etiam vario modo fateantur, ut non tantum se, verum etiam alios committunt.

Quintilian. declam. 18. Omnium quidem in rectorum

suspiciones pessimè semper a corporibus incipiunt; nec bene de cujusquam moribus illam partem corporis interrogas, quæ non animo, sed dolore responder.

See more to this purpose in Montagne's Essays, Book 2. cap. 5. and Grotius's Letters, l. 693. wherein he approves the Omission of this Practice in England.

^l Trials Vol. IV. p. 177.

How great a Latitude was taken in this Matter may appear from the antient Law-Books, where the lying with the Nurses of the King's Children, or the killing a Man sent on an Errand by the King were adjudged Treason. 1 Affiz. 22 Ed. 3. pl. 49. Briton. p. 43.

^m 25 Edw. 3. Stat. 5. cap. 2. That this was the Occasion of this Law appears from the Petition of the Commons in which it was founded, wherein they complain the Justices did adjudge several to be Traytors, for Causes which they did not own to be Treason. This Petition is enter'd in the Parliament Rolls of that Year. N^o. 171.

ⁿ 5 & 6 Edw. 6. cap. 11. Deut. cap. 19. ver. 15.

^o 2 Co. Instit. 186.

^p Cap. 29.

^q 3 Instit. 45. 50.

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his ordinary Courts of Justice^r, or by lawful Warrant. Now every lawful Warrant^s must be grounded upon Oath, must plainly and specially express the cause of Commitment^t; must be under the Hand and Seal of one, who is authorized to do it, expressing his Office, Place and Authority^u, whereby he committeth, and must conclude, *until he be delivered by due course of Law*, and not *until further Order*, or with such like Conclusions. Nor has the Law only prescribed what shall be necessary to a legal Commitment, but it has also provided divers Remedies^x in case any one should be illegally committed, or detained; the Party injured may have an Action or Indictment founded on *Magna Charta*, an Action of false Imprisonment, a Writ *de homine replegiando*, and a Writ *de odio & atia*^y.

BUT so precious is the Liberty of a Man's Person in the eye of the Law, that none of these Remedies was thought sufficient, not giving so speedy a Relief as the urgency of the Case requires; another Remedy is therefore provided, *viz.* the Writ of *Habeas Corpus*^z, which is called *festinum remedium*^a. By this Writ the Gaoler is obliged immediately to bring the Body of his Prisoner before the Lord Chancellor, or one of the twelve Judges, and to certify by whom and for what Cause he stands committed; whereupon the Lord Chancellor or Judge is requir'd (unless he be legally committed for an Offence not bailable by Law) to discharge or bail him, except in case of Treason or Felony plainly and specially expressed in the Warrant^b; and even in those Cases, that the Innocent may not be worn and wasted with long Imprisonment^c, the Prisoner must be brought to his Trial within a reasonable time; for if he be not indicted the next Term or Sessions after his Commitment, having duly enter'd his Prayer, he shall on the last Day of the Term or Sessions be admitted to Bail, unless it appear to the Court upon Oath, that the Witnesses for the King could not then be produced: and then, if he be not indicted and tried the second Term or Sessions after his Commitment, he shall be quite discharged^d.

BUT because all these Precautions in favour of Liberty may be rendered useless by sending the Subject to remote or private Prisons^e, whereby he may lose the Benefit of the King's Commission of Gaol Delivery^f, and the King's Writs be rendered ineffectual for want of knowing whom to direct them to^g; to prevent this Inconvenience, the Law has further provided, that no Subject of *England* shall be sent Prisoner into any Part beyond the Seas, either within or without the King's Dominions^h: nor shall any be compelled against his Will to serve the King out of the Realm, lest under pretence of Service, as Ambassador or the like, he should be sent into real Banishmentⁱ: nor can any be regularly imprisoned within the Realm in any other Place than the common County Gaol or other public accustomed Gaol^k; for which reason a Gaoler cannot be authorized by any Warrant to deliver his Prisoner into the Custody of an unknown Person^l: Nor can any new Gaol, according to the Opinion of Lord Coke^m be erected, but by Act of Parliament; one Statuteⁿ ordains, that none shall be imprisoned by Justices of the Peace (some say this extends to all other Judges and Justices^o) but in the common [County^p] Gaol, saving to Lords and others, who have Gaols, their Franchises.

SOME will be ready to object, if these Laws were in force, that a Subject shall not be compell'd to serve the King out of the Realm, how comes it to pass that divers Subjects [not only Mariners, but others] have been taken up by virtue of Press-Warrants^q, and by Force put aboard a Ship and carried beyond Sea? If it be not lawful to commit to any but antient accustomed Gaols, how comes it about that so many Persons have been taken up by Messengers^r, who have imprisoned them in their own Houses, detaining them there not for two or three days only, (the Time allowed by Law to take their Examinations^s) but for Weeks and Months, thereby making Gaols of their Houses, tho' they have neither the Grant of such a Franchise, nor any Act of Parliament to make them so? These are Questions to which I will not undertake to give a satisfactory Answer; but shall leave that to others, who are more

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- ^r 2 Co. Instit. 187.
- ^s 2 Co. Instit. 52.
- ^t 3 Car. 1. cap. 1. § 5. 2 Co. Instit. 616.
- ^u 2 Co. Instit. 591.
- ^x 2 Co. Instit. 55.
- ^y *This Writ is now quite disused; what the nature of it was, see 2 Co. Instit. 42.*
- ^z 2 Co. Instit. 55.
- ^a See *Trials*, Vol. IV. p. 561.
- ^b 31 Car. 2. cap. 2. § 2 & 3.
- ^c 2 Co. Instit. 315.
- ^d 31 Car. 2. cap. 2. § 7.
- ^e *This was complained of by the Judges in the 34 of Eliz. 1 Ander. Rep. 297.*

a

- ^f 2 Co. Instit. 43. 315. Cro. Eliz. 830.
- ^g 2 Co. Instit. 53.
- ^h 31 Car. 2. cap. 2. § 12.
- ⁱ 2 Co. Instit. 47.
- ^k 9 Co. Rep. 119. b.
- ^l 2 Co. Instit. 53. *How a Prisoner may lawfully be removed, see 31 Car. 2. cap. 2. § 9.*
- ^m 2 Instit. 705.
- ⁿ 5 Hen. 4. cap. 10.
- ^o 2 Co. Instit. 42.
- ^p See *Trials*, Vol. IV. p. 561.
- ^q See 16 Car. 1.
- ^r See *Trials*, Vol. IV. p. 554 5 Mod. Rep. 79.
- ^s Cro. Eliz. 830.

nearly

nearly concern'd and better able to do it: I can only say, that whatever may in fact have been practis'd, I do not know that such Practices have ever had the Sanction of one judicial Determination, and for my part must confess myself unable to reconcile them to the Laws of the Land.

IT must be owned that the Guards and Fences of the Law have not always proved an effectual Security for the Subject; the Reader will in the Course of these TRIALS find many Instances, wherein they, who held the Sword of Justice, did not employ it, as they ought, to the Punishment of Evil-doers, but to the Oppression and Destruction of Men more righteous than themselves. Indeed it is scarce possible to frame a Body of Laws, which a tyrannical Prince, influenced by wicked Counsellors and corrupt Judges may not be able to break thro; they may sometimes *check*, but will never be able to *stop* the Career of violent and furious Men. The Law itself is a dead Letter, Judges are the Interpreters of it, and if they prove Men of no Conscience nor Integrity, will give what Sense they will to it, however different from the true one; and when they are supported by superior Authority, will for a while prevail, till by repeated Iniquities they grow intolerable, and throw the State into those Convulsions, which may at last end in their own Ruin. This shews how valuable a Blessing an upright and learned Judge is, and of what great Concern it is to the Public, that none be prefer'd to that Office, but such whose Ability and Integrity may be safely depended on: *Ignorantia judicis est calamitas innocentis*.

Further Provisions in cases of Treason.

HOWEVER, amidst all the Mischiefs caused by the arbitrary Proceedings of these wicked and unjust Judges, there is one good Effect has follow'd from them; it is to them we owe those additional Provisions, which have been since made for the Security of the Subject: *Ex malis moribus bonæ oriuntur leges*^a; *Leges egregiæ apud bonos ex delictis aliorum gignuntur*^b. In all Cases of Treason, wherein the Crown is more immediately interested, the Party accused may now demand a Copy of the whole Indictment^c, five days at least, and of the Names of the Jurors^d two days at least before his Trial; he has a right to the assistance of Counsel^e, not only in matters of Law, but in matters of Fact; he may now have the benefit of the usual Process^f to compel the Appearance of his Witnesses; who, when produced, are to be examined on Oath^g, as well as those on the part of the Crown; (this last Privilege has been since^h extended to all Treasons and Felonies) Each Species of Treason must be prov'd by some Overt-actⁱ, and there must be at least two Witnesses to each Species^j. If the Accused be a Peer, not only *some* pick'd out of the whole Body, but *all* the Peers must be summoned to the Trial at least twenty days before^k.

THERE are other Alterations^l made in favour of the Subject, which the Legislature has not thought fit should take place during the Life of the present Pre-tender.

AFTER his Decease no Attainder for Treason will work a Disherison of the Heir, or affect any other Right, than only that of the Offender during his Life: the Prisoner will then be entitled to have a List, not only of the Jury, but of the Witnesses to be produced against him at the Trial, with the addition of their respective Professions and Places of Abode, delivered to him along with the Copy of the Indictment, in the Presence of two Witnesses, ten days before his Trial.

THE first of these Alterations being to mitigate the Punishment of those, who shall by the Law be adjudged guilty, might be thought an unseasonable Relaxation, while there should be any Apprehensions of immediate Danger: But why the others should be defer'd so long, which are intended only as the proper guards of Innocence against violent Prosecutions, I will not pretend to guess; for the heinousness or mischief of the Crime charged is so far from being a Reason, why the Prisoner should want Assurances, that it is a very strong Reason to the contrary; it being as easy a matter to impose a false Charge of a great, as of a small Crime.

THESE are some of the Privileges of a *British* Subject, which no other Subject in the World can boast of. But after all, it must not be said, that our Laws will admit of no Alterations for the better.

Observations on Juries.

I. EVEN in that darling and deservedly esteem'd Privilege of being tried by JURIES, some Change might, I was going to say ought to be made: The Law requires, that the twelve Men, of which a Jury consists, shall all agree before they give in a Verdict;

^a 2 Co. Instit. 30.

^b 2 Co. Instit. 161.

^c Tacit. Annal. Lib 25 § 20. Some Instances of this kind are there mentioned.

^d 7 Gul. 3. cap. 3. § 1.

^e Ibid. § 7.

^f Ibid. § 1.

^g Ibid § 7.

^h Ibid. § 1. Thus it ought always to have been. See Co. Instit. p. 79. State Trials Vol. IV. p. 178.

ⁱ 1 Ann. cap. 9. § 3.

^j 7 Gul. 3. cap. 3. § 2.

^k Ibid. § 4.

^l Ibid § 11.

^m 7 Ann. cap. 21.

dict; if they don't, they must undergo a greater Punishment than the Criminal himself; they are to be confin'd in one Room without Meat, Drink, Fire or Candle, till they are starv'd. It would be pretty hard to assign any tolerable Reason for this Usage: If it has seldom or never happen'd, I'm afraid it has sometimes been prevented only by the unjust Compliance of some of the Jurors against their own Consciences. For however plain some Cases may be, others there are, wherein they cannot avoid differing in their Judgments; nor do they deserve any Censure for so doing; many Men, many Minds; all can't see Things in the same Light. To what end therefore are they to be restrained in this manner? It may indeed force them to an outward seeming Agreement against the Dictates of their Consciences; but can never be a Means of informing their Judgment, or convincing their Understanding. I have known, when a Juror being afterwards asked, how he could join in such an unjust Verdict, could give no better Reason for it, than that the others were of that Opinion; which, I fear, is the best Reason a great many are able to give.

IF it be said, that otherwise one stubborn Fellow may stand it out against all the rest, even contrary to the Convictions of his own Mind, it is very true he may do so; and if his Body be as stubborn as his Mind, starve them out too. But why then is his Voice regarded? Why can't the others give a sufficient Verdict without him? Or, if a Man must not be convicted without the Agreement of all, why then is not the Prisoner acquitted, when they can't all agree? But why must the Jurors be compell'd to an Agreement one way or other? After all, a forc'd Agreement (as all Agreements procur'd by Restraint are) is no better than none. If the Consent of him, who stands it out against the rest, be of any regard, it ought to be free; if of none, then why can't a Verdict be given without it? If twelve must agree, the better way would be to have twenty three on a Jury, and the Verdict be given by the Majority; for sure 'tis an odd way of deciding a Cause, that it should be left to the Determination of him, who can fast the longest. But suppose it should be thought requisite, that two thirds should be of a mind, and if so many could agree to find the Prisoner guilty, he should be convicted; and if they did not, he should be acquitted: Would not this be a sufficient Security for Innocence? Sure it would be much better to make a Provision in case of Non-Agreement, than by forcible Methods to extort the Appearance of one; for it is the same thing to the Prisoner, whether he be convicted without the Concurrence of all, or by a Concurrence which is not sincere, but forced.

2. ANOTHER thing not to be counted among the Excellencies of our Law is, the Indictments and other Proceedings being in the Latin Tongue. Every body knows, that not one Prisoner in a great many understands that Language; and tho' the Indictment is generally explained to him in the vulgar Tongue, yet it is to the Original he must take his Exceptions, and upon that the Arguments must be founded. In the days of *Oliver Cromwell* all Proceedings were in the vulgar Tongue; and tho' it has not been thought proper to continue a Practice introduced by an Usurper, yet if the thing be really fit and right, it matters not, who introduced it: *fas est & ab hoste doceri*. The same might be said with respect to the writing it in a peculiar hand, not generally understood.

On the Proceedings being in Latin.

It is a Maxim in Law, *Ignorantia juris non excusat*ⁱ; ignorance of the Law is no good Plea; it is indeed necessary that it should not, for if it were, the Laws would always be evaded by a pretended Ignorance; but then it must be very unreasonable to use any Methods, which tend to conceal that Law, and keep the People in ignorance of it: *Misera servitus est, ubi jus est vagum aut incognitum*^k. The Inconvenience of this will appear more plainly, if we consider that every Indictment must be assented to by a Grand-Jury; and another Jury must afterwards declare whether the Charge therein contained be true or not. Now how can it be expected they should declare their Consent to what they cannot understand? So that I verily believe, the greater part may very safely return *Ignoramus* to every Bill that comes before them.

3. HERE it may not be amiss to take notice of one thing relating to the Form of our Indictments. It is very common to insert Words, which are never intended to be proved: as for instance, the Words *vi & armis*^l in Indictments for writing or publishing Libels, and in many other Cases, where there is no pretence or colour of Truth in them: e. g. *Juratores presentant, quod J. S. VI ET ARMIS falso & malitiose scripsit quendam libellum*^m; which not only is an Absurdity in the nature of the thing,

On the Form of Indictments.

but

ⁱ Digest. Lib. 22. tit. 6. De juris & facti ignorantia, l. 9. Plowd. Com. 343.

^k 4 Co. Instit. 246. 332. This Grievance is since remedied by the 4. Geo. 2. cap. 26. by which it is enacted, That all Proceedings shall be in English, and wrote in a common legible Hand and Character, and in Words at length. See also 6 Geo. 2. cap. 14.

^l These Words are not necessary in these Cases. See 37 H. 8. c. 8. it is therefore the more inexcusable to insert them, when they are not true.

^m See the Indictments of Francis Smith, and of Laurence Braddon, in the Appendix. 2 Lev. 221.

but tends to insnare the Consciences of Jurymen; who in giving a general Verdict against the Defendant, do not always consider whether that part of the Indictment be prov'd. When a Jurymen gives a general Verdict against the Defendant, he does in effect declare upon Oath, that he believes the entire Charge, as laid in the Indictment, to be true; how therefore can he find a Man guilty generally, when there is one part of the Charge, which he either believes to be false, or at least has no reason to believe to be true? It is said that these are Words of course; if they be, yet still they have a natural and proper meaning (else why are they inserted?) and if they are not true, I don't see how any one can upon Oath honestly declare they are, unless it can be thought an Excuse for giving a rash (not to say a false) Verdict, that it is a thing of course. The Words of course are generally the most material Words in an Indictment; *proditorie*ⁿ is a Word of course in an Indictment for Treason, *burglariter*^o in Burglary, and *felonice*^p in Felony; but if any of those Words be omitted in their respective Cases, the Indictment will be naught.

In blasphemous

IT is greatly to be feared, that Jurymen do sometimes over-look the most essential Words of an Indictment, under the notion of their being Words of course. Thus in the Case of a *blasphemous Libel*, it is customary to insert the Words *falso & malitiose scripsit*, &c. and indeed they are the very *Gist* of the Indictment, and absolutely necessary to constitute the Offence: for as no Words can be *Blasphemy* (i. e. a reproachful Reflexion upon God or Religion) which are true, for Truth can be no Reflexion on the God of Truth; so no Opinions, however erroneous, can merit that Denomination, unless utter'd with a wicked malicious design of reviling God or Religionⁿ. And yet how often have Persons been found guilty upon these Indictments, without any Proof either of the Falshood of the Positions, or of the Malice of him who wrote them? nay sometimes, when there is a great deal of reason to think they were published from no other Principle, but a sincere love and regard for Truth? These are things not always sufficiently attended to by Juries; it often satisfies them, if the Defendant be prov'd to have done the Fact (*i. e.* wrote the Book) whether with the Circumstances *falso & malitiose*, as charged in the Indictment, or not: and yet when the Defendant comes to move in Arrest of Judgment, that what he has done cannot amount to *Blasphemy*, because it was not done with an evil Intent; he is then told, that that is found by the Verdict, and must be taken to be true; and so indeed it must: but then this should be a Caution to Juries, how they find a Man guilty of an Indictment generally without due Proof of every part of it; since every thing, which was proper for their Consideration, will after Verdict be suppos'd to have been consider'd by them, whether in reality it was so or not.

And defamatory Libels.

THUS in the Case of *defamatory Libels*, or of *Scandalum Magnatum*, when the word *falso* is inserted, the Defendant ought not to be found guilty, if the Assertion be true. Whether it be necessary to insert the word *falso*, is another Question, (tho' I believe it would be difficult to maintain an Indictment without it;) yet certainly where the Indictment charges a Man with *falsly* writing a Libel, he cannot justly be found guilty of that Indictment so laid, if the Words be *true*.

On Trials for Felony.

4. HITHERTO the Law allows not a Copy of the Indictment, nor of the Names of the Jurors, nor the Assistance of Counsel^{*} as to matter of Fact on any Indictments for FELONY, yet it is the Opinion of many it would be never the worse if it did; for it seems very strange to allow a Man these Assistances in defence of his Property, and deny them to him, when his Life lies at stake. Perhaps it will be said, that the Prisoner would by these means be enabled to make captious Exceptions to the Proceedings, whereby public Justice might be either protracted or evaded; but this Objection would be remov'd, if the Law did not allow of such Exceptions: for either they relate to the Merits of the Cause, or they do not; if they do, they are not captious, but he ought to have the Benefit of them; if they do not, there will be no Wrong done in disallowing them.

BUT still there is one Reason why, as the Law now stands, the Prisoner ought not to be wholly deprived of the means of making even these captious Exceptions; and that is, because otherwise he may be brought into jeopardy of his Life divers times for one and the same Offence, a thing very unreasonable in it self, and contrary to the Maxims of Common Law^r: for if he be found not guilty on a faulty Indictment, his Acquittal shall avail him nothing, but he may still be indicted again for the same Fact. This is founded on a Supposition^f, that his Life was in no danger on the first Indictment, because of the Exceptions which might be taken to it; and yet it is apparent, that

ⁿ 3 Co. Instit. 15. H. P. C. 11.

^o 4 Co. 39 b. Cr. Eliz. 920.

^p 5 Co. 121 b. Cro. Eliz. 193.

^r See Reformat. leg. Ecclesiast de Blasphemia, cap. 1. Blasphemia contemptu contumelias in deum projicit, &

iraundia. See also Whitlock's Speech in behalf of James Nayler, Vol. II. p. 273. Blasphemy is crimen malitie.

^{*} See Whitlock's Rem. p. 433.

^f 4 Co. 40. a. 47. a.

^f Ibid 45. a.

that the generality of Prisoners, unless they may be inform'd by Counsel of such Exceptions, and advis'd how to make them, are like to be but little the better for them.

5. THERE is one thing in our Laws which is very singular, and comes the nearest of any thing to the Tortures used in other Countries, viz. LE PEINE FORT ET DURE, Le Peine fort et dure. or pressing to death: 'Tis true, this is not used to force the Prisoner to confess, but to plead one way or other; but yet even this seems a needless piece of Severity. In High-Treason, if the Party refuse to plead, the Charge is taken *pro confesso*; nor would it be any Inconvenience if it were so in other Cases, or rather if it amounted to a Plea of *not guilty*, and the Court thereupon proceeded to hear the Proofs of the Fact; for it is as unreasonable to press a Man to death without a Trial, as it would be to hang him without one: Nor can a Plea extorted by such Methods give any Credit to the Proceeding of the Court more than if they had proceeded without one, which yet would be no Injustice to the Prisoner, who will not plead, when he may: Nor, on the other hand, is it reasonable, that the hardness of a Criminal, if he should be able to endure such a lingering Death, should exempt him from the Forfeitures the Law has thought his Crime to deserve: If this Advantage were taken away, the only Temptation of standing mute would be taken away too.

6. IT has been esteemed an Advantage of our Law, that it does not inflict various and cruel Deaths; that which is inflicted for Treason is the only one, which has any appearance of Severity; and even there in the Execution it is generally the same with other capital Cases: but yet it must be also observed, that our Laws are very liberal of the Lives of Offenders, making no distinction between the most atrocious and heinous Felonies, and those of a less degree. If a Man commit a single Robbery, On the Punishments of Crimes, Hanging is the Punishment inflicted by Law; if he commit Robbery and Murder with never so many cruel Circumstances, the Punishment is still the same, and no more: So little regard is had in proportioning the Punishment to the Offence, that the Letter of the Law makes no difference between picking a Man's Pocket, Theft, and cutting his Throat; between stealing his Horse, and firing his House about his Ears.

HOW far this is either just or prudent, is left to every one's own Reason to determine; it is certainly a strong Temptation to an Highway-man to add Murder to Robbery, when by that means he runs less danger of a Discovery, and no danger of a severer Punishment.

THE Law of God to the *Israelites* required, that a Person convicted of Theft should restore two-fold, and in some Cases four or five-fold; (thus it was also by the Civil Law) and in Cases where personal Violence was offered, the Punishment was Retaliation, *Eye for Eye, Tooth for Tooth, Hand for Hand, Foot for Foot, Burning for Burning, Wound for Wound, and Stripe for Stripe*: and tho' this Law may not in strictness be binding on other Nations, yet undoubtedly where the Reason holds the same, it is the best Pattern for our Imitation.

MURDER is indeed a Crime, which even by the Law of Retaliation calls for a capital Punishment; it is so peremptorily enjoined by the Law given to *Noah*, (and therefore binding on all his Posterity) *Whosoever sheds Man's Blood, by Man shall his Blood be shed*, that some have questioned, whether any Prince or Power on Earth can lawfully dispense with it in any Case of a plain notorious Murder: most certainly they ought not without some very important and peculiar Reasons, and not merely for Favour or Interest. The Law of God forbids, *that any Satisfaction shall be taken for the Life of a Murderer, but he shall surely be put to death*.

AS to other less Offenders, it would be a more equitable and effectual Punishment to confine them to hard Labour at home; or, if they deserve it, to sell them to the *Moors* or *Spaniards* abroad: it is Idleness which is the Source of their Guilt, and generally draws them into the commission of their Crimes, and therefore nothing more proper to reclaim and deter them, than hard Work and Labour: however, they have by their Guilt incurr'd a Forfeiture of their natural Liberty, so that no Wrong will be done them in disposing of them in that manner. I am sure it is a much more lawful Method of making Slaves than the practice of kidnapping and stealing innocent Men from off the *African* Shore, and forcibly carrying them away from all their Friends and Relations into a miserable Slavery in *America*, without any better Title, than what arises from the difference of Complexions.

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* See Spelman's *Life of K. Alfred*, p. 101.

§ 8 Eliz. cap. 4. § 2.

† 1 Edw. 6. cap. 12. § 10. 2 & 3 Edw. 6. cap. 33.

‡ Exod. cap. 22. ver. 4 & 7.

× Ibid. cap. 22. ver. 1.

¥ Instit. lib. 4. tit. 1. de obligation. quæ ex delicto, &c.

§ 5. Exod. cap. 21. ver. 24, 25. Levit. cap. 24. ver. 19.

20 Deut. cap. 19. ver. 21.

• Grot. de jur. bel. lib. 2. cap. 20. § 32.

b Gen. cap. 9. ver. 6. Grot. de jur. bel. Lib. 1. cap. 2.

§ 5.

* See this Question discuss'd in Bishop Barlow's *Cases of Conscience*.

† By divers old Statutes no Charter of Pardon ought to be granted in case of Murder. Dal. cap. 145.

‡ Numb. cap. 35. ver. 31.

• Puf. *Law of Nat.* lib. 8. cap. 3. § 26. Mori Utopia, lib. 1.

HOWEVER not to enter into a Discussion of the Lawfulness or Justice of taking away Life for every kind of Offence, a Consideration which the learned *Spelman* observes has not had its due Weight in later Ages^f, yet methinks so long Experience might have taught us how ineffectual it is to answer the Purposes for which it is designed. Death is *ultimum supplicium*, and is therefore intended only for crimes of the highest Rank; but when it is indiscriminately inflicted, it leaves no room to difference the punishments of Crimes widely different in their own Nature. The lower part of Mankind are apt in dubious Cases to judge of the heinousness of the Offence by the Severity of the Punishments; but yet, when they see the same Punishment annexed, where the difference of Guilt is manifest and apparent, they soon lose the Sense of that extraordinary Guilt, and instead of conceiving worse of the Crime, they only blame the Cruelty of the Law. Further, when such Numbers are continually ordered for Execution, (as must be the Case where Death is made the common Punishment for ordinary Crimes) the frequency of the Example destroys the Terror of it, and makes it less dreaded than going to the Gallies or any Place of hard Labour. Besides, when the Punishments are so very disproportionate to the Offence, it defeats the End of them, forasmuch as those, who have any Tenderness or Humanity in their Temper, will much rather forbear wholly to prosecute, than be made the Instruments of putting such severe Laws in execution; instead therefore of being a means of bringing the Offenders to Punishment, it is oftentimes the very reason, why they escape with Impunity.

THIS Severity of our Law in inflicting capital Punishments upon the lighter Crimes of Pilfering and Thieving seems the more extraordinary, when one considers the great Indulgence shewn to one of the first Magnitude, and which is productive of much more mischievous Consequences, I mean ADULTERY, which it is holden^g, *And Adultery*; does not by our Law admit of any Prosecution in a criminal way; yet whether we consider the Guilt of the Offender, or the Mischief done to the injured Party, there is no Comparison between the one and the other. What proportion is there between a private Theft, perhaps of some Trifle, which may soon be repaired, and the Invasion of our Neighbour's Bed^h, irreparably robbing him of all the Satisfaction and Comfort of his Family, confounding Relations, and imposing upon him the charge of maintaining a spurious Issue as his own? the one is often done only to allay the Violence of a pressing Hunger, but the other always to gratify an irregular and ungovern'd Lust. Nor can it with reason be pretended, that the one is a Crime of a *public*, the other of a *private* nature: if the Public be concern'd in the Preservation of the Property of Goods, it cannot be less so in the Preservation of the more valuable Rights, which affect the Peace and Quiet of Families. Is private stealing an Offence against the Community? The other is much more so, having a greater tendency to promote Frays and Quarrels, public Disturbances and Breaches of the Peace, from whence Bloodshed and Murders often ensueⁱ.

WHAT may be the reason why our Laws make so light of this enormous Crime, whether it be the Countenance it receives from great Examples and the Commonness of the Fault, or some other reason, I will not take upon me to say; but most certain it is, that the Laws of other Nations^k had a different Sense of it, and treated it in a severer manner: By the *Mosaic* Law it was always punished with Death^l; and long before that Law it was esteemed *an Iniquity to be punished by the Judges*^m.

BY an old Law of *Romulus*ⁿ the Adulterers was to be put to death; *Adulterii convictam vir & cognati, uti volent, necanto*: and tho' afterwards the Civil Law (*Lex Julia*

^f Spelm. in verbo *Lanicinium*. See also Hales Hist. P. C. in notis p. 12.

^g 2 Co. Instit. 488. 2 Salk. Rep. 552. Galizard & Rigault: This is the general Opinion, tho' I must confess, I see not, but that Adultery is indictable by our Law. Godolphin in his Repertorium cap. 54. § 10. admits it to be a temporal Offence against the Peace of the Realm, for which Swetles of the Peace may be required. And Lord Coke says, That in antient Times it was punishable in the Turns or Leets by Fine or Imprisonment by the name of Letherwite. 2 Inst. 488. 3 Inst. 206. It is allowed on all hands that an Indictment lies for seducing a Servant away from his Master's Service; and that the same reason extends to the seducing a Wife away from her Husband: of this there is a Precedent in Tremain's Entries, p. 209. 213. & 214. The King against Mountague, 1 Jac. II. and another in Offic. Cler. Pac. p. 311. Tho' these were Cases where the Wife went away with the Adulterer, yet the reason holds proportionably, where she is seduced to a breach of her Fidelity and Trust, tho' it be without going away. If a Man debauch his Wife's Sister, this has been held a Misdemeanor punishable by Indictment or Information; this was the Case of Ford Lord Grey, for debauching the Earl of

Berkley's Daughter; see Trials, Vol. III. p. 519. N^o. 112. and of the King against Heathcote, for debauching Mr. Holworthy's Daughter, Trin. 7 Geo. I. (1720.) B. R. Rot. 46. Sure it is not less injurious to debauch another Man's Wife; but still it is punishable only as a Misdemeanor, and not with that Severity as the Guilt of the Offence requires, and the Laws of other Nations have thought it to deserve: so that the injured Party is in a manner obliged to betake himself to a civil Action for Damages; tho' as Mr. Wollaston says in the place cited below, the Offence is of such a nature that no Satisfaction can be made for it, if the injured Man thinks so, as he generally does. If this be so, the Law should be so framed, as rather to deter from committing the Crime, than to aim at making amends for it, after it is committed.

^h See Wollaston's Religion of Nature, § 6. par. 19.

ⁱ See 1 H. 7. c. 6.

^k See Godolph. Abridgm. cap. 54.

^l Levit. cap. 20. ver. 10. Deuter. cap. 22. ver. 22. Ezek. cap. 18. ver. 11. Susanna ver. 41. John cap. 8. ver. 5.

^m Job cap. 31. ver. 11.

ⁿ See Bodinus in methodo historica, cap. 4.

Julia de adulteriis) punish'd it only (*per relegationem*^o) with Banishment, or (*per deportationem*^v) with Transportation into some remote Island; yet the Father of the Adulteress was permitted to kill both his Daughter and the Adulterer^q, and in some Instances the Husband had the same Power^r; and if he chanced to use that Power in a Case not allow'd, even then he was not to be punished with Severity, but only to undergo a milder sort of Punishment^s: But at length when the Empire became Christian, under the Reign of *Constantine*, Adultery was made capital, *Sacrilegos nuptiarum gladio puniri oportet*^t, and so it continued to *Justinian's*^u Time and long after. Some are of opinion that it was so even while the Empire was Heathen, under the Reign of *Diocletian* and *Maximian*, it being enumerated in one of their Laws^x among the capital Crimes.

AS to smaller Crimes and Misdemeanors, they are differenc'd with such a variety of extenuating or aggravating Circumstances, that the Law has not, nor indeed could affix to each a certain and determinate Penalty; this is left to the Discretion and Prudence of the Judge, who may punish it either with Fine or Imprisonment^y, Pillory or Whipping, as he shall think the nature of the Crime deserves: but tho' he be intrusted with so great Power, yet he is not at liberty to do as he lists, and inflict what arbitrary Punishments he pleases; due regard is to be had to the Quality and Degree, to the Estate and Circumstances of the Offender, and to the greatness or smallness of the Offence; that Fine, which would be a mere Trifle to one Man, may be the utter Ruin and Undoing of another; and those Marks of Ignominy and Disgrace, which would be shocking and grievous to a Person of a liberal Education, would be slighted and despised by one of the vulgar sort^z. A Judge therefore who uses this discretionary Power to gratify a private Revenge, or the Rage of a Party, by inflicting indefinite and perpetual Imprisonment, excessive and exorbitant Fines, unusual and cruel Punishments, is equally guilty of perverting Justice and acting against Law, as he, who in a Case, where the Law has ascertained the Penalty, wilfully and knowingly varies from it. If no Measures were to be observed in these discretionary Punishments, a Man who is guilty of a Misdemeanor might be in a worse Condition than if he had committed a capital Crime; he might be exposed to an indefinite^a and perpetual Imprisonment, a Punishment not at all favour'd by Law, as being worse than Death itself^b: nor does an extravagant Fine, which is beyond the Power of the Offender ever to pay or raise, differ much from it; for if his Imprisonment depend upon a Condition, which will never be in his power to perform, it is the same as if it were absolute and unconditional; if the Offender be not able to pay such a Fine as his Offence deserves, he must then submit to a corporal Punishment in lieu of it, according to the old Rule, *Qui non habet in crumena, luat in cute*^c. It is true, that Clause of *Magna Charta*^d, which requires the saving every Man's Contenment, (*viz.* his means of Livelihood) extends only to Amerciaments, which are ascertained by a Jury, and not to Fines, which are imposed by the Court; but nevertheless those Fines ought to be moderate and within Bounds; where a Court has a Power of setting Fines, that must be understood of setting *reasonable* Fines^e: an *excessive* Fine, says Lord Coke^f, is *against Law*^g, and so it is declared to be by the *Act^h for declaring the Rights and Liberties of the Subject*, &c. The same Statute declares the Illegality of unusual and cruel Punishments.

IT was the non-observance of these Rules, which occasioned the dissolution of the *Star-Chamber*ⁱ, a Court, which Lord Coke^k calls the most honourable in the Christian World, consisting of the chief Officers of the Kingdom, but as he observes^l was of such a nature as most of all needed to be kept within its proper Bounds; it might indeed have served to very good Purposes, if rightly managed, being chiefly intended for the correction of scandalous Indecencies and Immoralities, which did not fall under the Cognizance of ordinary Jurisdictions^m, but when once its Authority was abus'd to wreak the Malice of particular Persons, and prostituted to the base Ends of a Court-

^o Digest. de divortiis & repudiis, lib. 24. tit. 2. l. 8.
^p Digest. de quaestionibus, lib. 48. tit. 18. l. 5.
^q Digest. ad leg. Jul. de adulter. lib. 48. tit. 5. l. 20.
^r Ibid. l. 24.
^s Digest. ad leg. Cornel. de sicariis, lib. 48. tit. 8. l. 1.
^t Digest. ad leg. Jul. de adulter. l. 38. § 8.
^u Cod. ad leg. Jul. de adulter. lib. 9. tit. 9. l. 30. § 1.
^v Institut. de publicis judiciis, Lib. 4. tit. 18. § 4.
^x Cod. de transact. lib. 2. tit. 6. l. 18.
^y 8 Co. Rep. fo. 59. b.
^z Wollast. Relig. of Nat. § 2. Obs. 5. Puf. Law of Nat. B. 8. cap. 3. § 25. Grot. de jur. bel. Lib. II. c. 20. § 53.
^a Trials, Vol. II. p. 621, 750.

^b Vita pejor morte, Trials, Vol. II. p. 746.
^c 2 Co. Instit. 173.
^d Cap. 14.
^e 8 Co. Rep. fo. 38. b.
^f 11 Rep. 4. 44. a.
^g See Sir John Hawles's Remarks, Trials, Vol. IV. p. 165.
^h 1 Gul. & Mar. Sess. 2. cap. 2. § 1.
ⁱ This was a Court by common Law confirmed by 3 Henr. 7. cap. 1. and dissolved by 16 Car. 1. cap. 10.
^k 4 Instit. 65.
^l Ibid. 60.
^m Ibid. 61. 63.

Court-Faction, when no Limits were observed in the Exercise of its Jurisdiction, nor Humanity in its Sentences, when the Judges thereof, however dignified by their Posts, became a Disgrace to human Nature by their barbarous and cruel butcherings, punishing pretended Libels not only with perpetual Imprisonments, but with brandings in the Face and mutilation of Members, when the Case was thus (as it appears to have been from some Instances^a in this Collection) it was then high time to tear it up by the Roots, as a Grievance no longer to be borne with. A Judge therefore ought to be strictly careful that he conform to the Rules of Law not only as to the nature of the Punishment, but likewise as to the degrees thereof.

IT is indeed no easy matter to settle the precise Limits, how far a Court of Justice may go; every Case must depend upon its own particular Circumstances. But *some* Fines and *some* Punishments are so monstrously extravagant, that no body can doubt their being so; such were the Fines of Sir *Samuel Barnardiston*^b and Mr. *Hampden*^c, such were the repeated Pilloryings and barbarous Whippings of *Oates*^d, *Dangerfield*^e, and *Johnson*^f.

Whipping,

THESE Punishments may no doubt be properly inflicted, where they are in a moderate degree and proportioned to the Offence; only it were to be wish'd, that some better care were taken in the Execution of them. How unreasonable is it that a Criminal sentenc'd to be *Whipt* should lie at the Mercy of a vile Executioner, and that it should be left in the Power of a common Hangman to make that Whipping as severe or as favourable as he pleases? In this respect it must be owned we are excell'd by foreign Countries, where the Magistrate, who is the best Judge of the Offender's Guilt, is present at the Execution of the Sentence, and gives the proper Directions about it.

And Pillory:

AS to the *Pillory*, that is intended only to expose the Offender to Shame and Infamy, and to mark him out to the Public, as a Person not fit to be trusted, but to be shunn'd and avoided by all creditable and honest Men: never did the Law design that he should be expos'd to the Peltings of a Mob, or the Assaults and Injuries of a furious Rabble, whereby the Prisoner is so disguised as to defeat one main design of setting him there, which was, that he might be publicly known and observ'd.

IT is indeed a surprizing Neglect, that no effectual Care has hitherto been taken to suppress these Practices, especially considering the fatal Consequences which have sometimes ensued from them, even to the loss of the poor Man's Life. It is not sufficient that whoever injures him in this manner may be punish'd for so doing; for how is it possible that a Man in his Condition should observe who it is that does him the Injury, or secure him if he did? he is at that time in the hands of Justice, and Justice ought to protect him: when a Man is at liberty, he is in many Cases able to defend himself; but when he is in the Custody of the Law, and is thereby disabled from being his own Defender, the Law ought to be his Security and Defence against any injurious Treatment.

IT cannot be pretended that this is altogether impracticable; Experience shows us, how effectually it may be done, when the Officers find an Advantage by it; nor would there be any harm in it, if the Officers were obliged by proper Penalties to take the same care without Money, which they are so well able to do with it.

On Gaolers,

7. ANOTHER thing in which our Law seems defective is the want of some further guard against the Packing of JURIES, and the Oppressions and Extortions of GAOLERS; but these are now under the Consideration of the Legislature, who, it is hoped, will apply proper Remedies to these growing Evils^g. As to the latter of these, I fear no Remedy will be effectual while they are suffer'd to buy and sell their Places; for while that is permitted, they will be under stronger Temptations than Men of their Character and Function usually resist, to exact more than is their due; the thing it self has an appearance of Hardship, to force a Man into Gaol against his Will, and yet oblige him to pay for his Admission into it: if he be guilty, the Punishment of the Law should be deem'd sufficient, but if innocent, the Hardship is still the greater, especially where it falls upon the Indigent and Neccessitous. It is chiefly owing to this that our Gaols swarm with Multitudes of miserable Objects, who lie there year after year without any hope of Redemption; so that when they have suffer'd the Penalty of the Law, they have a severer Punishment still to undergo for the Non-payment of

And their Fees.

^a See Proceedings against Prynne, N^o. 34. Vol. I. p. 418. and Proceedings against Bastwick, Burton, and Prynne, N^o. 36. Vol. I. p. 481.

^b Trials, Vol. III. p. 942.

^c Trials, Vol. III. p. 855.

^d 1685. Trials, Vol. IV. p. 105.

^e 1685. Burnet's Hist. own Times, p. 637.

^f 1686. See Memoirs of his Life, prefix to his Works.

^g Both these Grievances have been since remedied in some measure, the former by the 3 Geo. 2. cap. 25. and the latter by 2 Geo. 2. cap. 22.

of Fees^a, a Debt which is forc'd upon them against their Consent, and is often out of their Power ever to discharge, whereby the poor Wretches are in effect condemned to perpetual Imprisonment; a thing very odious in the eye of the Law, even for great and heinous Crimes.

HOW much better would it be for the Public to allow the Gaoler a reasonable Salary, instead of these Perquisites, which arise from the Miseries of the Unfortunate, who are thereby often necessitated to take dishonest and unlawful Methods to enable themselves to pay them?

BY the common Law^a, to avoid all Extortion and Grievance of the Subject, no Sheriff, Coroner, Gaoler or other of the King's Ministers ought to take any Fee or Reward for any Matter touching their Offices, but of the King only. This extended to all whose Offices did any ways concern the Administration or Execution of Justice, or the common good of the Subject or the King's Service^b.

FORTESCUE^c relates it as part of the Sheriff's Oath upon entering into his Office, *That he shall receive or take nothing of any other Man than the King by colour or means of his Office*. Divers Acts of Parliament^d have been made in affirmance of this, which Lord Coke^e calls a *fundamental Maxim of the Common Law*; he adds further, that *while Officers could take no Fee at all for doing their Office, but of the King, then had they no Colour to exact any thing of the Subject, who knew that they ought to take nothing of them; but after this Rule of the Common Law was alter'd by some Acts of Parliament, which gave to the said Ministers of the King Fees in some particular Cases to be taken of the Subject, it is not credible what Extortions and Oppressions have thereupon ensued; whereas before without any taking at all their Office was done, now no Office at all was done without taking, the Officers being fetter'd with golden Fees, as Fetters to the Suppression or Subversion of Justice*^f.

WHILE Prisoners are thus long detained, the true Design of Gaol-Deliveries can never be answer'd: This is a Commission, says Lord Coke^g, instituted by the Law of the Land, *ne homines diu detineantur in prisona*, but that they might receive *plenam & celerem justitiam*: he adds, that Gaols ought to be delivered thrice a Year, or oftner, if need be. Of so much Consequence does the Law esteem it to be, that the Abbot of *St. Albans*^h, who had a Grant of a Gaol and Gaol-delivery, was adjudged to have forfeited his Franchise for an unreasonable Delay in making Delivery of his Gaol. But what are the Prisoners benefited by Gaol-deliveries, if after the Law has done with them, they may still be detained for Fees, which they will never be able to pay?

The true Design of Gaol-deliveries:

ANOTHER Design of Gaol-deliveries was by clearing the Prisons to make room for new Comers; but the Discharge of the old Prisoners being by these means prevented, the continual addition of new ones renders the Croud so great, that the Place becomes too strait for its Inhabitants: This, together with the Filth and Nastiness occasion'd by their miserable Poverty and want of Conveniencies, is the cause of those contagious Distempers which are wont so violently to rage in many of our Prisons, not confining themselves within the Prison-Walls, but sometimes spreading their Infection in the very Court where the Prisoners are brought to Trial, to the no small hazard of Judges, Jurors, Counsel, and all who attend there. A dreadful Instance of this is recorded in Historyⁱ to have happen'd in the twentieth Year of Queen *Elizabeth* at *Oxford* Assizes, when the Prisoners brought such a Stench with them into Court, that the Lord Chief Baron *Bell*, the Sheriff, several Counsel, almost all the Jurors, and near three hundred others, died within the space of forty Hours after it. I could wish our own Times had not furnished us with a fresher Instance of this kind.

A FURTHER Mischief arising from this long Detention of Prisoners is, that it defeats the principal End of all Law and Justice. All Punishments below Capital are intended to reform the Criminal, and deter him from offending again: but as our Gaols are commonly managed, it is to be fear'd, they breed up and harden more Rogues, than the Law either reclaims or removes. The Prisoners are indulged so great a Liberty in Rioting and Debauchery, which the Keepers, who have the Advantage arising from the Sale of the Liquors, find their account in promoting; the young Novices are permitted to contract so intimate an Acquaintance and Familiarity with the old Offenders, that our Gaols are rather the Schools and

The ill Consequences of the common Management of Gaols.

VOL. I.

c

Nurseries

^a Mirror of Justices, c. 5. § 1. n. 53. says, it is an Abuse that Prisoners, or any for them, should pay any thing for their entrance into or coming out of Gaol.

^x See 2 Co. Instit. 74. and the Authorities there cited.

^y 2 Co. Instit. 209.

^z De laud. Leg. Angl. cap. 24.

^a Mag. Chart. cap. 35. West. 1. cap. 10. & cap. 26.

^b 2 Instit. 210.

^c 2 Instit. 74 & 176.

^d 4 Instit. p. 163.

^e 2 Co. Instit. 43.

^f See Baker's Chronicle, p. 353.

Nurseries of all manner of Roguery and Wickedness, than proper places for Correction and Amendment. It is generally observed, that they who enter in raw and unexperien'd Offenders, with some sense of Shame and Modesty, soon grow to be impudent and harden'd Villains, entering themselves Members of a Gang, wherein they are not only instructed in the Theory, but experien'd in the Practice of their wicked Arts. This may seem strange to some, who think they are restrained, (at least while they are Prisoners,) from doing Mischief without doors; yet it is not without reason apprehended by others, that they sometimes find means to make Excursions, which is hard to be accounted for without the Connivance or Permission of their Keepers, who no doubt take care to be no Losers by it: and tho' this may be a Favour not usually shown to any but inferior Rogues, who are detained for smaller Crimes; yet I could mention an Instance (attested by a Person of undoubted Credit) of one who was committed to *Newgate* for breaking open an House in the Night-time, and while he was in suppos'd Custody for that Offence, was apprehended committing a Fact of the like kind in a remote part of the Town.

The Use of
Chains and
Fetters in
Gaols.

ANOTHER matter of Complaint is, that intolerable and inhuman Practice of many Gaolers, who to extort from their unhappy Guests such Sums as they shall think fit to exact, thrust them, as soon as they arrive within their Dominions, into stinking Dungeons, loading them with Fetters and Irons till they can bring them to a Compliance with their unjust Demands: the Pretence indeed is, that they are answerable for their Prisoners, and therefore ought to be allowed the use of *proper* means to secure them. That this is nothing but Pretence is sufficiently plain, Money being generally able to procure a Release from these Shackles, which do then become no longer necessary for the Safeguard of the Prisoner, having already answer'd their real Design.

THO' Gaolers are indeed answerable for their Prisoners, yet neither the Law of *England* nor common Humanity esteems such Means as *proper* in ordinary Cases; *Severos quidem facit justitia, inhumanos non facit*^a: they may make their Prisons as strong as they can, may set what Guards and Keepers they will to watch them, but must use no Force or Violence to their Persons, no Tortures or Pains, while the Prisoners quietly submit themselves to the Process of the Law; *Carcer ad continendos homines, non ad puniendos haberi debet*^b. Prisons are designed only for the Custody of the Prisoners, not for their Punishment, unless when it becomes part of the Sentence; and even then it is no otherwise intended as a Punishment, than by way of Confinement to the Prison, not as a Justification of any ill Usage in it. *Custodes gaolarum penam sibi commissis non augeant, nec eos torqueant, vel redimant, sed omni severitiâ remotâ pietateque adhibitiâ judicia debite exequantur*^c.

IF a Prisoner is boisterous and unruly, or makes any Attempt to escape, or perhaps if he only threatens to do so; in such case it may be allowable to use a stricter Discipline.

Lord Chief Justice Coke says^d, *That Shackles about the Feet ought not to be, but for fear of Escape*. If these words have any meaning, they must import, that unless a Prisoner has given just Cause to apprehend an Escape, he ought not to be fetter'd: otherwise it may be pretended of all Prisoners, let them behave never so peaceably and civilly, who will by these means lie at the Mercy of Gaolers, whose very Mercies often are Cruelties^e. The same Author says in another place^f, *Where the Law requireth, that the Prisoner should be kept in salva & arcta custodia, yet that must be without Pain or Torment to the Prisoner*, which Chains and Fetters undoubtedly are. And again in his Comment^g on the Statute of *Westm.* 2. cap. 11. by which Statute the Gaoler is permitted in a particular Case there mentioned to lay his Prisoner in Irons, he makes this Observation, *That by the Common Law it might not be done*. There is one great Absurdity in this Practice, that by these means the Prisoner often suffers more before he is tried, than the Law inflicts on him when he is found guilty; but yet I know not how it comes to pass, it is too generally and too notoriously practis'd to be either conceal'd or deny'd. This Method of Proceeding is resembled by Lord Coke^h to that of *Rhadamanthus* the Judge of Hell, who first punisheth and then heareth; like as the chief Captain did by *St. Paul*ⁱ, first ordering him to be bound with Chains, and then demanding of him who he was, and what he had done.

8. THERE

^a See the Reports of the Committee of the House of Commons appointed to inquire into the State of the Gaols 1728-9, relating to the Fleet and Marshalsea Prisons.

^b 2 Co. Instit. 315.

^c Digest. lib. 48. tit. 19. de poenis, l. 8. §. 9. Braet. l. 3. fol. 105. a. 2 Co. Instit. 43.

^d Fleta, lib. 1. cap. 26.

^e 3 Instit. p. 34. in the Margin.

^f 'Tis on this presumption of Gaolers ill-treating their Prisoners, that whenever any die in Prison, the Law requires the Coroner should sit on their Bodies, to inquire into the manner of their Death, before they can be buried. Flet. lib. 1. cap. 26.

^g 3 Co. Instit. 35.

^h 2 Instit. p. 381.

ⁱ 2 Instit. 55.

^k Acts cap. 21. ver. 33.

8. THERE is one thing more which ought not to be wholly pass'd over, and that is the *Multiplicity and Voluminousness* of our Laws: If what lies scatter'd in so many various (some obsolete) Acts, were (so much of them as should be judged fit to be continued) collected under their several Heads into so many distinct Acts, the Law would be much more plain and easy; whereas now, considering the variety of Subjects, which are often thrown together into one Act, and the various Acts relating to one and the same Subject, it is no easy matter to find out the whole relating to one particular Head; and when it is found, many Difficulties arise from the Clashings and Inconsistencies of the several Acts, the old ones not being always sufficiently consulted when the new ones are made; so that it is to be wish'd we may never feel the Inconvenience which *Tacitus** complains of in his time, *Ante-hac flagitiis laborabatur, nunc legibus.*

And on the Voluminousness of the Laws.

I THOUGHT these short Observations upon the Laws of *England*, so far as they relate to public Crimes and the Incidents thereto, would not be altogether unsuitable to a Work consisting chiefly of the Histories of criminal Prosecutions.

THE Conclusion naturally resulting from the whole is, That as our Laws have many Excellencies and Advantages which we have just reason to value them for, so they have also their Defects and Blemishes: such a blind Veneration for them as will not allow this, does not only suppose a Perfection which all human Contrivances are incapable of, but is the greatest Obstruction to all Attempts for an Amendment: That some Things need to be mended, no experienc'd Lawyer can deny; and that they should be so, every honest one will heartily desire.

WHETHER the Particulars here mentioned be of that number, is submitted to the Judgment of all true Lovers of their Country, who it is hoped will be so far from being offended hereat, that they will use their utmost Endeavours to promote the Amendment of whatever shall appear to need it. I pretend not to have taken notice of every Particular in our Crown Law which may deserve it; my Design was only to give a few Hints, wherein I might evince the necessity of a Reformation; and if I can be any way instrumental in bringing it about by stirring up others of more Capacity and Influence to undertake the Task, I shall answer my End.

THE Reader will by this time expect some Account of the Improvements and Alterations in this second Edition.

WHEN the first Edition was preparing for the Press, the Undertakers were at great Pains and Expence, and offer'd large Encouragements to procure whatever was proper and suitable to their Design; but as they were sensible there must needs be many Defects and Omissions in the first Attempt of a Work of this nature, so they have continued their Pains to supply those Defects, and have offer'd the same Encouragements to any who should furnish them with such material Trials as were then omitted.

An Account of this Edition.

HOW they have succeeded in their Endeavours may be seen from the large number of *Additional Trials*: These, together with the Additions interspersed thro' the other Trials, have swell'd the Work to five Volumes; to which there is added a Sixth, containing the most remarkable Trials from the Reign of Queen *Anne*, where the first Edition ended, to the end of the Reign of King *George I.*

THE larger Trial of the Earl of *Strafford* is here purposely omitted, as being an entire Volume in *Rushworth's* Collections, which is to be had by itself.

TO make this Collection more generally acceptable, the Reader is informed at the end of each Trial, where the Prisoner was convicted of a capital Crime, whether he was executed or not; and (where it could be had) an Account also is added of his Behaviour and Speech at the Place of Execution.

AND whereas in the former Edition some Trials were inserted out of the Order of Time, and Parts of others transpos'd, they are here reduced to their proper Places; the Names of the Judges, Attorney-General, &c. are here generally, if not always inserted; several Notes are added to explain and illustrate the Text, and divers References made to the Books of Reports and Historians of the Times: and for the Ease and Conveniency of referring, each Trial is distinctly number'd, the several Titles are render'd uniform, containing the Date when, the Crime for which, and the Court before whom the Prisoner was try'd; all which are continued where there was room for them thro'out the Running Title; the Omission whereof in some Places 'tis hoped the candid Reader will excuse, since in a Work of this nature, where such a variety of Printers are employ'd, it can scarce be expected that all Parts of it should be perform'd with equal Care and Exactness.

TO

* Annal. lib. 3. §. 25.

The PREFACE.

TO render this Work the more useful, especially to the Gentlemen of the Law, there is subjoin'd by way of *Appendix* a Collection of Records relating to the said Trials. The Undertakers wish they could say they had had the same Success in this part of the Work as in the other; but hope the Fault will not be imputed to them, who have inserted all they could procure, and done their Endeavours to procure the rest.

THAT the whole might be the better fitted for Use, there are added two *Alphabetical Tables*; the one containing the Names of the Persons tried or proceeded against, together with the Times and Places of their Trial, and also their Crimes and Punishments; the other of the several Matters contained in all the Six Volumes.

March 27.
1730.

S. Emlyn.

Abbreviations used in the Table, and the Running Titles.

<i>H. L.</i>	—	<i>House of Lords.</i>
<i>B. R.</i>	—	<i>The King's Bench.</i>
<i>Scacc.</i>	—	<i>Exchequer.</i>
<i>C. S.</i>	—	<i>The Star Chamber.</i>
<i>G. H.</i>	—	<i>Guild-Hall.</i>
<i>O. B.</i>	—	<i>The Old Baily.</i>
<i>H. C. J.</i>	—	<i>High Court of Justice.</i>
<i>Mich.</i>	—	<i>Michaelmas Term.</i>
<i>Hil.</i>	—	<i>Hilary Term.</i>
<i>Pasch.</i>	—	<i>Easter Term.</i>
<i>Trin.</i>	—	<i>Trinity Term.</i>



A N

ALPHABETICAL TABLE

OF THE

NAMES of the Persons tried or proceeded against, the *Crimes* for which they were tried, the *Places* where, and the *Punishments* of such as were convicted.

Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o .	Trials.
A.							
1586	Sept. 15	Abington	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	10	Vol. I. 128
1679	Jan. 17	Anderfon	<i>A Romish Priest</i>	O. B.	<i>Repriev'd</i>	90	II. 993
1668	April 4	Appletree	<i>High-Treason</i>	O. B.	<i>Pardon'd</i>	68	II. 585
1661	Jan. 23	Argyle (<i>Marquiss</i>)	<i>High-Treason</i>	Scotl.	<i>Beheaded</i>	58	II. 417
1681	Nov.	Argyle (<i>Earl</i>)	<i>High-Treason</i>	Scotl.	<i>Beheaded</i>	110	III. 441
1684	June 14	Armstrong (<i>Sir Tho.</i>)	<i>High-Treason</i>	B. R.	<i>Hang'd, &c.</i>	128	III. 983
1589	Apr. 18	Arundel (<i>Earl</i>)	<i>High-Treason</i>	H. L.	<i>Died in Prison</i>	13	I. 164
1690	Jan. 17	Ashton	<i>High-Treason</i>	O. B.	<i>Hang'd</i>	148	IV. 455
1678	Feb. 11	Atkins (<i>Samuel</i>)	<i>Murder of Sir E. B. G.</i>	B. R.	<i>Acquitted</i>	80	II. 792
1679	Aug. 13	Atkins (<i>William</i>)	<i>A Romish Priest</i>	Affizes	<i>Guilty</i>	88	II. 968
1723	May	Atterbury (<i>Bishop</i>)	<i>A Treasonable Conspiracy</i>	Parl.	<i>Banish'd</i>	194	VI. 335
1631	Apr. 25	Audley (<i>Lord</i>)	<i>A Rape and Sodomy</i>	H. L.	<i>Beheaded</i>	31	I. 388
1660	Oct. 15	Axtel	<i>A Regicide</i>	O. B.	<i>Hang'd, &c.</i>	56	II. 369
B.							
1586	Sept. 14	Babington	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	10	I. 128
1620	Mar. 19	Bacon (<i>Lord</i>)	<i>Bribery and Corruption</i>	H. L.	<i>Fin'd and imprison'd</i>	30	I. 375
1684	Dec. 3	Baillie	<i>High-Treason</i>	Scotl.	<i>Hang'd, &c.</i>	123	III. 1095
1586	Sept. 14	Ballard	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	10	I. 128
1634	Dec. 3	Balmerino (<i>Lord</i>)	<i>A Treasonable Libel</i>	Scotl.	<i>Pardon'd</i>	35	I. 429
1683	Feb. 14	Barnardiston (<i>Sir Sam.</i>)	<i>A Misdemeanour</i>	G. H.	<i>Fin'd 10000 l.</i>	125	III. 933
1586	Sept. 14	Barnewell	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	10	I. 128
1637	June 14	Bastwick	<i>A Libel</i>	C. S.	<i>Pillory'd, Ears cut off, and imprison'd</i>	36	I. 481
1685	Dec. 9	Bateman	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	137	IV. 162
1605	Jan. 27	Bates	<i>Gunpowder Plot</i>	Westm.	<i>Hang'd, &c.</i>	19	I. 232
1701	Feb. 19	Bayard (<i>Col.</i>)	<i>High-Treason</i>	N. York	<i>Repriev'd</i>	172	V. 419
1702	Nov. 25	Baynton	<i>A forcible Marriage</i>	B. R.	<i>Repriev'd</i>	176	V. 465
1668	April 4	Beadle	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	68	II. 585
1668	April 4	Beasley	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	68	II. 585
1586	Sept. 15	Bellamy	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	11	I. 134
1678	Feb. 10	Berry	<i>Murder of Sir E. B. G.</i>	B. R.	<i>Hang'd</i>	79	II. 760
1681	Oct. 5	Bethel	<i>Affault and Battery</i>	Southw.	<i>Fin'd</i>	108	III. 413
1688	June 29	<i>Bishops (seven)</i>	<i>A Libel</i>	B. R.	<i>Acquitted</i>	144	IV. 305
1683	July 13	Blague	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	121	III. 739
1600	Mar. 5	Blunt (<i>Sir Christopher</i>)	<i>High-Treason</i>		<i>Beheaded</i>	17	I. 209
1662	June 25	Bolton	<i>Refusing to take the Oaths</i>	O. B.	<i>Imprison'd</i>	60	II. 463
1718	Oct. 13	Bonnet (<i>Maj.</i>) and others	<i>Piracy</i>	Carolina	<i>Hang'd</i>	189	VI. 156
1681	Feb. 28	Borosky	<i>Murder of Mr. Thynn</i>	O. B.	<i>Hang'd</i>	111	III. 466
1567	Apr. 12	Bothwell (<i>Earl</i>)	<i>Murder of King of Scots</i>	Scotl.	<i>Acquitted</i>	6	I. 78
1703	Feb. 28	Bouchier	<i>High-Treason</i>	B. R.	<i>Repriev'd</i>	178	V. 507
1683	Feb. 7	Braddon	<i>A Misdemeanour</i>	B. R.	<i>Fin'd 2000 l.</i>	124	III. 855
1388	Feb. 3	Brambre (<i>May. of Lon.</i>)	<i>High-Treason</i>	H. L.	<i>Hang'd, &c.</i>	1	I. 1
1663	Feb. 22	Brewster	<i>A Libel</i>	O. B.	<i>Pillory'd, fin'd, and imprison'd</i>	65	II. 538
1679	Aug. 13	Brommich	<i>A Romish Priest</i>	Affizes	<i>Guilty</i>	87	II. 965
1663	Feb. 22	Brooks	<i>A Libel</i>	O. B.	<i>Pillory'd, fin'd, and imprison'd</i>	65	II. 528

TABLE of the Persons tried, their Crimes, &c.

Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o .	Trials.
1631	June 27	Brodway	<i>A Rape and Sodomy</i>	B. R.	Hang'd	32	Vol. I. 396
1633	Feb. 7	Buckner	<i>A Libel</i>	C. S.	Censur'd	34	I. 418
1637	June 14	Burton	<i>A Libel</i>	C. S.	Pillory'd, Ears cut } off, and imprison'd }	36	I. 481
1681	July 25	Busby	<i>A Romish Priest</i>	Affizes	Repriev'd	106	III. 328
1699	Oct. 12	Butler	<i>Forgery</i>	O. B.	Fin'd	167	V. 232
C							
1687	April	Cambridge (University)	<i>A Contempt</i>		Vice Chanc. depriv'd	141	IV. 254
1680	July 2	Carr	<i>A Libel</i>	G. H.	Guilty	98	III. 57
1660	Oct. 12	Carew	<i>A Regicide</i>	O. B.	Hang'd, &c.	57	II. 330
1715	Feb. 9	Carnwath (Earl)	<i>High-Treason</i>	H. L.	Pardon'd	185	VI. 1
1688	Mar. 7	Cavenagh and others	<i>Cow-stealing</i>	Ireland	Hang'd	147	IV. 408
1680	June 11	Cellier	<i>High-Treason</i>	B. R.	Acquitted	96	III. 32
1680	Septemb.	The same	<i>A Libel</i>	O. B.	Pillory'd and fin'd	101	III. 89
1648	Jan. 20	Charles (King)	<i>High-Treason</i>	H. C. J.	Beheaded	43	I. 986
1695	Mar. 11	Charnock (Robert)	<i>High-Treason</i>	O. B.	Hang'd, &c.	153	IV. 562
1586	Sept. 15	Charnock (John)	<i>High-Treason</i>	Westm.	Hang'd, &c.	11	I. 134
1663	& 1667	Clarendon (Earl)	<i>H. Treason and H. Crimes</i>	Parl.	Banish'd	67	II. 554
1660	Oct. 12	Clement	<i>A Regicide</i>	O. B.	Hang'd, &c.	57	II. 338
1721	Mar. 13	Coke (Arundel)	<i>Slitting Mr. Crispe's Nose</i>	Affizes	Hang'd	192	VI. 212
1692	Sept. 2	Cole	<i>Murder of Dr. Clench</i>	O. B.	Acquitted	150	IV. 506
1678	Nov. 27	Coleman	<i>High-Treason</i>	B. R.	Hang'd, &c.	75	II. 660
1681	Aug. 17	Colledge	<i>High-Treason</i>	Oxon	Hang'd, &c.	107	III. 341
1660	Oct. 13	Cook (John)	<i>A Regicide</i>	O. B.	Hang'd, &c.	57	II. 341
1696	May 9	Cook (Peter)	<i>High-Treason</i>	O. B.	Pardon'd	159	IV. 738
1681	Feb. 28	Conningsmark (Count)	<i>Murder of Mr. Thynn</i>	O. B.	Acquitted	111	III. 406
1679	July 18	Corker	<i>High-Treason</i>	O. B.	Acquitted	85	II. 917
1679	Jan. 17	The same	<i>A Romish Priest</i>	O. B.	Repriev'd	90	II. 993
1678		Cornwallis (Lord)	<i>Murder of Clerk</i>	H. L.	Acquitted	77	II. 725
1683	May 8	Cornish and others	<i>A Riot</i>	G. H.	Fin'd	115	III. 630
1685	Oct. 19	The same	<i>High-Treason</i>	O. B.	Hang'd, &c.	136	IV. 130
1668	April 4	Cotton	<i>High-Treason</i>	O. B.	Hang'd, &c.	68	II. 585
1699	July 16	Cowper and others	<i>Murder of S. Stout</i>	Affizes	Acquitted	166	V. 194
1696	Apr. 21	Cranburne	<i>High-Treason</i>	Westm.	Hang'd, &c.	157	IV. 698
1662	June 25	Croke	<i>Refusing to take the Oaths</i>	O. B.	Imprison'd	60	II. 463
1600	Mar. 5	Cuffe	<i>High-Treason</i>		Hang'd, &c.	17	I. 209
1679		Curtis	<i>A Libel</i>	G. H.	Guilty	94	II. 1042
D							
1678	Decemb.	Danby (Earl)	<i>High-Treason</i>	Parl.	Pardon'd	78	II. 731
1600	Mar. 5	Davers (Sir Charles)	<i>High-Treason</i>		Beheaded	17	I. 209
1600	Mar. 5	Davis	<i>High-Treason</i>		Hang'd, &c.	17	I. 209
1696	Oct. 19	Dawson and others	<i>Piracy</i>	O. B.	Hang'd	161	V. 1
1685	Jan. 14	Delamere (Lord)	<i>High-Treason</i>	H. L.	Acquitted	139	IV. 210
1715	Feb. 9	Derwentwater (Earl)	<i>High-Treason</i>	H. L.	Beheaded	185	VI. 1
1605	Jan. 27	Digby (Sir Everard)	<i>Gunpowder Plot</i>	Westm.	Hang'd, &c.	19	I. 232
1586	Sept. 14	Donn	<i>High-Treason</i>	Westm.	Hang'd, &c.	10	I. 128
1663	Feb. 22	Dover	<i>A Libel</i>	O. B.	Pillory'd, fin'd, and } imprison'd }	65	II. 545
1660	Oct. 16	Downes	<i>A Regicide</i>	O. B.	Repriev'd	57	II. 396
E.							
1668	April 4	Earles	<i>High-Treason</i>	O. B.	Acquitted	68	II. 585
1690	Jan. 17	Elliot	<i>High-Treason</i>	O. B.	Not tried	148	IV. 410
1615	Nov. 16	Elwes (Sir Jervis)	<i>Murder of Sir T. Overb.</i>	G. H.	Hang'd	25	I. 341
1603	Feb. 19	Effex (Earl)	<i>High-Treason</i>	H. L.	Beheaded	16	I. 197
1613		Effex (E. and Countess)	<i>Impotency</i>	Delegates	Divorc'd	22	I. 315
F.							
1668	April 4	Farrel	<i>High-Treason</i>	O. B.	Acquitted	63	II. 585
1682	June 20	Farewell	<i>Libels</i>	G. H.	Pillory'd and fin'd	112	III. 505
1605	Jan. 27	Fawkes	<i>Gunpowder Plot</i>	Westm.	Hang'd, &c.	19	I. 232
1679	June 13	Fenwick	<i>High-Treason</i>	O. B.	Hang'd, &c.	83	II. 829
1696	Novem.	Fenwick (Sir John)	<i>High-Treason</i>	Parl.	Beheaded	163	V. 40
1685	Oct. 19	Fernley	<i>High-Treason</i>	O. B.	Repriev'd	136	IV. 130
1706	Dec. 4	Fielding	<i>Bigamy</i>	O. B.	Pardon'd	182	V. 610
1707	June 25	The same	<i>Marriage with the Duchess of Cleveland annull'd</i>				V. 632
1643	Dec. 14	Fiennes (Col.)	<i>Cowardice</i>	C. of War.	Pardon'd	40	I. 766
1681	Mar. 25	Fitz-Harris	<i>High-Treason</i>	B. R.	Hang'd, &c.	103	III. 224
1631	June 27	Fitz-Patrick	<i>A Rape and Sodomy</i>	B. R.	Hang'd	32	I. 396

T A B L E of the Persons tried, their Crimes, &c. xix

Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o	Trials.
1660	Oct. 10	Fleetwood	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	Vol. II. 311
1668	April 4	Ford	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	68	II. 585
1654	June 30	Fox	<i>High-Treason</i>	H. C. J.	<i>Pardon'd</i>	50	II. 212
1716	Jan. 22	Francia	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	187	VI. 58
1615	Nov. 27	Franklin	<i>Murder of Sir T. Overb.</i>	B. R.	<i>Hang'd</i>	26	I. 346
1695	Mar. 23	Friend (Sir John)	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	154	IV. 599
1702	May 20	Fuller	<i>An Impostor</i>	G. H.	<i>Pillory'd, &c.</i>	173	V. 441
G.							
1586	Sept. 15	Gage	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	11	I. 134
1660	Oct. 16	Garland	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 398
1606	Mar. 28	Garnet	<i>Gunpowder Plot</i>	G. H.	<i>Hang'd, &c.</i>	20	I. 248
1679	Feb. 11	Gascoigne (Sir Tho.)	<i>High-Treason</i>	B. R.	<i>Acquitted</i>	95	III. 1
1679	June 13	Gavan	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	83	II. 829
1685	Oct. 19	Gaunt	<i>High-Treason</i>	O. B.	<i>Burnt</i>	136	IV. 130
1654	June 30	Gerhard	<i>High-Treason</i>	H. C. J.	<i>Beheaded</i>	50	II. 212
1662	Dec. 11	Gibbs	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	62	II. 478
1651	July 18	Gibbons	<i>High-Treason</i>	H. C. J.	<i>Beheaded</i>	48	II. 183
1719	July 28	Gilbert (C. Baron) &c.	<i>A Contempt</i>	Ireland	<i>Imprison'd</i>	190	VI. 188
1680	July 14	Giles	<i>Attempt to murder } Mr. Arnold</i>	O. B.	<i>Pillory'd and fin'd</i>	99	III. 65
1740	Mar. 17	Goodere	<i>Murder of his Brother } Sir Dinely Goodere</i>	Bristol	<i>Hang'd</i>	197	VI. 795
1605	Jan. 27	Grant	<i>Gunpowder Plot</i>	Westm.	<i>Hang'd, &c.</i>	19	I. 232
1704	Mar. 14	Green (Capt.) and his } Crew	<i>Piracy</i>	Scotland	<i>Hang'd</i>	181	V. 573
1678	Feb. 10	Green (Robert)	<i>Murder of Sir E. B. G.</i>	B. R.	<i>Hang'd</i>	79	II. 760
1668	April 4	Green (William)	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	68	II. 585
1662	June 25	Grey	<i>Refusing to take the Oaths</i>	O. B.	<i>Imprison'd</i>	60	II. 463
1678	Dec. 17	Grove	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	76	II. 696
1682	Nov. 23	Grey (Lord) and others	<i>A Misdemeanour</i>	B. R.	<i>No Judgment</i>	113	III. 519
H							
1701		Halifax (Lord)	<i>High Misdemeanours</i>	H. L.	<i>Acquitted</i>	170	V. 339
1660	Oct. 15	Hacker	<i>A Regicide</i>	O. B.	<i>Hang'd, &c.</i>	57	II. 382
1637		Hampden (John)	<i>Ship-Money</i>	Seac'	<i>Judgm. against him</i>	37	I. 505
1683	Feb. 6	Hampden (John)	<i>High Misdemeanours</i>	B. R.	<i>Fin'd 40000 l.</i>	123	III. 824
1685	Dec. 30	The same	<i>High-Treason</i>	O. B.	<i>Pardon'd</i>	138	IV. 207
1648	Feb. 9	Hamilton (Duke)	<i>High-Treason</i>	H. C. J.	<i>Beheaded</i>	45	II. 1
1679	Feb. 5	Harris	<i>A Libel</i>	G. H.	<i>Pillory'd, fin'd and } imprison'd</i>	92	II. 1037
1638	Trin. 7.	Harrison (Tho.)	<i>Misdemeanour</i>	B. R.	<i>Fin'd and imprison'd</i>	38	I. 720
1660	Oct. 11	Harrison (Tho.)	<i>A Regicide</i>	O. B.	<i>Hang'd, &c.</i>	57	II. 313
1692	April 6	Harrison (Henry)	<i>Murder of Dr. Clench</i>	O. B.	<i>Hang'd</i>	149	IV. 488
1679	June 13	Harcourt	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	83	II. 829
1702	Nov. 25	Hartwell	<i>A forcible Marriage</i>	B. R.	<i>Acquitted</i>	176	V. 465
1660	Oct. 16	Harvey	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 390
1702	Mar. 24	Hathaway	<i>An Impostor</i>	Affizes	<i>Pillory'd, &c.</i>	177	V. 483
1701		Haverfham (Lord)		H. L.	<i>Acquitted</i>	167	V. 339
1668	Mar. 11	Hawkins	<i>Felony</i>	Affize	<i>Acquitted</i>	69	II. 595
1684	Nov. 21	Hayes	<i>High-Treason</i>	B. R.	<i>Acquitted</i>	131	III. 1067
1660	Oct. 16	Heveningham	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 400
1658	June 1	Hewet (Dr.)	<i>High-Treason</i>	H. C. J.	<i>Beheaded</i>	55	II. 281
1571	Feb. 9	Hickford	<i>High-Treason</i>	B. R.	<i>Guilty</i>	8	I. 117
1678	Feb. 10	Hill	<i>Murder of Sir E. B. G.</i>	B. R.	<i>Hang'd</i>	79	II. 760
1662	Dec. 11	Hind	<i>High-Treason</i>	O. B.	<i>Repriev'd</i>	62	II. 478
1615	Nov. 10	Hollis (Sir John)	<i>Misdemeanour</i>	C. S.	<i>Fin'd</i>		I. 333
1684	Apr. 21	Holloway	<i>High-Treason</i>	B. R.	<i>Hang'd, &c.</i>	126	III. 943
1683	July 12	Hone	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	118	III. 702
1660	Oct. 15	Hulet	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 385
1701	May 31	Hurly	<i>Perjury and Cheat</i>	Ireland.	<i>Fin'd</i>	171	V. 384
I.							
1662	Nov. 14	James	<i>High-Treason</i>	B. R.	<i>Hang'd, &c.</i>	61	II. 470
1586	Sept. 15	Jones (Edward)	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	11	I. 134
1660	Oct. 12	Jones (John)	<i>A Regicide</i>	O. B.	<i>Hang'd, &c.</i>	57	II. 338
1388	Feb. 3	Ireland (Duke)	<i>High-Treason</i>	H. L.	<i>Escap'd</i>	1	I. 1
1678	Dec. 17	Ireland	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	76	II. 696
K.							
1664	Oct. 8	Keach	<i>A Libel</i>	Affizes	<i>Pillory'd, fin'd, and } imprison'd</i>	66	II. 550
1723	May	Kelly	<i>A Treasonable Conspiracy</i>	Parl.	<i>Imprison'd for Life</i>	194	VI. 335
1695	Oct. 31	Kendal and Roe	<i>Habeas Corpus</i>	B. R.	<i>Bail'd</i>	152	IV. 554
							Year

TABLE of the Persons tried, their Crimes, &c.

Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o	Trials.
1715	Feb. 9	Kenmure (<i>Viscount</i>)	<i>High-Treason</i>	H. L.	<i>Beheaded</i>	183	Vol. VI. 1
1679	Jan. 17	Kemish	<i>A Romish Priest</i>	O. B.	<i>Arraign'd only</i>	90	II. 993
1679	Aug. 4	Kerne	<i>High-Treason</i>	Affizes	<i>Acquitted</i>	86	II. 961
1605	Jan. 27	Keys (Robert)	<i>Gunpowder Plot</i>	Westm.	<i>Hang'd, &c.</i>	19	I. 232
1695	Mar. 11	Keys (Thomas)	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	153	IV. 562
1701	May 8	Kidd (<i>Capt.</i>) and others	<i>Murder and Piracy</i>	O. B.	<i>Hang'd</i>	169	V. 287
1695	Mar. 11	King	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	153	IV. 562
1702	Oct. 8	Kirkby and others	<i>Defertion</i>		<i>Shot to death</i>	174	V. 445
1696	May 20	Knightley	<i>High-Treason</i>	B. R.	<i>Pardon'd</i>	160	IV. 777
1679	Nov. 25	Knox	<i>A Misdemeanour</i>	B. R.	<i>Fin'd and imprison'd</i>	89	II. 970
L.							
1679	Nov. 25	Lane	<i>A Misdemeanour</i>	B. R.	<i>Pillory, fin'd, and } imprison'd</i>	89	II. 970
1679	June 14	Langhorne	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	84	II. 878
1668	Apr. 4	Latimer	<i>High-Treason</i>	O. B.	<i>Pardon'd</i>	68	II. 585
1643	Mar. 12	Laud (<i>Archbishop</i>)	<i>High-Treason</i>	H. L.	<i>Beheaded</i>	41	I. 824
1722	Nov. 21	Layer	<i>High-Treason</i>	B. R.	<i>Hang'd, &c.</i>	193	VI. 229
1679	Mar. 28	Lewis	<i>High-Treason</i>	Affizes	<i>Hang'd, &c.</i>	81	II. 801
1649	Oct. 24	Lilburne (<i>Col.</i>)	<i>High-Treason</i>	G. H.	<i>Acquitted</i>	46	II. 19
1653	Aug. 20	<i>His fury</i>			<i>Examin'd</i>		II. 81
1660	Oct. 16	Lilburne (Robert)	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 394
1668	April 4	Limerick	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	68	II. 585
1704	Apr. 19	Lindsay	<i>High-Treason</i>		<i>Repriev'd</i>	179	V. 508
1685	Aug. 27	Lisle (<i>Lady</i>)	<i>High-Treason</i>	Winton	<i>Beheaded</i>	135	IV. 105
1686	August.	London (<i>Bishop</i>)	<i>A Contempt</i>		<i>Suspended</i>	140	IV. 247
1683	Hil. 7.	London (<i>City</i>)	<i>Quo Warranto</i>	B. R.	<i>Charter forfeited</i>		IV. 769
1651	June 20	Love	<i>High-Treason</i>	H. C. J.	<i>Beheaded</i>	47	II. 83
1696	Apr. 22	Lowick	<i>High-Treason</i>	Westm.	<i>Hang'd, &c.</i>	158	IV. 718
1615	Nov. 10	Lumsden	<i>Misdemeanour</i>	C. S.	<i>Fin'd</i>		I. 333
1679	Jan. 17	Lumsden	<i>A Romish Priest</i>	O. B.	<i>Repriev'd</i>	90	II. 993
M							
1644	Feb. 10	Macguire (<i>Lord</i>)	<i>High-Treason</i>	B. R.	<i>Hang'd, &c.</i>	42	I. 949
1725	May 6	Macclesfield (<i>Earl</i>)	<i>High Misdemeanours</i>	H. L.	<i>Fin'd 30000 l.</i>	195	VI. 477
1687	June	Magdalen College	<i>A Contempt</i>		<i>Fellows expell'd</i>	142	IV. 262
1679	July 18	Marshal (William)	<i>High-Treason</i>	O. B.	<i>Acquitted</i>	85	II. 917
1679	Jan. 17	<i>The same</i>	<i>A Romish Priest</i>	O. B.	<i>Repriev'd</i>	90	II. 993
1660	Oct. 16	Marten (Harry)	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 392
1670	Sept. 1	Mead, (Will.)	<i>A Tumult</i>	O. B.	<i>Acquitted</i>	70	II. 610
1600	Mar. 5	Merrick (<i>Sir Gilly</i>)	<i>High-Treason</i>		<i>Hang'd, &c.</i>	17	I. 209
1668	April 4	Messenger	<i>High-Treason</i>	O. B.	<i>Hang'd, &c.</i>	68	II. 585
1660	Oct. 16	Meyne	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 399
1660	Oct. 16	Millington	<i>A Regicide</i>	O. B.	<i>Repriev'd</i>	57	II. 393
1677	Jan. 7	Mitchel	<i>Attempt to murder the } ABp of St. Andrews }</i>	Scotland	<i>Hang'd</i>	72	II. 623
1663	June 3	Moders (<i>Germ. Princess</i>)	<i>Bigamy</i>	O. B.	<i>Acquitted</i>	63	II. 498
1692	Jan. 31	Mohun (<i>Lord</i>)	<i>Murder of Mountford</i>	H. L.	<i>Acquitted</i>	151	IV. 510
1699	Mar. 29	<i>The same</i>	<i>Murder of Coote</i>	H. L.	<i>Acquitted</i>	165	V. 180
1615	Dec. 1	Monson (<i>Sir Tho.</i>)	<i>Murder of Sir T. Overb.</i>	G. H.	<i>Not tried</i>	27	I. 347
1658	June 1	Mordaunt	<i>High-Treason</i>	H. C. J.	<i>Acquitted</i>	56	II. 292
1535	May 7	More (<i>Lord Chancellor</i>)	<i>High-Treason</i>		<i>Beheaded</i>	4	I. 59
N							
1715	Feb. 9	Nairn (<i>Lord</i>)	<i>High-Treason</i>	H. L.	<i>Pardon'd</i>	185	VI. 1
1656	Decemb.	Naylor	<i>Blasphemy</i>	H. Com.	<i>Whipt, Pillory'd } Branded, &c. }</i>	53	II. 265
1388	Feb. 3	Nevil (<i>ABp of York</i>)	<i>High-Treason</i>	H. L.	<i>Escap'd</i>	1	I. 1
1715	Feb. 9	Nithisdale (<i>Earl</i>)	<i>High-Treason</i>	H. L.	<i>Escap'd</i>	185	VI. 1
1571	Jan. 16	Norfolk (<i>Duke</i>)	<i>High-Treason</i>	H. L.	<i>Beheaded</i>	7	I. 82
1699	Febr.	Norfolk (<i>D. and Duch.</i>)	<i>Adultery</i>	Parl.	<i>Divorc'd</i>	168	V. 239
O.							
1413	Sept. 23	Oldcastle (<i>Ld Cobham</i>)	<i>Herefy</i>	AB. Cant.	<i>Hang'd and Burnt</i>	3	I. 36
1684	June 18	Oates	<i>Scand' Mag'</i>	B. R.	<i>Damages 100000 l.</i>	129	III. 987
1685	May 8	<i>The same</i>	<i>Perjury</i>	B. R.	<i>Pillory'd, whipt, } fin'd, &c. }</i>	134	IV. 1
1685	May 9	<i>The same</i>	<i>Perjury</i>	B. R.	<i>Pillory'd, whipt, } fin'd, &c. }</i>		IV. 66
1701		Orford (<i>Earl</i>)	<i>High Misdemeanours</i>	H. L.	<i>Acquitted</i>	170	V. 339
1717	June 24	Oxford (<i>Earl</i>)	<i>High-Treason, &c.</i>	H. L.	<i>Acquitted</i>	188	VI. 102

T A B L E of the Persons tried, their Crimes, &c. xxi


Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o .	Trials.
P.							
1680	June 23	Palmer (Earl Castle- maine)	High-Treason	B. R.	Acquitted	97	Vol. III. 36
1689	Oct. 26	The same	High-Treason	H. Com.	Bail'd	145	IV. 397
1682	June 20	Pain	Libels	G. H.	Fin'd	112	III. 505
1584	Feb. 25	Parry	High-Treason		Hang'd, &c.	9	I. 121
1679	Jan. 17	Parris	A Romish Priest	O. B.	Repriev'd	90	II. 993
1678	April 4	Pembroke (Earl)	Murder of Cony	H. L.	Manslaughter	73	II. 641
1670	Sept. 1	Penn (William)	A Tumult	O. B.	Acquitted	70	II. 610
1660	Oct. 16	Pennington	A Regicide	O. B.	Repriev'd	57	II. 391
1655	Apr. 19	Penruddock (Col.)	High-Treason		Beheaded	52	II. 259
1695	Mar. 24	Perkins (Sir William)	High-Treason	O. B.	Hang'd, &c.	155	IV. 627
1592	Apr. 27	Perrot (Sir John)	High-Treason	Westm.	Died in Prison	15	I. 188
1660	Oct. 13	Peters (Hugh)	A Regicide	O. B.	Hang'd, &c.	57	II. 357
1678	Dec. 17	Pickering	High-Treason	O. B.	Hang'd, &c.	76	II. 696
1683	May 8	Pilkington and others	A Riot	G. H.	Fin'd	115	III. 630
1662	Dec. 11	Phillips	High-Treason	O. B.	Hang'd, &c.	62	II. 478
1681	June 8	Plunket (Oliver)	High-Treason	B. R.	Hang'd, &c.	104	III. 293
1723	May	Plunket (John)	A Treasonable Conspir.	Parl.	Imprison'd for Life	194	VI. 335
1654	Sept. 18	oPrdage (Dr.)	Insufficiency		Ejected	51	II. 217
1736	July 5	Porteous (Capt.)	Murder	Scotland	Hang'd	196	VI. 763
1701		Portland (Earl)	High Misdemeanors	H. L.	Acquitted	170	V. 339
1660	Oct. 16	Potter	A Regicide	O. B.	Repriev'd	57	II. 398
1680	July 24	Preflicks	High-Treason	Affizes	Acquitted	100	III. 79
1690	Jan. 17	Preston (Viscount)	High-Treason	O. B.	Pardon'd	148	IV. 410
1688	Mar. 6	Price (John) and others	High-Treason	Irel.	Not try'd	146	IV. 401
1679	Feb. 3	Price (Anne)	Subornation of Perjury	B. R.	Fin'd	91	II. 1017
1684	Nov. 6	Pritchard and Papillon	A false Arrest	G. H.	Guilty	132	III. 1072
1633	Feb. 7	Prynn	A Libel	C. S.	Fin'd, Mutilated, &c.	34	I. 418
1637	June 14	The same	A Libel	C. S.	Pillory'd, Ears cut off, and imprison'd	36	I. 481
R.							
1603	Nov. 17	Raleigh (Sir Walter)	High-Treason	Winton	Beheaded	18	I. 212
1679	Apr. 24	Reading	A Misdemeanor		Pillory'd, fin'd, and imprison'd	82	II. 806
1721	Febr. 3	Reason	Murd. of Capt. Lutterel	B. R.	Manslaughter	191	VI. 195
1668	Apr. 4	Richardson	High-Treason	O. B.	Acquitted	68	II. 585
1685	Oct. 19	Ring	High-Treason	O. B.	Repriev'd	136	IV. 130
1660	Oct. 16	Roe (Owen)	A Regicide	O. B.	Repriev'd	57	II. 394
1605	Jan. 27	Rookwood (Ambrose)	Gunpowder Plot	Westm.	Hang'd, &c.	19	I. 232
1696	April 2	Rookwood (Ambrose)	High-Treason	Westm.	Hang'd, &c.	156	IV. 661
1684	Nov. 18	Rosewell	High-Treason	B. R.	Pardon'd	130	III. 997
1683	July 12	Rouse	High-Treason	O. B.	Hang'd, &c.	120	III. 731
1679	July 18	Rumley	High-Treason	O. B.	Acquitted	85	II. 917
1679	Jan. 17	Ruffel	A Romish Priest	O. B.	Repriev'd	90	II. 993
1683	July 13	Ruffel (Lord)	High-Treason	O. B.	Beheaded	119	III. 706
S.							
1684	May 2	Sacheverell (Wil.) &c.	A Riot at Nottingham	B. R.	Fin'd	127	III. 949
1709	Feb. 27	Sacheverell (Dr.)	A Misdemeanor	H. L.	Silenc'd for 3 Years	184	V. 641
1586	Sept. 14	Salisbury	High-Treason	Westm.	Hang'd, &c.	10	I. 128
	Sept. 13	Savage	High-Treason	Westm.	Hang'd, &c.	10	I. 128
	Oct. 12	Scots (Queen)	A Conspir. against Q. El.		Beheaded	12	I. 143
1660	Oct. 12	Scot	A Regicide	O. B.	Hang'd, &c.	57	II. 334
1600	Oct. 12	Scroop	A Regicide	O. B.	Hang'd, &c.	57	II. 324
1677	June 29	Shaftesbury (Earl)	Habeas Corpus	B. R.	Remanded	71	II. 616
1681	Nov. 24	The same	High-Treason	O. B.	Ignoramus	109	III. 418
1662	Dec. 11	Sellers	High-Treason	O. B.	Repriev'd	62	II. 478
1632	Feb. 6	Sherfield	A Misdemeanor	C. S.	Fin'd	33	I. 399
1683	May 6	Shute, and others	A Riot	G. H.	Fin'd	115	III. 630
1683	Nov. 21	Sidney (Col.)	High-Treason	B. R.	Beheaded	122	III. 794
1658	May 25	Slingsby (Sir Henry)	High-Treason	H. C. J.	Beheaded	54	II. 277
1660	Oct. 16	Smith (Henry)	A Regicide	O. B.	Repriev'd	57	II. 395
1679	Feb. 7	Smith (Francis)	A Libel	G. H.	Fin'd	93	II. 1040
1701		Somers (Lord)	High Misdemeanors	H. L.	Acquitted	170	V. 339
1616	May 25	Somerfet (Earl)	Murder of Sir T. Overb.	H. L.	Pardon'd	29	I. 351
1616	May 24	Somerfet (Countess)	Murder of Sir T. Overb.	H. L.	Pardon'd	28	I. 348
1600	Feb. 19	Southampton (Earl)	High-Treason	H. L.	Repriev'd	16	I. 197
1633	Feb. 7	Sparkes	A Libel	C. S.	Censur'd	34	I. 418
1683	Feb. 7	Speke	A Misdemeanor	B. R.	Fin'd 1000 l.	124	III. 855

T A B L E of the Persons tried, their Crimes, &c.

Year.	Month.	Names.	Crimes.	Where try'd.	Punishments.	N ^o .	Trials.
1608	Aug. 12	Sprot	High-Treason	Scotl.	Hang'd	21	I. 312
1702	Nov. 25	Spurr	A forcible Marriage	B. R.	Acquitted	176	V. 465
1687	Feb. 6	Standfield	Parricide	Scotl.	Hang'd, &c.	143	IV. 283
1681	June 18	Stapleton (Sir Miles)	High-Treason	Affizes	Acquitted	105	III. 317
1679	Jan. 17	Starkey	A Romish Priest	O. B.	Repriev'd	90	II. 993
1680	Nov. 30	Stafford (Viscount)	High-Treason	H. L.	Beheaded	102	III. 101
1678	Nov. 21	Stayley	High-Treason	B. R.	Hang'd, &c.	74	II. 656
1681	Feb. 28	Sterne	Murder of Mr. Thynn	O. B.	Hang'd	111	III. 466
1708	Nov. 15	Sirling, and others	High-Treason	Scotl.	Acquitted	183	V. 630
1640	Mar. 22	Strafford (Earl)	High-Treason	H. L.	Beheaded	39	I. 723
1653	Novem.	Streater (Capt.)	Habeas Corpus	Up. B.	Discharg'd	49	II. 195
1662	Dec. 11	Stubbs	High-Treason	O. B.	Hang'd, &c.	64	II. 478
1388	Feb. 3	Suffolk (Earl)	H. Treason and H. Misdemeanors	H. L.	Escap'd	1	I. 1
1702	Nov. 25	Swendfen	A forcible Marriage	B. R.	Hang'd	175	V. 449
T.							
1679	Feb. 3	Tasborough	Subornation of Perjury	B. R.	Fin'd	91	II. 1017
1660	Oct. 16	Temple (James)	A Regicide	O. B.	Repriev'd	57	II. 398
1660	Oct. 16	Temple (Peter)	A Regicide	O. B.	Repriev'd	57	II. 398
1682	June 20	Thompson	Libels	G. H.	Pillory'd and fin'd	112	III. 505
1407	July 3	Thorpe	Herefy	ABp.	Imprison'd	2	I. 16
1554	Apr. 17	Throckmorton	High-Treason	G. H.	Acquitted	5	I. 63
	Nov. 10	His Jury		C. S.	Fin'd		I. 78
1680	July 24	Thwing	High-Treason	Affizes	Hang'd, &c.	100	III. 79
1586	Sept. 15	Tilney	High-Treason	Westm.	Hang'd, &c.	11	I. 134
1586	Sept. 14	Titchburne	High-Treason	Westm.	Hang'd, &c.	10	I. 128
1660	Oct. 16	Titchburne (Robt.)	A Regicide	O. B.	Repriev'd	57	II. 394
1662	Dec. 11	Tonge	High-Treason	O. B.	Hang'd, &c.	62	II. 478
1721	Feb. 3	Tranter	Murd. of Capt. Lutterel	B. R.	Manslaughter	191	VI. 195
1586	Sept. 15	Travers	High-Treason	Westm.	Hang'd, &c.	11	I. 134
1388	Feb. 3	Trefilian (L. C. J.)	High-Treason	H. L.	Hang'd, &c.	1	I. 1
1615	Nov. 7	Turner (Anne)	Murder of Sir T. Overb.	B. R.	Hang'd	24	I. 339
1663	Jan. 15	Turner (Col.) and others	Burglary	O. B.	Hang'd	64	II. 502
1679	June 13	Turner (Anthony)	High-Treason	O. B.	Hang'd, &c.	83	II. 829
1704	Nov. 4	Tutchin	A Libel	G. H.	No Judgment	180	V. 528
1663	Feb. 20	Twyn	High-Treason	O. B.	Hang'd, &c.	65	II. 528
V.							
1662	June 2	Vane (Sir Henry)	High-Treason	B. R.	Beheaded	59	II. 435
1696	Nov. 6	Vaughan (Capt.)	High-Treason	O. B.	Hang'd, &c.	162	V. 17
1590	July 24	Udal	Felony	Affizes	Pardon'd	14	I. 168
1654	June 30	Vowel	High-Treason	H. C. J.	Hang'd, &c.	50	II. 212
1681	Feb. 28	Vratz	Murder of Mr. Thynn	O. B.	Hang'd	111	III. 466
W.							
1660	Oct. 16	Waite	A Regicide	O. B.	Repriev'd	57	II. 398
1679	July 18	Wakeman (Sir Geo.)	High-Treason	O. B.	Acquitted	85	II. 917
1683	July 12	Walcot	High-Treason	O. B.	Hang'd, &c.	117	III. 684
1660	Oct. 10	Waller (Sir Hardrefs)	A Regicide	O. B.	Repriev'd	57	II. 308
1683	May 19	Ward (Sir Patience)	Perjury	B. R.	Fled	116	III. 661
1699	Mar. 28	Warwick (Earl)	Murder of Coote	H. L.	Manslaughter	164	V. 137
1615	Nov. 10	Wentworth (Sir John)	Misdemeanor	C. S.	Fin'd		I. 333
1615	Oct. 19	Weston	Murd. of Sir T. Overb.	G. H.	Hang'd	23	I. 324
1679	June 13	Whitebread	High-Treason	O. B.	Hang'd, &c.	83	II. 829
1715	Feb. 9	Widdrington (Lord)	High-Treason	H. L.	Pardon'd	185	VI. 1
1668	April 4	Wilks	High-Treason	O. B.	Acquitted	68	II. 585
1605	Jan. 27	Winter (Robert)	Gunpowder Plot	Westm.	Hang'd, &c.	19	I. 232
	Jan. 27	Winter (Thomas)	Gunpowder Plot	Westm.	Hang'd, &c.	19	I. 232
1715	Mar. 15	Wintoun (Earl)	High-Treason	H. L.	Escap'd	186	VI. 17
1721	Mar. 13	Woodburn	Slitting Mr. Crispe's Nose	Affizes	Hang'd	192	VI. 212
1668	Apr. 14	Woodward	High-Treason.	O. B.	Acquitted	68	II. 585



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A Complete
COLLECTION
OF
TRIALS, &c.

I.

Proceedings in PARLIAMENT against *Alexander Nevil* Archbishop of *York*, *Robert Vere* Duke of *Ireland*, *Michael de la Pole* Earl of *Suffolk*, *Robert Tresilian* Lord Chief Justice of *England*, and *Nicholas Brambre* sometime Mayor of *London*, and others, for High-Treason, *Feb. 3. 1388.*
11th of *Rich. II.*

TH ESE Men being raised from mean Estates by the favour of the King, and advanced to the degree of Privy-Counsellors, were the Men who had the only Rule of the Commonwealth, which under the King they govern'd for some small space with careful Diligence, acquiring thereby deserv'd Commendations: but not long did they thus steer the Ship of the Kingdom, for many of them being of inferior Rank by Birth, not having their Veins dignified with noble Blood, they were the sooner enticed with the libidinous baits of Voluptuousness, and infected with the insatiable itch of Avarice; insomuch that despising the Authority of the King, and neglecting the Commodity of the Realm, and only desiring to keep up the Revenues of the Kingdom, they so wrought by their Policy, that the King is impoverished, and the Treasury exhausted: upon which the Commons murmur at the multiplicity

of Tenths, Levies and Subsidies; the Peers repine to see themselves disgraced and their Inferiors honoured; and in a word, the whole Kingdom endures an universal Misery.

The Nobility seeing the miserable estate, wherein the whole Kingdom lay, bleeding as it were to death, urged the King to summon a Parliament, to the end the Grievances of the Nation might be inquir'd into and redress'd *. Accordingly a Parliament was shortly after held *Octob. 1. 1386.* in which among many other Acts, *John Fortbam* Bishop of *Durham* was discharg'd of his Office of Treasurer, and *John Gilbert* Bishop of *Hereford* appointed in his place; and *Michael de la Pole* † Earl of *Suffolk*, and Chancellor of *England*, was dismiss'd from his Chancellorship, and immediately after was impeached of high Crimes and Misdemeanors by the Commons, as follows.

1. That the said Earl being Chancellor, and sworn to act for the just Profit of the King, hath purchased of our Lord the King, Lands, Tene-

*Rot. Par. 10
Rich. 2. N^o
1, &c.*

* *Hol. Chron. Vol. 3. p. 453, &c. Grauston, p. 377, &c. Walsingh. p. 334. Tyr. Hist. of Engl. Vol. 3. Part. 2. p. 895, &c. Brady's Introd. p. 30.*

† He was Son to a Merchant in London.

ments and Rents to a great Value, as appears by the Record in the Rolls of Chancery; and that against his Oath, not regarding the great Necessity of the King and Realm, being Chancellor at the time of such Purchase made, did cause the said Lands and Tenements to be set at a much smaller Value than really they were worth by the Year, in deceit of the King.

To this first Article the Earl answered to this Effect: That while he was Chancellor, he neither purchased any Lands of the King, nor did he give any to him, unless when he made him an Earl, he had four hundred Marks *per Ann.* from the King by way of Exchange, for so much as he had by Inheritance out of the Customs of *Kingston upon Hull*, whereof some part was assigned to him by one *Tydeman* of *Limburgh* and others before he was Chancellor, and some part since that time; which exchange was for the King's annual Advantage: as also because of the Sum of one thousand Marks paid by the Earl upon that Consideration. And he further endeavour'd to prove, that the Oath he had taken, when he was made Chancellor, had another intent than what they (*the Commons*) would put upon it; and yet notwithstanding that Oath, he might lawfully take, or purchase from the King.

But the Commons not being satisfied with this Answer, reply'd thereto, and shewed the Lords the Copy of his (*the Chancellor's*) Oath, when he took the Great Seal into his Custody, being in manner following, *viz.*

You shall swear that you will well and truly serve our Lord the King and his People, in the Office of Chancellor, and will do Right to all Persons both Poor and Rich, according to the Laws and Customs of the Realm, and shall faithfully advise the King, and conceal his Counsels; and you shall not know of, nor permit any Damage or Disherison to the King, nor that the Rights of his Crown shall by any ways be destroyed, if you can hinder it; and if you cannot hinder it, you shall then clearly and expressly make it known to the King, together with your faithful Advice and Counsel thereupon: and you shall always act for, and procure the Profit of the King, in all things where you may reasonably do it. So help you God and the Holy Gospels.

Wherefore the Commons prayed, that this being read, and well understood, and the Circumstances of his said Answer consider'd, to wit, that he had not denied to have receiv'd of the Gift of the King, since he was made an Earl, and being then in the Office of Chancellor, divers Lands and Tenements, as is contain'd in the Impeachment, and it is openly known that he had receiv'd from the King other Lands and Tenements, that are certain and sure, to the Value of four hundred Marks *per Annum*, in exchange for four hundred Marks yearly, which he had upon the Customs of *Kingston upon Hull*, that are casual, and not so sure, without informing the King of his Damage in that particular. And whereas he the said Chancellor has alledged, that he received part of the said Lands and Tenements so taken in Exchange before he was Chancellor; the Commons reply, that he was then sworn of the King's Privy Council, and that afterwards at his being made Chancellor, was again obliged by Oath; and that being in the said Office, he had agreed to the Exchanges by him before desired, and had received from the

King the Remainder of the said Lands and Tenements in full performance of the said Exchanges; and therefore they demand Judgment of the Parliament upon his aforesaid Answer: which being thought insufficient by the Lords, the following Judgment was given, being to this Effect: That since the said Earl had not alledg'd in his Answer, that he had observ'd his Oath, when he swore *that he would not know of, or suffer any Damage or Disherison of the King, nor that the Right of his Crown should any ways be destroy'd if he could hinder it*, with the rest of the Clause in the said Oath, as is above recited; yet that he being the principal Minister of the King, and knowing his Estate, and the necessity of the Realm, had taken such Lands and Tenements as are laid in the said Impeachment, and are recited in the first Article; and tho' he hath alledged in his Answer, that the Gifts so bestowed upon him, were confirm'd in full Parliament; yet since he hath produced no such Record enroll'd in Parliament, therefore it was adjudged, *that all Mannors, Lands, Tenements, and their Appurtenances, so received by him from the King, should be seized and taken into his hands, to have and to hold them to him, and his Heirs, as fully as ever they had been before the Gift so made of them to the said Earl, with the Issues and mesne Profits of the same from the time of the said Grant, and which were to be levied out of the rest of the said Earl's Lands elsewhere*; yet that it was not the Intention of the King, nor of the Lords, that this Judgment so given should make him lose the Title of *Earl*, nor yet the twenty Marks yearly, which he was to receive out of the Issues and Profits of the County of *Suffolk*, by reason of the said Title.

2. The second Article is, That whereas nine Lords were assign'd by the last Parliament to view and examine the State of the King and Realm, and to deliver their Advice how the same might be improved and amended, and put into better Order and Governance; and thereupon such Examination to be deliver'd to the King, as well by word of Mouth as in Writing; and altho' the said late Chancellor did say in full Parliament, that the said Advice and Ordinances should be put in due execution, yet it was not done, and that by the default of him who was the principal Officer or Minister. *The Earl's Answer to this being not very material, is omitted.*

3. Item, Whereas a Tax was granted by the Commons in the last Parliament, to be expended according to a certain Form demanded by the said Commons, and assented to by the King and Lords, and not otherwise; yet the Monies thence arising, were expended in another manner, so that the Sea was not guarded as it was order'd to have been; whence many Mischiefs have already happen'd, and more are like to ensue to the Realm, and all this by the default of the said Lord Chancellor. *This Article the Earl denied, and it does not appear that it was proved.*

4. Item, Whereas one *Tydeman* of *Limburgh* having had granted to him and his Heirs a Gift of fifty Pounds *per Annum* by the King's Grandfather, out of the Customs of *Kingston upon Hull*, which the said *Tydeman* had forfeited to the King, so that the Payment of the said fifty Pounds *per Annum* was discontinued for five and thirty Years and upwards; yet the said Chancellor knowing the Premises, purchased to him and his Heirs of the said *Tydeman*, the said fifty Pounds *per Annum*, and

and prevail'd with the King to confirm the said Purchase, whereas the King ought to have had the whole Profit.

For this Purchase the said Earl was adjudged to make Fine and Ransom, and the said fifty Pounds were to go to the King, and his Heirs, with the Mannor of *Floxstete*, and ten Marks of Rent, which were exchanged for the fifty Pounds *per Annum* out of the Customs or Profits, with the Issues aforesaid.

5. And whereas the Master of *St. Anthony* is a Schismatick, and for that Cause the King ought to have the Revenues (being to the value of four hundred Marks yearly) which appertain to him in *England*; the said late Chancellor, who ought to advance and procure the Profit of the King, took to Farm the said Profits at twenty Marks *per Annum*, and so got to his own use above three hundred Marks; and afterwards when the true Master nominated by the Pope, ought to have had the Possession and Livery of the said Profits, he could not obtain the same, till he and two Persons with him became bound by Recognizance in Chancery of three thousand Pounds to pay yearly to the said Chancellor, and his Son *John*, one hundred Pounds *per Annum* for the Term of their two Lives.

As to this, it is adjudged, that the King shall have all the Profits belonging to the said Master of *St. Anthony's* at the time of the Purchase; and that for the Recognizance so made, the said Earl shall be awarded to Prison, and fined and ransomed at the Pleasure of the King.

6. *Item*, That in the time of the late Chancellor, there were granted and made divers Charters, and Patents of Pardon for Murders, Treasons, Felonies, &c. against the Laws of the Land; and that before the Commencement of this present Parliament, there was made and sealed a Charter of certain Franchises granted to the Castle of *Dover*, in disinherison of the Crown, and to the subversion of the Pleas and Courts of the King, and of his Laws.

To this the Judgment was, the King awards that those Charters be repealed.

7. *Item*, Whereas by an Ordinance made in the last Parliament, that ten thousand Marks should be raised for the Relief of the City of *Gaunt*, yet by the default of the said late Chancellor, the said City of *Gaunt* was lost, and also a thousand Marks of the said Money *. The Sum of the Earl's Answers to the rest of these Articles, were either by denying some of them, or

confessing and excusing others; but for all that he was soon after cast into the Castle of *Windsor*, and all his Lands, which were of no small Revenue, confiscated.

Neither did the Parliament stop here, but to provide further for the whole State, they did by the unanimous Consent of the King, Prelates, Barons, and Commons, constitute and give plenary and absolute Power to certain Commissioners as well of the Spirituality as of the Temporality for the ordering and disposing of the publick Affairs, according as to them should seem best and most necessary for the desperate estate of the Commonwealth, to deprefs civil Diffensions, and to pacify and appease the grudgings of the People.

These † Commissioners were 13 in number, and were as follows;

Of the Spirituality.

1. *William* Archbishop of *Canterbury*.
2. *Alexander Nevil* Archbishop of *York*.
3. *Thomas Arundel* Bishop of *Ely*, lately made Chancellor of *England*.
4. *William Wickham* Bishop of *Winchester*.
5. *John Gilbert* Bishop of *Hereford*, Lord Treasurer.
6. *Thomas* Bishop of *Exeter*.
7. *Nicholas* Abbot of *Waltham*, Lord Keeper of the Privy Seal.

Of the Laity.

8. *Edmond Langley* Duke of *York*.
9. *Thomas* of *Woodstock* Duke of *Glocester*.
10. *Richard* Earl of *Arundel*.
11. *John* Lord *Cobham*.
12. *Richard* Lord *Scrope*.
13. *John Devereux*, Knight.

These, as Men eminent in Virtue, were chosen by the general Suffrage, and confirm'd by the King under the Great Seal; and sworn to carry themselves as dutiful and obedient Subjects in all their Actions: And it was farther enacted, "That if any should refuse or disobey the Ordinances so made for the publick good, the Punishment for the first Offence should be the Confiscation of all his Goods, and for the second the Loss of his Life."

Thus all Things being dispos'd for the best, the Parliament was dissolv'd, and every Man return'd to his own Home. 20 Nov. 1386.

Soon after the said *Michael de la Pole*, with others of his Confederates, being mov'd with implacable Fury against the late Statute, buzz'd into the King's

* *Walsingham* relates, that all these Articles above mention'd were so fully prov'd, that the Earl could not deny them; insomuch that when he stood upon his Defence, he had nothing to say for himself: Whereupon the King blushing for him, shook his Head and said, Alas, alas *Michael*, see what thou hast done.

† The Commission which is among the Parliament Rolls 10 Richard II. Part 1. M. 7. mentions but eleven Commissioners; omitting the Bishops of *Ely* and *Hereford*, and was in Substance as follows:

That the King of his own Free-will, and at the Request of his Lords and Commons, had chang'd the Great Officers of the Crown above-mention'd, for the good Government of the Kingdom, the good and due Execution of the Laws, and in relief of his own Estate, and ease of his People; and had appointed eleven Commissioners, viz. *William* Archbishop of *Canterbury*, *Alexander* Archbishop of *York*, *Edmond* Duke of *York*, and *Thomas* Duke of *Glocester* (the King's Uncles) *William* Bishop of *Winchester*, *Thomas* Bishop of *Exeter*, *Nicholas* Abbot of *Waltham*, *Richard* Earl of *Arundel*, *John* Lord *Cobham*, *Richard* Le *Scrope* and *John* *Devereux*, to be his great and continual Council for one Year next coming, after the Date of these Letters Patent; by which he gave them Power to survey and examine all his Officers, Courts, Household, and the Government of the whole Kingdom, to receive all his Revenue, as also all Subsidies, Taxes, and other Payments; to do what they would in the Kingdom, and to amend all things according to their Discretions: And these Powers were given to any six of them, with his three great Officers, willing, that if any Difference in Opinion should happen between his Counsellors and those Officers, that the matter should be determined by the Major part of them; commanding and charging all Prelates, Dukes, Earls, Barons, the Steward, Treasurer, and Comptroller of his Household, the Justices of one Bench or the other, and other his Justices whatsoever, Barons and Chamberlains of the Exchequer, Sheriffs, Escheators, Mayors, Bayliffs, and all other his Officers, Ministers, and Lieges whatsoever, that they should be attending, obedient, counselling and assisting to the said Counsellors and Officers, so often and in what manner they should direct. Dated at Westminster the 19th Day of November. Upon this Commission a Statute was made, and the whole recited in it, which may be seen in the Statute Book 10 Rich. II. Cap. 1.

Ears, that the Statutes lately enacted were very prejudicial to the Honour of his Crown, and derogatory to his princely Prerogative; that if they were in force he was no King, but rather resembled the Shadow of one; and earnestly moved the King against the other Lords, and to disannul all that was done in the late Parliament. The King gave credit to these Tales, and therefore had the Lords in great jealousy; but he released *Michael de la Pole* Earl of *Suffolk* out of the Castle of *Windsor*, and suffer'd him to go at large: notwithstanding which, the said Earl of *Suffolk*, the Duke of *Ireland*, and *Robert Tresilian* Lord Chief Justice, doubtful of their own Safeguards, did what they could to move the King forward to the Destruction of the Duke of *Glocester*, the Earls of *Arundel*, *Warwick*, *Derby*, and *Nottingham*, with others of that Party; and accordingly they conspir'd together with *Alexander* Archbishop of *York*, and Sir *Nicholas Brambre*, to devise means how they might dispatch the said Lords; and for that purpose wrote Letters to the King of *France* to aid and assist them in seizing on the said Lords, and further prevail'd with the Judges to declare the said Lords guilty of High-Treason for procuring the said late Statutes.

But the said Duke of *Gloucester*, and the Earls of *Arundel* and *Warwick*, seeing the heap of Ills that daily did arise by the Practices of those Conspirators, set almost in every part of the Kingdom Intelligencers, who should apprehend all Messengers, and intercept all Letters, which went under the King's Name, and send them to the Commissioners. And thus did they come to have Intelligence of the whole Plot of the Conspirators, all their Letters being indors'd, *Glory be to God on High, on Earth Peace, and Good-will towards Men*: and by coming to the Knowledge of each Circumstance they found that the Kingdom was at the point of Destruction, wherefore they sought for a Remedy, for by the Law of Nature 'tis lawful to repel Violence by Violence; every Man according to his Ability levied a Power for the preservation of the King and Kingdom; part of which Forces being committed to the Earl of *Arundel*, he march'd away by Night, and pitch'd his Tents near *London*: and in the mean time he used such Discipline in his Camp, that he lacked nothing, but all things were sold at reasonable Rates as if it had been a Market.

On the other side, the Conspirators intending to prevent their Purposes, caused it to be proclaim'd thro'out the City of *London*, "That none should upon pain of the Forfeiture of all their Goods, either sell, give, or communicate any Necessaries to the Army of the Earl of *Arundel*, but should treat them as Rebels to the King and Country." Further, they counsell'd the King to absent himself from the Parliament (which was to begin on *Candlemas* next, according as the King and Commissioners had appointed it) unless the Duke of *Glocester*, the Earls of *Arundel* and *Warwick*, and the rest of the Commissioners would swear, "That neither they nor any in their Name should accuse them, or urge any Accusation against them." In the mean time the three

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Noblemen, viz. Duke of *Glocester*, and the Earls of *Arundel* and *Warwick*, having muster'd their Troops on the 14th of *November* in the same Year at *Waltham-Cross* in the County of *Herford*, sent for the Commissioners

that were at *Westminster* in Parliament, and sent the Archbishop of *Canterbury*, the Lord *John Lovel*, Lord *Cobham*, and Sir *John Devereux*, with an Accusation in Writing against the aforesaid Conspirators, viz. the Archbishop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, *Robert Tresilian* and *Nicholas Brambre*, wherein they accus'd them of High-Treason; which their Appellation they did offer to maintain, and that they were willing to prosecute the same, and to prove it to be true: they caus'd also the rest of the Commissioners to subscribe as Parties to their Appellation. When these things came to the Ears of the King, he sent unto them requiring to know what their Request was, and what they wished to have done: They return'd answer thus, "That they did desire, that the Traitors which were always about him filling his Ears with false Reports, and daily committed insufferable Crimes and Injuries, might be rewarded with condign Punishment; for it were better some few should die for the People, than the whole Nation should perish." The King being advised by the Archbishop of *Canterbury*, and the Bishop of *Ely* Lord Chancellor, sent to them, willing them to come to him to *Westminster* on the Sunday then next following; which the Lords would not agree to, till the Lord Chancellor with divers other Noblemen of good Credit had undertaken upon their Oaths on the King's behalf, that no Fraud, Deceit, Peril or evil Pretence should be put in practice against them, whereby they might come to loss of Life, Limbs, Goods, or otherwise, thro' the King's means.

When therefore the Lords were ready according to Covenant to come to *Westminster*, they were secretly advertis'd that there was an Ambush laid in a place call'd the *Mews*, and so they staid and came not at the appointed Hour: whereupon when the King demanded how it fortun'd that the Lords kept not Promise; the Bishop of *Ely* made answer, *because there is an Ambush of a thousand armed Men or more laid in such a place* (and named it) *contrary to Covenant, and therefore they neither come, nor hold you for faithful to your word*. The King hearing this was astonish'd, and said with an Oath, *that he knew of no such thing*; and withal sent to the Sheriffs of *London*, commanding them to go to the *Mews*, and if upon search made they found any Force of Men there assembled, to take and kill all such as they could lay hands on: but Sir * *Thomas Trivet* and Sir *Nicholas Brambre*, who had indeed assembled such a number of Men, when they understood what Order the King had given therein, sent their Men back to *London*.

* He was afterwards kill'd by a fall from his Horse.

The Lords after this receiving a safe Conduct from the King, and perceiving all to be safe and clear, came to *Westminster* with a gallant Troop of Gentlemen; and entering the Hall, as soon as they had sight of the King (who was seated on a Throne apparel'd in his kingly Robes, with his Scepter in his Hand) made to him their humble Obeisance, and went on till they came to the nether Steps going up to the King's Seat of State, where they made their second Obeisance, and then the King gave them Countenance to come nearer to him; and they so did, kneeling down before him: and forthwith he rose from his place, and lovingly welcoming

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welcoming them, took each of them by the Hand, and then sat him down again; when the aforesaid Lords again appeal'd * the Archbishop, the Duke of Ireland, the Earl of Suffolk, Robert Tresilian that false Justice, and Nicholas Brambre that disloyal Knight (for so they term'd them) of High-Treason, according as they had done before at *Waltham-Cross*; and to prove their Accusations to be true, they threw down their Gloves, protesting by their Oaths to prosecute it to Battle: Nay, faith the King, *Not so, but in the next Parliament, which we do appoint beforehand to begin the morrow after the Purification of our Lady, both they and you appearing shall receive according to Law all that which Reason doth appoint.* And finally, it was concluded they should all meet together at the next Parliament, and each one receive according to Justice; and in the mean time the King commanded them upon their Honours, not any Party to molest the other until the next Parliament.

In the mean time the Earl of Suffolk fled to *Calais*, and the Archbishop of *York* fled along with the Bishop of *Durham*, it was not known whither; and the Duke of Ireland going into *Cheshire*, *Lancashire* and *Wales*, rais'd Forces to withstand the Appellants, (to whom were now join'd the Earls of *Derby* and *Nottingham*) with which Forces he march'd towards *London*; but meeting with the Appellants Forces at *Ratcote-bridge* near *Chipping-Norton* in *Oxfordshire*, he was stopt in his march, and his Men revolting from him, was constrain'd to save himself by flight in swimming cross the River *Thames* †.

On the other side, *Nicholas Brambre* in the King's Name caused all the Gates of the City of *London* to be shut against the Appellants, and to be guarded with a sufficient Watch: nevertheless the Lords Appellants marched towards *London* to confer with the King; but when they heard that *Nicholas Brambre* had caused the Gates of the City to be shut against them, they encamp'd themselves on the 27th of *December* in *Clerkenwell*, and sent two Knights and two Esquires to the Mayor and Aldermen of *London* to desire Entrance: then came the † Mayor of *London* and certain of the chief Citizens, and brought the Keys of the City with them, and submitted themselves to the Lords, and offer'd them entrance into their City with all their People at their pleasures.

The next day there happen'd an Interview between the King and the Appellants so far, that they open'd their Minds one to another: but because the King was loth to speak to them before such a rabble of Men, and on the other side refused to go out of the *Tower* to speak with them, and the Appellants feared some Violence or Wrong to be offer'd them, they would not go into the *Tower* without a strong Guard of valiant Warriors; therefore the most wise of the Appellants

after divers Consultations resolv'd to go and confer with the King; but first they sent a strong Troop well arm'd to search all the Corners and Caves of the *Tower*, and relation being made of the Safety of the place, with a selected band of valiant Cavaliers they entered the *Tower*, and seizing the Gates, and placing a Guard, they appear'd before the King, who was set in a Pavilion richly array'd; and after their humble Salutations done, they a third time appeal'd the aforesaid Conspirators in the same Sort and Form as afore: which Appellation being ended, the King swore that he would do Justice so far as the Rule of Law, Reason and Equity did require.

These things being accomplish'd, they departed from the *Tower* to their own Homes; and then it was publish'd in the Presence of the King, and thro'out his Dominions, That on the morrow after *Candlemas-Day*, a § Parliament should be held, and the aforesaid Conspirators should personally appear there to answer the Appellation whereby they were charg'd with so many Treasons.

In the mean while the King, by Consent of the said Commissioners and Appellants, issued out several ** Orders for the apprehending and seizing all suspected Folks, and for keeping them in safe Custody till the Parliament should assemble: accordingly divers Officers of the Household were expell'd their Office, and together with several others apprehended and committed to Prison viz. Sir *Simon Burleigh*, Sir *William Elman*, Sir *John Beauchamp*, Sir *Thomas Trivet*, Sir *John Salisbury*, and divers others; and there was also taken Sir *Nicholas Brambre*, but he found Surety for his forth-coming; but the Duke of Ireland, Archbishop of *York*, Earl of *Suffolk*, and *Robert Tresilian* were no where to be found.

Shortly after, that is to say, the morrow after *Candlemas-Day*, the Parliament began; and the first Day, by the joint Consent of all the Commissioners, were arrested sitting in their places ††, all the Justices (except Sir *William Skipworth*, who had been hinder'd by Sickness from being along with the other Judges when the Commissioners were declar'd guilty of High-Treason, and *Tresilian*, who was fled) who were all immediately displac'd from their Offices, and sent Prisoners to the *Tower*, and there kept in separate Places.

All the Peers as well of the Spirituality as the Temporality being assembled in the great Hall at *Westminster*, the King soon after came and sat down on his Throne; and after him the five Noble-men Appellants (the fame of whose admired Worth echo'd thro' all the Land) entered the House in their costly Robes, leading one another hand in hand, with an innumerable Company following them; and beholding where the King sat, they all at once with submissive Gestures revered the King. The Hall was so full of

* All Appeals of Treason in Parliament are since taken away by 1 H. 4. c. 14. Stat. 119. a. 3. Co. Instit. 132. See Proceedings against E. of Clarendon, Vol. II.

† See a Proclamation by the King to this purpose, Holin. Vol. 3. p. 450.

† He afterwards was translated by Pope Urban V. to the See of St. Andrews in Scotland; but that Kingdom being under Obedience to the Anti-Pope, the Translation was of no Service to him, so that he was constrain'd to be a Parish Priest at *Lovain*, where he continued three Years, till the time of his Death.

‡ He afterwards got into Holland, from whence he went to *Lovain*, where in 1393, he was slain in hunting a wild Boar.

§ See the King's Order to the Sheriff of Kent for proclaiming it, and summoning the Conspirators to appear at it, dated 4 Jan. 1388. Rym. Fœd. Tom. 7. p. 567. The like Order to all the Sheriffs thro'out England, of the same Date. Ibid.

** See a Warrant directed to the Constable of Gloucester Castle, for Taking into Custody Robert Tresilian and Nicholas Brambre, dated 4 Jan. 1388. Rym. Fœd. Tom. 7. p. 566. See likewise another Warrant of the same Date, directed to the Constable of Dover Castle, and the Warden of the Cinque Ports, for keeping in Custody and apart several others accused by the Lords. Ibid.

†† Sir Roger Fulthorp, Sir Robert Belknap, Sir John Carey, Sir John Holt, Sir William Burleigh, and John Locton, the King's Serjeant at Law.

Spectators, that the very Roofs were cover'd with them; but amongst this infinite multitude there could not be found any of the Conspirators; *Brambre*, who had attempted to flee away, had been taken a little before, and was cast into *Glocester Gaol*.

The Clergy then placing themselves on the Right-hand, and the Nobility on the Left-hand of the King, according to the ancient Custom of the high Court of Parliament, the Lord Chancellor standing with his Back towards the King, by the King's Command declar'd the Cause of their Summons to Parliament; which was to consider by what means the Distraction of the Realm, thro' evil Management, might for the future be composed, the King better advised, the Nation better govern'd, Misdemeanors more severely punish'd, and good Men more encourag'd; how the Kingdom also might be best defended, the Sea best kept, the Marches of *Scotland* securely guarded, *Guyenne* preserv'd, and lastly how the Charges of these things may most easily be borne; and then gave notice that whoever would complain in Parliament of such things as could not well be redress'd by the common Law, might carry their Petitions to the Clerk in Chancery, there named and appointed to receive them. Which being ended, the aforesaid five Appellants arising, declar'd their Appellation by the Mouth of *Robert Pleasington*, their Speaker, who thus spoke:

Behold the Duke of *Glocester* comes to purge himself of Treasons which are laid to his charge by the Conspirators. To whom the Lord Chancellor by the King's Commandment answer'd: My Lord Duke, the King conceiveth so honourably of you, that he cannot be induced to believe that you who are of Affinity to him in a collateral Line, should attempt any Treason against his Majesty.

The Duke, with his four Companions upon their Knees, humbly gave Thanks to the King for his gracious Opinion of their Fidelity.

The Lords Spiritual and Temporal there present then claim'd as their Liberty and Franchise, that all great Matters moved in that Parliament, and to be moved in other Parliaments in time to come, touching the Peers of the Land, should be discuss'd and judged by the Course of Parliament, and not by the Law civil, or by the common Law of the Land used in the inferior Courts of the Kingdom; which Claim, Liberty and Franchise, the King allow'd and granted in full Parliament.

Then after Silence proclaim'd, the Appellants arose, and accus'd the aforesaid Conspirators of High Treason, and deliver'd in certain Articles in writing, wherein were contain'd the Particularities of their Treasons; which were as follow.

1. That as false Traitors and Enemies to the King and Kingdom, taking advantage of his tender Age, and the Innocency of his Person, they inform'd and put upon him for Truth divers false things of their own Invention, against all Loyalty and good Faith, and made him intirely their own; so that they had his Love, firm Faith and Credit, while he hated and suspected his loyal Lords and Lieges, by whom he ought to have been govern'd: That these false Traitors had encroach'd to themselves Royal Power, by enslaving the King, blemishing his Sovereignty, and lessening his Prerogative and Royalty; and made him so obedient to their Will, that he was sworn to be govern'd, counsell'd and conducted by them: by virtue of which

Oath they kept him in obedience to their false Imaginations and mischievous Deeds contain'd in the following Articles.

2. Also whereas the King is not bound to take any Oath, but on the Day of his Coronation, or for the common Profit of himself and Kingdom, the aforesaid *Alexander, Robert* and *Michael*, as false Traitors and Enemies to the King and Realm, made him to swear, and assure them, that he would maintain, support, and live and die with them: and also whereas the King ought to be of more free Condition than any other of his Kingdom, they have put him more in Servitude than any one, against his Honour, Estate and Royalty, against their Ligeance, as Traitors to him.

3. Also the said *Robert, Michael* and *Alexander*, by the Assent and Counsel of *Robert Tresilian* that false Justice, and *Nicholas Brambre* that false Knight of *London*, by their wicked contrivance would not permit the great Men of the Kingdom, nor good Counsellors to come near the King, nor would suffer him to speak to them, unless in their Presence and Hearing, encroaching to themselves Royal Power, Lordship and Sovereignty over the Person of the King, to the great Dishonour and Peril of the King, the Crown and his Realm.

4. Also the aforesaid *Alexander, Robert Vere, Michael de la Pole, Robert Tresilian*, and *Nicholas de Brambre*, by their false Wickedness evilly advis'd the King, so that his personal Presence which he ought to make to the great Lords, and his Liege People, and the Favours and Rights to which they request'd his Answer, were not to be obtain'd but at their Pleasure and Allowance, in staying the King from his Duty, and against his Oath, and turning the Hearts of the great Lords from him, with design to estrange his Heart from the Peers of the Land, to have amongst them the sole Government of the Kingdom.

5. Also by the said Encroachment of *Robert de Vere*, Duke of *Ireland*, and *Michael de la Pole*, with the Advice and Counsel of *Alexander* Archbishop of *York*, they caused the King without Assent of the Kingdom, by their Abetments, without any Deferts of the Persons, to give divers Lordships, Castles, Towns and Mannors, as well annexed to his Crown as others, as the whole Realm of *Ireland*, the Town of *Okeham*, and the Forest thereof, and the Lands which were the Lord *Audley's* and other great Estates, to the said *Robert de Vere*, and others, whereby they were mightily enrich'd, and the King became so poor, that he had not wherewith to support and bear the Charges of the Kingdom, unless by Impositions, Taxes, and Tributes put upon his People, in disherison of his Crown, and to the undoing of the Realm.

6. Also by the Encroachment of the said *Alexander, Robert*, and *Michael*, by the Assent and Advice of the aforesaid *Robert Tresilian* and *Nicholas Brambre*, they caused the King to give divers Lands, Mannors, Tenements, Rents, Offices and Bailiwicks to People of their Kindred, and other Persons of whom they receiv'd great Bribes; and also to make them of their Party, in their false Quarrels and Purposes, as in the Case of *Sir Robert Mansel Clerk, John Blake, Thomas Uske*, and others, to the Destruction of the King and Kingdom.

7. Also *Robert de Vere, Michael de la Pole, Alexander* Archbishop of *York*, with the rest of the Persons above-named, by Assent and Counsel of the

the said *Nicholas Brambre*, &c. encroaching to themselves Royal Power, caused the King to give very great Sums of Gold and Silver, as well of his own Goods and Jewels as the Treasure of the Kingdom, besides Tenths, Fifteenths, and other Taxes granted by divers Parliaments to be expended in defence and safeguard of the Kingdom, and otherwise, which amounted to the Sum of one hundred thousand Marks and more, to the said *Robert*, and others. And further, they caused many good Ordinances and Purposes made and ordained in Parliaments, as well for the Wars as Defence of the Kingdom, to be interrupted, to the great Injury of the King and Kingdom.

8. Also by the said Encroachment and great Bribes taken by the said *Robert*, *Michael*, and *Alexander*, divers not sufficient nor fit had the Guard and Government of divers Lordships, Castles and Countries, as in *Guyenne* and elsewhere, as well on this side as beyond the Sea; whereby the People and Countries of those Territories being loyal to the King, for the most part were destroy'd, and great Dominions of late render'd into the Hands and Possession of the Enemy, without assent of the Realm, which were never in the hands of the Enemy since the Conquest of them; as also in the Marches of *Scotland*, and elsewhere, in disherison of the Crown, and great Injury to the Realm; as in the Case of *Harpeden*, *Craddock*, and others.

9. Also by the Encroachment of the aforesaid *Alexander*, *Robert*, *Michael*, *Robert* and *Nicholas*, divers People have been hinder'd of the Benefit of the common Law of *England*, and put to great Delays, Losses and Costs; while Statutes and Judgments justly made upon necessary Causes in Parliament have been reversed and annulled by the Procurement of the said Misdoers, and Traitors, and this by reason of the large Bribes by them extorted, to the great Prejudice of the Kingdom.

10. Also the five aforesaid encroaching to themselves Royal Power, as false Traitors to the King and Kingdom, caus'd and counsell'd the King to grant Charters of Pardon for horrible Felonies and Treasons, as well against the State of the King, as of the Party, against the Law and Oath of the King.

11. Also, Whereas the great Lordship and Land of *Ireland* hath been beyond Memory parcel of the Crown of *England*, and the People thereof for all that time have been the King's Lieges without any Mesne Lord, to him and his Royal Progenitors, and our Lord and his noble Progenitors Kings of *England* have in all their Charters, Writs, Letters and Patents, and also under their Seals, in augmentation of their Names and Royalty, styled themselves Lords of *Ireland*; the aforesaid *Robert*, Duke of *Ireland*, *Alexander* and *Michael*, &c. as false Traitors to the King by the said Encroachment, gave Advice that the King, as much as was in him, had granted that *Robert de Vere* should be King of *Ireland*; and to accomplish this wicked Purpose, the aforesaid Traitors counsell'd and excited the King to send Letters to the Pope to ratify and confirm their traitorous Intention, without the Knowledge and Assent of the Kingdom of *England*, or Land of *Ireland*, in parting the King's Ligeance in respect to both Nations, in decrease of the honourable Name of the KING, and in open Disherison of his Crown of *England*, and full Destruction of his loyal Lieges and the Nation of *Ireland*.

12. Also, Whereas by the great Charter and other good Laws and Usages of the Kingdom, no Man ought to be taken, put in Prison, or to Death without due Process of Law, the aforesaid *Nicholas Brambre*, false Knight of *London*, took by Night certain Persons out of the Prison of *Newgate*, Chaplains, and others, to the Number of twenty two; some Debtors and others accus'd of Felony, and some Approvers in the Case of Felony, and some taken and imprison'd there upon suspicion of Felony; and led them into *Kent* to a Place called the *Foul Oak*, and there encroaching to himself Royal Power, as a Traitor to the King, and without Warrant, or Process of Law, caused all their Heads to be cut off but one, who was appealed of Felony by an Approver, and him he suffer'd to go at large at the same time.

13. Also, The aforesaid *Alexander*, *Robert*, *Michael*, *Nicholas*, &c. Traitors to the King and Kingdom, took great Bribes in many Cases in the Name of the King for maintenance of Quarrels, of Suits; and once took Bribes of both Sides or Parties.

14. Also, These five caused some Lords and others, loyal Lieges, to be put out of the King's Council; so as they dar'd not to speak in Parliament about the good Government of the King's Person or Kingdom.

15. Also, Whereas in the last Parliament all the Lords, Sages and Commons there assembled, seeing the imminent Ruin of the King and Kingdom by the Perils and Mischiefs aforesaid; and for that the King had forsaken the Council of the Kingdom and holden himself altogether to the Council of the said five Evil-doers and Traitors; and also for that the King of *France*, with his Royal Power, was then shipp'd ready to have landed in *England*, to have destroy'd the Kingdom and Language thereof, and there was no Ordinance then made, or Care taken for the Safety of the King and Kingdom; they knew no other Remedy than to shew the King fully how he was ill govern'd; led and counsell'd by the Traitors and ill Doers aforesaid; requiring him most humbly, as his loyal Lieges, for the Safety of him and his whole Realm, and for avoiding the Perils aforesaid, to remove from his Presence the said Evil-doers and Traitors, and not to do any thing after their Advice, but according to the Counsel of the loyal and discreet Sages of the Realm: And hereupon the said Traitors and Evil-doers, seeing the good and honourable Opinion of the Parliament, to undo this good Purpose by their false Counsel, caused the King to command the Mayor of *London* to kill and put to death all the said Lords and Commons, except such as were of their Party; to the doing whereof, these great Traitors and Evil-doers should have been Parties, and present; to the undoing of the King and the Kingdom.

16. Also, That those five Traitors above-mention'd, when the Mayor and good People of *London* utterly refus'd in the Presence of the King to murder the Lords and Commons; they by their said traitorous Accroachment falsely counsell'd the King, and prevail'd with him to leave the Parliament for many Days, and caused him to certify that he would not come to the Parliament, nor treat with the Lords and Commons concerning the Business of the Kingdom, for any Peril, Ruin or Mischief whatsoever that might happen any ways to him, or the Realm, if he were not first assur'd

by

by the Lords and Commons, that they would not speak nor do in that Parliament any thing against any of the Misdoers, saving that they might proceed on in the Process, which was then commenced against *Michael de la Pole*, to the great Ruin of the King and Kingdom, and against the ancient Ordinances and Liberties of Parliaments.

17. Also, The said Lords and Commons, after they understood that the King's Mind (thro' the wicked Excitation and Counsel of the said five, &c. above-mention'd) was such, that he would not suffer any thing to be commenced, pursued or done against the said Evil-doers, so that they durst not speak or proceed against the King's Will; upon consideration of the former Counsel and Advice of the Lords and Justices, with other Sages and Commons of Parliament, how the Estate of the King and his Royalty might be best saved against the Perils and Mischiefs aforesaid, knew not how to find out any other Remedy than to ordain, That * twelve loyal Lords of the Land should be the King's Council for one Year, and that there should be made such a Commission and Statute, by which they should have full and sufficient Power to ordain, &c. according to the Effect of the said Commission and Statute; by both which no Man was to advise the King against them, under Forfeiture, for the first Offence, of his Goods and Chattels; and for the second Offence, of Life and Member: Which Ordinance, Statute, and Commission being made by the Assent of the King, the Lords, Judges, and other Sages and Commons, assembled in the said Parliament to preserve to the King his Royalty and Realm, the said Traitors and Misdoers, by their evil, false and traitorous Informations, insinuated to the King, that the said Ordinance, Statute and Commission were made to defeat his Royalty; and that all those who procur'd and counsel'd the making of them, and those who excited the King to consent to them, were worthy to be put to death as Traitors to the King.

18. Also, after this, the aforesaid five Misdoers and Traitors caused the King to assemble a Council of certain Lords Justices and others, many times without the Assent and Presence of the Lords of the said great Council; and made divers Demands of them very suspicious, concerning divers Matters, by which the King, Lords and common People were in great trouble, with the whole Realm.

19. Also, to accomplish the said High-Treason, the said Misdoers and Traitors, *Alexander, Robert, Michael, &c.* by the Assent and Counsel of *Robert Tresilian* and *Nicholas Brambre*, caused the King to ride thro' the Kingdom with some of them into *Wales*, and caused him to make come before him, the Lords, Knights, and Esquires, and other good People of those Parts, as well of Cities and Burghs, as other Places, and made some to enter into Bond; and obliged others by their Oaths to stand by him, against all People, and to effect his Purpose, which at that time was the Will and Purpose of the said Misdoers and Traitors, by their false Imaginations, Deceits and Accroach-

ments above-said; which Securities and Oaths were against the good Laws and Usages of the Land, and against the Oath of the King, to the great Ruin and Dishonour of the King and Kingdom.

20. Also, by force of such Bonds and Oaths, all the Realm was put into great Trouble by the said Evil-doers and Traitors; and in peril, to have suffer'd many intolerable Mischiefs.

21. Also, to bring about their traitorous Purposes, the said five caused the King to go into several other Parts of the Kingdom for some time; whereby the Lords assigned by the said Ordinances, Statute and Commission, could not advise with him about the Business of the Kingdom; so as the Purport and Effect of the Ordinances, Statute and Commission were defeated, to the great Ruin of the King and Kingdom.

22. Also, the said *Robert de Vere*, Duke of *Ireland*, by the Counsel and Abetment of the other four Traitors, accroaching to himself Royal Power, without the King's Commission, or other sufficient or usual Warrant, made himself Chief Justice of *Chester*, and by himself and Deputies held all manner of Pleas, as well common as of the Crown, and gave Judgments upon them, and made Execution thereof; and also caused many original and judicial Writs to be sealed with the Great Seal used in those Parts; and also by such Accroachment of Royal Power, he caused to rise with him great part of the People of that Country; some by Threats, others by Imprisonments of their Bodies; some by seizing of their Lands, others by many dishonest Ways, by colour of the said Office; and all this to make War upon and destroy the loyal Lords and others the King's Liege Subjects, to the undoing of the King and the whole Realm.

23. Also, the said Traitors, *Robert de Vere, Alexander, Michael, &c.* by the Counsel and Abetment of *Robert Tresilian* and *Nicholas Brambre*, accroaching to themselves Royal Power, caused to be deliver'd *John de Blois*, Heir of *Bretagne*, who was Prisoner, and Security to the King and Kingdom, without assent of Parliament, or the King's Great Council, and without any due Warrant, to the great strengthening the Adversary of *France*, the ruin of the King and Realm, and against the Statutes and Ordinances aforesaid made in the last Parliament.

24. Also, the said five Traitors caused the King to have a great Retinue of late of divers People, to whom he gave Badges, which was not done in antient time by any King his Progenitor, that they might have Power to perform their false Treasons aforesaid.

25. Also, the aforesaid five Misdoers and Traitors, in full Accomplishment of all their Treasons aforesaid, and to make the King give Credit to them and their Counsel, and hold them more loyal and greater Sages than others of the Kingdom; and the more to colour their false Treasons, caused the King to make come before him to the Castle of *Nottingham*, divers Justices and Lawyers, on the Morrow after *St. Bartholomew's-Day* last past, and there † constrained the said Justices to set their Hands to the Answers to certain Questions

* There were thirteen Commissioners, but only twelve of them were Peers.

† Divers of the Justices refused to subscribe, but yet they were obliged to do as the rest did; among whom was *Robert Belknap*, who utterly refused, till the Duke of *Ireland* and the Earl of *Suffolk* compell'd him thereto; for if he had persisted in his Refusal he had not escaped their Hands: and yet when he had set to his Seal, he burst out into these Words: Now here lacketh nothing but a Rope, that I may receive a Reward worthy my Desert; and I know if I had not done this I should not have escaped your Hands; so that for your Pleasures and the King's I have done it, and thereby deserve Death at the hands of the Lords. *Holin. Vol. 3. p. 456.*

then propounded and delivered to them, that by means thereof those Persons who were about the King might have colour to put to death the Duke of Gloucester and other Lords, who in the last Parliament were ordained to have the Governance of the Realm.

Which Questions and Answers were as follow :

(1.) *First*, it was ask'd of them, whether the new Statute, Ordinance and Commission, made in the last Parliament held at *Westminster*, be hurtful to the King's Prerogative?

Whereunto all of one mind answer'd, That they were hurtful, and especially because they be against the King's Will.

(2.) *Item*, It was inquir'd of them how they ought to be punish'd that procur'd the said Statute, Ordinance and Commission to be made?

Whereunto with one Assent they answer'd, That they deserv'd Death, except the King of his Grace would pardon them.

(3.) *Item*, It was inquir'd how they ought to be punish'd, which mov'd the King to consent to the making of the said Statute, Ordinance and Commission? Whereunto they answer'd, That unless the King would give them his Pardon they ought to lose their Lives.

(4.) *Item*, It was inquir'd of them what Punishment they deserv'd that compell'd the King to the making of that Statute, Ordinance and Commission? Whereunto they gave Answer, That they ought to suffer as Traitors.

(5.) *Item*, It was demanded of them how they ought to be punish'd that interrupted the King, so that he might not exercise those Things that appertain'd to his Regality and Prerogative?

Whereunto Answer was made, that they ought to be punish'd as Traitors.

(6.) *Item*, it was enquir'd of them, whether, that after the Affairs of the Realm, and the Cause of the calling together of the States of the Parliament, were once by the King's Commandment declar'd and open'd, and other Articles on the King's behalf limited, upon which the Lords and Commons of the Realm ought to treat and proceed; if the Lords nevertheless would proceed upon other Articles, and not meddle with those Articles which the King had limited, till the time the King had answer'd the Articles proponed by them, notwithstanding the King injoined them to the contrary: Whether in this Case the King might rule the Parliament, and cause them to proceed upon the Articles by him limited before they proceeded any further?

To which Question it was answer'd, That the King should have in this Part the Rule for Order of all such Articles to be prosecuted until the end of the Parliament; and if any presum'd to go contrary to this Rule, he was to be punish'd as a Traitor.

(7.) *Item*, It was ask'd, whether the King, whensoever it pleased him, might not dissolve the Parliament, and command the Lords and Commons to depart from thence, or not?

Whereunto it was answer'd, that he might.

(8.) *Item*, It was inquir'd, that for so much as it was in the King to remove such Justices and Officers as offended, and to punish them for their Offences, whether the Lords and Commons might

without the King's Will impeach the same Officers and Justices upon their Offences in Parliament, or not? To this answer was made, That they might not; and he that attempted contrary was to suffer as a Traitor.

(9.) *Item*, It was inquir'd how he is to be punish'd that mov'd in the Parliament, that the Statute wherein *Edward*, the Son of King *Edward*, Great Grandfather to the King that now is, was indicted in Parliament, might be sent for? by Inspection of which Statute, the said new Statute or Ordinance and Commission, were conceived and devised in the Parliament.

To which Question, with one accord, as in all the Residue, they answer'd, that as well he that so summon'd, as the other, which by force of the said Motion brought the said Statute into the Parliament House, be as publick Offenders and Traitors to be punish'd.

(10.) *Item*, It was inquir'd of them, whether the Judgment given in the Parliament against *Michael de la Pole*, Earl of *Suffolk*, were erroneous, and revocable or not?

To which Question likewise with one Assent they said, that if the same Judgment were now to be given, the Justices and Serjeants aforesaid would not give the same, because it seemeth to them that the said Judgment is erroneous and revocable in every Part. In witness of the Premises, the Justices and Serjeant aforesaid to these Presents have set their Seals; these being Witneses, *Alexander* Archbishop of *York*, *Robert* Archbishop of *Dublin*, *John* Bishop of *Durham*, *Thomas* Bishop of *Chester*, *John* Bishop of *Bangor*, *Robert* Duke of *Ireland*, *Michael* Earl of *Suffolk*, *John* Rippon Clerk, and *John* Blake.

26. These five Evil-doers and Traitors are also farther accused, that they drew away the Heart and Good-will of the King from the said Lords and others, who had agreed to make the said Commission and Ordinances in the last Parliament, and he thereupon accounted them Enemies and Traitors; and being sure the said Justices favour'd their Designs, contriv'd that those Lords and others should be arrested, indicted, and attainted by false Inquests of Treason, and put to death, and they and their Issue disherited: and these false Arrests, Indictments, and Attainders were to be made in *London* or *Middlesex*; and for that purpose they had procur'd a false and wicked Person called *Thomas Husk*, to be Under-Sheriff of *Middlesex*; who by their Assent, Procurement and Command, undertook the said false Indictments and Attainders should be made and accomplish'd: And for the more complete effecting of their Treason, they caused the King to send his Letters of Credence by one *John Rippon*, a false Clerk, and one of their Crew, to the Mayor of *London* to arrest the Duke of *Gloucester*, and others therein named; and by force of those Letters one *John Blake* carry'd to the Mayor a Bill of Information against them, by which they were to be indicted and attainted. The Effect of which Bill was, "That it seem'd for the better that certain of the Lords, Knights, and Commons of the last Parliament which were notoriously impeachable, should be privately indicted in *London* and *Middlesex* of Conspiracy and Confederacy, for that they at a certain Day mention'd, falsely and traitorously had conspired and confederated between themselves to make in the same

“ Parliament a Statute and Commission against the
 “ Royalty of our Lord the King, and in derogation of his Crown, and procur’d the same Statute there afterwards at a certain Day to be passed; and also had procur’d, nay constrain’d our
 “ Lord the King to assent against his Will to have it made; and they traitorously against their Allegiance hinder’d the King from using his Royalty, to the great Dishonour of him, and Derogation to his Crown, against their Allegiance, swearing to maintain each other in this Matter.”

And further, The said Evil-doers and Traitors set a Watch to give notice of the Duke of Lancaster’s landing in England, that he might be arrested upon his Arrival.

27. Also the above-named five Evil-doers and Traitors, after having inform’d the King that he should believe that the said Statute, Ordinance and Commission were made in derogation of his Royalty and Prerogative, they strongly possessed him that all those who made, or caused to be made the said Statute, Ordinance and Commission, had thereby a Purpose to degrade, and finally to oppose him, and that they would not give over that Purpose until they had perfected it; for which Cause the King held them as Enemies and Traitors.

28. Also, after this false and traitorous Information, when the Five aforesaid had procured the King to hold the loyal Lords as Enemies and Traitors; the said Misdoers and Traitors advised him by every way possible, as well by the Power of his own People, as by the Power of his Enemies of France and others, to destroy and put to death the said Lords, and all others who assented to the making of the said Statute, Ordinance and Commission; and that it might be done so privately, as none might know of it till it was done.

29. Also, to accomplish the High-Treason aforesaid, Alexander, &c. Robert de Vere, &c. and Michael, &c. by their Advice, caused the King to send his Letters of Credence to his Adversary the King of France; some by one Nicholas Southwell, a Groom of his Chamber, and others by other Persons of small Account, as well Strangers as English, requesting and praying the King of France that he would with all his Power and Advice be aiding and assisting him to destroy and put to death the said Lords and other English which the King held to be his Enemies and Traitors as above, to the great Disturbance and Dissatisfaction of the whole Realm.

30. Also the three last named Persons encroaching to themselves Royal Power, caused the King to promise the King of France, by his Letters Patent and Messages, that for such his Aid and Power to accomplish the same, he would grant and surrender unto him the Town and Castle of Calais, and all other Castles and Fortresses in the Marches and Confines of Picardy and Artois, with the Castles and Towns of Cherburgh and Brest; to the great Dishonour, Trouble, and Ruin of the King and Kingdom.

31. Also, after the last named three were sure of having Aid and Assistance from the King of France, by Instigation and Contrivance of the said Traitors, a Conference was to have been in the Marches of Calais about a Truce for five Years between the two Nations; at which Conference both Kings were to be present, as likewise the English Lords whom the King then held to be his Traitors; and there Thomas Duke of Gloucester,

Constable of England, Richard Earl of Arundel and Surrey, and Thomas Earl of Warwick, and divers others, were to have been put to death by Treachery.

32. Also for performance of this High-Treason, the last named Three caused the King to send for Safe-Conducts to the King of France; some for himself and for the Duke of Ireland, and others for John Salisbury and John Lancaster Knights, with other People with them, who were to go into France, to put in execution this wicked Purpose and Treason; which Safe-Conducts were ready to be produc’d.

33. Also the aforesaid Nicholas Brambre, false Knight of London, by the Assent and Advice of the said Alexander, &c. Robert de Vere, &c. Michael, &c. and Robert Tresilian false Justice, encroaching to themselves Royal Power (as before) some of them went personally into London, and without the Assent and Knowledge of the King, there openly in his Name made all the Crafts or Trades of that City to be sworn, to hold and perform divers Matters not lawful, as is contained in the said Oath upon record in Chancery: And amongst other Things, that they should keep and maintain the King’s Will and Purpose to their power, against all such as were, or should be Rebels against the King’s Person or his Royalty, and that they should be ready to live and die with him in destruction of all such who did or should design Treason against the King in any manner; and that they should be ready and come speedily to their Mayor for the time being, or that afterwards should be, when and at what Hour they should be requir’d, to resist, so long as they lived, all such as did or should design any thing against the King in any of the Points aforesaid: at which time the King, by evil Information of the said Misdoers and Traitors, and by the false Answers of the Justices, firmly held the said Lords and others who contrived the said Statute, Ordinance and Commission, to be Rebels, Enemies, and Traitors, which false Information was then unknown to the People of London; and also by obscure Words contained in the said Oath, the Intent of the Misdoers and Traitors being to engage the People of London to raise their Power to destroy the said loyal Lords and others.

34. Also the said Nicholas, Alexander, Robert de Vere, and Michael, as Traitors to the King and Kingdom, encroaching to themselves Royal Power, did of their own Authority, without Warrant from the King, or his great Council, cause to be proclaimed thro’ the City of London, that none of the King’s Lieges should aid or comfort Richard Earl of Arundel and Surrey, a Peer of the Land, and one of the Lords of the King’s Great Council during the Commission; nor should sell him Armour, Victuals, or other things necessary, but should avoid all of his Party as Rebels, upon pain of being proceeded against as Rebels, and on forfeiture of all they were worth; shewing Letters Patent from the King for making such Proclamation, being to the Destruction of the King’s Liege Subjects.

35. Also the said Nicholas Brambre, by Assent and Counsel of the said Alexander, Robert de Vere, and Michael, caused it to be proclaimed in the City of London, That no Person should be so hardy as to presume to speak any Ill of the said Misdoers and Traitors, upon pain of forfeiting to the King whatever they were worth.

36. Also

36. Also the said five Traitors to the King and Kingdom, caused the King to make certain Persons to be Sheriffs thro' the Kingdom, named and recommended to him by the said Evil-doers and Traitors, to the Intent that they might get such Persons as they should name return'd for Knights of the Shire to serve in Parliament; to the undoing of the loyal Lords and Commons, and also the good Laws and Customs of the Kingdom.

37. Also the said five Misdoers and Traitors, during the time of Protection, to hinder the Appeal against them, falsely counsell'd and prevail'd with the King to command by his Letters divers Knights and Esquires, Sheriffs, and other Ministers of several Counties, to levy and assemble all the Power they could to join with the Duke of Ireland against the Lords Appellants, to make sudden War upon and destroy them.

38. Also during the time of the said Protection of the said Robert de Vere, Michael, &c. Alexander, Nicholas, &c. they caused the King by his Letters, to signify to the Duke of Ireland, that they were all appealed of Treason by Thomas Duke of Gloucester, Constable of England, Richard Earl of Arundel and Surrey, and Thomas Earl of Warwick, and how he had given them Day until the next Parliament, and how he had taken into his special Protection both Parties, with all their Goods and Chattels: And it was further contain'd in the King's Letters, That if the Duke of Ireland should have sufficient Power, he should not cease to march on with all his Force to come to him. And soon after they caused the King to write to the said Duke that he should take the Field with all the Force he could get together; and that he would meet him with all his Troops, and that he would adventure his Royal Person with him, and that he was in great danger, as also the whole Nation, if he was not relieved by him: and this the Duke ought to declare to all the People with him, and that the King would pay the Wages and Costs of the said Duke, and all the People assembled with him. By virtue of which Letters, and the wicked and traitorous Instigations, as well of the Duke and his Adherents, as of all the other Misdoers and Traitors, he raised a great number of Men at Arms, and Archers, as well in the Counties of Lancaster and Chester, as in Wales and other Places of the Kingdom, to destroy and put to death the said loyal Lords, and all others who had assented to the making of the said Statute, Ordinance and Commission, in defence of the King and his Kingdom.

39. Also the said Robert de Vere, Duke of Ireland, as a false Traitor to the King and Kingdom, assembled a great Power of Men at Arms and Archers in Lancashire, Cheshire, Wales, and many other Places, to the Intent to have traitorously destroy'd with all his Power the said Lords, Thomas Duke of Gloucester, Constable of England, Henry Earl of Derby, Richard Earl of Arundel and Surrey, Thomas Earl of Warwick, and Thomas Earl Marshal, with divers others the King's Lieges, to the undoing and ruin of the King and the whole Kingdom; and so rode and march'd with a great Force of Men at Arms, and Archers, from the County of Chester to Ratcot Bridge, accroaching to himself Royal Power, and displaying the King's Banner in his Army, against the State of the King and his Crown.

This Impeachment was exhibited on Monday the third of February, being the first Day of the

Parliament; when the Lords Appellants also affirm'd they were ready to prove every Article of it as should be awarded in Parliament, to the Honour of God, and the Advantage and Profit of the King and the whole Realm.

Whereupon all the Persons appealed, were by command of the King and Lords solemnly summon'd in the great Hall at Westminster, as also at the Gate of the said Palace, to come and answer the said Appellants; but upon their Non-appearance, the said Duke and Lords Appellants pray'd, that their Default might be recorded. Then upon the said Appellants alledging, that the Accused had full Notice of the said Appeal, and the King and Lords being satisfy'd it was so, by reason they did not appear, their Default was recorded accordingly: Whereupon the said Duke and Earls Appellants pray'd the King and Lords, that they might be adjudged and convicted of the Treasons contained in the said Appeal. Then the King and Lords took time to consider and examine the Articles, after which they would give such Judgment in this Case, as should be to the Honour of God, the Advantage and Profit of the King and the whole Kingdom. Then the King commanded the said Lords to examine the Articles severally, which they did with great Labour and Diligence, until Thursday the 13th of February.

During this Interval, the Justices, Serjeants, and other Sages of the Law, both of the Realm and Law Civil, were charg'd by the King to give their faithful Advice to the Lords of Parliament how they ought to proceed in the above-said Appeal. Then the said Justices, Serjeants, and Sages of both Laws having taken these Matters into their Deliberation, answer'd the said Lords of Parliament, that they had seen and well understood the Tenor of the said Appeal, and affirm'd that it was not made nor brought according as the one Law or other requir'd. Upon which the said Lords of Parliament having taken Deliberation and Advice, it was by the Assent of the King with their common Accord declared, That in so high a Crime as is laid in this Appeal, and which touches the Person of the King and the Estates of this Realm, and is perpetrated by Persons who are Peers thereof, together with others, the Cause cannot be try'd elsewhere but in Parliament, nor by any other Law or Court, except that of Parliament; and that it belongs to the Lords of Parliament, and to their free Choice and Liberty, by antient Custom of Parliament, to be Judges in such Cases, and to judge of them by the Assent of the King; and thus it shall be done in this Case by Award of Parliament, because the Realm of England is not, nor ever was (neither is it the Intent of the King and Lords of Parliament that it shall ever be) ruled and govern'd by the Civil Law; and therefore it is not their Intent otherwise to proceed in so high a Case as this Appeal, which cannot be try'd or determin'd any where else than in Parliament, since the Process or Order used in inferior Courts is only as they are intrusted with the Execution of the antient Laws and Customs of the Realm, and the Ordinances and Establishments of Parliament: And it was the Judgment of the Lords of Parliament, by assent of the King, that this Appeal was well and duly brought, and the Process upon the same was good and effectual, according to the Laws and Course of Parliament, and by which they will award and judge

judge it. Upon this the Appellants again moved the King and Lords to record their Default; and that *Nicholas Brambre* (who was the only Person in Custody) might be brought to answer.

Then the other Persons appealed were again summoned to come in and make Answer, but they did not appear; nevertheless the King and Lords took time to deliberate till the next Day, being the 5th of *February*; at which time the said Appellants again prayed that the Default of the Appealed might be recorded, which was done accordingly. After which the Lord * Chancellor, in the Name of the Clergy, in open Parliament, made an Oration, shewing, *That they could not by any means be present at Proceedings where any Censure of Death is to be passed*; for the Confirmation whereof the Clergy deliver'd in a Protestation, which being read, they declar'd, "That neither in respect of
"any Favour, nor for fear of any Man's Hate,
"nor in hope of any Reward, they did desire to
"absent themselves; but only that they were
"bound by the Canon not to be present at any
"Man's Arraignment or Condemnation." They likewise sent their Protestation to the Chapel of the Abbey where the Commons sate, which was allow'd of.

And then, on the 13th of *February*, the King and Lords of Parliament being met again in the *Whitehall*, the said Appellants pray'd that the last Default of the said Archbishop, Duke, and Earl, and *Robert Tresilian*, should be recorded. Then the Persons accused being again summoned (*the third time*) and not appearing, the Lords proceeded to Judgment, and declared, that divers of the Articles therein contain'd were Treason; as the *First, Second, Eleventh, Twelfth, Fifteenth, and Seventeenth*, as also the *Eighteenth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-seventh, Thirty-eighth, and Thirty-ninth* Articles: and then upon due Information of their Consciences, they pronounced the said Archbishop, Duke, and Earl, with *Robert Tresilian*, to be notoriously guilty of each of the said Articles that concern'd them, and that they were also culpable of all the rest of the Articles contain'd in the said Appeal, not yet declar'd Treason.

Then in presence of the King, and Lords assembled at the Day and Place aforesaid the said Duke and Earls Appellants pray'd the King, and the Lords there present, that the Persons so appeal'd as aforesaid should be adjudged convicted of the High-Treasons contain'd in the said Appeals. Wherefore the said Lords of Parliament there present, as Judges in Parliament in this Case, by assent of the King pronounced their Sentence; and did adjudge the said Archbishop, Duke, and Earl, with *Robert Tresilian*, so appeal'd as aforesaid, to be Guilty and convicted of Treason, and to be drawn and hang'd as Traitors and Enemies to the King and Kingdom; and that their Heirs should be disinherited for ever, and their Lands and Tenements, Goods and Chattels forfeited to the King, and that the Temporalities of the Archbishop of *York* should be taken into the King's hands.

On this Day Sir *Nicholas Brambre*
Feb. 17. was brought by the Constable of the Tower into Parliament; and being

charged with the aforesaid Articles of Treason, he desired longer time, that he might advise with Counsel Learned in the Law, and might make a more full Answer to his Accusation, but he was refus'd, in that he requir'd a thing not usual, nor allowable by Law in a Case of this Nature; whereupon the Judges requir'd him then to answer severally and distinctly to every Point in the Articles of Treason contain'd. Whereunto *Brambre* answer'd, "Whosoever hath branded me with
"this ignominious Mark, with him I am ready
"to fight in the Lists to maintain my Innocency
"whenever the King shall appoint." And this he spake with such a Fury, that his Eyes sparkled with Rage, and he breath'd as if an *Aetna* lay hid in his Breast, chusing rather to die gloriously in the Field, than disgracefully on a Gibbet.

The Appellants hearing this courageous Challenge, with resolute Countenance answer'd, that they would readily accept of the Combat, and thereupon flung down their Gages before the King; and on a sudden the whole Company of Lords, Knights, Esquires, and Commons flung down their Gages so thick, that they seem'd like Snow in a Winter's Day, crying out, "We also
"will accept of the Combat, and will prove these
"Articles to be true to thy Head, most damnable Traitor." But the Lords resolv'd that Battle † did not lie in that Case, and that they would examine the Articles touching the said *Nicholas*, and take due Information by all true, necessary and convenient Ways, that their Consciences might be truly directed what Judgment to give in this Case, to the honour of God, the advantage and profit of the King and his Kingdom, and as they would answer it before God, according to the Course and Law of Parliament.

This Day, to aggravate the Appellation against the Conspirators, there Feb. 19. came divers Companies of the City of *London*, complaining of the manifold Injuries they had suffer'd from *Brambre*, and other Extortions and Exactions wherewith they had been daily charg'd; and yet they protested, that they did not accuse him either for hate to his Person, or for love, fear or hope of Reward from his Enemies, but they charg'd him only with the Truth. Before they could proceed with his Trial, they were interrupted by unfortunate *Tresilian*, who being got upon the top of an Apothecary's House adjoining to the Palace, and descended into a Gutter to look about him and observe who went into the Palace, was discover'd by certain of the Peers, who presently sent some of the Guard to apprehend him; who entering into the House where he was, and having spent long time in vain in looking for him, at length one of the Guard stept to the Master of the House, and taking him by the Shoulder with his Dagger drawn, said thus, *Show us where thou hast hid Tresilian, or else resolve thy Days are accomplish'd*. The Master trembling, and ready to yield up the Ghost for fear, answer'd, *Tonder is the place where he lies*; and shew'd him a round Table cover'd with branches of Bays, under which *Tresilian* lay close cover'd. When they had found him, they drew him out by the Heels, wondering to see him wear his Hair and

* The Bishop of Ely. Tyrrel says, the Archbishop of Canterbury.

† In Appeals of Treason, Battle don't lie, if it can be proved by Witnesses. (See Proceedings against the Earl of Clarendon, No 66. Vol. II. p. 553.)

Beard overgrown, with old clouted Shoes and patch'd Hole, more like a miserable poor Beggar than a Judge.

When this came to the Ears of the Peers, the five Appellants suddenly rose up, and going to the Gate of the Hall, they met the Guard leading *Trefilian* bound, crying as they came, *We have him, we have him* *.

Trefilian being come into the Hall, was ask'd what he could say for himself, why Execution should not be done according to the Judgment pass'd upon him for his Treasons so often committed: but he became as one struck dumb, he had nothing to say, and his Heart was harden'd to the very last, so that he would not confess himself Guilty of any thing. Whereupon he was without delay led to the Tower, that he might suffer the Sentence pass'd against him: his Wife and his Children did with many Tears accompany him to the Tower; but his Wife was so overcome with Grief, that she fell down in a swoon as if she had been dead.

Immediately *Trefilian* is put upon an Hurdle, and drawn thro' the Streets of the City, with a wonderful Concourse of People following him. At every Furlong's end he was suffer'd to stop, that he might rest himself, and to see if he would confess or acknowledge any thing; but what he said to the Frier his Confessor, is not known. When he came to the place of Execution, he would not climb the Ladder, until such time as being found-

ly beaten with Bats and Staves, he was forc'd to go up; and when he was up, he said, so long as I do wear any thing upon me, I shall not die; wherefore the Executioner stript him, and found certain Images painted like to the Signs of the Heavens, and the Head of a Devil painted, and the Names of many of the Devils wrote in Parchment; these being taken away, he was hang'd up naked, and after he had hang'd some time, that the Spectators should be sure he was dead, they cut his Throat, and because the Night approached, they let him hang till the next Morning, and then his Wife having obtain'd a License of the King, took down his Body, and carried it to the *Gray-Friers*, where it was buried,

On this Day *Brambre* was brought again before the Parliament; but not Feb. 20. being able to make any Answer to the Articles wherewith he was charg'd, the like Sentence was pronounc'd against him, as had been before against the other Conspirators. After which he was drawn upon an Hurdle from the Tower to *Tyburn*, thro' the City, when he shewed himself very penitent, humbly craving Mercy and Forgiveness at the hands of God and Men, whom he had so grievously offended, and so injuriously wrong'd in Times past, earnestly desiring all Persons to pray for him: When the Rope was about his Neck, and he was ready to be turn'd off, a certain young Man, the Son of one *Northampton*, ask'd him if he had done Justice to his Father or

* *Froissart's Chron. Part 2. fol. 110. relates the manner of his Discovery thus; "Understanding that the King's Uncles and the new Council at England would keep a secret Parliament at Westminster, he (*Trefilian*) thought to go and lie there to learn what should be done; and so he came and lodg'd at Westminster the same Day their Council began, and lodg'd in an Ale-house right over against the Palace-Gate, and there he was in a Chamber looking out at a Window down into the Court, and there he might see them that went in and out to the Council, but none knew him because of his Apparel. At last on a Day, a Squire of the Duke of Gloucester's knew him, for he had oftentimes been in his Company; and as soon as Sir Robert *Trefilian* saw him, he knew him well, and withdrew himself out of the Window. The Squire had suspicion thereof, and said to himself, Methinks I see yonder Sir Robert *Trefilian*; and to the intent to know the Truth, he enter'd into the Lodging and said to the Wife, Dame, who is that, that is above in the Chamber? is he alone or with Company? Sir, quoth she, I cannot shew you, but he has been here a long space. Therewith the Squire went up the better to advise him, and saluted him, and saw well it was true; but he feigned himself, and turned his Tale and said, God save you good Man, I pray you be not discontented, for I took you for a Farmer of mine in Essex, for you are like him. Sir, quoth he, I am of Kent, and a Farmer of Sir John of Hollandes, and there be Men of the Bishop of Canterbury's that would do me wrong; and I am come hither to complain to the Council. Well, quoth the Squire, if you come into the Palace, I will help to make your way, that you shall speak with the Lords of the Council. Sir, I thank you, quoth he, and I shall not refuse your Aid. Then the Squire call'd for a Pot of Ale, and drank with him, and paid for it, and bad him farewell and departed; and never ceased till he came to the Council Chamber-door, and call'd the Usher to open the Door. Then the Usher demanded what he would, because the Lords were in Council: he answer'd and said, I would speak with my Lord and Master the Duke of Gloucester, for a matter that right near toucheth him and all the Council. Then the Usher let him in, and when he came before his Master, he said, Sir, I have brought you great Tidings. What be they, quoth the Duke? Sir, quoth the Squire, I will speak aloud, for it toucheth you and all my Lords here present. I have seen Sir Robert *Trefilian* disguised in a Villain's Habit, in an Alehouse here without the Gate. *Trefilian*! quoth the Duke. Yea truly Sir, quoth the Squire, you shall have him ere you go to Dinner, if you please. I am content, quoth the Duke, and he shall show us some News of his Master the Duke of Ireland; gothy way and fetch him, but look that thou be strong enough so to do, that thou fail not. The Squire went forth and took four Serjeants with him, and said, Sirs, follow me afar off; and as soon as I make to you a Sign, and that I lay my Hand on a Man, that I go for, take him and let him not escape. Therewith the Squire enter'd into the House where *Trefilian* was, and went up into the Chamber; and as soon as he saw him, he said, *Trefilian*, you are come into this Country for no Goodness; my Lord the Duke of Gloucester commandeth, that you come and speak with him. The Knight would have excus'd himself, and said, I am not *Trefilian*, I am a Farmer of Sir John of Hollandes. Nay, nay, quoth the Squire, your Body is *Trefilian*, but your Habit is not; and therewith he made Tokens to the Serjeants, that they should take him. Then they went up into the Chamber, and took him, and so brought him to the Palace." Of his taking, the Duke of Gloucester was right joyful, and would see him, and when he was in his Presence, the Duke said, *Trefilian*, what thing makes you here in this Country? where is the King? where left you him? *Trefilian*, when he saw that he was so well known, and that none excusation could avail him, said, Sir, the King sent me hither to learn Tidings, and he is at Bristol, and hunteth along the River Severn. What, quoth the Duke, you are not come like a wife Man, but rather like a Spy; if you would have come to have learnt Tidings, you should have come in the State of a Knight. Sir, quoth *Trefilian*, if I have trespassed, I ask Pardon, for I was caus'd this to do. Well, Sir, quoth the Duke, and where is your Master the Duke of Ireland? Sir, quoth he, of a truth he is with the King. It is shewed us here, quoth the Duke, that he assembleth much People, and the King for him; whither will he lead that People? Sir, quoth he, it is to go into Ireland. Into Ireland, quoth the Duke of Gloucester! Yea, Sir, truly, quoth *Trefilian*: and then the Duke studied a little, and said, Ah, *Trefilian*! *Trefilian*! your Business is neither fair nor good; you have done great Folly to come into this Country: for you are not beloved here, and that shall well be seen; you and such other of your Affinity have done great Displeasure to my Brother and me, and you have troubled to your Power, and with your Counsel, the King, and divers others, Nobles of the Realm; also you have moved certain good Towns against us. Now is the Day come, that you shall have your Payment; for he that doth well, by Reason should find it. Think on your Business, for I will neither eat nor drink till you be dead. That word greatly abash'd *Trefilian*; he would fain have excus'd himself with fair Language, in lowly humbling himself; but he could do nothing to appease the Duke. So Sir Robert *Trefilian* was deliver'd to the Hangman, and so led out of Westminster, and there beheaded, and after hang'd on a Gibbet.*

not [for Northampton was some time] Mayor of the City of London, more wealthy and substantial, than any else in the City; him did Brambre and Tresilian accuse of Treason and Conspiracy against the State, and condemn'd him to die, being despoil'd of his Estate, he himself at length hardly escap'd.] To whom Brambre answer'd, and confess'd with bitter Tears, that what he did was most vile and wicked, and with an intent only to murder and overthrow the said Northampton; for which craving Pardon of the young Man, he was suddenly turn'd off, and the Executioner cutting his Throat, he died *.

Robert Belknap, John Holt, Roger Fulthorpe, William Burleigh, John Carey, and John Lockton, being impeached by the Commons, were call'd to answer for their Conspiracy against the Commissioners at Nottingham. They could not gainsay, but that the Questions were such as were then asked them, but denied the Answers to be so: and Sir Robert Belknap pleaded in particular, that the Archbishop of York, in his Chamber at Windsor, told him that he had devised and drawn up the Commission and Statute, whereby the Government was wholly taken out of the King's Hands, and that he therefore hated him above all Men; and that if he found not some way to make void the said Statute and Commission, he should be slain as a Traitor. He answer'd, that the Intention of the Lords, and such as assisted at the making of them, was, that they should be for the Honour and good Government of the State of the King and Kingdom: that he twice parted from the King dissatisfied, and was in doubt of his Life; and said these Answers proceeded not from his Good-will, but were made against his Mind, and were the Effects of the Threats of the Archbishop of York, Duke of Ireland, and Earl of Suffolk; and that he was sworn, and commanded in the Presence of the King, upon pain of Death, to conceal this Matter, as the Counsel of the King; and prayed for the Love of God that he might have a gracious and merciful Judgment.

Sir John Holt alledged the same Matter of Excuse, and made the same Prayer, so did Sir William Burgh, and Sir John Cary; who all made the same Excuse, and made the same Requests, as did also Sir Roger Fulthorpe, and John Lockton Serjeant at Law.

To all which the Commons answer'd, that they were taken and holden for Sages in the Law; and the King's Will was, that they should have answer'd the Question as the Law was, and not otherwise, as they did, with Design, and under Colour of Law, to murder and destroy the Lords, and Loyal Lieges, who were aiding and assisting in making the Commission and Statute in the last Parliament, for the good Government of the State of the King, and Kingdom; and therefore the Commons pray'd they might be adjudg'd, convicted, and attainted as Traitors. Upon which the Lords Temporal took time by good Deliberation

to examine the Matter and Circumstances of it; and for that they were present at the making of the said Statute and Commission, which they knew were contrived for the Honour of God, and for the good Government of the State of the King and whole Kingdom, and that it was the King's Will, that they should not have otherwise answered them, than according to Law, and had answered as before, they were by the Lords Temporal, by the Assent of the King, adjudg'd to be Drawn and Hang'd as Traitors, their Heirs disherited, and their Lands and Tenements, Goods and Chattels to be forfeited to the King.

Whilst the Peers were trying them, the Clergy were retir'd into the King's Chamber; but when word was brought to them of the Condemnation of the Judges, the Archbishop of Canterbury, the Bishop of Winchester, the Chancellor, the Treasurer, the Lord Keeper of the Privy-Seal, arose hastily and went into the Parliament House, pouring forth their Complaints before the King and Peers, humbly upon their Knees beseeching them, that for the Love of God, the Virgin Mary, and all the Saints, even as they hoped to have Mercy at the Day of Judgment, they should shew Favour, and not put to death the said Judges then present.

The Duke of Gloucester likewise, with the Earls of Arundel, Warwick, Derby, and Nottingham, whose Hearts began to be mollified, joined with them in their Petition. At length thro' their Intercession, the Execution upon their Persons was spar'd, and their Lives granted them; but they were sent back to the Tower to be kept close Prisoners, and afterwards were sent into Ireland, there to remain for Term of Life †.

On Tuesday, March 3. John Blake, and Thomas Uske were brought into Parliament: and first John Blake was impeached by the Commons, That being retained of Council for the King, he drew up the Questions, to which the Justices made Answer, and contrived with the Persons appealed, that the Lords, and other the King's Loyal Lieges that caused the said Commission and Statute to be made in the last Parliament, should be indicted in London and Middlesex for Treason, and that they should be arrested, and traitorously and wickedly murdered: and that he was aiding and advising in the Treasons aforesaid, with the appealed already executed.

Then Thomas Uske was accused for procuring himself to be made Under-Sheriff of Middlesex, to the end to cause the said Lords, and Loyal Lieges, to be arrested and indicted, as had been said before; and was aiding and counselling the Appealed in the Treasons aforesaid.

John Blake answered, That he was retain'd of Council for the King, by his Command, and sworn to keep secret his Advice, and whatever he did, it was by the King's Command, whom he ought to obey. And Thomas Uske gave the same Answer. Whereupon the Lords Temporal took Deliberation till the morrow, being the 4th of

* Grafton, p. 379. and from him, Holinshed, Vol. 3. p. 453. say, that in his Mayoralty he caused great and monstrous Stocks to be made to imprison Men in, as also a common Axe to strike off the Heads of such as should resist his Will and Pleasure; and that he was sentenc'd by the Parliament to be beheaded with his own Axe. Froissart's Chron. Part. 2. fol. 113. But it appears by the Parliament-Rolls, 11 Rich. II. Par. 3. N^o 15. that both he and Tresilian were drawn and hanged.

† They were thus distributed; Robert Belknap and John Holt in the Village of Dromore in Ireland; not to live at Justices, but as banish'd Offenders, nor to go out of Town above the space of two Miles upon pain of Death. But the King out of his Bounty was pleas'd to give a yearly Annuity of 40 Pounds to Robert Belknap, and of 20 Marks to John Holt, during their Lives.

Roger Fulthorpe, and William Burleigh in the City of Dublin, with the yearly Allowance of forty Pounds to each during Life, with the Liberty of going two Miles to Burleigh, and of three to Fulthorpe, for their Recreation.

John Carey, and John Lockton in Waterford, with the yearly Allowance of twenty Pounds to each during Life, with the like Liberty, and like Penalty.

March, when the said *John* and *Thomas* were again brought into Parliament; and good Advice and Deliberation having been taken by the Lords, they pronounced them Guilty of the Things whereof they were accused. And whereas they alledged for their Excuse the King's Command, it made the Crime the greater, for that they knew well the Persons appealed and condemned, had encroached to themselves Royal Power, as is said before, and it was their Command, and not the King's. Then the Lords awarded, by Assent of the King, that they should both be *Hanged and Drawn as Traitors*, as open Enemies to the King and Kingdom, and their Heirs disherited for ever, and their Lands and Tenements, Goods and Chatties forfeited to the King: and they were executed the same Day.

On the 6th of *March*, *Thomas* Bishop of *Chichester* was impeached and accused by the Commons, that he was present at the Places and Times when the said Questions were put to the Justices, &c. and the Answers made; and excited them by Threats to answer as they did, and knew the false Purposes and Treasons design'd by the Traitors adjudged, and aided and assisted them, and would not make Discovery to any of the Lords, that caused the said Commission to be made last Parliament, whereby Remedy might have been had for the Safety of the King and Kingdom. To which the Bishop answer'd, That of his own Freewill, he had not excited them to do or say any thing; and further said, they were not excited or charged to say any thing but what the Law was: and touching the Concealment of the Treason, he had made such Assurance as he could not discover: and said further, that the Traitors were about the King, and had such Power over him before, that he had not so great Interest in the King as to prevent those Mischiefs, that now came upon him. The Commons reply'd, He had upon the Matter confess'd himself Guilty, and pray'd he might be attainted. Upon this Answer of the Bishop, the Replication of the Commons, and all Circumstances of the Accusation, the Lords took time to give such Judgment, as might be for the Honour of God, and Profit of the King and Kingdom.

Simon de Burleigh, *John de Beauchamp*, *James Baroverse*, and *John Salisbury*, were brought into the Parliament House, where they were impeach'd at the Instance of the Commons. The Articles exhibited against them were sixteen; the first Article was the first Article in the former Impeachment; in the second Article they were accused as Traitors and Enemies of the Kingdom, for that they knew of all the Treasons in the Appeal mentioned, and that they were aiding, assisting, counselling and assenting to all the Traitors attainted; and that *Simon Burleigh*, and *John Beauchamp* were principal Actors in all the said Treasons. In the eighth Article they were accused for conspiring and designing with the five Persons appealed, to destroy

and put to death those who were assenting to the making of the said Commission and Statute in the last Parliament. Another Article was, That the said *Simon Burleigh* being King's Chamberlain, and being oblig'd to counsel the King for the best, to the Advantage of him and his Realm, he the said *Simon* by his wicked Contrivance and Procurement, advised the King to entertain in his Household great Numbers of Aliens, *Bohemians* and others, and to give them large Gifts out of the Revenues and Profits of the Realm, whereby the King was greatly impoverish'd, and the People otherwise oppress'd. The other Articles are of less moment, but all relating to the Articles of the Appeal, to which they all pleaded *Not Guilty*.

The Commons replied they were Guilty, and the Lords took time to examine and consider the Impeachment. Upon this and the Bishop of *Chichester*'s Impeachment, the Lords adjourn'd until the 20th of *March*, on which Day the whole Parliament was adjourn'd until the 13th of *April*, on which Day the Lords further adjourned till the 5th of *May*; the time between was taken up with the Affair of Sir *Simon Burleigh*: for three Appellants, viz, the Duke of *Glocester*, the Earls of *Arundel* and *Warwick*, with the whole House of Commons, urg'd that Execution should be perform'd according to the Law: On the other side the King and Queen, the Earls of *Derby* and *Nottingham*, and the Prior of *St. John* his Uncle, with the major part of the House of Lords, did labour to have him sav'd.

There was also some muttering among the common People, and it was reported to the Parliament, that the Commons did rise in divers parts of the Realm, but especially about *Kent*, in favour of Sir *Simon Burleigh*; which when they heard, those that before spake and stood for him, now clean left him.

By joint Consent of the King and the Lords, Sentence was pronounc'd *May 5.* against the said Sir *Simon Burleigh*, That he should be drawn from the *Tower* to *Tyburn*, and there be hang'd till he be dead, and then have his Head struck from his Body: but because he was a Knight of the Garter, a gallant Courtier, powerful, and once a * Favourite of the King's, and much respected of all the Court, the King was pleas'd to mitigate his Doom, that he should only be led to *Tower-Hill*, and there be beheaded.

John Beauchamp, Steward of the Household to the King, *James Baroverse*, *May 12.* and *John Salisbury* Knights, Gentlemen of the Privy-Chamber, were in like manner condemn'd; the two first were beheaded on *Tower-Hill*, but *John Salisbury* was drawn from *Tower-Hill* to *Tyburn*, and there hang'd. On the same Day also was condemn'd the Bishop of *Chichester*, the King's Confessor; but because of his great Dignity he was pardon'd, but was banish'd to *Cork* in *Ireland* †.

* See a particular account of his Advancement and Greatness, Holin. Vol. 3. p. 464.

† The Judgments were afterwards revers'd in the Parliament held the 21 Ric. 2. but that Parliament is declar'd to be held by Force in the Parliament Rolls, 1 Hen. 4. No. 21, 22. and No. 48. and is therefore entirely repeal'd by 1 Hen. 4. cap. 3. and the Parliament of 11 Ric. 2. confirm'd and approv'd of, as for the honour and profit of the Realm, 1 Hen. 4. cap. 4.

II. *The Trial and Examination of Master WILLIAM THORPE*, Preste, for HERESYE, before Thomas Arundel, Archebishop of Canterbury, the 3d of July, 1407. the 8th of Henry IV. Written by himself.*

KNOWEN be yt to all Men that rede or heare thys Wrytyng benethe, That on the Sondaye next after the Feste of Seynt Peter, that we call Lammesse, in the yeare of our Lord a M.CCCC. and vii. yeare, I William Thorpe, being in Prison in the Castell of Saltwoode, was brought before Thomas Arundell Archebyshope of Canterbury, and Chauncellor than of England: And when that I came to hym, he stode in a great Chamber, and moch People aboute hym; and when that he sawe me, he went faste into a Clofett, bydding all seculer Men that folowed him to go forth from hym sone; so that no Man was left than in that Clofett but the Archebyshop hymselfe, and a Physician that was callyd Malueren, Person of Seynt Dunstons in London, and other two Personys unknowen to me, whych ware Minysters of the Lawe. And I standyng before them, by-and-by the Archebyshop seyde to me, William, I know well that thou hast thys twenty Wynter and more trauelyd about besyly in the North Contre, and in other diverse Contres of England, sowyng about false Doctrine, hauyng great Busynesse yf thou myght wyth thyne untrew Teachyng, and shrewyd Will for to infecte and poyson all this Lande: But through the Grace of God thou art now wythstoded and brought in to my Warde, so that I shall now sequester the from thyne euill purpose, and lett the to enuename the Shepe of my Provynce. Never the lesse Seynt Paul seythe, *If it may be as ferre as in us is, we owe to have Peace wyth all Men*: Therefore William, yf thou wyll now mekely, and of good Harte, without onye feynyng, knele downe and leye thy Hande upon a Booke and kyffe yt, promysyng feythfully, as I shall here charge the, that thou wilt submyt the to my Correccyon, and stande to myne Ordinance, and fulfyll yt dewly by all thy Connyng and Power, thou shall yet fynde me gracyoule unto the. Then seyde I to the Archebyshop, Syr, syns ye deme me an Heretyke out of Beleue, wyll ye gyue me here Audience to tell my Beleue; and he seyde, ye tell on. And I seyde, I beleue that there is not but one God Almyghty, and in thys Godhede, and of thys Godhede ar thre Personys; that is, the Fader, the Sonne, and the sothe faste Holy Goste: And I beleue that all thes thre Persones ar euen in Power, and in Connyng, and in Myght, full of Grace and of all Goodnesse; for whatsoever that the Father dothe,

or can, or wyll, that thyng also the Sonne dothe, and can, and wyll; and in all their Power, Connyng and Wyll, the Holy Goste is equall to the Father and to the Sonne. Ouer thys I beleue, that through Counsell of thys moste bleffyd Trinite, in a moste conuenient tyme before ordenyd for the Salvacyon of Man kynde, the seconde Person of thys Trinite was ordeynd to take the Fourme of Man, that is the kynde of Man. And I beleue that thys seconde Person, our Lorde Jesu Christe, was conceiuyd thorough the Holy Goste into the Wombe of the most bleffyd Virgyn Marye, wythout Manys Seede: And I beleue that after nyne monthys Christe was borne of thys moste bleffyd Vergyn, without one Peyne, or brekyng of the Closter of hyr Wombe, and wythout Fylthe of hyr Virginite: And I beleue that Christe our Sauyours was circuncisyd in the eyghte daye after hys Byrthe in fulfylling of the Lawe, and hys Name was callyd Jesu, which was callyd of the Angell before that he was conceiuyd in the Wombe of Marie hys Moder: And I beleue that Christe, as he was about thyrty yeare old, was baptizyd in the Fludde of Jordan of John Baptist; and, in lykeness of a Dove, the Holy Goste descendyd there upon hym, and a Voyce was herde from Heuen, seying, *Thou art my welbelouyd Sonne, in the I am full pleasyd*. And I beleue that Christe was moeuyd than by the Holy Goste for to go into Desert, and there he fastyd fourty dayes and fourty nyghtes wythout bodely Meate and Drynk: And I beleue that by and by, after hys Fastyng, when the Manhode of Christe hongeryd, the Feende came to hym and temptyd hym in Glotony, in veyn Glory, and in Couetyse; but in all thoes Temptacyons Christe concludyd the Fende, and withstode hym; and than wythout taryng, Jesu began to preache and to seye unto the People, *Doe ye Penauce, for the Relme of Heven ys now at hande*. And I beleue that Christ, in all hys tyme here, lyued moste holly, and taught the Wyll of hys Fader moste trewly; and I beleue that he sufferyd therefore moste wrongfully greatyft Repeuys and Despyfynges. And after thys whan Christe wolde make an ende here of hys temporall Lyfe, I beleue that in the daye next before that he wolde suffer Passyon in the Morne, in fourme of Brede and of Wyne he ordenyd the Sacramente of hys Flesh and his Blood, that ys, hys owne precyous Body, and gave it to hys Apostles for to eate, com-

* Fox, Acts & Mon. Vol. 1. p. 602. Coll. Eccl. Hist. 625.

maundayng them, and by them all their Aftercomers, that they sholde doo it in thys fourme that he shewyd to them, use them self, and teache and commune forth to other Men and Woomen thys moste worshipful holiest Sacrament, in myndefulnesse of hys holiest Lyuyng, and of hys moste trew Teachyng, and of hys wilfull and patient Sufferyng of the moste peynful Passiō: And I beleue that thus Christe our Savyour, after that he had ordenid thys most woorthy Sacrament of hys owne precious Body, he went forth the wyllfully agent hys Enemyes, and he sufferyd them most patiently to ley their Handys moste violently uppon hym, and to bynde hym, and to leade hym forth as a Thefe, and to skorne hym, and buffet, and all to blow or fyle him with their Spittinges. Over this I beleue that Christe suffered most mekely and patiently his Enemyes for to dinge out with sharpe Scourges the Bloude that was betwene his Skyn and his Flesh; yee without grudgyng Christe suffered the cruell *Jewes* to crown him with most sharp Thornes, and to strike him with a Rede: And after Christe suffered wicked *Jewes* to draw him out upon the Crosse, and for to nayle hym there upon Fote and Hande; and so, thorow this pitiefull Naylinge, Christe shed out wilfully for Man's Lyfe the Bloude that was in his Vaynes: And then Christe gave wilfully his Spirite in to the Handes or Power of his Father, and so as he wolde, and when he wold, Christ deid wilfully for Man's sake upon the Crosse. And notwithstandinge that Christe was wilfully, paynfully, and most shamefully put to deeth as to the Worlde, there was left Bloude and Water in his Herte, as he before ordered, that he wolde shede out this Bloude and this Water for Man's Saluacion: And therefore he suffered the *Jewes* to make a blinde Knight to thrust him in to the Herte with a Spere, and this the Bloude and Water that was in his Herte Christe wolde shede out for Man's Love. And after this I beleue that Christe was taken downe from the Crosse, and buried; and I beleue that on the third daye, by power of his Godheed, Christ rose again from Deth to Life; and the xlth day ther after, I beleue that Christe ascended up into Heaven, and that he there sitteth on the right Hande of God the Father Almyghty; and the tenth daye after this up goinge, he sente to his Apostles the Holy Gooft that he had promysed them before; and I beleue that Christe shall come and judge all Mankinde, some to euerlastinge Peace, and some to euerlastinge Paynes. And as I beleue in the Father and in the Sonne, that they are one God Almyghty; so I beleue in the Holy Gooft, that is also with them the same God Almyghty. And I beleue an holy Chirche, that is, all thei that haue byn, and that now are, and alwayes to the end of the Worlde shal be a People, the which shall endeuer them to knowe and to kepe the Commaundments of God, dredinge over all thyng to offende God, and lovyng and sekynge most to please hym. And I beleue that all they that haue had, and yet haue, and all they that yet shall haue the foresayde vertuous surely standyng in the Belefe of God, hopying stedfastly in hys mercifull Doynge, continuyng to their ende in perfect Charitie, wilfully, patiently, and gladly soferynge Persecutions, by the example of Christ chiefly and his Apostles, all these haue their Names wrytten in the Boke of Life: Therefore I beleue that the gaderynge together of this Peo-

ple, lyuyng now here in this Lyfe, ys the holye Chyrche of God, feyghtyng here on Erth agaynst the Fende, the Prosperyte of the Worlde, and their fleshely Lustes. Wherefore seyng that all the gadering together of this Church before said, and euery parte therof, nother coueteth, nor willeth, nor loveth, nor seketh any thing but to eschew the Offence of God, and to do his pleasing Will; mekely, gladly, and wilfully of all myne Herte I submitt my selfe unto thys holye Church of Christe, to be ever buxom and obedient to the Ordinaunce of it, and of euery Member thereof, after my Knowlege and Power by the helpe of God. Therefore I knowlege now and euermore shall, if God will, that of all my Harte, and of all my Might, I will submyt me only to the Rule and Gouvernaunce of them whome after my Knowlege, I may perceave, by the havynge and usynge of the beforefayd Vertues, to be Membres of the holy Church. Wherefore these Articles of Belefe, and all other bothe of the olde Lawe and of the newe, which after the Commaundement of God any Man oughte to beleue, I beleue verely in my Soule, as synnefull deedly Wretche, of my Cunnyng and Power oughte to beleue, prayenge the Lorde God, for his holye Name, for to encrease my Belefe, and help my Unbelefe.

And forbycause to the praysynge of Goddes Name, I desyre above all thyng to be a faythfull Membre of holy Church, I make this Protestacyon before you all foure that are now here presente, covetyng that all Men and Women that now absente knewe the same, that what thyng soever before this tyme I have sayde or done, or what thyng here I shall doo or saye at any tyme here after; I beleue that all the olde Lawe and the newe Lawe, geuen and ordered by the Councell of these thre Persones of the Trynite, were geuen and wrytten to the Saluacyon of Mankynde: And I beleue that these Lawes are sufficient for Man's Saluacyon: And I beleue every Article of these Lawes, to the entente that these Articles were ordered and commaunded of these thre Persones of the moste blessed Trynite to be beleued. And therefore to the Rule and the Ordinaunce of these Goddes Lawes, mekely, gladly, and wilfully I submytte me with all myne Harte, that who ever can or wyll by auctoryte of Goddes Lawe, or by open Reason, tell me that I haue erred, or now erre or any tyme here after shall erre in any Article of Belefe (fro whyche Inconuenience God kepe me for his Goodnesse) I submytte me to be reconcyld, and to be buxom and obedyente unto these Lawes of God, and to every Article of them. For by Auctorite, specially of these Lawes, I will, thorowe the Grace of God, be vnyed charytably unto these Lawes. Yee, Syr, and ouer thys I beleue and admytte all the Sentences, Auctorites, and Reasons of the Saynctes and Doctoures, accordyng unto Holy Scripture, and declaryng it truely.

I submytte me wyllfully and mekely to be ever obedyente after my connyng and power to all these Saynctes and Doctoures, as they are obedyente in Worke and in Worde to God and to his Lawe, and forther not to my Knowlege, not for any erthly Power, Dignity or State, thorowe the help of God. But Syr, I praye you tell me if after youre bidding I shall laye my Hande upon the Boke to the entente to swere thereby?

And the Archebifhope faid to me, ye, wherefore els? And I fayde to him, Syr, a Boke is nothyng els but a thyng coupled together of dyuerfe Creatures, and to fwere by any Creature both Gods Lawe and Mans Lawe is agaynft.

But Syr, this thinge I faye here to you before thefe your Clerckes, with my forfayd Proteftacion, that how, where, when and to whom Men are bounden to fwere or to obey in any wyfe after Gods Lawe, and Sayntes and trewe Doctours according with Gods Lawe: I will thorow Gods Grace be ever redy thereto with all my conning and power. But I pray you Syr, for the Charity of God, that ye will before I fwere as I have here reherfed to you, tell me how or whereto that I fhall fubmytt me; and fhewe me whereof that ye will correct me, and what is the Ordinaunce that ye will thus oblige me to fulfill.

And the Archebifhop feid unto me, I will fhortely that now thou fwere here to me that thou fhalt forfake all the Opinions which the Seete of *Lollards* holde, and is flaundred with; fo that after this tyme nother pryuely nor apertly thou holde any Opinion which I fhall after that thou hafte fborne reherfe to the here. Nor thou fhalt fauer no Man nor Woman, young nor old, that holdeth any of thefe forefeid Opinions; but after thi Knowledge and Power thou fhalt enforthe the to withftand all foche diftrobbers of Holye Chyrche in euery Diocefe that thou comeft in: and them that will not leaue their falfe and dampnable Opinions, thou fhalt put them up, publefhyng them and their Names, and make them knowen to the Bifhop of the Diocefe that they are in, or to the Bifhopes Miniftres. And ouer this I will that thou preach no more unto the tyme that I know by good Witneffe and trewe, that thy Conuerfacion be foche that thy Hart and thy Mouth accorde treuly in one contrariyng all the leude Learning that thou haft taught here before.

And I hearyng thefe Wordes, thought in my Harte, that this was an vnlefull asking; and I demyed myfelf curfed of God, yf I confented hereto, and I thought howe *Susan* feid, *Anguyfch is to me on euery fyde*. And in that I ftode ftill, and fpake not, the Archebifhop feid to me, Anfwere one wyfe or a nother: and I feid, Syr, if I confented to you thus, as ye haue here reherfed to me, I fhould become an Appealer, or euery Bifhopis efpye, fomounour of all *Englonde*. For, and I fhoulde thus put up, and publefhe the Names of Men and Women, I fhoulde herein deceiue full many Perfons; ye Syr, as it is likely by the dome of my Confcience I fhoulde herein, becaufe of the dethe of both Men and Women, ye both bodely and goftely. For many Men and Women that ftand now in the Treuthe, and are in the waye of Salvation; yf I fhoulde for the Learning and Reding of their Beleue publefhe them, and put them therfor up to Bifhopes, or to their unpituoufe Miniftres, I know fome dele by Experience, that they fhoulde be fo diftrobled and difeafed with Perfecution or otherwife, that many of them (I thinke) would rather chofe to forfake the waye of Treuthe, than to be traveled, fkornd and flaundred, or punifhed as Bifhopes and their Miniftres now ufe for to conftreyn Men and Women to confent to them. But I fynde in no place in Holy Scripture, that this Office that ye wolde now enfeffe me with accordith to ony Priſte of Chriftes Seete, nor to any other Chriſ-

ten Man. And therefore to do thus wer to me a full noycous bonde to be bounden with, and over grevoufe Charge. For I fuppofe, that yf I thus dede many Men and Women would, ye Syr, might juſtly unto my Confuſion fey to me, that I wer a Traitor to God and to them; ſyns (as I thinke in myne Herte) many Men and Women truſte ſo mekle in me in this caſe, that I wold not for faving of my Lyfe do thus to them. For yf I thus fhoulde do, full many Men and Women wolde (as they might full truly fey) that I hadde falſly and cowerdly forfaken the Truthe, and flaundred ſhamefully the Word of God. For yf I confented to you to do hereafter your Will for bon cheſe or miſcheſ that may befall to me in this Lyfe, I deme in my Confcience that I were worthy herefore to be curfed of God, and alſo of all his Seyntes, fro which inconuenience kepe me, and all Chriſten People Almighty God now and ever for his Holy Name. And than the Archebifhop faid unto me, O thine Hart is full hard endured as was the Herte of *Pharao*, and the Deuell hath ouercomen the and perverted the; and he hath ſo blynded the in all thy Wittes, that thou haſt no Grace to know the Treuthe, nor the meſure of Mercy thot I have profered to the. Therefor, as I perceyue now by thy foliſh Anſwere, thou haſt no will to leaue thyne olde Errours. But I fey to the leude Loſell, other thou quickly confente to myne Ordinaunce, and ſubmit the to ſtand to my Decrees, or by Seynt *Thomas* thou ſhalt be diſgraded, and followe thy Felowe in *Smithfelde*. And at this feying I ftode ſtyll and ſpake not, but I thought in myne Harte that God did to me a greates Grace, if he wolde of his great Mercy bringe me to ſoch an ende. And in myne Harte I was nothing frayde with this menaſing of the Archebifhop. And I conſidered there two things in him: one, that he was not yet forowfull for that he had made *William Soutre* wrongfully to be burnt; and as I conſidered that the Archebifhop thyrfte yet after more fheding out of innocent Bloode. And faſt therefore I was moved in all my Wittes, for to hold the Archebifhop nother for Prelate nor for Preiſt of God; and for that myne inward Man was thus altogether departed from the Archebifhop, methought I ſhould not haue any dread of him. But I was right heuy and forouful, for that ther was none Audience of Seculer Men by: but in myne Hart I praid the Lord God for to comforte me and ſtrength me ageiſt them that there ware agaynſt the ſothefaſteneſſe. And I purpoſed to ſpeak no more to the Archebifhop and his Clerckes than me nede behoued: and all thus I praid God for his Goodneſſe to geue me than and alwaye Grace to ſpeake with a meke and an eaſy Spyrit; and whatſoeuer thinge that I ſhulde ſpeke, that I might haue true Authorities of Scripture, or open Reaſon. And for that I ftode thus ſtill, and nothing ſpake, one of the Archebifhopes Clerkes feid vnto me,

What thing muſiſte thou? Do thou as my Lord hath now commanded to the here.

And yet I ftode ſtill, and answered him not; and than ſone after the Archebifhope feid to me, Art thou not yet bethought, whether thou wilt do, as I haue here feid to the? And I feid then to hym;

Syr, my Father and my Mother, on whoſe Souls God haue Mercy (if it be his will) ſpent mekyll Money in diuerſe Places about my Learning,

ing, for the entent to haue made me a Prieste to God: but when I came to Yeares of Discretion I had no will to be Prieste, and therefore my Friends were right heuy to me: and than me thought their grudging agenst me was so peynfull to me, that I purposed therfor to haue left their Company: and when they perceiued this in me, they spake some tyme full feire and pleasaunt Wordes to me; but for that they might not make me to consent of good Harte to be a Prieste, thei spake to me full ofte tymes very greuous Wordes, and manassed me in diuerse manners, shewing to me full heuy chere. And thus one while in feire manner, a nother while in greuous they were long tyme as me thought full besy about me, or I consented to them to be a Prieste: but at the laste, whan in this matter they wold no longer suffer myne Excusacions, but other I should consent to them, or I sholde ever bear their Indignation, ye, their Curse, (as they seide) than I seing this, praid them that they wold gyue me licence for to go to them that wer named wyse Priestis and of vertuous Conuersacion, to haue their Counsell, and to know of them the Office and the Charge of Priesthode. And hereto my Father and my Mother consented full gladly, and gaue me their Blissing and goode leaue to go, and also Money to spende in this Journey. And so than I went to tho Priestis, whom I herde to be of beste Name, and of moste holy lyving, and beste learned, and moste wyse of heauenly Wisdom; and so I communed with them vnto the tyme that I perceiuyd by their vertuous and continuall Occupacions that their honeste and charitable werks passed their fame wiche I herde before of them. Wherefore, Syr, by the example of the Doctrine of them, and specially for the godly and innocent Workis wiche I perceiued than of them and in them; after my Conning and Power I have exercised me than and in this tyme to knowe perfectly Goddis Lawe, hauing a will and a desyre to lyve ther after, willing that all Men and Women exercised them self feithfully therabout. Yf than, Syr, other for Pleasure or Displeasure of them that ar nother so wise, nor of so verteuouse Conuersation to my Knowledge; nor by comone Fame to any other Mannis Knowledge in this Land, as thes Men wer of whome I toke my Counsell and Information; I sholde now forsake thus sodenly and shortely, and unwarnid, all the Learning that I exercised my self in this thirty Winter and more; my Conscience shulde ever be herewith out of mesure vnquieted: and as, Syr, I knowe well that many Men and Women should be therthrowe greatly troublid and sclanderid, and as I said Syr to you before, for myne untrewthe and false Cowardnes many a one sholde be put into full great represe: ye Syr I drede, that many a one, as thei might then iustely, wolde curse me full bitterly, and Syr I feare not but the Curse of God, which I sholde deserue herein, wolde bring me to a full euill end, yf I continewid thus. And if thorow remorse of Conscience I repentid me any tyme retourning into the way, which you doo your diligence to constreine me now to forsake ye Syr, all the Bishopis of this Lande with full many other Priestis wolde defame, and pursue me as a Relapse, and thei that now have (though I be unworthy) some Confidence in me, hereafter wolde neuer truste to me though I cowlde teache and liue neuer so verteu-

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ously more than I can or may. For if after your Counsell I lefte vtterly all my Learning, I sholde hereby firste wounde and desyle myne owne soule; and also I sholde here through geue occasion to many Men and Women of full fore hurting: ye Syr, as it is likely to me, if I consented to your will I sholde herein by myne euil Example in it, as ferre as in me wer, slee many Folke ghostely, that I sholde neuer deserue for to haue Grace of God to the edifying of his Chirche nother of my self, nor of none other Mannes Lyfe, and undone bothe before God and Man. But Syr, by Example chefely of some whos Names I will not now reherse, *H. of J. P. and B.* and also by the present doying of *Philip of Rampenton* that is now becomen Bishop of *Lincoln*, I am now learned, as many more hereafter thorow Goddis Grace shall be learned, to hate and to fle all soche sclander, that thes foresaid Men chefely hathe defyled principally themselves with. And in it that in them is they have enuenemid all the Chirche of God for that sclanderous reuoking at the Crosse of *Paulis* of *H. P.* and of *B.* and how now *Philip Rampenton* persewith Cristis People. And that feining, that thes Men dissemble by worldly Prudence keping them cowerdly in their Preaching and Communing within the Bondis and Termis (wiche without blame may be spokyn and shewid out to the moste worldly lyuers) will not be unpunished of God. For to the point of Trewthe that thes Men shewid out some tyme, they will not now streche forth their Lyues. But by Example eche one of them, as their Wordis and their Works shewe, they besy them thorow their feinyng, for to sclander and to persewe Christe in his Members, rather than they will be persewed.

And the Archebishop seid to me, Thes Men the which thou spekest of now wer Foolis and Heretiques, whan they were countid wyse Men of the and other soche loselles. But now they ar wyse Men, though thou and soche other deme them vnwyse. Neuerthelesse I wiste neuer none, that right seide, that any while were enuenymed with your contagiousnesse, that is, contaminate and spottid Doctrine.

And I seid to the Archebishop, Syr, I think well that thes Men and such other ar now wyse as to this Worlde; but as their Wordis soundid sometyme, and their Workis shewid outwardly, it was likely to move me that they had earnestte of the Wisdom of God; and that they sholde haue deserued mickell Grace of God to haue sauyd their own Soules, and meny other Mennis, if they had continewid feithfully in wilfull pouerte, and in other symple vertuous lyving; and specially if they hadde with thes foreseid vertues continewid in their besy fruteful sowing of Goddis Word: as to many Mennys Knowledge they occupied them a Season in all their Wittes full besyly to know the pleasaunt Will of God, trauelyng all their Membres full besyly for to doo thereafter, purely and chefely to the praising of the most Holy Name of God, and for Grace of Edification and Saluacion of Christen People; but wo worthe false Couetise, and euill Counsell, and Tyranny, by wiche they and many Men and Women are ledde blyndely into an euill ende.

Than the Archebishop seide to me, Thou and soche other losellis of thy Secte wolde shawe your Headis full nere for to haue a Benefice. For by Jesu I know none more couetouse shrewis than ye ar, when that ye haue a Benefice. For lo I gave

to *John Puruay* a Benefice but a Myle out of this Castell, and I herde more Complaintis aboute his Covetousnesse for Tythes and other Mysdoyngeys, than I didde of all Men that wer auanced within my Dioceffe.

And I seid to the Archebishop, Syr, *Puruay* is nother with you now for the Benefice that ye gaue him, nor he holdith feithfully with the Learnynge that he tawght and writ before tyme, and thus he sheweth hymself nother to be hote nor cold; and therefore he and his Felaws may fore drede, that if they torne not hastily to the waye that they have forsaken, perauenture they be put out of the nombre of Cristis chofyn People.

And the Archebishop said, Though *Puruay* be now a false Harlot, I quyte me to him; but come he more for soche Cause before me or we depart, I shall knowe with whom he holdith. But I sey to the, Whiche are thes holy Men and Wyse of whom thou haste takyn thyne Informacion?

And I seid, Sir, Master *John Wickliff* was holden of full many Men the greatiste Clerke that they knewe than lyyng; and therwith he was namid a passing ruely Man, and an ynnocent in his lyyunge, and herefore greates Men commonyd ofte with him, and they louyd so his Learnynge that they writ it, and besily enforfid them to rule themself there after. Therefore Syr, this foresaid Learnynge of Master *John Wickliff* is yet holden of full many Men and Women, the most agreeable Learning unto the lyying and teachynge of Criste and of his Apostles, and mooste openly shewing and declaring how the Chirche of Criste hath ben, and yet shulde be rewild and gouern'd. Therefore so many Men and Women couet this Learnynge, and purpose through Goddis Grace to conforme their lyying Life to this Learnynge of *Wickliff*. Master *John Aiston* tawght and writ accordingly, and full besily wher and whan, and to whome that he might; and he vsid it hymself right perfily unto his Lifes ende. And also *Philip of Rampenton* while he was a Chanone of *Lacester*, *Nicholas Herforde*, *Dauy Gotray* of *Pakring*, Monk of *Bylande*, and a Master of Diuinitie, and *John Puruay* and many other wiche wer holden right wise Men and prudent, tawght and writ besily this foresaid Learnynge, and conformid them thereto. And with all thes Men I was ofte right homely, and communyd with them long tyme and ofte; and so before all other Men I choes wilfully to be informid of them and by them, and specially of *Wickliff* himself, as of the most vertuous and godly wise Men that I herde of or knewe. And therefore of him specially, and of thes Men, I tooke the Learning that I haue taucht, and purpose to liue there after (if God will) to my Lifes end. For though some of thes Men be contrary to the Learning that they taucht, before I wote well that their Learning was trewe which they taucht; and therefore with the helpe of Gode I purpose to holde and to use the Learning which I harde of them, while they sat on *Moses* Chaire, and specially while they sat on the Chaire of Criste. But after the Werkis that they now do, I will not doo with Goddis helpe. For they feine and hide, and contrary the Trewthe wiche before they taucht out plenily and trewly. For as I know well when some of thes Men hath been blamid for their schlaundersous doing, they graunte not that they haue tauchte a misse, or erryd before time; but that they were constrained by peine to leave

to tell out the sothe, and thus they choese now rather to blasfeme God than to suffer a while here Persecution bodely for sothefastnesse that Criste shed out his Harte Bloode for.

And the Archebishop seid, that Learning that thou callist Trewthe and Sothefastnesse, is open schlauder to Holy Chirche, as it is prouid of Holy Chirche. For all be it, that *Wickliff*, your Autour was a great Clerke, and though that many Men held him a perfite liuer, yet his Doctrine is not approuid of Holy Chirche, but many Sentences of his Learning are dampnid as they well woorthy ar. But as touching *Philip of Rampenton* that was first Chanone, and after Abbot of *Lacester*, which is now Bishop of *Lincoln*; I tell the that the Day is comen for which he fastid the euene. For nother he holdeth now, nor will hold the Learning that he thought when he was a Chanon of *Lacester*: For no Bishop of this Land perfeweth now more sharply them that holde thy way than he doeth.

And I said, Syr, full many Men and Women wonderith upon him, and speakith him mekill Shame, and holdeth him for a cursid Enemy of the Trewthe.

And the Archebishop seid to me, Wherefore tariest thou me thus here with soche Fables, wilt thou shortly (as I have seid to the) submit the to me or no?

And I seid, Syr, I tell you at one word, I dare not for the drede of God submit me to you, after the Tenour and Sentence that ye have aboue reherfed to me.

And than as if he hadde been wrothe he seid to one of his Clerkis, fetch hider quikely the Certification that came to me fro *Shrewisbury* under the Bailiues Seal, witnesssing the Errours and Heresies which this losell hath venemously sown there.

Then hastily the Clerke tooke out, and leid forth on a Cupborde diverse Rollis and Writings, among which there was a little one, which the Clerke delivered to the Archebishop. And by and by the Archebishop redde this Rolle, containning this Sentence.

¶ The thirde Sonday after *Easter*, the Yere of our Lorde M. CCCC. and Seuen, *William Thorpe* came vnto the Towne of *Shrewisbury*, and thorow leaue graunted unto him to preache:

He said openly in Synt *Chaddis* Chirche in his Sermon, that the Sacrament of the Altare after the Consecration was material Brede.

And that Ymages shulde in no wise be worshipped.

And that Men shulde not go on Pilgremages.

And that Priestes have no Titles to Tythes.

And that it is not lesull for to swere in any wise.

And when the Archebishop had red thus this Rolle, he rolled it up agein, and seid to me, Ys this holesome Learninge to be among the People?

And I said to him, Syr, I am both ashamed on their behalfe, and right soroufull for them that have certified you thes things thus vntrewly: for I preached never nor taught thus priuely nor apertly.

And the Archebishop said to me, I will give Credence to thes worshipfull Men which haue written to me, and witnessed vnder their Sealis there among them. Though thou now deniest this, wenist thou that I will give Credence to the? Thou losell haste troubled the worshipfull Cominalte of *Shrewisbury*; so that the Bailiues and Cominalte of that Town haue written to me, praynge me that am Archbishop of *Canterbury*, Primate

Primate and Chaunceler of *Englond*, that I will vouchsafe to graunte them, that if thou shalt be made (as thou art worthy) to suffer open Jouresse for thine Heresys, that thou maye haue thi youresse openly ther among them: so that all they whome thou and soche other loselles haue ther peruered, may thorow feare of thy Dede be reconfylled ageyn to the vnite of Holy Chirche. And also they that stand in true Faithe of Holy Chirche may thorowe thy Dede be more stablished therein. And as yf thys askyng hadde pleased the Archebishop, he said, By my thrifte this hartye Prayoure and feruente Requeste shall be thought on.

But certeynly nother the Prayer of the Men of *Shrewisbury*, nor the manassynge of the Archebishop made me any thing a frayde. But in reherlyng of this malice, and in the hearynge of of it, my herte greatly rejoyced and yet dothe. I thanke God for the Grace that I than thought and yet thinke shall come to all the Chirche of God here thorowe, by the speciall mercifull doynge of the Lord. And as hauynge no drede of the Malice of Tyrautes, by trustynge stedfastly in the helpe of the Lorde with full purpose for to knowlege the sothefastnesse, and to stande thereby after my connyng and power, I said to the Archebishop; Syr, yf the Truthe of Gods Worde might now be accepted as it sholde be, I doute not to proue by lykely evidence, that they that are famed to be out of the Faythe of Holy Chirche in *Shrewisbury*, and in other Places also, are in the true Faithe of Holy Chirche. For as their Wordes founde, and their Workes shewe to Mannis Judgment, dreading and louing faithfully God, their Will, their Desyre, their Loue, and their Besynesse are moste sett to drede to offend God, and to loue for to please him in true and faithfull keping of his Commandments. And agene, they that are said to be in the Faithe of Holy Chirche in *Shrewisbury* and in other places, by open euidence of their proude, enuiose, maliciouse, couetouse, lecherouse and other foule Wordes and Workes, nother knowe nor haue will to knowe, nor to occupye their Wittes truly and effectuously in the right Faith of Holy Chirche. Wherefore all these, nor none that followe their maners, shall ony time come verely in the Faith of Holy Chirche, except they enforce them more truely to come in the waye whiche now they despise. For these Men and Women that are now called feithfull and holden iuste, nother knowe nor will exercise themselfe to know of Faithfulnesse one Commaundment of God. And thus full many Men and Women now, and especially Men that are named to be principall Lymmes of Holy Chirche, stiere God to greate Wrathe, and deserue his Curse, for that they call or holde them unjusse Men, which are full vnjusse, as their viciouse Wordes, their great customable Sweringe, and their slaunderouse and shamefull Workes shew openly and witnesse. And herefore soche viciouse Men and unjusse in their owne Confusion call them unjusse Men and Women, which after their power and conning besy them self to liue iustely after the Commaundment of God. And where Syr ye say, that I haue distrobled the Cominaltie of *Shrewisbury*, and many other Men and Women with my teaching, if it thus be, it is not to be wondred of wise Men, sins all the Cominalte of the Cite of *Ierusalem* was destrobled of Christes awne Person that was very God

and Man, and most prudent Precher that ever was or shall be. And also all the Synagogue of *Nazareth* was moued againste Christe, and so fulfilled with ire towardes him for his preaching, that the Men of the Synagogue rose up and cast Christe out of their Cyte, and ledde him vppe to the top of a Mountaine for to cast him doune ther hedeling. Also accordingly hereto the Lord witnesyth by *Moses*, that he shall put Dissention betwixt his People and the People that contrarieth and persewith his People. Who, Syr, is he that shall preche the Treuthe of Goddes Worde to the vnfeithful People, and shall lett the sothefastnesse of the Gospell, and the Prophecy of God Almightye to be fulfilled?

And the Archebishop said to me, It foloweth of thes thy Words, that thou and soche other thinkest that ye do right well for to preach and teach as ye do without Authoritie of any Bishop. For ye presume, that the Lord hath chosen you only for to preache as faithfull Disciples and speciall Folowars of Christe.

And I said, Syr, by Authoritie of Gods Lawe, and also of Seintes and Doctours, I am learned to deme, that it is euery Priests Office and Dutie for to preache besily frely and truely the Worde of God. For no doute euery Priest should purpose first in his Soule, and couett to take the Order of Priesthode chiefly for to make knowen to the People the Worde of God after his conning and power, approving his Wordes euer to be true by his vertuous Workes: and for this entent we suppose that Bishops and other Prelates of Holy Chirch shold chiefly take and use ther Prelacie. And for the same cause Bishops sholde giue to Priestes their Orders. For Bishops sholde accept no Man to Priesthode, except that he had good Will and full purpose, and were well disposed, and well learned to preache. Wherefore, Syr, by the bidding of Christ, and by Example of his moste holy liuing, and also by the witnesing of his holy Apostles and Prophets, we are bounde under full great Peine to exercise vs after our conning and power (as euery Priest is likewise charged of God) to fulfill dewly the Office of Priesthode. We presume not here of oure selues for to be esteemed (nother in our owne Reputacion, nor in none other Mannes) feithful Disciples, and speciall Folowars of Christe: but Syr, as I said to you before, we deme this by Authoritie chiefly of Goddes Worde, that it is the chefe deutie of euery Priest to besy them feithfully to make the Law of God knowen to his People, and so to comune the Commaundment of God charitably, howe that we may beste, where, whan, and to whom that euer we may, is our very deutie. And for the will and busynesse that we owe of our dewe dette to do justely our Office thorow the steiring and special helpe (as we trust) of God, hoping stedfastly in his mercie, we desire to be the feithfull Disciples of Christe; and we pray this gracious Lorde for his holy Name, that he make us able so to please him with deuout Prayers, and charitable Priestly workes, that we may obtene of him to folowe him thankfully.

And the Archebishop said to me, Lewde Lofell, whereto makist thou soche veyne Reasons to me? Asketh not Seynt *Paul*, *Howe sholde Priestes preche, except they be sent?* but I sent the neuer to preche; for thy venomous Doctryne is so knowen thorow out *Englond*, that no Bishop will admitt the for to preach by witnesing of their Letters.

Why

Why than, lewde Ydiot, willest thou presume to preach, syns thou art not sent, nor licensed of thy Souereyn to preach? Saith not Seynt *Paule*, *That Subjectes owe to obey their Souereyns*, and not only good and vertuous, but also Tyrauntis that are vicious?

And I said to the Archebishop, Syr, As touching your Letter of Licence or other Bishopes, which ye say we sholde haue to witnesse that we wer able to be sent for to preache; we knowe well that nother you, Syr, nor any other Bishop of this Lande will graunte to us ony soche Letters of Licence, but we sholde oblige us to you and to other Bishopes, by unlesfull Oathes, for to passe not the Bondes and Termes which ye, Syr, or other Bishopes will limyt to us. And fins in this Matter your Term is to be some to large, and some to streite, we dare not oblige vs thus to be bounden to you for to kepe the Termes, which you will lymitt to us, as ye do to Friere and soch other Prechers: and therfor though we haue not your Letter, Sir, nor Letters of other Bishops written with Ynke upon Parchement, we dare not herefor leaue the Office of Preching; to which Preching all Priestes, after there Connyng and Power, are bounde by diuerse Testimonies of God's Lawe, and of great Doctours, without ony mencion making of Bishopes Letters. For as mekell as we haue taken upon vs the Office of Priesthode (though we are vnworthy thereto) we come and purpose to fulfill it with the helpe of God, by Authoritie of his owne Lawe, and by witnesse of great Doctours and Seintes accordingly, hereto trusting stedfastly in the mercye of God: For that he commaundeth vs to do the Office of Priesthode, he will be our sufficient Letters and Witnesse, if we by example of his holy lyuing and teaching specially occupye vs feithfully to do our Office justly, ye the People to whom we preache, be they feithfull or unfeithfull, shall be our Letters, that is, our Witnesseberers; for the Treuthe, where it is sown, maye not be unwitnesed: For all that are conuerted and faued by learninge of Goddes Worde, and by working thereafter, are Witnesseberers, that the Trewith and Sothfastnesse which they harde and dyd after, is cause of their Saluacion. And ageyn, all unfeythfull Men and Women, which herde the Treuthe, tolde out to them, and wolde not do there after; also all they that might haue herde the Truthe, and wolde not heare it because that they wolde not do thereafter: all thes shall beare witnesse against themselves, and the Treuthe which they wold not heare, or else harden and despised to do thereafter thorow their Unfeythfulness, is and shall be cause of their Dampnacion. Therefore, Syr, syns this forseide witnesing of God, and of diuerse Seintes and Doctours, and of all the People good and evyll, sufficeth to all true Prechers; we thinke that we do not the Office of Priesthode, if that we leaue our Preching, because that we haue not, or maye not, haue dewly Bishopes Letters to witnesse that we are sent of them to preache. This Sentence approueth Seynt *Paul*, wher he speaketh of himselfe, and of feithfull Apostles and Disciples, saing thus: *We neede no Letters of Commendacion, as some other Preachers do, whiche preache for Couctousnes of temporal Goodes, and for Mennes praising.* And where ye say, Syr, that *Paul* biddeth Subjectes obey their Souereyns; this is soth, and may not be denied: But ther is ij. maner of So-

uereyns, vertuous Sufferenys, and vicious Tyrauntis; therefore to thes last Souereyns nother Men nor Women that be subiecte owe to obey in ij. manners. To vertuous Sufferens and charitable, Subjectes owe to obey wilfully and gladly, in hearing of their good Counsell, in consenting to their charitable Biddinges, and in werkynge after their frutefull Works. This Sentence *Paul* approueth, wher he saith thus to Subjectis: *Be ye mindfull of your Souereyns that speke to you the Worde of God, and folow you the Feitbe of them whos Conuersacion you know to be vertuous.* For as *Paul* saith after, *Thes Souereyns, to whome Subjectis owe to obeye in following of their Maners, worke besily in holy studying, how they may withstande and destroy Vices firste in themself, and after in all their Subjectis, and how they may beste plante in them Vertues.* Also thes Souereyns make deuoute and feruent Prayers for to purchase Grace of God, that they and their Subjectis may ouer all things dreade to offende him, and to loue for to please hym. Also thes Souereyns to whom *Paul* biddeth vs obey, as it is seid before, lyue so vertuously, that all they that will lyue well may take of them goode Example to knowe and to kepe the Commaundmentis of God. But in this foresaid wyse, Subjectis owe not to obey, nor to be obedient to Tyrauntis, while they ar vicious Tyrauntis; syns their Will, their Counsell, their Biddings, and their Workis ar so vicious, that they owe to be hatid and leste. And though soche Tyrauntis be masterfull and cruell in Boslyng, and manasing in Oppressions and diuerse Punyshyngis; Seynt *Peter* biddeth the Seruauntis of soche Tyrauntis to obey mekely to soche Tyrauntis, suffering patiently their malicious Cruelnes: But *Peter* counsellith not ony Seruant or Subjecte to obey to ony Lorde, or Prince, or Souereyn in ony thyng that is not pleasing to God.

And the Archebishop said vnto me, Yf a Souereyn bidde his Subject doo that thing that is vicious, this Souereyn herein is to blame; but the Subjecte for his Obedience deserueth mede of God, for Obedience pleasith more to God than ony Sacrifice.

And I said, *Samuel* the Prophete said to *Saul* the wycked King, *That God was more pleased with the Obedience of his Commaundment, than with ony Sacrifice of Bestis:* But *Dauid* saith, and Seynt *Paul*, and Seynt *Gregory* accordingly to gither, *That not onely they that do Euyll is worthy of Dethe and Dampnacion, but also all they that consente to euyll Doers.* And, Syr, the Law of holy Chirche teacheth in the Decrees, That no Seruant to his Lorde, nor Childe to the Father or Mother, nor Wyfe to hyr Husbond, nor Monke to his Abot, ought to obey except in lesfull thingis and lawfull.

And the Archebishop said to me, All thes Allegingis that thou bringest forth ar not els but proude Presumptuousnes; for hereby thou enforcist the to prove, that thou and soche other ar so juste, that ye owe not to obeye to Prelatis. And thus agenst the Learning of Seynt *Paul*, that teachith you not to preache but if ye wer sent, of your own Authorite ye will go forthe, and preache, and doo what ye list.

And I said, Sir, presentith not every Prieste the Office of the Apostles, or the Office of the Disciples of Christe? And the Archebishop said ye. ¶ And I said, Syr, as the tenthe Chaptre of *Matthew*, and the laste Chaptre of *Marke* wit-

nesseth, Christe sent his Apostles for to preache: And the tenth Chaptre of *Luke* witnesseth, that Christe sent his two and seuentie Disciples for to preache in every place that Christe was to come to. And Seynt *Gregory* in the common Lawe saith, That every Man that goth to Priesthode, takith upon hym the Office of Preaching; for as he saith, that Prieste steirith God to great Wrathe, of whos Mouthe is not herde the Voice of Preaching. And as other more gloses upon *Ezechiel* witnesseth, that the Prieste that preachith not besily to the People, shall be Partetaker of their Dampnacion that perishe thorow his Defaute; and though the People be sauyn by other speciall Grace of God than by the Priestis Preaching, yet the Priestis, in that they ar ordenyd to preache and preache not, as before God they ar Mansleas, for as ferre as in them is; soche Priestes as preache not besily and trewly sleeth all the People gostely, in that they withhold from them the Worde of God, that is Lyfe and Sustenance of Menes Soules. And Seynt *Isidore* saith, Priestis shall be dampnid for Wickednesse of the People, if they teache not them that ar ignorant, or blame not them that are Synners: For all the Worke or Besynesse of Priestis standith in preaching and teaching, that they edifye all Men as well by Connyng of Feithe, as by Discipline of Workes, that is vertuous teaching. And as the Gospell witnesseth, Christe said in his teaching, *I am borne and comen into this Worlde to beare witness to the Trewthe, and he that is of the Trewthe hearith my Voice.* ¶ Than, Syr, syns by the Word of Christe specially, that is, his Voice, Priestis ar commaundid to preache, whatsoeuer Prieste that it be that hathe not Goodwill and full Purpose to doo thus, and ableth not hymself, after his Connyng and Power, to doo his Office by the Example of Christe and of his Apostles, whatsoeuer other thing that he dothe displeasith God. For lo Seynt *Gregory* saith, that thing leste that a Man is bounde chesely to doo, whatsoeuer other thing that a Man dothe, it is unthankfull to the Holy Goste: And therefore saith the *Lincoln*, That Prieste that preachith not the Worde of God, though he be siene to have none other Defaute, he is Antichriste and Sathanas, a Night-thefe and a Day-thefe, a Slear of Soules, and an Angell of Light tournid into Derkenesse. Wherefore, Syr, thes Authorites and other well considered, I deme my self dampnable if I, other for Pleasure or Displeasure of ony Creature, applye me not diligently to preache the Worde of God. And in the same Dampnacion I deme all those Priestis, which of goode Purpose and Will enforse them not besily to doo thus; and also all them that have Purpose or Will to lett ony Prieste of this Busynesse.

And the Archebischop said to those three Clerkis that stode before hym, Lo, Syrs, this is the Manner and Busynesse of this Losell and soche other, to pike out soche sharp Sentencis of holy Scripture, and of Doctoris, to mainteine their Secte and Lore againste the Ordinaunce of Holy Chirche. And therefore, Losell, it is that thou couetist to have ageyn the Psalter that I made to be takyn from the at *Canterbury*, to recorde sharpe Versys ageinst vs; but thou shalt neuer haue that Psalter, nor none other Boke, tyll that I know that thy Harte and thy Mouthe accorde fully to be gouernid by holy Chirche.

And I said, Syr, all my Will and Power is and euer shall be (I truste to God) to be gouernyd by holy Chirche.

And the Archebischop asked me, What was holy Chirche?

And I said, Sir, I tolde you before what was holy Chirche; but syns ye aske me this Demaunde, I call Christe and his Seyntes holy Chirche.

And the Archebischop said unto me, I wote well that Christe and his Seyntes ar holy Chirche in Heuene; but what is holy Chirche in Erthe?

And I said, Syr, though holy Chirche be euey one in Charite, yet it hath two Partis: The firste and principall Parte hath ouercomen perfectly all the Wretchednesse of this Lyfe, and reigneth joyfully in Heuene with Christe; and the tother Parte is here yet in Erth, besily and continually fighting day and night ageinst Temptacions of the Fende, forsakyng and hatyng the Prosperite of this Worlde, despising and withstanding their fleschely Lustis; which only ar the Pilgrimes of Christe, wandering toward Heuene by stedfast Feith, and grounded Hope, and by perfite Charite: For thes heuently Pilgremis may not, nor will not be lettid of their goode purpos, by the reason of eny Doctours discording fro holy Scripture, nor by the Fluddis of any Tribulacion temporall, nor by the winde of any Pride of Bosse, or of manasing of ony Creature; for they ar all faste grounded upon the suer Stone Christe, hearing his Worde, and louing it, exercising them feithfully, and continually in all their Wittes to doo thereafter.

And the Archebischop said to his Clerkis, Se ye not how his Harte is endured, and how he is traueled with the Deuill, occupying him thus besily to allege soche Sentencis to mainteyne hys Errours and Heresies? Certeyn thus he wold occupie vs here all day, if we wold suffer hym.

One of the Clerkes answered; Syr, he said right now, that this Certificacion that came to you fro *Shrewisbery* is untrewly forged against hym; therefore, Syr, appose you hym now here in all the Pointis which ar certified ageinst hym, and so we shall heare of his owne Mouthe his Answers, and witnesseth them.

And the Archebischop tooke the Certificacion in his Honde, and looked theron a while, and than he said to me:

Lo here it is certified ageinst the by worthy Men and feithfull of *Shrewisbery*, that thou preachedst there openly in Seynt *Chaddis* Chirche, that the Sacramente of the Altare was materiall Brede after the Consecracion: What saist thou? Was this trewly preached?

And I said, Syr, I tell you trewly that I touchid nothing there of the Sacrament of the Altare, but in this wyse, as I will with Goddis Grace tell you here. As I stood ther in the Pulpit, besyng me to teache the Commaundement of God, ther knylded a sacring Bell, and therefore mekill People toornid awaye hastily, and with great noyse ran fro towardis me. And I seing this, said to them thus: Goode Men, ye wer better to stand here still, and to heare Goddis Worde; for certis the Vertue and the Mede of the moste holy Sacrament of the Altare standith mekill more in the Beleue thereof that ye ought to haue in your Soule, than it dothe in the outward Sichte thereof. And therfor ye were better to stande

still

still quietly to hear Goddis Worde, because that thorow the hearing thereof Men come to very trewe Belefe. And otherwyse, Syr, I am certein I spake not there of the woorthy Sacrament of the Altare.

And the Archebishop said to me, I beleue the not what so euer thou saist, syns so worshipfull Men haue witnessed thus ageinst the; but syns thou denyest that thou saidist thus there, what saist thou now? Restith there, after the Consecration, in the oste materiall Brede or no?

And I said, Sir, I knowe in no place in holy Scripture where this Terme materiall Brede is written; and therefore, Sir, when I speake of this matter, I vse not to speake of materiall Brede.

Than the Archebishop said to me, How teachest thou Men to beleue in this Sacrament?

And I said, Sir, as I beleue myself, so I teache other Men.

He said, Tell out plainly thy Beleue hereof.

And I said with my Protestacion, Sir, I beleue that the Nyght before that Christe Jesu wold suffer wilfully Passion for Mankynde on the Morne after, he toke Brede in his holy and moste worshipfull Handis, lifting vp his Eyes, and gyuyng Thankis to God his Father, blessed this Brede and brake it, and gaue it to his Disciples, saying to them, *Take and eate of this all you, this is my Body*; and tho this is and ought to be all Mennis Belefe, *Mathew, Mark, Luke, and Paul* witness: other Beleue, Sir, haue I none, nor will have none else; for I beleue that this sufficeth in this matter: For in this Beleue, with Goddis Grace, I purpose to lyue and dye, knoleging as I beleue and teache other Men to beleue, that the worshipfull Sacrament of the Altare ys the Sacramente of Christis Flesche and his Bloode, in fourme of Brede and of Wine.

And the Archebishop said to me, It is sothe that this Sacrament is very Christis Body in fourme of Brede; but thou and thy Secte techist it to be Substaunce of Brede: Thynke you this true Teachinge?

And I said, Nother I nor any other of the Secte that ye dampne, teach any other wyse than I haue told you, nor beleue otherwise to my knowyng. Neuerthelesse, Syr, I aske of you for Charyte, that ye will tell me here pleyndly, how ye shall vnderstonde this Text of Saynt Paule, wher he sayth thus: *This thinge feale you in youre self, that is in Christe Jesu, while he was in the fourme of God*. Sir, calleth not Paule here the Fourme of God, the Substaunce or Kynde of God? Also, Sir, saith not the Chirche in the houres of the most blessed Virgine accordingly hereto, wher it is written thus: *Thou Austour of Healthe remembre, that sometye thou toke of the undefyled Vyrgyne the Fourme of oure Bodye*? Tell me for Charyte therefore, whether the Fourme of our Bodye be called here the Kynde of our Body or no?

And the Archebishop said to me, Wouldest thou make nie to declare this Texte after thy Purpose, syns the Chirche hathe now determined, that there abideth no Substance of Brede after the Consecracion in the Sacrament of the Altare? Beleuest thou not on this Ordinaunce of the Churche?

And I said, Syr, What soeuer Prelates haue ordered in the Churche, our beleue standith euer hooil. I haue not herde that the Ordinaunce of Men under Beleue shulde be putt in to Beleue. And the Archebishop saide to me, Yf thou hast

not learned this before, learne now to knowe that thou art out of Beleue, if in this matter and other thou beleuest not as holy Chirche beleueth. What saye Doctours treatinge of this Sacrament?

And I said, Syr, Seint Paule that was a greate Doctour of holy Chirche, speakyng to the People, and teaching them the right Beleue of this moste holy Sacrament, calleth it Brede that we breake. And also in the Canon of the Masse after the Consecration, this most worthy Sacrament is called holy Brede; and euery Prieste in this Lande, after that he hathe receyued this Sacrament, saythe in thys wyse: That thyng that we haue taken with oure Mouthe, we praye God that we may take it with a pure and clene Mynde; that is, as I understonde, we praye God that we may receyue, thorowe very Beleue, this holy Sacrament worthely. And, Syr, Seynt Augustine saith, That thing that is sene is Brede; but that Menneys Feithe asketh to be informed of, is verry Christes Body. And also Fulgence, an ententyfe Doctour, saith, As it were an Errour to saye that Christe was but a Substaunce, that is, very Man, and not very God, or to say, that Christe was very God, and not very Man; so is it (this Doctour sayth) an Errour to say, that the Sacrament of the Altar is but a Substaunce. And also, Syr, accordingly hereto in the Secrete of the middle Masse on *Christmasse* Day, it is written thus: *Idem refulsit Deus, sic terrena substantia nobis confert quod diuinum est*; which Sentence, Syr, with the Secrete of the forthe ferye, *quatuor temporum Septembris*; I pray you, Syr, declare here openly in English.

And the Archebishop seid to me, I perceiue well ynough wher about thou art, and how the Deuell blyndeth the, that thou may not vnderstond the Ordinaunce of holy Churche, nor consent thereto: But I commaunde the now answere me shortly; Beleuest thou that, after the Consecracion of this forsaide Sacrament, there abideth Substaunce of Brede or not?

And I said, Sir, as I vnderstond, it is all one to graunte or to beleue, that there dwelleth Substaunce of Brede, and to graunte and to beleue that this most worthy Sacrament of Christes owne Body is one Accident withoute Subiecte. But, Syr, for as mekell as your asking passeth myne Understanding, I dare nother denye it nor graunte it; for it is Skole-Mater aboute which I besyed me neuer for to know it: and therefore I commit this Terme, *Accidens sine Subiecto*, to those Clerkes which delyte them so in curiouse and fittill Sophistrie, because they determine oft so difficulte and straunge Maters, and wade and wander so in them, from Argument to Argument with *pro & contra*, till that they wote not wher they are, nor understonde notthemselfe: But the Shame that thes proude Sophistrers haue to yelde them to Men and before Men, maketh them ofte Foolis, and to be concluded shamefully before God.

And the Archebishop said to me, I purpose not to oblige the to the fittyll Argumentes of Clerkes, syns thou art vnable therto; but I purpose to make the obeye to the Determinacion of holy Chirche.

And I said, Syr, by open Evidence and great Witnesse a thoulend yere after the Incarnation of Christe, the Determinacion which I haue here before you rehearsed was accepte of holy Church, as sufficient to the Saluacion of all them that wolde beleue it faithfully, and worke thereafter charitably.

charitably. But, Syr, the Determinacion of this Mater, which was brought in fyns the Fende was losed by Frier *Thomas* agayn, especially calling the most worshipfull Sacrament of Christes owne Body an Accident without Subiecte, which Terme fyns I knowe not that Goddes Lawe approueth it in this mater, I dare not graunte; but vtterly I denye to make this Frier's Sentence or ony soche other my Beleue, do with me God what thou wilt.

And the Archebishop saide to me, Well, well, thou shalt say otherwise or that I leaue the.

But what faist thou to this seconde Poynte that is recorded ageinst the by woorthy Men of *Shrewsbury*, faing, that thou preacheft openly there, that Ymages oughte not to be worshipped in ony wise?

And I said, Sir, I preached neuer thus, nor thorow Gods Grace I will not any tyme consent to thinke nor to say thus nother pryuely nor apertly: For, lo! the Lorde witnesfeth by *Moses*, that the thinges which he made were righte good, and so then they were, and yet they are and shall be good, and worshipfull in their kynde; and therefore to the ende that God made them to, they are all preisable and worshipfull, and specially Man, that was made after the Ymage and Likeneffe of God, is full worshipfull in his kynde: ye this holy Ymage, that is Man, God worshippeth; and herefore euery Man shuld worshippe other in kynde, and also for heuenly Vertues that Men use charitably. Also I saye, Woode, Tynne, Gold, Syluer, or any other Mater that Ymages are made of, all these Creatures are worshipfull in their kynde, and to the ende that God made them for; but the keruyng, castyng, nor peynting of ony Ymagery made with Mannes Hande, all behit that this doing be accepte of Man of hiest State and Dignitie, and ordered of them to be a Kalendar to leude Men, that nother can nor will be learned to know God in his Worde, nother by his Creatures, nor by hys wonderfull and diuerse Workinges; yet this Ymagery ought not to be worshipped in the Forme nor in the Likeneffe of Mannes Crafte; neuertheless that euery Matter that Peinters peynte with, fyns it is Gods Creature, ought to be worshipped in the kynde, and to the ende that God made and ordered it to serue Man.

Than the Archebishop said to me, I graunte well that no body oweth to do worshippe to any soche Ymages for them selfe; but a Crucifyxe ought to be worshipped for the Passion of Christe that is peynted therein, and so brought ther thorow to Mannes Mynde: And thus the Ymages of the blessed Trinitie, and of Virgin *Mary*, Christes Mother, and other Ymages of Sayntes ought to be worshipped. For lo earthely Kynges and Lordes, which use to send their Letters enfealid with their Armes, or with their preuy Signet, to Men that are with them, are worshipped of thes Men: For whan thes Men receiue their Lordes Letters, in whiche they se and knowe the Willes and Biddings of their Lordes, in worshippe of their Lordes they do offer their Cappes to thes Lettres. Why not than, sins in Ymages made with Mannes Hande, we may rede and knowe many diuerse thinges of God, and of his Sayntes, shall we not worshippe their Ymages?

And I sayde with my foresaid Protestacyon, I say that these worldly Visages of temporal Lordes

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that he speake now of, maye be done in case without Synne; but thys is no Similitude to worship Ymages made by Mannes Hande, fyns that *Moses*, *Dauid*, *Solomon*, *Baruch*, and other Seyntes in the Bible, forbidde so pleylny the worshiping of all soche Ymages.

Than the Archebishop said to me, Lewde ~~Do~~ sell, in the olde Lawe, before that Christe toke Mankind, was no Likeneffe of any Persone of the Trinitie, nother shewed to Man nor knowen of Man; but nowe fyns Christe became Man, it is lesfull to haue Ymages to shewe his Manhode: ye though many Men, which are right greate Clerkes, and other also helde it an Errour to peynte the Trinitie, I say it is well done to make and to peynte the Trinitie in Ymages: For it is great mouing of Deuocion to Men, to haue and to behold the Trinitie and other Ymages of Seyntes caruyd, caste, and peynted; for beyonde the Sea are the beste Peynters that euer I saw. And, Syrs, I tell you this is their Maner, and it is a goode Maner. Whan that an Ymagemaker shall kerue, caste in Moulde, or peynte ony Images, he shall go to a Priestte, and shryue him as clene as if he sholde than dye and take Penaunce, and make some certeyn Vowe of Fastyng or of Prayinge, or of Pilgrimages doinge, praiyng the Priestte specially to praye for hym, that he may haue Grace to make a faire and deuoute Ymage.

And I said, Syr, I doute not yf thes Peynters that ye speake of, or ony other Peynters, vnderstode truely the Texte of *Moses*, of *Dauid*, of the wife Man, of *Baruch*, and of other Seyntes and Doctours, these Peynters should be moued to shryue them to God wyth full inwarde Sorowe of Harte, takyng vpon them to doo right sharpe Penaunce for the synfull and vayne Crafte of Peyntinge, Karuyng or Castinge that they had vsed, promysing God feithfully neuer to do so after, knowleging openly before all Men their reprouable Earning. And also, Syr, thes Priesttes that shriue (as ye do say) Peinters, and inioine them to do Penaunce, and praye for their speede, promysing to them helpe of their Prayers for to be curious in their synfull Craftes, synne herein more greuouly than the Peynters: For thes Priesttes do comforte and gyue them Counsell to do that thyng, which of great Peyne, ye under the Peyne of Goddes Curse, they sholde vtterly forbydde them. For certis, Syr, yf the wonderfull werking of God, and the holy lyuyng and teachyng, of Christe, and of his Apostles and Prophetes, were made knowen to the People by holy lyuyng, and true and befy teachyng of Priesttes; these thynges (Syr) were sufficient Bokes and Kalendares to knowe God by and his Sayntes, without ony Ymages made with Mannes Hond: but certis the vicious lyuyng of Priesttes, and their Couetousnesse, are chefe Cause of this Errour, and all other Vicioufnesse that reigneth among the People.

Than the Archebishop said unto me, I holde the a vicious Priest and acurste, and all them that are of thy Secte; for all Priesttes of holy Chirche, and all Ymages that moue Men to Deuocion, thou and soche other go about to destroy. Losell, ware it a feire thing to come in to a Chirch, and see therein none Ymage?

And I said, Syr, they that come to the Chyrch for to pray deuoutly to the Lorde God, may in their inwarde Wittes be the more feruent, that

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all their outwarde Wittes be closed fro all outwarde seyng and hearing, and fro all Disturbance and Lettingis. And fynes Christe blessed them that saw hym not bodely, and haue beleuyd feithfully in hym; it sufficeth than to all Men, thorow hearing and knowing of Goddis Worde, and to doo there after, for to beleue in God, though they see neuer Ymagis made with Mannis Hande, after ony Person of the Trinite, or of ony other Seynte.

And the Archebischop said to me with a feruent Spyrite, I say to the, Lofell, that it is right well done to make and to haue an Ymage of the Trinite, ye what saist thou? Ys it not a stiering thinge to beholde soche an Ymage?

And I said, Sir, ye said right now, that in the olde Lawe, or Christe toke Mankynde, no Likeneffe of ony Person of the Trinite was shewid to Men: wherefore, Sir, ye said it was not than lesfull to haue Ymagis; but now ye say, fynes Christe is becomen Man, it is lesfull to make and to haue an Ymage of the Trinite, and also of other Seyntis. But, Syr, this thing wolde I learne of you, Synt the Father of Heuen, ye and euery Person of the Trinite was without beginnyng God Almighty, and many holy Prophetis that wer dedely Men wer martired violently in the olde Lawe, and also many Men and Women than died holy Confessours: why was it not than as lesfull and necessarie as now to haue made an Ymage of the Father of Heuen, and to haue made and hadde other Ymagis of Marties, Prophetis, and holy Confessours, to haue ben Kalendaris to aduise Men, and move them to Deuocion, as ye say that Ymagis now doo?

And the Archebischop said, The Sinagogue of Jues hadde not Authorite to approue thes thingis, as the Chirche of Christe hathe now.

And I said, Sir, Seint Gregory was a great Man in the newe Lawe, and of great Dignite: and as the comon Lawe witnesith, he commendid greatly a Bischop, in that he forbade vtterly the Ymagis made with Mannis Hande sholde be worshipped.

And the Archebischop said, Vngracious Lofell, thou fauerist no more Trewthe than an Hounde, fynes at the Roode at the Northe Dore at London, at our Lady at *Walsingham*, and many other diuerse Places in *England*, ar many great and preisable Miracles done; shulde not the Ymagis of soche holy Seyntis and Placis, at the Reuerence of God and our Lady, and other Seyntis, be more worshipping than other Placis and Ymages wher no soche Miracles ar done?

And I said, Sir, ther is no soche Vertue in ony Ymagerie, that ony Ymagis sholde herefore be worshipped; wherefore I am certein, that ther is no Miracle done of God in ony Place in Erthe, because that ony Ymagis made with Mannis Hande sholde be worshipping. And herefore, Sir, as I preached openly at *Sbrewisbury* and other Placis, I say now here before you, that no body sholde truste that ther war ony Vertue in Ymagerie made with Mannis Hande, and herefor no body sholde vowe to them, nor seake them, nor knele to them, nor bow to them, nor pray to them, nor offer any thinge to them, nor kyffe them, nor encense them: For lo the most worthy of soche Ymagis, the brasen Serpente by *Moyse* made at Goddis bidding, the goode Kyng *Ezechie* destroyed worthily and thankfully, forbycause it wes encensed. Therefore, Sir, yf Men take

goode hede to the writing and to the lerning of Seynt *Augustine*, of Seynt *Gregory*, and of Seynt *John Chrysostome*, and of other Seyntis and Doctors, how they speake and write of Miracles that shall be done now in the laste ende of the Worlde, it is to drede, that for the Vnfeithfulnesse of Men and Women, the Fende hath great power for to worke many of the Miracles that now ar done in soche Placis: For bothe Men and Women delyte now more for to heare and knowe Miracles, than they do to knowe Goddis Worde, or to hear it effectuously. Wherefore to the great Confusion of all them that thus doo, Christe saith, *The Gnacion of Adulterers requireth Tokens, Miracles and Wonders*. Neuerthelesse as diuerse Seyntis say, now whan the Feithe of God is published in *Christendome*, the Worde of God sufficeth to Mannis Saluacion without soche Miracles; and thus also the Worde of God sufficeth to all feithfull Men and Women, without ony soche Ymagis. But, goode Sir, fynes the Father of Heuen that is God in his Godhead, is the moste unknowen thing that may be, and the moste wonderfull Spirit, hauyng in it no Shape or Likeneffe of ony Members of ony dedely Creature; in what Likeneffe or what Ymage may God the Father be shewid or peintyd?

And the Archebischop said, As holy Chirche hath sufferid and yet sufferith the Ymagis of all the Trinite, and other Ymagis to be peyntid and shewid, sufficeth to them that ar Membres of holy Chirche; but fynes thou art a rotten Membre, cutt away from holy Chirche, thou fauerest not the Ordinaunce therof. But fynes the Daye passith, leaue we this Mater.

And than he said to me: What saist thou to the thirde Poynte that is certified against the, preching openly in *Sbrewisbury*, that Pilgrimage is not lesfull? And ouer this thou saidist, that those Men and Women that go on Pilgrimagis to *Canturbery*, to *Beuerley*, to *Karlington*, to *Walsingham*, and to ony soche other Placis, ar accursed, and made foolisch, spending their Goodes in waste.

And I said, Sir, by this Certificacion I am accused to you, that I sholde teache that no Pilgrimage is lesfull. But I said neuer thus: For I knowe that ther be trew Pilgrimagis, and lesfull and full plesaunt to God; and therefore, Sir, how so euer myne Enemies haue certified you of me, I tolde at *Sbrewisbury* of two maner of Pilgrimagis.

And the Archebischop said to me, whom callest thou trewe Pilgrimes?

And I said, Sir, with my Protestacion I call them trewe Pilgremis trauelyn toward the blisse of Heuen, which in the state, degree, or ordre that God calleth them, doo besy them feithfully for to occupie all their Wittes bodely and gostely, to knowe trewly and to keape feithfully the biddinges of God, hatyng and fleyng all the feuen dedely synnes, and euery braunche of them, reulyng them vertuously (as it is said before) with all their Wittes, doyng discretely, wilfully and gladly all the Werkis of mercy bodely and gostely after their connyng and power, ablyng them to the gyftes of the Holy Goste, disposing them to receyue in their Soules, and to holde therein the right Blessinges of Christe, beseyng them to knowe and to kepe the seuene principall Vertues; and so than they shall obteyne here thorow grace for to use
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thankfully to God all the Condictions of Charitie, and than they shall be moouyd with the good Spirite of God for to examyne ofte and diligently their Conscience, that nother wilfully nor wittingly they erre in any Article of Beleue, hauyng continually (as frailete will suffer) all their besynesse to drede and to flee the Offence of God, and to looue ouer all thing, and to seke euer to doo his pleasaunt Will. Of these Pilgremis I said, what so euer goode thought that they any tyme thinke, what vertuous Worde that they speake, and what fruitefull worke that they worke, euery soche Thoughte, Worde and Werke is a steppe noumbered of God toward hym into Heuene. Thes forsaide Pilgremis of God, delyte fore whan they heare of Seyntis or of vertuous Men and Women, how they forsoke wilfully the Prosperity of this Lyfe, how they withstode the Suggeſtion of the Fende, how they restrained their fleshly Lustes; how discrete they wer in their Penance doying; how patient they wer in all their Adversities, how prudent they wer in counselling of Men and Women, moouyng them to hate all synne, and to flye them, and to shame euer greatly thereof, and to love all Vertues, and to draw to them, ymaginyng how Christe and his Followers by example of hym, suffered Skornis and Sclaunders, and how paciently they abode and toke the wrongfull manasyng of Tyrauntis, how homely they wer and seruisable to poore Men, to relieue and comforte them bodely and gostely after their power and connyng; and how deuote they wer in Praiers, how feruent they wer in heuently Desyres, and how they absented them fro spectacles of veyne seyngis and hearingis, and how stable they were to lett and to destroye all Vices, and how laborious and ioysfull they wer to sowe and to plante Vertues. Thes heuently condicions and soche other haue the Pilgremis, or endeuer them for to haue, whose Pilgrimage God acceptith. And ageyne I saide, as their Werkis shew the moste part of Men and Women that go now on Pilgrimagis haue not thes foresaid Conditions, nor loueth to besy them feithfully for to haue. For as I well know, syns I haue full ofte assaide, examyne whosoever will twentie of thes Pilgremis, and he shall not fynde thre Men or Women that knowe surely a Commaundment of God, nor can say their *Pater-noster* and *Ave-maria*, nor their *Credo* redely in any maner of Language. And as I haue learnid and also know somewhat by Experience of thes same Pilgremis, tellyng the Cause why that many Men and Women go hither and thither now on Pilgrimages, it is more for the helthe of their Bodies than of their Soules, more for to haue Richeſſe and Prosperitie of thys Worlde, than for to be enryched with vertues in their Soules, more to haue here worldely and fleshely Friendship, than for to haue Friendship of God and of his Seintes in Heuen. For whatsoeuer thing Man or Woman dothe, the Friendship of God, nor of any other Seynte, cannot be hadde without keaping of Goddis Commaundmentis. Forther with my Protestacion I say now as I said in *Shrewsbury*, though they that haue fleshely willes trauell for their Bodies, and spende mekill Money to seake and to visite the Bonys or Ymagis (as they say they do) of this Seynte or of that; soche Pilgrimage goyng is nother praisable nor thankfull to God nor to any Seynte of God: Syns in effect all soche Pilgremis despise God and all his Commaundmentis

and Seyntis, For the Commaundmentis of God they will nother knowe nor keape, nor conforme them to lyue vertuously by Example of Christe and of his Seyntis. Wherefore Syr, I haue prechid and taucht openly, and so I purpose all my Lyfe time to do with Gods helpe, saying that soche fond People waſt blamefully Gods Goodes in ther veyne Pilgrimagis, spending their Goodes upon vicious Hostlers, which ar ofte vnclene Women of their Bodies; and at the leſte thoſe Goodes with the which they shoulde doo Werkis of Mercie after Goddis bidding to poore nedy Men and Women. ¶ Thes poor Mennis Goodes and their lyuelode thes runners about offer to riche Priestis, which haue mekill more lyuelode than they neade: and thus thoſe Goodes they waſte wilfully, and spend them vnjustely ageinst Goddis bidding upon Straungers, with which they sholde helpe and releue after Goddis will their poor nedy Neighbours at home: ye and ouer this foly, ofte tymes diuerſe Men and Women of thes Runners thus madly hither and thither in to Pilgrimage borowe hereto other Mennis Goodes, ye and sometyme they stele Mennis Goodes hereto, and they pay them neuer agein. Also Sir, I know well that whan diuerſe Men and Women will go thus after their own Willes, and fynding out one Pilgrimage, they will orden with them before to haue with them both Men and Women that can well syng wanton Songes, and some other Pilgremis will haue with them Bagge Pipes; so that euery Towne they come throwe, what with the Noyſe of their Synging, and with the founde of their Piping, and with the Jangelyng of their *Canterbury* Bellis, and with the Barkyng out of Doggis after them, that they make more Noise than if the Kyng came there awaye with all his Clarions, and many other Menstrelles. And if thes Men and Women be a Moneth in their Pilgrimage, many of them shall be an half year after great Janglers, Tale-Tellers and Lyers.

And the Archebishop said to me, Leude losell, thou seest not ferre ynough in this mater, for thou confidest not the great Trauell of Pilgremys, therefore thou blameſt that thing that is praisable. I say to the that it is right well done, that Pilgremys haue with them both Syngers, and also Pipers, that whan one of them that goeth barfote striketh his Too upon a Stone and hurteth hym fore, and maketh hym to blede; it is well done that he or his Fellow begyn than a Songe, or else take out of his Bosome a Bagge-pype for to driue away with soche Myrthe the hurte of his Fellow. For with soche solace the Trauell and Werineſſe off Pylgremes is lightly and merily broughte forth.

And I said, Sir, Seynte *Paule* teacheth Men to wepe with them that wepe.

And the Archebishoppe said, What janglist thou ageinst Mennis Deuocion? what soeuer thou or soch other say, I say that the Pilgrimage that now is used, is to them that doo it a prayſable and a good meane to come the rather to Grace. But I holde the unable to know this Grace; for thou enforſest the to lett the Duccion of the People: syns by Authoritie of Holy Scripture Men maye lesfully haue and use soche solace as thou reproueſt. For *Dauid* in his laſte Pſalme teacheth me to haue diuerſe Instrumentes of Musick for to praise therewith God.

And I saide, Sir, by the Sentence of diuerſe Doctours expounding the Pſalmes of *Dauid*, the

Musike and Menstrelcy that *Dauid* and other Seyntes of the olde Lawe spake of, owe now nother to be taken nor used by the Letter, but the Instruments with their Musike ought to be interpreted gostely: for all those Figures are called Vertues and Graces, with which Vertues Men sholde please God and praise his Name. For Saynt *Paul* faith, All such thynges befell to them in figure. Therefore Sir, I understaund that the Letter of this Psalme of *Dauid*, and of soche other Psalmes and Sentences, dothe slee them that take them now letterally. This Sentence I understond Syr, Christ approueth himself, putting out the Menstrelles, or that he wolde quyen the deade Damsell.

And the Archebischop said to me, Leude losell, is it not lesfull to us to haue Organes in the Chirche for to worship therewithall God? And I said,

Ye, Syr, by Mannis Ordynaunce, but by the Ordynaunce of God, a goode Sermonne to the Peoples understondyng were mekill more plesant to God.

And the Archebischoppe sayde, that Organes and good delectable Songe quyen and sharpened more Mennys Witts than sholde ony Sermonne.

But I said, Sir, lusty Men and worldly louers delyte and couete, and trauell to haue all their Witts quickened and sharpened with diuerse sensible solace: but all the feithful Louers and Followers of Christe haue all their delyte to heare Goddis Worde, and to vnderstond it truly, and to worke thereafter faithfully and continually. For no doute to drede to offende God, and to loue to please him in all thing, quyeneth and sharpeneth all the Wittes of Christes chosen People: and ableth them so to grace, that they joye greatly to withdrawe their Eares, and all their Wittes and Membres from all worldly delyte, and from all fleschly solace: For Seynte *Jerome* (as I thinke) faith, No body may joye with this Worlde, and reigne with Christe.

And the Archebischop (as yf he had been displeased with myne answere) said to his Clerkes, What gesse ye this ydiote will speake there, wher he hath none drede, syns he speaketh thus nowe here in my Presence? Well, well, by God thou shalt be ordered for. And than he spake to me all angrily.

What saist thou to this forthe Pointe, that is certified against the, preching openly and boldly in *Shrewsbury*, that Priestres haue no Title to Tythes?

And I said, Sir, I named ther no Worde of Tythes in my preaching. But, more than a Moneth after that I was arreasted there in Pryson, a Man came to me in to the Pryson askyng me what I sayde of Tythes. And I saide to him, Sir, in this Towne are many Clerkes and Priestres, of which some are called Religious Men, though many of them be Seculers, therefore aske ye of them this Question. And this Man saide to me, Sir, our Prelates say, that we ar also obliged to pay our Tythes of all things that renewe to us; and that they ar acursed, that withdrawe any part wittingly fro them of their Tythes. And I said, Sir, to that Man, as with my Protestacyon I say now here before you, that I hadde wonder that ony Priestre dare say, Men to be acursed without grounde of Goddis Worde. And the Man said, Sir, our Priestres say that they

curse Men thus by Authoritie of Goddes Law. And I sayde, Sir, I know not wher this Sentence of cursing is authorized now in the Bible. And therefore, Syr, I pray you that ye will aske the moste conning Clerke of this Towne, that ye may knowe wher this Sentence cursyng them that tythe not now is written in Goddes Lawe: for yf it were written there, I wolde right gladly be learned where. But shortly this Man wolde not go from me, to aske this Question of another body; but required me there, as I wolde answere before God, if in this case the cursing of Priestres wer lausful and approued of God. And shortly herewith came to my Mynde the Learning of Seynt *Peter*, teaching Priestres especially to halow the Lord Christ in their Hartes: beinge euermore redye (as ferre as in them is) to answere thorowe Faith and Hope to them that aske of them a reason. And this Lesson *Peter* teacheth Men to use with a meke Spyrit, and with drede of the Lord. Wherefore, Syr, I said to this Man in this wise: In the old Lawe which endyd not fully till the tyme that Christe rose up ageyn fro Dethe to Lyfe, God commaunded Tythes to be gyven to the *Leuites*, for the great Besynesse dayly Trauell that pertayned to their Office. But Priestres, because their trauell was mekill more easy and light, than was the Office of the *Leuites*, God ordeyned that Priestres should take for their lifelode to do their Office, the tenth part of the Tythes that wer giuen to the *Leuites*. But naw (I said) in the newe Lawe nother Christe, nor ony of his Apostles tooke Tythes of the People, nor commaunded the People to pay Tythes nother to Priestres, nor to Deacons. But Christe taught the People to do Almesse, that is Werkes of Mercy, to poor neddy Men, of Surpluse, that is superfluous of their Temporal Goodes, which they hadde more than them nedid reasonably to their necessary lyuelode. And thus (I said) not of Tythes, but of pure Almesse of the People Christe lyued and his Apostles, whan they were to besye in teachyng off the Worde of God to the People, that they might not trauell other wyse for to gett their lyuelode. But after Christes ascension, and whan the Apostles had receyued the Holy Goste, they traueled with their Handes for to gett their lyuelode, whan that they myght thus doo for besye preachyng. Therefore by example of hymselfe Seynt *Paule* teacheth all the Priestres of Christe for to trauell with their Hande, whan for besye teaching of the People they myght thus do. And thus all these Priests whose Priestehode God accepteth nowe, or will accepte or dyd in the Apostles tyme, and after their Decease, will do to the Worldes ende. But (as *Cisterciensis* telleth) in the thousande Year of oure Lorde Jesu Christe, two hundreth and a leuenth Yere, one Pope the tenth *Gregory* ordered new Tythes first to be gyven to Priestres now in the newe Lawe. But Seynt *Paule* in his tyme, whose trace or example all Priestres of God enforce them to folow, seyng the couetousnesse that was among the People, desyryng to destroye this foule Synne thorow the Grace of God and the true vertuous lyuyng an Example of hymselfe, wrotte and taught all Priestres for to folowe him as he folowed Christe patiently, willingly, and gladly in hys Pouerte. Wherefore *Paule* saithe thus, the Lorde hath ordered that they that preache the Gospell shall lyue of the Gospell. But we (saith *Paul*) that couet and besy us to be feithfull Followers of Christ,

Christ, vse not this Power. For lo (as *Paul* witnesseth afterwarde) whan he was full pore and nedy preaching among the People, he was not chargeous vnto them, but with his handes he traueled not only to get his owne lyuyng, but also the lyuyng of other poore and nedy Creatures. And syns the People was never so couetouse nor so auarose (I gesse) as thei are now, it were good Counsell, that all Priestes toke good hede to this heuenly Learning of *Paul*, folowing him here, in wilfull Pouerte, nothing charging the People for their bodely lyuelode. But because that many Priestes do contrary to *Paul* in this forsayde Doctrin; *Paul* biddeth the People take hede to those Preystes that folow him as he had geuen them example. As, if *Paul* wolde say thus to the People, Accept ye none other Priestes than thei that lyue after the fourme that I haue tauchte you. For certeyn in whatsoeuer Dignite or Ordre that ony Prieste is in, yf he conforme him not to folowe Christe and his Apostles in wilful Pouerte, and in other heuenly Vertues, and specially in true preachyng of Goddes Worde; though soche a one be named a Prieste, yet he is no more but a Prieste in name, for the worke of a very Prieste soch a one wanteth. This Sentence approueth *Augustine*, *Gregory*, *Chrysostome*, and *Lincoln* plainly.

And the Archebishop said to me, Thinkest thou this holsome Learninge for to sowe openly, or yet priuely among the People? Certeyn this Doctrin contrarieth playnly the Ordinaunce of holy Fathers, which haue ordered, graunted and licensed Priestes to be in diuerse Degres, and to lyue by Tythes and Offringes of the People, and by other Dewties.

And I said, Syr, if Priestes were now in measurable mesure and numbere, and lyued vertuously, and taucht besyly and truely the Word of God by example of Christ, and of his Apostles, withouten Tythes, Offrynges, and other Dewties that Priestes now chalenge and take, the People wolde gyue them freely sufficient lyuelode.

And a Clerke said to me, How wilt thou make this good that the People will gyue frely to Priestes their lyuelode, syns that now by the Lawe euery Prieste can scarcely constrayne the People to gyue them their lyuelode?

And I said, Sir, it is now no wonder, though the People grudge to gyue Priestes the Lyuelode that they aske; for mekill People knowe now how that Priestes shulde lyue, and how that they lyue contrary to Christe and to his Apostles: And therefore the People is full heuy to paye (as they do) their temporall Goodes to Persones, and to other Vicars and Priestes, which sholde be feithfull Dispensatours of the Pareshes Goodes, taking to themselves no more but a scarce Lyuing of Tythes nor of Offrynges by the Ordinaunce of the comon Lawe. For whatsoeuer Priestes take of the People, be it Tythe or Offering, or ony other Deutie or Seruyce, the Priestes ought not to haue thereof no more but a bare Lyuing, and to parte the Residew to the poore Men and Women specially of the Parishes, of whom they take this temporal Lyuyng. But the most dele of Priestes nowe wasteth their Pareshes Goodes, and spendeth them at their owne Will after the Worlde in their veyne Lustes, so that in few places poore Men haue dewly (as they sholde haue) their owne Sustenance, nother of Tythes nor of Offrynges, nor of other large Wages and

Foundations that Priestes take of the People in diuerse maners aboue it, that they nede for nedeful Sustenance of Meat and Clothinge. But the poore nedy People ar forsaken, and left of Priestis to be susteynd of the Paroshenis, as if the Priestis toke nothing of the Paroshenis, for to help the poor People with. And thus, Syr, into ouer great Chargis of the Paroshenis they pay their Temporal Goods twise, wher ones myght suffice, if Priestis wer trew Dispensatours. Also Sir, the Paroshenis that pay their temporal Goodes (be they Tythes or Offerings) to Priestis that doo not their Office among them justely, are parteners of euery Synne of those Priestis; because that they susteyne those Priestis folly in their Synne with their temporall Goods. Yf thes things be well considerid, what wonder is it than, Syr, if the Paroshenis grudge ageinst thes Dispensatours?

Than the Archebishop said to me, Thou that sholdest be judged and reulyd by holy Chirche, presumptuously thou demest holy Chirche to haue erryd in the Ordinaunce of Tythes and other Dewties to be payd to Priestis. It shall be long or thou thryue Losell, that thou despicest thy gostely Mother, how darist thou speake this Losell among the People? Ar not Tythes geuyn to Priestis for to lyue by?

And I said, Sir, Seynt *Paul* saith that Tythes wer gyuen in the old Lawe to *Leuites* and to Priestis, that came of the Lynage of *Leui*; but our Priest he saith came not of the Lynage of *Leui*, but of the Lynage of *Juda*; to which *Juda* no Tythes were promised to be geuyn. And therefore *Paul* saith, syns the Priesthode is chaunged from the Generacion of *Leui* to the Generacion of *Juda*, it is necessary that chaungyng also be made of the Lawe. So that Priestis lyue now without Tythes and other Dewties that they now claime, folowing Christe and his Apostles in wilfull Pouertie, as they haue geuyn them example. For syns Christe lyued all the tyme of his preaching by pure almes of the People, and by example of hym his Apostles lyued all the same wyse, or els by the trauell of their Handis, as it is said aboue, euery Prieste whose Priesthode Christe approuyth knowith well, and confessith in Worde and in Werke, that a Disciple owith not to be aboue his Master; but it sufficeth to a Disciple to be as his Master, symple, and pure, meke and patient; and by example specially of his Master Christe, euery Priest shoulde reule hym in all his lyuyng, and so after his connyng and power a Prieste sholde besy hym to enfourme, and to reule whome soeuer he myght charitably,

And the Archebishop said to me with a great Spirite, Goddis curse haue thou and myne for this teaching; for thou woldist hereby make the olde Law more fre and perfect than the new Lawe. For thou saist that it is lesfull to *Leuites* and to Priestis to take Tythes in the old Lawe, and so to enjoye their Priuilegies; but to us Priestis in the new Lawe thou saist it is not lesfull to take Tythes: and thus thou geuest *Leuites* of the olde Lawe more fredome than to Priestis of the new Lawe.

And I said, Sir, I mervell that ye vnderstonde this playne Text of *Paul* thus. Ye wote well, that the *Leuites* and Priestis in the olde Lawe that tooke Tythes, wer not so fre nor so perfite as Christe and his Apostles that tooke no Tythes. And Sir, there is a Doctour (I thinke that it is Seynt *Jerome*) that saith thus, The Priestis that chalenge

challenge now in the new Lawe Tythes, say in effecte, that Christe is not becomen Man, nor that he hath yet suffered dethe for Mannis loue. Wherefore this Doctour saith thys Sentence, Syns Tythes were the Hyres and Wages limyted to *Leuites* and to Priestes of the olde Lawe for bearing about of the Tabernacle, and for sleayng and sleayng of Beasts, and for burning of Sacrifice, and for keeping of the Temple, and for tromping of Battell before the oste of *Israel*, and other diuerse Obseruancis that pertainyd to their Office; those Priestis that will challenge or take Tythes, denye that Christe is comen in Fleshe, and doo the Priestis Office of the old Lawe for whome Tythes were graunted; for els (as this Doctour saith) Priestis take now Tythes wrongfully.

And the Archebishop said to his Clerkes, Herde ye euer lofell speake thus? Certeyn this is the Learning of them all, that wher so ever they come, and they may be suffered, they enforce them to expunge the freedome of Holy Chirche.

And I said, Sir, why call you the takyng of Tythes, and of soche other Dewties that Priestes challenge now wrongfully, the fredome of holy Chirche? syns nother Christe nor his Apostles chalengid nor tooke soche Dewties. Herefore thes takyngis of Priestis now ar not callyd justely the fredome of Holy Chirche; but all soche geuyng and takyng ought to be called and holden the sleaundersous couetousnesse of Men of the Holy Chirche.

And the Archebishop said to me, Why Lo-fell wilt not thou and other that ar confedered with the, seake out of holy Scripture, and of the Sentence of Doctours, all sharp Authorities ageinst Lordis, and Knyghtis, and Squyeris, and ageinst other Seculer Men, as thou doeste ageinst Priestes?

And I said, Sir, what so euer Men or Women, Lordis or Ladies, or any other that ar present in our preaching specially, or in our communynge, after our connyng we tell out to them their Office and their Charges; but Syr, syns *Christostome* saith, that Priestis ar the Stomake of the People, it is needfull in preaching and also in communynge, to be most bely about this Priesthode, syns by the viciousnes of Priestis both Lordis and Commons ar moste synfully infected and ledde into the worst: And because that the couetousnes of Priestis, and Pride and the boiste that they haue and make of their Dignity and Power, destroieth not only the Vertues of Priesthode in Priestis themselves, but also ouer this, it stiereth God to take greate Vengeance both upon Lordis and upon Comons, which suffer thes Priestes charitably.

And the Archebishop said to me, Thou judgest euery Prieste proude that will not go arayed as thou doste. By God I deme hym to be more meke that goeth euery day in a scarlet Gowne, than thou in that threde bard blew Gowne. Whereby knowest thou a proude Man?

And I said, Sir, a proude Prieste may be known when he denyeth to folow Christe, and his Apostles in wilfull Pouerte and other Vertues, and couetith worldly Worship, and taketh it gladly, and gatherith to gither with pletyng, manasyng, or with flattering, or with Simony any worldly Goodis: and moste if a Prieste besy hym not chesely in himself, and after in all other Men and Women, after his connyng and power to withstand Synne.

And the Archebishop said to me, Though thou knewest a Prieste to haue all thes Vices, and though sawest a Prieste louely lye now by a Woman, knowing hir fleschly; woldest thou herfore deme this Prieste dampnable? I say to the, that in the tournying about of thy Hande soche a Synner may be verily repented.

And I said, Sir, I will not dampne any Man for any Synne that I know done or may be done, so that the Synner leueth his Synne. But by Authoritie of holy Scripture, he that synneth thus openly as ye shew here, is dampnable for doying of soche a Synne, and most especially a Prieste that sholde be example to all other for to hate and fle synne; and in how short tyme that euer ye say that soche a synner may be repented, he oweth not of hym that knoweth not his synnyng to be judged verily repentaunt, without open euidence of greate shame and hartly sorow for his Synne. For whosoever, and specially a Prieste that viseth Pride, Enuy, Couetousnes, Lechery, Simony, or any other Vices; and shewith not as opyn euidence of Repentaunce as he hath gyuen euill example and occasion of synning, if he contynew in any soche Synne as long as he may, it is likely that Synne leaueth hym, and he not Synne; and as I vnderstonde, soche a one synneth unto Dethe, for whome no body oweth to pray, as Seynt *John* saith.

And a Clerke said than to the Archebishop, Sir, the lenger that ye appose him, the worse he is; and the more that ye besy you to amende him, the waiwarder he is: for he is of so shrewde a kynde, that he shameth not onely to be hymself a foule nestle, but without Shame he besiet him to make his Nestle fouler.

And the Archebishop said to his Clerke, Suffer a while, for I am at an ende with him: for there is one other poynte certified ageynst hym, and I will heare what he saith thereto.

And so than he said to me, Lo it is here certified ageinst the, that thou preachidst openly at *Shrewisbury*, that it is not lefull to sweare in any case.

And I said, Sir, I preached neuer so openly, nor I haue not tauchte in this wise in any place. But Sir, as I preachid in *Shrewisbury*, with my Protestacion I say to you now here; that by the Authoritie of the Gospel and of Seynt *James*, and by witnesse of diuerse Seyntis and Doctours, I haue preachid openly in one place or other, that it is not lefull in any case to sweare by any Creature. And ouer this, Sir, I haue also preachid and tauchte by the forsaide Authorities, that no body sholde sweare in any case; if that without Othe in any wyse he that is charged to sweare myght excuse hym to them that haue power to compell hym to sweare in lefull thyng and lafull. But if a Man may not excuse hym without Othe to them that haue power to compell hym to sweare, than he owght to sweare only by God, takyng him onely that is sothefastnesse, for to witnesse the sothefastnesse.

And then a Clerke asked me yf it wer not lefull to a Subjecte at the bidding of his Prelate for to knele down and towche the holy Gospell Booke and kyss it, saying, So helpe me God and this holy Dome; for he sholde after his connyng and power do all thyng that his Prelate commaundeth hym.

¶ And I said to them, Sirs, ye speke here full generally or largely: What if a Prelate commaunded his Subjecte to doo an unlauffull thyng, should he obey thereto?

And the Archebishop said to me, a Subjecte ought not to suppose that this Prelate will bidde him doo an unlauffull thing; for a Subject ought to thinke, that his Prelate will bidde hym doo nothing but that he will answere for before God that it is lesfull; and than though the bidding of the Prelate be unlesfull, the Subject hath no parell to fulfill it, syns that he thinketh and judgeth that what so euer thing his Prelate bid-deth him doo, that it is lesfull to hym for to doo it.

And I said, Sir, I truste not hereto. But to our firste purpose, Sir, I tell you that I was onys in a gentill Mannis Houfe, and there war than two Clerkes there, a Master of Diuinite, and a Man of Lawe, which Man of Lawe was also communing in Diuinite; and among other thinges thes Men spake of Othes, and the Man of Lawe said, At the bidding of his Souereign which hadde Power to charge hym to sweare, he wold lay his Hand upon a Booke, and heare his Charge; and if his Charge to his vnderstondinge were unlesfull he wolde hastily withdrawe his Hande from the Booke: and if he perceiued his Charge to be lesfull, he wolde holde still his Hande upon the Booke, takyng there only God to witnesse, that he wolde fulfill that lesfull Charge after his power. And the Master of Diuinitie said than to hym thus, Certeyn he that leyeth his Hande upon a Booke in this wyse, and makyth there a Promesse to doo that thing that he is commaunded, is obliged there by Booke Othe than to fulfill his Charge. For no doute he that chargeth hym to lay his Hande thus upon a Booke towching the Booke and swearing by it, and kyssing it, promysing in this fourme to doo this thyng or that, will say and witnesse that he that towcheth thus a Booke and kysseth it, hath sworne upon that Booke: and all other Men that see that Man thus doo, and also all tho that heare hereof in the same wyse, will saye and witnesse, that thys Man hath sworne upon a Boke: wherefore the Master of Diuinite sayde, it was not lesfull nother to gyue nor to take any soche charge upon a Boke, for euery Boke is nothing els but diuerse Creatures of whiche it is made of. Therefore to sweare upon a Boke, is to sweare by Creatures, and this swearinge is euer unlesfull. This Sentence witnesseth *Chrysostome*, plainly blaming them greatly that bring forth a Boke for to sweare upon, charginge Clerkes that in no wise they constrayne any body to sweare, whether they think a Man to sweare true or false.

And the Archebishop and his Clerkes scorned me, and blamyd me greatly for this sayyng. And the Archebishop manassed me with great Punishment and sharpe, except I leste this Opinion of swearinge.

And I saide, Sir, this is not myne Opinion, but it is the Opinion of Christe our Sauyours, and of Seynt *Jamis* and of *Chrysostome*, and other diuerse Seyntes and Doctours.

Than the Archebishop badde a Clerke rede the Homely of *Chrysostome*, which Homely thys Clerke helde in his Hande written in a Roll, which Rolle the Archebishope caused to be taken from my Fellow at *Canterbury*; and so than this Clerke redde this Roll till he came to a Clause, wher

Chrysostome saithe, that it is synne to sweare well.

And than a Clerke (*Malueren*, as I gesse) said to the Archebishop, Sir, I pray you wete of him, how that he vnderstondeth *Chrysostome* here, saing it to be synne to sweare well.

And so the Archebishop asked me how I vnderstode here *Chrysostome*.

And certeyne I was somewhat afraide to answere hereto, for I had not beyed me to study about the Sense thereof; but lyfing up my Mynde to God, I prayed him of Grace. And as faste as I thought how Christe said to his Apostles, *Whan for my Name ye shall be brought before Judges, I shall gyue into your Mouth Wisdome, that your Aduerserayes shall not ageynst saye*; and trusting feithfully in the Worde of Gode, I said, Sir, I know well that many Men and Women haue now swearing so in Custome, that thei know not nor will not knowe that they do euell for to sweare as they do; but they thinke and say that they do well for to sweare as they do, though they know well that they sweare vntreuly. For they saye, they may by their swearing (though it be false) voide blame or temporall harme, which they sholde haue yf they sweare not thus. And, Sir, many Men and Women maynteyne strongly that they sweare well, whan that thing is sothe that they sweare for. Also full many Men and Women now say, that it is well done to swear by Creatures, whan they may not (as they saye) otherwise be beleued. And also full many Men and Women now say, that it is well done to sweare by God, and by our Ladye, and by other Seyntes, for to haue them in Mynde. But syns all these Saiynges are but Excusations and Synne, me thinketh, Sir, that this Sentence of *Chrysostome* may be alleged welle ageynste all soch Swerers, witnesing that all thes synne greuouly, though they thinke themself for to swear in this forsaide wyse well. For it is euyl done and great synne for to sweare trewth, whan in any manner a Man may excuse him without Othe.

And the Archebishop said, that *Chrysostome* might be thus vnderstode.

And than a Clerke said to me, Wilt thou tarye my Lorde no lenger, but submit the here mekely to the Ordinaunce of Holy Chirche, and laye thyne Hande upon a Booke touching the Holy Gospell of God, promysinge not onely with thy Mouth, but also with thyne Harte to stande to my Lordes Ordinaunce?

And I said, Sir, haue I not told you here, how that I herde a Master of Diuinitie say that in soche a case it is all one to touche a Boke, and to sweare by a Boke?

And the Archebishop said, There is no Master of Diuinitie in *Englond* so great, that yf he hold this Opinion before me, but I shall punishe him, as I shall do the, except thou swear as I shall charge the.

And I said, Sir, is not *Chrysostome* an ententyfe Doctour?

And the Archebishop said, Ye.

And I sayde, Yf *Chrysostome* proueth hym woorthy great blame that bryngeth forth a Boke to sweare upon, it muste nedes folowe that he is more to blame that sweareth on that Boke.

And the Archebishop said, Yf *Chrysostome* ment accordingly to the Ordinaunce of Holy Chirche, we will accepte him.

And

And than said a Clerke to me, Ys not the Worde of God and God himself equipollent, that is, of one Authorite?

And I saide, Ye.

Than he said to me, Why wilt thou not sweare than by the Gospell of God, that is Gods worde, fynes it is all one to sweare by the Worde of God, and by God himselfe?

And I said, Sir, fynes I may not nowe other wyse be beleued but by swearynge, I perceyue (as *Augustine* saith) that it is not spedefull that ye that shold be my Brothern sholde not beleue me: therefore I am redy by the Worde of God (as the Lorde commaunded me by his Worde) to sweare.

Then the Clerke said to me, Laye than thyne Hande upon the Boke, touching the Holy Gospell of God, and take thy Charge.

And I said, Sir, I vnderstonde that the holy Gospell of God may not be touched with Mannes Hande.

And the Clerke saide, I fonded, and that I sayde not trewth.

And I asked this Clerke, whether it wer more to reade the Gospell, or to touche the Gospell.

And he said, it was more to reade the Gospell.

Than I said, Sir, by Authorite of Seynt *Jerome*, the Gospell is not the Gospell for reding of the Letter; but for the beleue that Men haue in the Worde of God, that it is the Gospell that we beleue, and not the Letter that we rede: for because the Letter that is touched with Mannes Hande is not the Gospell, but the Sentence that is verely beleued in Mannis Hart is the Gospell. For so Seynt *Jerome* saith, the Gospell that is the vertue of Goddes Worde is not the Leaues of the Boke, but it is in the Root of Reason. Nother the Gospell (he saith) is in the Writing aboute of the Letters; but the Gospell is in the marking of the Sentence of Scriptures. This Sentence approueth Seynt *Paule*, saynge thus, The Kingdome of God is not in Worde, but in Vertue. And *Dauid* saith, the Voice of the Lorde, that is his Worde, is in Vertue. And after *Dauid* saith, Thorow the Worde of God, the Heauens were fourmed, and in the Spirite of his Mouth is all the Vertue of them. And I pray you, Syr, vnderstonde ye well how *Dauid* saith, that in the Spirite of the Mouthe of the Lorde is all the Vertue of Angells and of Men?

And the Clerke said to me, Thou woldest make us to fonde with the: Saye we not that the Gospellis are written in the Masse-Boke?

And I sayde, Syr, though Men use to saye thus, yet it is unperfyte Speche. For the principall parte of a thinge is properly the hooll thyng: for lo, Mannes Soule, that may not now be sene here, nor touched with any sensible thing, is properly Man. And all the Vertue of a Tree is in the Roote thereof, that maye not be sene; for do awaye the Roote, and the Tree is destroyed. And, Syr, as ye sayde to me right nowe, God and hys Worde are of one Authoritie; and, Syr, Seynte *Jerome* witneseth that Christe, very Godde and very Man, is hidde in the Letter of his Lawe: thus also, Syr, the Gospell is hidde in the Letter. For, Syr, as it is full likely many diuerse Men and Women here in the Erthe touched Christe, and sawe hym and knewe his bodeley Person, which nother touched nor sawe, nor knewe ghostely his Godhede: right thus, Sir,

many Men now touche and see, and write and rede the Scriptures of Goddis Lawe, whiche nother touche, see nor rede effectuallye the Gospell. For as the Godhede of Christe, that is the Vertue of God, is knowen by the Vertue of thorowe Belefe, so is the Gospell, that is Christes Worde.

And a Clerke said to me, Thes be full mystic Matters, and unsauery, that thou shewest here to vs.

And I said, Sir, if ye that ar Masters know not playnly this Sentence, ye may fore drede that the Kingdome of Heuene be taken fro you, as it was fro the Princes of Priestes, and fro the Elders of the Jewes.

And than a Clerke (as I gesse *Malueren*) sayde to me, Thou knowest not thyne Equiuocacyons, for the Kyngdome of Heuene hath diuerse vnderstondinges. What callest thou the Kingdome of Heuene, in this Sentence that thou shewest here?

And I said, Sir, by good Reason and Sentence of Doctours, the Realme of Heuene is called here the vnderstonding of Godes Worde.

And a Clerke said to me, Frome whome thinkest thou that this vnderstondinge is taken awaye?

And I said, Sir, by Authorite of Christe himselfe, the effectuall vnderstondinge of Christes Worde is taken awaye from all them chiefly, whiche are greates lettered Men, and presume to vnderstonde high thynges: and will be holden wise Men, and desyre Masterhippe and hie State and Dignite; but they will not conforme them to the lyuyng and teaching of Christe and of his Apostles.

Than the Archebishop said, Well, well, thou wilt judge thy Souereyns. By God the Kyng doeth not his Deutie, but he suffer the to be condemned.

And than another Clerke said to me, Why on *Friday* that last was, counfeldest thou a Man of my Lordes, that he sholde not shriue him to Man, but only to God:

And with this asking I was abashed, and than by and by I knewe that I was fultely betrayed of a Man that came to me in Presone on the *Friday* before, comunyng with me in thys matter of Confession; and certayn by his Wordes (I thoughte) that this Man came than to me of full seruent and charitable Will: But knowe I nowe he came to tempt me, and to accuse me (God forgyue him, yf it be his will). And with all myne Harte whan I hadde thoughte thus, I said to this Clerke, Sir, I pray you that ye wolde fetch this Man hither; and all the Wordes as nere as I can repete them, which that I spake to hym on *Friday* in the Pryson, I will reherse nowe here before you all, and before hym.

And (as I gesse) the Archebishop said than to me, They that are nowe here suffyse to repete them: How saidest thou to him?

And I said, Sir, that Man came and asked me of diuerse thinges; and after his askyng I answered hym (as I vnderstoode) that goode was: and as he shewed to me by his Wordes, he was fory of his lyuyng in Courte, and right heuy for his owne vicious lyuyng; and also for the Vicioufnesse of other Men, and speciallye of Priestes euyl lyuyng: and herefore he sayde to me with a sorrowfull Harte (as I gessed) that he purposed fully within shorte tyme for to leaue the Court, and besy him to know Gods Lawe, and

and to conforme all his Lyfe thereafter. And whan he hadde said to me thes Wordis and mo other, which I woulde reherse and he wer present, he praid me to heare his Confession. And I said to hym, Sir, wherfore come ye to me to be confessed of me? ye wote well that the Archebischop puttith and holdeth me here as one unworthy, other to gyue or to take any Sacrament of Holy Chirche.

And he said to me, Brother I wote well, and so wote many mo other, that you and soche other ar wrongfully vexed, and herefore I will comon with you the more gladly. And I said to hym, Certeyn I wote well that many Men of this Court, and specially the Priestis of this Houssholde, wolde be full euyll a payde, both with you and with me, if they wiste that ye wer confessed of me. And he said that he cared not therefore, for he hadde full litle Affection in them: and (as me thought) he spake thes Wordis, and many other, of so goode Will, and of so hye Desire, for to haue knowen and done the pleasant will of God. And I said than to hym, as with my foresaid Protestacion I say to you now here; Sir, I counsell you for to abiente you frome all euyll Company, and to drawe you to them that looue and besy them to knowe and to keape the Preceptis of God: and than the good Spirite of God will mooue you for to occupie besily all your Wittes, in gathering to gither of all your Synnes, as far as ye can bethinke you, shamynge greatly of them and sorrowing hartely for them: ye, Sir, the holy Goste will than put in your Harte a good will, and a feruent Desire for to take and to holde a good purpose to hate euer, and to flie (after your connyng and power) all occasion of Synne: and so than Wysdome shall come to you frome aboue, lightenyng with diuerse Beamis of Grace, and of heuenly desire, all your Wittes, enfourmyng you how ye shall truste stedfastely in the Mercie of the Lorde, knouledgyng to him onely all your vicious Lyuyng, praying to him euer deuoutely of charitable Counsell and Continuance, hoping without doute, that yf ye contynew thus besyng you feithfully to knowe and to kepe his biddings, that he will (for he only may) forgyue you all your Synnes. And this Man said than to me, Though God forgyue Men their Synnes, yet it behoueth Men to be affoyled of Priestis, and to doo the Penance that they enjoyne them. And I said to him, Sir, it is all one to affoyle Men of their Synnes, and to forgyue Men their Synnes: Wherefore syns it perteinyth onely to God to forgive Synne, yt suffisith in this case to counsell Men and Women for to leave their Synne, and to comforte them that besye them thus to doo, for to hope stedfastely in the Mercie of God. And ageynward, Priestis owght to tell sharply to customable Synners, that if they will not make an ende of their Synne, but contynew in diuerse Synnes while that they may synne, all soche deserue Peyn without any ende. And herfore Priestis shoulde euer besy them to liue well and holily, and to teache the People besely and trewly the Worde of God, shewing to all folke in open preaching, and in preuy counselyng, that the Lorde God onely forgeuyth Synne. And therefore those Priestis that take upon them to affoyle Men of their Synnes, blaspheme God: syns that it perteinyth only to the Lorde to affoyle Men of all their Synnes. For no doute a thousande Yere after that Christe was Man, no

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Prieste of Christe durste take upon hym to teache the People nother priuely nor apertely, that they behoouyd nedis to come to be affoyled of them, as Priestis now doo. But by Authoritie of Christis Worde, Priestis bound indured customable Sinners to euerlasting Peyns, which in no tyme of their lyuyng wolde besy them feithfully to know the biddings of God, nor to keape them. And ageyn, all they that would occupie all their Wittes, to hate and to flie occasion of Synne, dreding over all things to offend God, and loouyng for to please him continually, to thes Men and Women, Priestis shewid how the Lorde affoileth them of all their Synnes. And thus Christe promysed to conferme in Heuen all the binding and loosyng, that Priestis by Authorite of his Worde bynde Men in Synne that ar indured therein, or loose them out of Synne here upon Erthe that ar verely repentaunt. And this Man hearing thes Wordis said, that he myght well in Conscience consent to this Sentence; but he said, Is it not needful to the Lay People that cannot thus doo, to go shriue them to Priestis? And I said, yf a Man feale himself so distrobled with ony Sinne that he cannot by his owne Witte auoide this Synne without Counsell of them that ar herein wyser than he, in soche a case the Counsell of a goode Prieste is full necessarie. And if a good Prieste faile, as they do now commonly, in soche a case Seynt *Augustine* faith that a Man may lefully comon and take Counsell of a vertuous Seculer Man; but certeyn that a Man or Woman is ouer laden and to bestely, which cannot brynge their owne Synnes into their Mynde, besyng them Night and Day for to hate and to forsake all their Synnes, doying a fighe for them after their connyng and power. And, Sir, full accordingly to this Sentence, upon Midlenton *Sunday* two Yere (as I gesse) now agone, I harde a Monke of *Fewersham*, that Men called *Moredon*, preache at *Canterbury* at the Crosse within *Christe-Church Abbey*, sayyng thus of Confession: As thorow the Suggestion of the Fende, without counsell of any other body, that of themself many Men and Women can ymagine, and fynde meanys and wayes inough to come to Pride, to Theft, to Lechery, and to other diuerse Vyces: In contrarie wyse this Monke said, Syns the Lorde God is more redy to forgyue Synne than the Fende is or may be of power to mooue ony body to Synne, than who so euer will shame and sorow hartely for their Synnes, knouledging them feithfully to God, amending them after their power and connyng, without counsell of any other body than of God and hymself, thorow the Grace of God, all soche Men and Women may fynde sufficient meanys to come to Goddis Mercie, and so to be cleane affoyled of all their Synnes. This Sentence I said, Sir, to this Man of yours, and the selfe Wordis as nere as I can gesse.

And the Archebischop said, Holy Chirche approueth not this Learnynge.

And I said, Sir, Holy Chirche of which Christe is hed in Heuen and Erthe, must nedys approue this Sentence. For lo hereby all Men and Women may, if they will, be sufficiently tauchte to know and to kepe the Commaundementis of God, and to hate and to flie continewally all occasion of Synne, and to looue and to seke Vertues besely, and to beleue in God stably, and to truste in his mercy stedfastly, and so to come to perfite Charite, and contynew therein perseverently.

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ly. And more the Lorde askith not of any Man here now in this Lyfe; and certeyn, syns Jesu Christe dyed upon the Crosse wilfully to make Men fre, Men of the Chirche ar to bolde and to besy to make Men thrall, bynding them under the payne of endlesse Curse (as they say) to doo many Observaunces and Ordinauncis, which nother the lyuyng nor teaching of Christe, nor of his Apostles approueth.

And a Clerke said than to me, Thou shewest playnely here thy Disceite which thou hast learnyd of them that trauell to sowe Popill among Wheate. But I counsell the to go away clene frome this Learning, and submyt the lowly to my Lorde, and thou shalt fynde hym yet to be gracious to the.

And as faste than another Clerke said to me, How wast thou so bolde at *Paulis* Crosse in *London*, to stonde there harde with thi Tippet bounden about thyne Hedde, and to repreue in his Sermonne the woorthy Clerke *Alkerton*, drawyng away all that thou myghtist; ye and the same Day, at afternone thou metyng that woorthy Doctour in *Watlyng-strete*, callidst hym false Flaterer and Ypocrite.

And I said, Sir, I thynk certainly that there was no Man nor Wooman that hated verely Synne, and loouyd Vertues, hearing the Sermonne of the Clerke of *Oxforde*, and also *Alkerton's* Sermonne; but they sayd or might justely say, that *Alkerton* reproouyd the Clerke untrewly, and sclaundered hym wrongfully and uncharitably. For no doute if the lyuyng and teaching of Christe chesely, and of his Apostles be trewe, no body that looueth God and his Lawe, will blame any Sentence that the Clerke than preachid there, syns by Authorite of Goddis Worde, and by approued Seyntis and Doctours, and by open Reason, this Clerke approued all thingis clerly that he preached there.

And a Clerke of the Archebishops said to me, His Sermonne was false, and that he shewith openly, syns he dare not stande forthe, and defende his preaching that he then preached there.

And I said, Sir, I thinke that he purposith to stande stedfastely thereby, or els he sclaundereth foully hym self, and also many other that haue great Truste, that he will stande by the treweth of the Gospell. For I wote well his Sermonne is written both in *Latyne* and in *Englysch*, and many Men haue it, and they sett great pryse thereby. And Sir, if ye wer present with the Archebishop at *Lambeth* when his Clerke apered, and was at his Answer before the Archebishop, ye wote well that this Clerke denyed not there his Sermonne; but two days he maynteinyd it before the Archebishop and his Clerkis.

And then the Archebishop, or one of his Clerkis said, I wote not which of them, that Harlot shall be met with for that Sermonne. For no Man but he and thou, and soche other false Harlots praisith any soche preaching.

And then the Archebishop said, Your cursed Secte is besy, and it joieth right greatly to contrarie, and to destroye the Priuilege and Fredome of Holy Chirche.

§ And I said, Sir, I knowe no Man that trauell so besely as this Secte dothe (which you repreue) to make Rest and Peace in holy Chirche. For Pride, Couetousnesse and Simony which distrooble moste Holy Chirche, this Secte hatith and fliethe, and trauellith besely to mooue all other Men in lyke maner unto Meaknesse; and wilfull

Pouerte and Charite, and fre ministryng of the Sacramentis, this Secte louyth and vsith, and is full besy to mooue all other Folkis thus to doo. For thes Vertues owe all Membres of Holy Chirche to their hedde Christe.

Than a Clerke said to the Archebishop, Sir, it is ferre Daies, and ye haue ferre to ryde to Nyght; therefore make an ende with him, for he will none make. But the more, Sir, that ye besy you for to drawe hym toward you, the more contumax he is made, and the ferder from you.

And than *Malueren* said to me, *William* knele downe and praye my Lorde of Grace, and leaue all thy Fantasies, and become a Childe of Holy Chirche.

And I said, Sir, I have praied the Archebishop ofte, and yet I pray hym for the looue of Christe, that he will leaue his Indignacion that he hathe ageinst me; and that he will suffer me after my connyng and power, for to doo myne Office of Priestehode, as I am chargid of God to do it. For I couete nought els but to serue my God to his pleasing, in the state that I stande in, and haue taken me to.

And the Archebishop said to me, Yf of good Harte thou wilt submyt the now here mekely to be reulid fro this tyme forthe by my counsell, obeyyng meekly and wilfully to myne Ordinaunce, thou shalt fynde it moste profitable and best to the for to doo thus. Therefore tary thou me no lenger, graunte to doo this that I haue said to the now here shortly, or deny it utterly.

And I said to the Archebishop, Sir, owe we to beleue that Jesu Christe was, and is very God and very Man?

And the Archebishop said, Ye.

And I said, Sir, owe we to beleue, that all Christis lyuyng and his teaching is trewe in euery poynte?

And he said, Ye.

And I said, Sir, owe we to beleue, that the lyuyng of the Apostles, and the teaching of Christe, and of all the Prophetes, are true, which are written in the Bible for the Health and Saluacion of Goddes People?

And he said, Ye.

And I said, Syr, owe all christen Men and Women after their connyng and power for to conforme all their lyuyng to the teaching specially of Christe, and also to the teaching and lyuyng of his Apostles, and of Prophetes, in all thinges that are plefant to God, and edification to his Churche?

And he said, Ye.

And I said, Sir, ought the Doctrine, the bidding or the counsell of any body to be accepted or obeid unto, excepte this Doctrine, thes biddinges or this counsell may be graunted and affirmed by Christes lyuyng and his teaching specially, or by the lyuyng and teaching of his Apostles and Prophetes?

And the Archebishop said to me, Other Doctrine ought not to be accepted, nor we owe not to obey to any Mannes bidding or counsell, except we can perceyue that this bidding or counsell accordeth with the bidding and teaching of Christe, and of his Apostles and Prophets.

And I said, Sir, is not all the learninge and biddinges and counsellis of Holy Chirche meanes and healfull remedies to know and to withstand the preuy Suggestions, and the aperte Temptacions of the Fende; and also wayes and healfull remedies to flee Pride, and all other dedely Synnes, and the

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Braunches of them, and souereyn meanes to purchase Grace, for to withstonde and ouercome all the fleschly Lustes and Mouynges?

And the Archebishop said, Ye.

And I said, Sir, whatsoever thing ye or any other body bid or counsell me to do, accordingly to this forsaide Learning, after my connyng and power throwe the helpe of God I will mekely with all myne harte obey thereto.

And the Archebishop sayde to me, Submitte the than now here mekely and wilfully to the Ordinaunce of Holy Church, which I shall shewe to the.

And I said, Sir, accordingly as I haue here nowe before you reherfed, I will now be redy to obey full gladly to Christe the hede of all Holy Church, and to the learnyng and biddynges and counselles of euery pleasyng Membre of hym.

Than the Archebishop striking with his Honde ferseylly upon a Cupborde, spake to me with a greate Spyrite, saying, By Jesu, but yf thou leaue soche Addicions obliging the now here, without any excepcion to myne Ordinaunce, or that I go out of this place, I shall make the as sure as any These that is in the Pryson of *Lantern*. Aduyle the now what thou wilt do: and than as if he had ben angered, he went fro the Cupborde where he stode to a Wyndowe.

And than *Malueren* and another Clerke came nener me, and they spake to me many Wordes full plesently: and another while they manafed me, and counselled full besily to submyt me, or els they sayde, I shoulde not escape ponishing ouer mesure; for they saide I shoulde be degraded, cursed and burned, and so than dampned. But now they said, thou maiste eschewe all these Mischeues, yf thou wilt submit the wilfully and mekely to thys worthy Prelate that hath cure of the Soule. And for the pytie of Christe (said they) bethinke the, howe great Clerkes the Bishop of *Lincoln*, *Herford*, and *Purney*, wer and yet are, and also *B.* that is a well vnderfunding Man, which also haue forsaken and reuoked all the Learnynge and Opinions, that thou and soche o-ther holde. Wherefore syns eche of them is mekill wyser than thou arte, we counsell the for the beste, that by the example of thes four Clerkes thou folowe them, submyttinge the as they did.

And one of the Bishopes Clerkes said than there, that he herde *Nicoll Herforde* say, that syns he forsoke and reuoked all the Learning and Lolardes Opinions, he hathe had mekill greater Favour, and more delyte to holde ageinst them, than euer he hadde to holde with them while he helde with them.

And therefore *Malueren* said to me, I vnderfonde and thou wilt take the to a Priest, and shryue the clene; forsake all soch Opinions, and take thy Penance of my Lord here, for the holding and teaching of them, with in shorte tyme thou shalt be greatly confortd in this doing.

And I said to the Clerkes that thus besyly counfelled me to folow these forsaide Men, Sirs, if thes Men, of whome ye counsell me to take example, had forsaken Benefyces of Temporall Profyte, and of worldly Worshippe, so that they had absented them and eschewed frome all Occasyons of Couetousnesse, and of fleschely Lustes, and had taken them to symple lyunyge, and wilfull Pouerte, they hadde herein geuen goode example to me, and to many other to haue folowed them. But

now, syns all thes four Men haue slaundersly and shamefully done the contrarye, consentyng to receyue and to haue and to holde Temporall Benefyces, lyuynge now more worldly and more fleschely than they did before, conformyng them to the Maners of this Worlde; I forsake them herein, and in all their forsaide slaundersous doynge. For I purpose with the help of God into Remission of all my Synnes and of my foule cursed lyuynge, to hate and to flye prively and apertly, to folow thes Men, teaching and counfellyng whomesoeuer that I may for to flye and eschewe the waye that they haue chosyn to go in, whiche will lede them to the worste ende, if in conuenient tyme they repente them not, verely forsakyng and reuokynge openly the Slaunder that they haue put and euery Daye yet put to Christes Church. For certeyn so open Blasphemye and Slaunder as they haue spoken and done in their reuokynge and forsakyng of the treuthe, ought not, nor maye not priuely be amended dewly. Wherefore, Sirs, I praye you that ye besye you not for to mooue me to folowe these Men in reuokynge and forsakyng of the treuthe and sothefastnesse as they haue done and yet doo, wherein by open eydence they steire God to greate wrothe, and not onely ageynst themselfe but also ageynste all them that fauoure them or consente to them herein, or that comoneth with them, except it be for their amendement. For whereas thes Men firste were persued of Enemyes, now they haue obliged them by Othe for to slaunder and persue Christe in his Membres. Wherefor as I truste stedfastely in the Goodnes of God, the worldly Couetousnesse, and the lustie lyuynge, and the flyding fro the treuth of these Runagates, shall be to me and to many other Men and Women an example, and an eydence to stonde the more stify by the trewith of Christe. For certeyn, right many Men and Women doo marke and abhorre the foulnesse and cowardnesse of these forsaide untrew Men, howe that they are ouercome and stopped with Benefyces, and withdrawn fro the treuth of Goddes Worde, forsaking vtterly to suffer therfore bodely Persecucion. For by this vnfeithfull doynge and Apostasie of them, specially that ar great lettered Men and haue knowledged openly the treuth, and now other for Pleasure or Displeasure of Tyrantes haue taken Hyer and temporal Wages to forsake the Trewthe, and to holde ageinst it, slaundering and persewing them that couete to folowe Christ in the waye of Righteousnesse, many Men and Women therefore are nowe moued: But many mo, thorow the Grace of God, shall be moued hereby for to learne the Treuth of God, and to doo thereafter, and to stond boldly thereby.

Than the Archebishoppe sayde to his Clerkes, Besy you no lenger aboute hym; for he and other soche as he is are confedered so to gither, that they will not sweare to be obedient, and to submytte them to Prelates of holy Chirche. For nowe syns I stode here, his Felowe sent me worde that he will not sweare, and that he counselled hym that he sholde not sweare to me. And, *Losell*, in that thyng that in the is, thou haste besyed the to loose thys yonge Man; but blessed be God, thou shalt not haue thy purpose of hym: For he hath forsaken all thy Learnynge, submytting him to be buxum and obedient to the Ordinaunce of holy Church, and wepeth full bitterly, and curseth the full hartely for the venemous Teachynge whiche thou haste shewed to hym, counfellyng him

him to doo thereafter. And for thy false counsel-lynge of many other and hym, thou haste greete Cause to be righte fory. For long tyme thou haste besied the to peruert whom so euer thou mightest; therfore as many Deathes thou arte worthy of, as thou hast geuen euell Councelles: And therefore by Jesu thou shalt go thither, where *Nicoll Harforde* and *Tom Purnay* were herbered. And I vndertake, or thys daye eighte dayes thou shalt be righte gladde for to doo what thyng that euer I bydde the doo. And, Lofell, I shall assaye if I can make the there as soroufull (as it was tolde me) thou waste gladde of my laste going out of *England*; by Seynt *Thomas* I shall tourne thy Joye into Sorowe.

And I sayde, Sir, there can no Body preue lauffully that I loyed euer of the manner of youre goyng out of this Lande. But, Sir, to saye the sothe, I was joyfull whan ye were gone; for the Bishop of *London*, in whos Pryson ye leste me, founde in me no Cause for to holde me lenger in hys Pryson, but at the requeste of my Frenedes, he delivered me to them, asking of me no manner of submittyng.

Than the Archebishoppe said to me, Wherefore that I yede out of *England* is vnknownen to the; but be this thinge well knownen to the, that God (as I wote well) hath called me ageyne, and broughte me into this Lande for to destroye the and the false Secte that thou arte of, as by God I shall persue you so naroulye, that I shall not leave a steppe of you in thys Lande.

And I said to the Archebishop, Sir, the holy Prophete *Jeremy* said to the false Prophete *Anany*, *Whan the Worde that is the Prophecye of a Prophete is knowen or fulfilled, than it shall be knowen that the Lorde sent the Prophete in treuthe.*

And the Archebishop, as if he hadde not been pleasid with my Saiyng, turned hym awaye warde hyther and thither, and sayde, By God I shall sette upon thy Shynnes a pair of Perlis, that thou shalt be gladde to chaunge thy Voice.

Thes and many mo wonderous and convicious wordes were spoken to me, manassing me and all other of the same Secte for to be punished and destroyed vnto the vttermoste.

And the Archebishop called than to hym a Clerke, and rowned with him; and that Clerke went forthe, and sone he brought in the Constable of *Saltwode Castell*, and the Archebishop rowned a good while with hym, and than the Constable went forthe, and than cam in diuerse Seculers,

and they scorned me on euery fyde, and manassed me greatly; and some counsellid the Archebishop to burne me by and by, and some other counsellid hym to drounde me in the Sea, for it is near hande there.

And a Clerke standyng besyde me there, knelede downe to the Archebishoppe, praiyng hym that he wolde delyuer me to hym for to saye Matenes with hym, and he wolde vndertake that within thre dayes I sholde not resiste any thyng that were commaunded me to doo of my Prelate.

And the Archebishop said, that he would ordeine for me himselfe.

And than after came in ageyn the Constable, and spake priuely to the Archebishop.

And than the Archebishop commaunded the Constable to lede me forthe thens with hym, and so he did; and whan we wer gone forthe thens, we wer sent after ageyn. And whan I came in ageyne before the Archebishop, a Clerke badde me knele downe, and aske Grace, and submit me lowly, and I sholde fynde it for the beste.

And I said than to the Archebishop, Sir, as I haue said to you diuerse tymes to day, I will willfully and lowly obey and submit me to be ordenid euer after my Connyng and Power to God, and to his Lawe, and to euery Membre of holy Chirche, as ferre forth as I can perceyue that thes Membres accorde with their Hedde Christe, and will teach me, reule me, or chaastyse me by Authorite specially of Goddis Lawe.

And the Archebishop said, I wiste well he wolde not without soche Addicions submit hym.

And than I was rebukyd, scornyd, and manasyd on euery fyde; and yet after this diuerse Persones cried vpon me to knele down and submit me, but I stood still and spake no worde: and than there was spokyn of me, and to me many greete Wordis: and I stode and herde them manasse, curse, and scorne me; but I said nothing.

Than a while after the Archebishop said to me, Wilt thou not submit the to the Ordinance of holy Chirche?

And I said, Sir, I will full gladly submit me, as I haue shewid you before.

And than the Archebishop badde the Constable to haue me forthe thens in haste; and so then I was led forth, and brought into a foul dishonest Prison, where I came never before.

After this it is not known what became of him; but most probably he died in Prison.



III. *The Trial and Examination of Sir JOHN OLDCASTLE*, Lord COBHAM, for HERESY, before the Archbishop of Canterbury, September 23, &c. 1413. the 1st of Henry V. Collected by John Bale.*



AFTER that the true Seruante of Jesus Chryst, *Johan Wycleue*, a Man of very excellent Lyfe and Learning, had for the space of more than xxvi. yeares mooste valeauntly battelled with the great Antichrist of *Europa*, or Pope of *Rome*, and

his diuersly dysgyfed Host of anoynted Hypocrites, to restore the Church again to the pure Estate that Chryst left her in at hys Ascensyon, he departed hens most christely into the handes of God, the yeare of our Lord 1387, and was buried in his owne Parrish-Church at *Lutterworth* in

* Holin. Chron. 544. a. 1. Hall's Chron. 24. b. Stow's Annals, 344. a. See also Hale's H. P. C. Vol. 1. p. 141. & seq.

in *Lecestershire*. No small Nombre of godly Disciples left that good Man behynd hym to defend the Lowlynesse of the Gospell against the exceeding Pryde, Ambition, Symony, Auarice, Ipocrysy, Whoredom, Sacrylege, Tyrannye, ydolatrourse Worshipinges, and other fylthy Frutes of those stifnecked Pharyses. Agaynst whome *Thomas Arundel*, than Archebishop of *Caunterbury*, so ferce as ever was *Pharao*, *Antiochus*, *Herodes*, or *Cayphas*, collected in *Pauls Church* at *London* an unyuerfall Synode of all the Papisttall Clergye of *England*, in the yere of our Lord a M.CCCC. and xiii. as he had done diuerse other afore, to withstand their moost godly Enterpryse. And thys was the fyrst Yere of King *Henry* the Fifth, whom they had than made fit for theyr hande.

As these hygh Prelates with their Pharysees and Scribes were thus gathered in thys pestilent Councell against the Lord and his Woorde, fyrst there resorted vnto them the xii Inquisitours of Heresy (whom they had appointed at *Oxford* the yere afore, to ferche out Heretikes with all *Wicleues* Bookes) and they brought two hundreth and lxvi. faithfull Conclufyons, whome they had collected as Heresy of the seyde Bokes. The Names of the seyde Inquisitours were these; *Johan Witnam* a Master in the *New-College*, *Johan Languedon* Monke of *Chry-Churche* in *Conterbury*, *Wilyam Ufforde* Regent of the *Carmelytes*, *Thomas Claxton* Regent of the *Dominikes*, *Robert Gylbert*, *Rycharde Earthydale*, *John Lucke*, *Rycharde Sneydisham*, *Richarde Flemming*, *Thomas Rottborne*, *Robert Rondbery*, and *Richard Grafdale*. In the meane season caused they their hyred Seruantes to blowe it forth abroade throughout all the hole Reame, that they were there congregated for an wholfome Unite and Reformation of the Church of *England*, to stoppe so the Mouthes of the comen People. Such is always the comen Practise of these subtil Sorcerers, whyls they are in doing Mischief, to blere the Eyes of the vnlearned Multytude, with one false Craft or other.

After a certain Communication they concluded among themselves; that it was not possible for them to make whole Christes Cote without Seme (meaning thereby their patched Popysh Synagoge) onlesse certeyn great Men were brought out of the way; which semed to be the chefe Mainteners of the seyde Disciples of *Wicleue*: Among whome the most noble Knight Sir *Johan Oldcastell*, the † Lord *Cobham*, was complained of by the generall Proctours, yea rather Betrayers of Christ in his faithful Membres, to be the chefe Principal. Him they accused first for a mighty Maintener of suspected Preachers in the Dioces of *London*, *Rocheſter*, and *Hereforde*, contrary to the Mindes of their Ordynaries: Not only they affirmed him to have sent thyder the seyde Preachers, but also to haue assisted them ther by force of Armes, notwithstanding their sinodall Constitucion made afore to the contrarye. Last of all, they accused him, that he was farre other wise in Beleue of the Sacrament of the Altre, of Penaunce, of Pilgrymage, of Ymage-worshipping, and of the Ecclesiastycall Power, than the holy Church of *Rome* had taught many years afore.

In the ende it was concluded among them, that wythoute anye farther Delaye, Proceſſe shulde oute agaynst hym, as agaynst a moost pernycious Heretike.

Som of that Felloushyp; whyche were of more

craftye Experyence than the other, wold in no case haue that matter so rashlye handeled, but thought thys waye moche better. Conſydering the seyde Lord *Cobham* was a Man of great Byrth, and in fauer at that tyme with the King, theyr Counsell was to know first the Kinges Mynde, to saue all thynges right vp. This Counsell was well accepted, and ther vpon the Archbishop *Thomas Arundell*, wythe his other Byshoppes, and a great part of the Clergy, went strayght wayes vnto the King, as than remayninge at *Kenynnton*; and there layed forth most greuous Complayntes against the saied Lord *Cobham*, to his great Infamy and Blemyshe, being a Man most godly. The King gentilly harde those bloud thursty Rauenours; and farre otherwise than became his Princelye Dignite, he instauntly desyred them, that in respect of his noble Stock and Knighthode, they shuld yet fauourably deale with him; and that they wold, if it were possible, without all rigour or extreme handeling, reduce him again to the Churches Unite. He promised them also, that in case they were not contented to take some Deliberacion, his selfe wold ferously common the matter with him.

Anon after the King sent for the seyde Lord *Cobham*; and as he was come, he called him secretly, admonishing him betwixt him and him, to submit him selfe to hys Mother the holy Church, and as an obedient Chylde to acknowledge him selfe culpable. Vnto whom the Christen Knight made this Answer, You most worthy Prince, faith he, am I always prompt and wylling to obeye, for so moche as I knowe you a Christen Kinge, and the appointed Minister of God, bearing the Sworde to the Punishment of Yll-doers, and for the Sauegarde of them that be vertuous. Unto you next my æternal God, owe I my whole Obedience, and submit my thervnto, as I haue done euer, all that I have eyther of Fortune or Nature, redy at all times to fulfill what so euer ye shall in that lorde commaund me; But as touching the Pope and hys Spirituality, truly I owe them neyther Sute nor Seruice; for so moch as I knowe hym by the Scriptures to be the great Antichryſte; the Sonne of Perdicyon, the open Adversary of God, and the Abominacyon standing in the holy place. Whan the King had hearde this, with sochelyke Sentences more, he wolde talke no longer with him, but leste hym so vtterly.

And as the Archebishop resorted again vnto him for an Answer, he gaue him his full Auctorite to cyte him, examine hym; and punyshe him according to the deueliſhe Decrees, whiche they call the Lawes of holy Church. Then the seyde Archebishop, by the Counsell of hys other Bishoppes and Clergy, appointed to call before him Syr *Johan Oldcastell*, the Lord *Cobham*, and to cause him personally to appeare to answer to suche suspect Articles as they shuld lay against him. So sent he forth his chefe Sommener, with a very sharp Citation, vnto the Castell of *Cowling*, where as he at that tyme dwelt for his Solace. And as the seyde Sommener was thether comen, he durste in no case entre the Gates of so noble a Man without his Lycens; and therefore he returned home agayne, hys Meſſage not done. Than called the Archebishop one *John Butler* unto him, whych was than the Dorekeeper of the Kinges Priue Chamber, and with him he covenanted through Promises and Rewards to haue this matter craftly brought

* So called in right of his Wife, who was Granddaughter and Heir of Lord Cobham.

brought to passe vnder the King's Name. Wherevpon the feyd *John Butler* toke the Archebishops Sommener with hym, and went vnto the sayd Lord *Cobham*, shewing him that it was the Kings Pleasure that he shuld obeye that Citacyon, and so cyted him fraudulently. Than said he vnto them in few woordes, that in no case wold he consent to those moost deuylishe Practises of the Priestres. As they had informed the Archebishop of the Answer, and that it was mete for no Man priuately to cyte him after that without parell of Lyfe, he decreed by and by to haue him cyted by publike Proceffe or open Commaundment. And in al the hast possible, vpon the Wednyliday before the Natiuite of oure Ladye in *September*, he commaunded Letters Citatory to be set vpon the great Gates of the Cathedral Church of *Rocheſter*, (which was but iij. *English* myles from thens) charging him to apere personally before him at *Ledys*, in the xi. daye of the same moneth and yeaere, all Excuses to the contrary set apart. Those Letters were taken downe anon after, by such as bare fauer vnto the Lorde *Cobham*, and so conueyed asyde. After that caused the Archebischoppe newe Letters to be set vpon the Natiuite day of our Ladye, which also were rent downe and vtterly consumed.

Than for so moche as he did not apere at the day appoynted at *Ledys* (where as he sate in Consistory, as cruell as ever was *Cayphas*, with his Court of Hipocrites aboute him) he judged hym, denounced him, and condemned him of most depe Contumacy: after that whan he had bene falsely inſourmed by his hierd Spyes, and other glosing Glauerers, that the sayd Lord *Cobham* had lawghed him to ſcorne, disdayned all his Doings, maintained his old Opinions, contemned the Churches power, the Dignitie of a Bishop, and the Ordre of Priesthode (for all these was he than accused) in hys mody Madnes, without iust profe, dyd he openly excommunicate him. Yet was he not for all this ferce Tiranny qualified, but commaunded him to be cited a fresh, to apere afore him the Saturday before the Feast of Saint *Matthew* the Apostle, with these cruell Threatinges added therunto; That if he did not obey at that day, he wold more extremely handle him: and to make him selfe more strong towards the perfourmance thereof, he compelled the Lay-Power, By most terrible Menacinges of Curses and Interdictions, to assyst him against that cecidious Apostate Schismaticke, that Heretike, that Troubler of the publycke Peace, that Enemye of the Realme, and greate Adversarye of all holy Church; for all these hateful Names dyd he giue him.

This most constaunt Seruant of the Lord and worthy Knight Sir *Johan Oldecastell*, the Lord *Cobham*, beholding the vnpacable Fury of Antichrist thus kindeled against him, perceiuing him self also compased on every side with deadly Daungers, he toke Paper and Penne in hand, and so wrote a Christen Confession or Rekening of his Faith (which foloweth here after) and both signed and sealed it with his own hande: Wherein he also answereth to the iij. chefest Articles that the Archebishop layed against him. That doone, he toke the Copie with him, and wente therewith to the Kyng, trustinge to fynd Mercy and Fauer at his hande. None other was that Confession of his, than the common Beleue or Somme of the Churches Faith, called the Apostles Crede, of all Christen Men than vsed. As thus;

The Christen Beleue of the Lord Cobham.

I Beleue in God the Father Almighty, Maker of Heuen and Earth; and in Jesu Christ his only Sonne our Lord, which was conceived by the Holy Gost, borne of the Virgin *Mary*, suffred, vnder *Ponte Pilate*, crucified, dead, and buried, went down to Helle, the third daye rose againe from Death, ascended vp to Heuen, sitteth on the right hand of God the Father Almightye, and from thens shall come agayne to iudge the Quicke and the Dead. I beleue in the Holy Gost, the vniuersall holy Church, the Communion of Sainctes, the Forgeuenes of Sinnes, the Vprising of the Flesh, and everlasting Life. Amen.

And for a more large Declaracion (saith he) of this my Faith in the Catholick Church, I stedfastly beleue that there is but one God Almighty, in and of whose Godhead are these iij. Parsonnes, the Father, the Sonne, and the Holy Gost, and that those iij. Parsonnes are the same selfe God Almyghtyes. I beleue also that the seconde Parsonne of this most blessed Trinite, in most conuenient tyme appointed thereunto afore, toke Flesh and Bloud of the most blessed Virgyn *Mary*, for the Sauegard and Redempcion of the vniuersall kynd of Man, which was afore lost in *Adam's* Offence. Moreouer, I beleue that the same Jesus Christ our Lord, thus being both God and Man, is the onely Head of the whole Christen Church, and that all those that hath bene, or shal be faued, be Membres of this most holy Church: And this holy Church I think to be diuided into iij. sortes or Companies.

Wherof the first sort be now in Heauen, and they are the Saynctes from hens departed. These, as they were here conuerſaunt, conformed alwayes theyre Lyues to the most holye Lawes and pure Examples of Chryste, renouncyng Sathan, the Worlde, and the Flesh, wythe all their Concupiscences and Euels. The second sort are in Purgatory (yf any such be by the Scriptures) abyding the Mercy of God, and a full Delyuerance of Payne. The thyrde sorte are here vpon the Earth, and be called the Church Mylytaunt. For Daye and Nyght they contend agaynst the crafty Assaultes of the Deuel, the flattering Prosperities of thys Worlde, and the rebellyouse fylthynes of the Fleshe.

Thys latter Congregation by the iuste Ordinance of God is also seuered into three diuerſe Estates, that is to say into Priesthode, Knighthode, and the Comens. Amonge whom the Wyll of God is, that the one shuld ayde the other, but not destroye the other. The Priestres fyrst of all seclused from all Worldlynesse shuld conforme theyr Lyues vtterly to the Examples of Chryst and his Apostles. Euermore shulde they be occupied in preaching and teaching the Scriptures purely, and in geuing wholsom Counſels of good liuing to the other two Degrees of Men. More modest also, more louing, gentyll, and lowlye in Spirite shuld they be than any other sortes of People.

In Knighthode are all they which beare Sword by Lawe of Office. These shuld defende Gods Lawes, and see that the Gospell were purely taught, conforming their Lyues to the same, and secludynge all false Preachers: yea these ought rather to haſard their Lyues than to suffer such wycked Decrees as eyther blemisheth the eternal Testament

Testament of God, or yet letteth the fre Passage therof, wherby Heresies and Schismes might spring in the Church. For of none other ryle they as I suppose, than of erronyous Constitucions, craftely fyrst creping in under Hypocrites lyes for auantage. They ought also to preferue Gods Peple from Oppressors, Tirauntes, and Theues, and to se the Clergy supported so long as they teache purely, pray rightly, and minister the Sacraments frely. And if they se them do otherwise, they are bound by Law of Office to compell them to chaunge their doinges, and to se all thinges performed according to Gods Prescript or Ordinaunce.

The latter Fellowship of this Church are the common Peple, whose Dewtye is to beare their good Mindes and true Obedience to the aforeseyd Ministers of God, their Kinges, Cyuile Gouvernours and Priestes. The right Office of these is iustly to occupy euery Man in his Faculte, be it Merchaundise, Handy-craft, or the Tilthe of the Grounde. And so one of them to be as an helper to another, followynge all wayes in theyr sortes the iust Commaundementes of theyr Lord God.

Ouer and besydes all thys, I moost faithfully beleue that the Sacramentes of Chrystes Church are necessary to all Chrysten Beleuers, thys alwayes sene to, that they be truly ministred according to Chrystes fyrst Institucion and Ordinaunce. And for so moch as I am malyciously and most falsely accused of a misbeleue in the Sacrament of the Aulter, to the hurtfull Slaundre of many; I signifye here unto al Men, that this is my Fayth concerning that. I beleue in that Sacrament to be contayned very Chrystes Body and Bloude under the Similytudes of Breade and Wyne, yea, the same Body that was conceyued of the Holy Gost, born of *Mary* the Virgin, done on the Crosse, dyed, that was buried, arose the thyrd Day from the Death, and is now glorified in Heauen. I also beleue the vniuersal Lawe of God to be moost true and persficht, and they which do not so followe it in theyr Fayth and Workes at one time or other, can neuer be saued. Where as he that seketh it in Faith, accepteth it, learneth it, delyghteth therein, and persfourmeth it in Loue, shall tast for it the felicity of euerlasting Innocency.

Finally this is my Faith also, that God wyl axe no more of a Chrysten Beleuer in this Lyfe, but only to obey the Preceptes of that most blessed Law. If any Prelates of the Church require more, or elsse anye other kynd of Obedience, than thys to be vsed, he contemneth Chryst, exalting himselfe aboue God, and so becometh an open Anti-christe. All these Premisses I beleue particularlye, and generally all that God hath left in his Holy Scryptures that I shuld beleue: Instauntly desiring you, my Lyege Lord and most worthy King, that thys Confession of mine may be iustly examined by the most godly, wise, and learned Men of your Realme. And if it be found in all Pointes agreying to the Verite, than let it be so allowed, and I theruppon holden for none other than a true Chrystiane. If it be proued otherwise, than let it be vtterly condemned: provided alwaies, that I be taught a better Beleue by the Word of God, and I shall most reuerently at all times obey therunto.

Thys brefe Confessyon of hys Fayth, the Lorde *Cobham* wrote (as is mencioned afore) and so toke it wyth hym to the Court, offeryng it wyth all Mekenesse vnto the Kyng to rede it ouer.

The Kyng wold in no case receiue it, but commaunded yt to be delyuered unto them that shuld be his Judges. Than desyred he in the Kinges Presens, that an hondred Knights and Esquiers might be suffered to come in vpon hys Purgacyon, which he knewe wolde clere him of all Heresy. Moreouer he offred hym selfe after the Law of Armes, to fyght for Lyfe or Death with any Man lyuing, Chrysten or Heythen, in the Quarrell of his Faith, the King and the Lordes of his Counsell excepted. Fynally with all gentleness he protested before all that were present, that he wold refuse no manner of Correction that shuld after the Lawes of God be ministred vnto him; but that he wold at all times with all Mekeness obey it. Notwithstanding all thys, the Kyng suffered him to be summoned personally in his own Preuy Chambre. Than sayed the Lorde *Cobham* to the Kyng, that he had appealed from the Archbyshop to the Pope of *Rome*, and therefore he ought, he sayd, in no case to be his Judge. And hauyng hys appeale there at hande redye written, he shewed yt wyth all Reuerence to the Kyng. Wherwith the Kyng was than moche more displeased than afore, and sayd angerlye unto him, that he shuld not pursue his Appeal: but rather he shuld tarry in hold, tyll such time as it were of the Pope allowed. And than, wold he or nyld he, the Archebishop shuld be his Judge. Thus was there nothing allowed that the good Lorde *Cobham* had lawfully afore required. But for so moch as he wold not be sworn in all things to submit himselfe to the Church, and so to take what Penance the Archbisshoppe would enioyne him, he was arested againe at the Kinges Commaundment, and so led forth to the Tower of *London*, to kepe his Day (so was it than spoken) that the Archbyshop had appoynted hym afore in the Kinges Chambre.

Then caused he the aforeseyd Confession of his Faith to be copyed againe, and the Answer also (which he had made to the iiij. Articles proponed agaynst him) to be wryten in maner of an Indenture in two Shetes of Paper; that whan he shuld come to his Answer, he might geue the one Copy vnto the Archebishop, and perserue the other to himselfe. As the Day of Examinacion was comen, whyche was the xxij. Day of *Septembre*, the Saturday before the Feast of Saint *Mathewe*, *Thomas Arundell* the Archebyshop, sitting in *Cayphas* Rouse, in the Chapterhouse of *Paules*, wyth *Richard Glyfforde* Bisshop of *London*, and *Henry Bolingbroke* Bisshop of *Winchester*, Sir *Robert Morley* Knight and Lesetenaunt of the *Tower*, brought personally before him the seid Lorde *Cobham*, and there left hym for the time, vnto whom the Archebishop sayd these wordes.

The fyrst Examination of the Lorde Cobham, September 23.

SIR *John*, in the last general Contuocation of the Clergye of thys our Prouynce, ye were detected of certain Heresy, and by sufficient Witnesse founde culpable; whervpon ye were by fourme of spirituall Lawe cyted, and wolde in no case appeare: In conclusion, vpon your rebellious Contumacie, ye were both priuately and openly excommunicated. Notwythstanding we neuer yet shewed oure selfe unreadye to haue geuen you youre Absolucion (nor yet do not to thys

thys houre) wolde ye haue mekely axed it. Unto this the Lord *Cobham* shewed as though he had giuen none care, hauing his Mynde otherwise occupied, and so desyred none Absolucion: But he sayd, he wold gladly before him and his Brethren make Reherfall of that Fayth, which he helde and entended alway to stande to, yf it wolde please them to lycens him therunto; and then he toke out of hys Bosome a certein Writing endented, concerning the Articles whereof he was accused, and so openly redde it before them, geuing it vnto the Archebysshop, as he had made thereof an ende; whereof thys is the Copy.

I *Johan Oldecastell* Knight and Lord *Cobham*, wyll all Chrysten Men to vnderstand, That *Thomas Arundell*, Archbysshop of *Canterbury* hath not onely laid it to my Charge malitiously, but also very vntruly by hys Letter and Seale, written against me in most slanderouse wyse, that I shuld otherwyse fele and teach of the Sacramentes of the Church (assigning specyally the Sacrament of the Aulter, the Sacrament of Penance, the worshipping of Ymages, and the going of Pilgrimage vnto them) far other wise than either beleueth or teacheth the vniuersall holye Church. I take Almyghte God vnto wytnesse, that yt hath bene and nowe is, and euermore wyth the helpe of God yt shall be my full Intent and Wyll, to beleue faythfully and wholly all the Sacramentes that ever God ordeined, to be minystred in the holy Church; and morouer, for to declare me in these iij. Points afore reherfed.

I beleue that in the moost worshypfull Sacrament of the Aulter, is Christs very Body in forme of Bread, the same Body that was borne of the blessed Virgin *Mary*, done on the Crosse, dead and buried, and that the thyrd day arose from Death to Lyfe, the which Body is nowe glorified wyth the Father in Heaven. And as for the Sacrament of Penance, I beleue that it is nedefull to all them that shall be saued, to forsake theyr Sinne, and to do Penance for it wyth true Contricion to God, Confession of their Fautes, and dewe Satisfaction in Chryste, lyke as Gods Laws limiteth and teacheth, els can they haue no Saluation; This Penance I desyre all Men to do. And as for Images, I vnderstand that they perteyn nothing to our Chrysten Beleue, but were permitted long sins the Faith was geuen vs of Christ, by sufferance of the Church, for to be as Kalendars vnto Laymen, to represent or bring to mind the Passion of our Lorde Jesus Christ, with the Martirdom and good liuing of the Saintes.

I think also, that whatsoeuer he which doth that worship to dead Ymages, that is duely belonging vnto God, or that putteth his Faith, Hope, or Confidence in the helpe of them, as he shuld do only in his eternal lyuing God, or that hath Affection in one more than in an other, he perpetrath in so doing the abhominable Sine of Idolatry. Moreouer in this am I fully perswaded, that everye Man dwellyng on thys Ærth is a Pilgrim, eyther towards Blessè, or els towards Payne.

And that he which knoweth not, nor wyll not knowe, nor yet kepe the holy Commaundementes of God in hys lyuyng here (all be it that he goth on Pylgrymage into all quarters of the Worlde) yf he departeth so, he shall surely be dampned. Agayne, he that knoweth the holy Commaundementes of God, and so performeth them to the

ende of his Life to his power, shal without fayle be saued in Christ, though he neuer in his Lyfe go on Pylgrimage as Men vse now a dayes, to *Caunterbury*, *Walsingham*, *Compostell*, and *Rome*, or to any other Places.

Thys Answer to his Articles thus ended and redde, he delyuered it to the Bysshopes, as is sayde afore. Than counceled the Archbysshop wyth the other two Byshoppes, and with dyuerse of the Doctours, what was to be done in thys matter, commaunding him for the time to stande aside. In conclusion, by theyr Assent and Informacion, he sayd thus vnto him: Come hyder Sir *Johan*; In this your Writing are many good thinges conteyned, and ryght Catholyck also, we deny yt not; but ye must consyder that thys daye was appoynted you to answer to other Poynts concerning those Articles, whereof as yet no mencion is made in this your Byll: And therefore ye must yet declare vs your Mind more plainly; as thus, Whether that ye holde, affirme, and beleue, that in the Sacrament of the Aulter, after the Consecration rightly done by a Pryest, remaineth materall Breade or not? Moreouer, whether ye do hold, affirme, and beleue, that as concerning the Sacrament of Penance (wher as a competent nombre of Priests are) everye Chrysten Manne is necessarily bound to be confessed of hys Synnes to a Priest ordayned by the Church or not?

After certein other Communication thys was the Answer of the good Lord *Cobham*, That none otherwise wold he declare his Minde, nor yet answer vnto hys Articles, than was expresselye in hys Wrytinge there conteyned. Than sayd the Archbysshop againe vnto him. Syr *Johan* bewar what ye do; for if ye answer not clerely to those thinges that are here objected against you, specially at the time appoynted you only for that purpose, the Lawe of holy Church is, that compelled ones by a Judge, we may openly proclayme ye an Heretike. Unto whom he gaue this Answer, Do as ye shall thinke it beste, for I am at a point. Whatsoeuer he or the other Byshoppes did aske him after that, he bad them resort to his Byll, for therby wold he stande to the verye Death; other Answer wold he not geue that day: wherwith the Bishops and Prelates were in a maner amased and wonderfully disquyeted. At the last the Archbysshop counseled again with his other Bishops and Doctours, and in the end thereof declared vnto him what the holy Church of *Rome*, folowing the Sayinges of Saint *Austyn*, Saint *Hierom*, Saint *Ambrose*, and of other holy Doctours, had determined in these matters, no maner of mencion ones made of Christ; which Determinacion (sayth he) ought all Chrysten Menne bothe to beleue and to folowe.

Than said the Lord *Cobham* vnto him, That he wold gladly bothe beleue and obserue whatsoeuer the holy Church of Christes Instytucion had determined, or yet whatsoeuer God had willed him eyther to beleue or to do; but that the Pope of *Rome* with his Cardinals, Archbysshopes, Bishopes, and other Prelates of that Church, had lafull power to determyne suche matters as stode not with his Word thoroughly, that wolde he not (he sayd) at that tyme affyrme. Wyth thys the Archbysshoppe bad hym to take good Aduysement tyll the Mondaye nexte followinge (which was the xxv. daye of *September*) and then justlye to answer specyallye vnto thys Pointe, Whether there remayn-

ed materyal Breade in the Sacrament of the Aulter, after the Wordes of Consecration, or not? He promysed him also to sende vnto him in wryting those matters clerely determined, that he myght than be the more perfyght in hys Answer making; and all this was not els but to blynde the multitude with somwhat. The next day following (according to his Promes) the Archbishop sent unto him into the Towr this folysh and blasphemouse Writting, made by him and by his vnlearned Clergye.

The Determination of the Archbishop and Clergye.

THE Faith and Determinacion of the holy Church touching the blesful Sacrament of the Aulter, is this, That after the sacramentall Wordes be ones spoken by a Priest in his Masse, the materiall Bread, that was before Bread, is turned into Christes very Body; and the materiyall Wyne, that was before Wyne, is turned into Chryltes very Bloud; and so there remayneth in the Sacrament of the Aulter, from thens forth, no materiyall Breade, nor materiall Wyne, which were there before the sacramentall Wordes were spoken. How beleue ye this Article? Holy Church hath determined, that euery Chrysten Man lyuing here bodyly vppon Earth, ought to be shruen to a Priest ordeyned by the Church, if he may come to him: How fele ye thys Article?

Christ ordeyned Sainct *Peter* the Apostle to be his Vicar here in Earth, whose See is the holy Church of *Rome*; and he graunted that the same power which he gaue vnto *Peter*, shuld succede to al *Peters* Successours, which we call now Popes of *Rome*; by whose speciall power in Churches particular, be ordeyned Prelates, as Archbishops, Bishops, Parsons, Curates, and other Degrees more, unto whom Christen Men ought to obeye after the Lawes of the Church of *Rome*. Thys is the Determinacion of holy Church: how fele ye this Article? Holy Church hath determined, that it is meritorious to a Christen Man to go on Pilgrimage to holy Places, and there specially to worship holy Relyques and Ymages of Saintes, Apostles, Martirs, Confessours, and all other Saintes beydes, approued by the Church of *Rome*; howe fele ye thys Article?

And as the good Lord *Cobham* had red ouer thys moost wretched Writting, he maruelled greatly of their madde Ignorance; but that he confydered agayne, that God had geuen them ouer for theyr Unbeleues sake, into moost depe Errours and Blindnesse of Soule. Agayne, he perseyued thereby, that theyr vttermoost Malyce was purposed against him, howsoeuer he shulde answere; and therefore he put his Lyfe into the handes of God, desyring his onely Spyrit to assist him in his next Answer. Whan the feyd xxv. day of *Septembre* was come (which was also the Monday afore *Myghelmasse*) in the sayd yeare of our Lorde, M. CCCC. and xij. *Thomas Arundell*, the Archbishop of *Caunterbury*, commaunded his iudiciall Seate to be removed from that Chapterhouse of *Pauls*, to the Dominike Fryers wythin *Ludgate* at *London*; and as he was there set with *Rychard* the Bishop of *London*, *Henry* the Bishop of *Winchester*, and *Benet* the Bishop of *Bangor*, he called in vnto him his Counsell and his Officers, with diuerse other Doctours and Friers; of whom these are the Names here followynge.

Vol. I.

Master *Henry Ware*, the Officall of *Caunterbury*; *Philip Morgan*, Doctor of both Lawes; *Howell Kiffin*, Doctor of the Canon Lawe; *Johan Kempe*, Doctour of the Canon Lawe; *Willyam Carleton*, Doctour of the Canon Lawe; *Johan Witnam*, of the *New College* in *Oxford*; *Johan Whighthead*, a Doctour of *Oxford* also; *Robert Wonbewell*, Vicar of Saint *Laurence* in the *Jewry*; *Thomas Palmer*, the Warden of the *Mynors*; *Robert Chamberlaine*, Prior of the *Dominickes*; *Rychard Dodington*, Prior of the *Augustines*; *Thomas Walden*, Prior of the *Carmelites*, all Doctours of Diuinitie; *Johan Steuens* also, and *James Cole*, both Notaries, appointed there purposely to write all that shuld be eyther said or done: All these, with a great sort more of Pryestes, Monks, Channons, Friers, Parish-Clarkes, Belringers, and Pardoners, disdained him with innumerable Mockes and Scornes, rekenyng him to be an horrible Heretik, and a Man acursed afore God.

Anon the Archbyshoppe called for a Masseboke, and caused all those Prelates and Doctours to sweare there vpon, that everye Man shulde saythfullye doo hys Offyce and Dewtye that daye; and that neyther for Fauer nor Feare, Loue nor Hate of the one Partye nor the other, any thing shuld ther be witnessed, spoken, or done, but according to the Trueth, as they wold answere before God and all the World at the day of Dome. Than were the two forseyd Notaries sworne also to wryt and to witnes the Wordes and Proceffe that ther shuld be vttered on both Parties, and to saye their mindes (if they otherwise knewe it) before they shuld regester it; and all thys Diffimulation was but to colour their Mischeues before the Ignoraunt Multytude.

Confydre herin (gentyll Reader) what this wicked Generacion is, and how farre wyde from the just Feare of God; for as they were than, so are they yet to this daye.

After that cam forth before them Sir *Robert Morley* Knight, and Lefetenaunte of the *Tower*, and he brought with him the good Lord *Cobham*, there leauing him among them, as a Lambe among Wolues, to his Examinacion and Answer.

The latter Examinacion of the Lord Cobham, September 25th.

THAN sayd the Archbyshoppe vnto hym, Lord *Cobham*, ye be aduylled (I am sure) of the Woordes and Proceffe which we had vnto you vppon Saturdaye last past in the Chapterhouse of *Pauls*, which Proces were now no long to be rehearsed agayne: I sayd vnto you than, that ye were acursed for your Contumacy and Disobedience to holy Church, thinking that ye shulde with Mekenes haue desired your Absolucion.

Than spake the Lorde *Cobham* with a most cherefull Contenance, and sayd, God sayth by his holye Prophet, *Maledicam benedictionibus vestris*, which is as much as to say, I shall curse, wher as you blesse.

The Archbishop made than as though he had continued forthe hys Tale, and not heard him, saying, Sir, at that tyme I gentilly proferd to haue assoyled you if ye wold haue asked it; and yet I do the same, if ye will humblye desyre it in due Forme and Maner, as holy Church hath ordeined.

Than sayd the Lord *Cobham*, Naye, forsoth, wyll I not, for I neuer yet trespassed against you, and therefore I will not do it; and with that he

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kneled

kneled downe on the Pauement, holding vp hys handes towards Heauen, and sayed, I shryue me here vnto the my eternall lyuyng God, that in my frayle Youth I offended the (Lorde) most greuously in Pryde, Wrath, and Glottony, in Couetousnes and in Lechery. Many Men haue I hurt in mine Anger, and done manye other horryble Synnes, good Lord I aske the Mercy: and therewith wepingly he stode up againe, and sayd with a mighty Voice, Lo, good People, lo, for the breaking of God's Lawe, and his great Commandements, they never yet cursed me; but for theyr owne Lawes and Tradicions most cruelly do they handle both me and other Men: and therefore both they and theyr Lawes, by the Promes of God, shall vtterly be destroyed.

At this the Archbishop and hys Companye were not a lytle blemysht; notwithstanding he toke Stomack vnto him agayn, after certain wordes had in excuse of theyr Tyrannye, and examined the Lorde Cobham of his Christen Beleue.

Whereunto the Lorde Cobham made thys godly Answer. I beleue (faith he) fullye and faythfullye the vnyuersall Lawes of God; I beleue that all is true which is conteyned in the holy sacred Scriptures of the Byble; finally, I beleue all that my Lorde God wolde I shulde beleue.

Than demaunded the Archbishop an Answer of the Byll which he and the Clergy had sent him into the Tower the day afore, in maner of a Determinacion of the Church concerning the iiij. Articles whereof he was accused, specially for the Sacrament of the Alter, how he beleued therin?

Wherunto the Lord Cobham said, That with that Byll he had nothing to do; but this was his Beleue (he said) concerning the Sacrament, That his Lord and Sauer Jesus Christ, sytting at hys last Supper with his most dere Disciples, the Night before he shuld suffer, toke Bread in his hand, and geuing Thanks to his eternall Father, blessed it, brake it, and so gaue vnto them, saying, *Take it vnto ye, and eate therof all; this is my Body which shall be betraid for you, do this here after in my remembrance.* This do I thoroughly beleue (faith he) for this Faith am I taught of the Gospell in *Matthew*, in *Marke*, and in *Luke*, and also in the first Epistle of Saint Paul to the *Corinthians*.

Than asked the Archbyshoppe, If he beleued that it were Breade after the Consecracion or sacramentall Wordes spoken ouer it.

The Lord Cobham sayd, I beleue that in the Sacrament of the Aulter is Christs very Body in fourme of Breade, the same that was born of the Virgin Mary, done on the Crosse, dead, and buried, and that the third day arose from Death to Lyfe, whych now is glorified in Heauen.

Than sayd one of the Doctours of Lawe, After the sacramentall Wordes be vttered, there remaineth no Breade but the onely Body of Christ.

The Lorde Cobham sayd than to one Master *Johan Wighthead*, You said ones vnto me in the Castell of *Coulynge*, that the sacred Host was not Chrystes Body; but I helde than against you, and proued that herein was his Body, though the Seculars and Friars could not therin agree, but helde yche one against other in that Opinyon: these were my Woordes than if ye remembre it.

Than shouted a sort of them together, and cryed with great noyse, We say all that it is Gods Body.

And dyuerse of them asked hym in great Anger,

Whether it were materiall Breade after the Consecracyon or not?

Than loked the Lord Cobham earnestly vppon the Archbishop, and sayde, I beleue surely that it is Chrystes Body in fourme of Breade; Sir, beleue not you thus?

And the Archbishoppe sayd, Yes mary do I.

Than asked him the Doctours, Whether it were onely Christes Body after the Consecration of a Priest, and no Bread or not?

And he sayd vnto them, It is both Christs Body and Bread. I shall proue it as thus: For lyke as Chryft dwelling here vppon the Earth, had in him both Godhede and Manhead, and had the inuisible Godhead couered under that Manhead, which was only visible and seane in him: so in the Sacrament of the Aulter is Christes very Body and very Bread also, as I beleue the Breade is the thyng that we see with our Eyes, the Bodye of Christ (whiche is his Flesh and his Blood) is there vnder hydde, and not seane, but in Fayth.

Than synyled they yche one vppon other, that the People shulde judge hym taken in a greate Herefye; and wyth a great bragge diuerse of them sayde, It is a foule Herefy.

Than asked the Archbishop, What Breade it was? And the Doctours also inquired of hym, whether it were materyall or not?

The Lord Cobham sayd vnto them, the Scriptures maketh no mencion of this woorde materyall; and therefore my Faith hath nothing to do therewith: But thys I say and beleue it, that it is Christes Bodye and Breade; for Chryft sayde in the Syxt of *Johans* Gospell, *Ego sum panis vivus, qui de Celo descendi*; I which came downe from Heauen am the lyuing, and not the dead Bread: therefore I say now again, like as I said afore, as our Lord Jesus Chryft is very God and very Man, so in the most blessed Sacrament of the Aulter, is Chrystes very Body and Breade.

Than seyde they all with one Voyce, It is an Herefye.

One of the Byshoppes stode vp by and by, and said, What, it is an Herefye manifest, to saye that it is Breade after the sacramentall Wordes be ones spoken, but Chrystes Body onely.

The Lord Cobham said, Sainct Paule the Apostle was (I am sure) as wyse as you be now, and more godlye learned. And he called yt Breade, wrytting to the *Corinthians*, *The Breade that we breake*, sayth he, *is it not the partaking of the Body of Christ?* Lo, he calleth it Bread and not Christes Body, but a meane whereby we receyve Christes Body.

Than sayd they agayne, Paule must be otherwise vnderstanded. For it is surely an Herefye to saye that it is Breade after the Consecration, but onely Chrystes Body.

The Lord Cobham asked, howe they could make good that Sentence of theirs?

They answered him thus, For it is against the Determinacion of holy Church.

Than sayde the Archbishop vnto him, Sir *Johan* we sent you a Wrytting concerning the Faith of thys Blessed Sacrament clerely determined by the Church of Rome, our Mother, and by the Holy Doctours.

Than sayd he again vnto him, I knowe none holier than is Christ and his Apostles. And as for that Determinacion, I wote it is none of theirs, for it standeth not with the Scriptures, but

but manifestly against them. If it be the Churches, as ye saye it is, it hath bene hers onely sins she receiued the greates Poyson of worldly Possessions, and not afore.

Than asked they hym, to stoppe hys Mouth therewith, if he beleued not in the Determinacion of the Church?

And he said vnto them, No forsooth, for it is no God. In all oure Crede is in but thryse mentioned concerning Beleue; in God the Father, in God the Sonne, in God the Holy Gooft. The Byrthe, the Death, the Buriall, the Resurrection and Ascensyon of Christe hath none in, for beleue but in hym. Neyther yet hath the Church, the Sacramentes, the Forgyuenes of Synne, the latter Resurrection, nor yet the Lyfe Everlasting, any other in, than in the Holy Gooft.

Than sayd one of the Lawiers, Tush, that was but a Worde of Office. But what is your Beleue concerning Holy Church?

The Lord Cobham answered, My Beleue is (as I sayde afore) that all the Scriptures of the Sacred Bible are true. All that is grounded vpon them, I beleue throughly. For, I know, it is Gods pleasure that I shuld so do. But in youre lordly Lawes and ydell Determinations haue I no beleue. For ye be no part of Christis holy Church, as your open Dedes doth shew; but ye are very Antichrists, obstinately set against his holy Law and Will. The Lawes that ye haue made are nothing to his Glorie; but onely for your vayne Glory and abhominable Couetousnes.

This they said, was an exceeding Herisy (and that in a great fume) not to beleue the Determinacion of Holy Church.

Than the Archbishop asked him, what he thought holy Church?

He said vnto him: My Beleue is, that holy Church is the nombre of them which shall be saued, of whom Christ is the Head. Of this Church one part is in Heauen with Christ, an other in Purgatory (you say) and the third is here in Ærth. This later part standeth in thre degrees, in Knighthode, Priesthode, and the Comunalte, as I saide afore plainly in the Confessyon of my Beleue.

Than saide the Archbishop vnto him, Can ye tell me who is of this Church?

The Lord Cobham answered, Yea truly can I.

Than said Doctour Walden the Prior of the Carmelites, It is doubte vnto you who is thereof. For Christ sayth in *Math. Nolite iudicare*, Presume to judge no Man. If ye here be forbidden the Judgment of your Neighbour or Brother, moche more the Judgment of your Superior.

The Lord Cobham made him thys Answer, Christ sayth also in the same selfe Chapter of *Math. That lyke as the yll Tree is knowne by his yll fruit, so is a false Prophet by his Works, appeare they neuer so glorious*. But that ye left behind ye. And in *Johan* he hath this Text, *Operibus credite*, Beleue you the outward doings. And in another place of *Johan*, *Iustum iudicium iudicate*, When we knowe the thing to be true, we may so judge it, and not offende. For *Dauid* sayth also, *Recte iudicate filii hominum*, Judge rightly always ye Children of Men. And as for your Superiorite, were ye of Christ, ye should be meke Ministers, and no proud Superiours.

Then said Doctour Walden vnto him, Ye make here no difference of Judgements: Ye put no di-

uerfite betwene the yll Judgements, which Chryst hath forbidden, and the good Judgements, which he hath commaunded us to haue. Rash Judgement and right Judgement, al is one with you. So is Judgement presumed, and Judgement of Office. So swift Judges always are the learned Scolers of *Wickleue*. Vnto whome the Lord Cobham thus answered, It is well sophistried of you forsooth; preposterouse are your Judgements euer more. For as the prophet *Esay* saith, *Ye judge yll good, and good yll*. And therefore the same Prophet concludeth, *That your wayes are not Gods wayes, nor Gods wayes your wayes*. And as for that vertuouse Man *Wickleue*, whose Judgment ye so highly disdayne; I shall saye here for my part both before God and Man, that before I knew that dispised Doctrine of his, I neuer absteyned from Synne. But syns I learned therein to feare my Lord God, it hath otherwise, I trust, been with me: so much Grace could I neuer finde in all your gloriouse Instructions.

Than sayde Doctour Walden again yet vnto hym, It were not well wyth me, so meny vertuous Men lyuyng, and so many learned Men teaching, the Scriptures being also so open, and the Examples of Fathers so plenteouse, if I than had no Grace to amende my Life till I hearde the Deuell preache. Saint *Hierom* saith, that he whych seketh suche suspected Masters, shall not fynde the mydday Lyght, but the midday Deuell.

The Lord Cobham said, Your Fathers the olde Pharisees ascrybed Chrystes Miracles to *Belzebub*, and hys Doctrine to the Deuell. And you as their naturall Children haue still the same self Judgment, concerning his faithful Followers. They that rebuke your viciously lyuyng, must nedes be Heretykes; and that must your Doctours proue, whan ye haue no Scriptures to do it. Than said he to them all, To judge you as ye be, we nede no farther go than your owne propre Actes. Where do ye fynd in all Gods Lawe, that ye shuld thus syt in Judgment of any Christen Men, or yet sentens anye other Man vnto Death, as ye do here daily? No ground haue ye in all the Scriptures so lordely to take it vpon ye; but in *Annas* and in *Cayphas*, whiche fate thus vpon Chryst, and vpon his Apostles after his Ascensyon, of them onely haue ye taken it to judge Chrystes Membres as ye do, and neyther of *Peter* nor *Johan*.

Than sayde some of the Lawyers, Yes forsooth, Sir, for Christ judged *Judas*.

The Lord Cobham sayd, No, Christ judged him not, but he judged himselfe; and therupon went forth, and so did hang himselfe. But indede Christ sayd, wo vnto him for that couetous Act of his, as he doth yet styll vnto many of you. For sens the Venime was shed into the Church, ye never folowed Christ: neither yet have ye stand in the Perfection of Gods Lawe.

Then asked him the Archbyshoppe, What he meant by that Venim?

The Lord Cobham sayd, your Possessions and Lordshippes. For than cryed an Aungell in the Ayre (as your owne Chronycles mencioneth) Wo, wo, wo, this Day is Venime shedde into the Church of God. Before that tyme all the Byshopes of Rome were Martirs in a maner. And sens that time we rede of very few: but indede sens that same time one hath put down an other,

one hath poysoned an other, one hath cursed another, one hath slayne an other, and done much more Mischefe besides, as all the Chronicles telleth. And let all Men confydre well thys, That Christ was meke and mercifull; The Pope is proud and a Tiraunt. Christ was pore and forgaue; the Pope is riche, and a most cruell manslayer, as his dayly Actes doth prove him. Rome is the very Nest of Antichryst, and out of the Nest cometh all his Disciples; of whome Prelates, Priestes and Monkes are the Body, and these pylde Friars are the Tayle, whyche couereth his moost fylthy part.

Than sayed the Pryor of the Fryre *Augustines*, Alac, Syr, why do ye say so? That is uncharitably spoken.

And the Lord *Cobham* said, not only is it my Saying; but also the Prophet *Esayes* long afore my tyme. The Prophet, sayth he, which preacheth Lyes, is the Tayle behind. As you Fryers and Monkes be lyke Pharisees diuided in your outward Apparell and Viages, so make ye diuysyon among the Peple. And thus, you with such other are the very naturall Membres of Antychryst.

Than said he vnto them all, Christ faith in his Gospell, *Wo to you Scribes and Pharisees, Hypocrites, for ye close up the Kingdom of Heauen before Men. Neyther entre ye in your selues, nor yet suffre any other that would entre into it. But ye stop up the wayes thereunto with your owne Tradicions, and therefore are ye the Household of Antichrist; ye will not permit Gods veryte to haue Passage, nor yet to be taught of his true Ministers, fearing to haue your Wickedness reprobud. But by such wayne Flatterers as vpholde you in your Mischeues, ye suffer the common Peple most miserably to be seduced.*

Than saide the Archbishop, By oure Lady, Sir there shall no suche preache within my Diocese, (and God will) nor yet in my Jurisdiction, (yf I may knowe yt) as either maketh Diuision, or yet Dissension amonge the poore Commons.

The Lord *Cobham* sayd, Both Chryst and his Apostles were accused of Sedicion making, yet were they most peaceable Men. Both *Daniel* and Christ prophcyed, that such a troublous tyme shulde come, as hath not been yet sens the Worlde beginning. And this Prophecy is partly fulfilled in your Daies and Doinges. For many haue ye slaine already, and more wyl ye slee hereafter, if God fulfil not his Promes. Chryst faith also, if those Days of yours were not shortened, scarcely shuld any Flesh be saued. Therefore loke for it iustly, for God wyll shorten your Dayes. Moreouer, though Priestes and Deacons for preaching of Gods Word, and for ministring the Sacraments, with Prouision for the Pore, be grounded in Gods Lawe, yet haue these other Sectes no maner of ground thereof, so far as I haue red.

Than a Doctour of Lawe, called Master *Johan Kempe*, plucked out of his Bosome a Copie of that Byll which they had afore sent him into the Tower, by the Archbishops Council, thinking thereby to make shorter worke with him. For they were so amased with his Answeres (not al vnlike to them which disputed with *Steven*) that they knew not well howe to occupye the tyme, there Wyttes and Sophistry (as God wolde) so sayled them that Day.

My Lord *Cobham* (sayth this Doctour) we must brefely know your Mynde concerning these iiii. Poyntes here following. The fyrst of them is thys. And then he redde vpon the Byll. The Fayth and the Determinacion of holy Church, touching the Blessed Sacrament of the Alter is this, That after the Sacramentall Wordes be ones spoken by a Pryest in hys Masse, the materyall Bread that was before Bread, is turned into Christes very Bodye. And the materiall Wyne that was before Wyne, is turned into Christes very Bloude. And so there remaineth in the Sacrament of the Aulter from thens forth no materyall Bread nor materyall Wyne, which were there before the Sacramentall Wordes were spoken: Sir, beleue ye not this?

The Lord *Cobham* sayed, This is not my Beleue; but my Faith is (as I sayd to you afore) that in the worshypfull Sacrament of the Aulter, is very Christes Body in fourme of Breade.

Than said the Archbishop, Sir *Johan*, ye must say otherwise.

The Lord *Cobham* saide, Nay, that I shall not, if God be vpon my fyde (as I trust he is) but that there is Christes Body in fourme of Breade, as the comen Beleue is.

Than redde the Doctour againe.

The second Point is this, Holy Church hath determined that euery Christen Man lyuing here bodely vpon Earth, ought to be shryuen to a Priest ordeined by the Church, if he may come to him: Sir, what say ye to this?

The Lord *Cobham* answered and said, A diseased or fore wounded Man had nede to haue a sure wyse Chyrurgion, and a true; knowing both the ground and the danger of the fame. Moost necessary were it therefore, to be fyrst shryuen vnto God, which only knoweth our Diseases, and can helpe us. I deny not in this the going to a Priest, if he be a Man of good Lyfe and Learning: For the Lawes of God are to be required of the Priest, which is godly learned. But if he be an Ydiote, or a Man of vicious lyuyng, that is my Curate, I ought rather to flee from him, than to seke vnto him. For sooner might I catch yll of him that is nought, than any Goodnesse towardes my Soule Helth.

Than redde the Doctour againe.

The third Pointe is this, Christe ordeined Saint *Peter* the Apostle to be his Vicar here in Ærth, whose See is the Church of Rome. And he graunted, that the same Power which he gaue vnto *Peter*, shulde succede to all *Peter's* Successors, which we call now Popes of Rome. By whose speciall Power in Churches partycular he ordeined Prelates, as Archbishops, Parsons, Curates, and other Degrees more; vnto whom Christen Men ought to obeye after the Lawes of the Church of Rome. This is the Determinacion of holy Church: Sir, beleue ye not this?

To this he answered and said, He that foloweth *Peter* moost nighest in pure Lyuing, is next vnto him in Succession; but your lordely Ordre estemeth not greatly the lowly Behauer of pore *Peter*, what foer ye prate of him; neither care you greatlye for the humble Maners of them that succeded him tyll the time of *Siluestre*, which for the more part were Martirs, as I tolde ye afore. Ye can lett all their good Condicions go by you, and not hurt your selues with them at all; all the Worlde knoweth

knoweth thys well inough by you, and yet ye can make boast of *Peter*.

With that one of the other Doctours axed him, Than what do ye say of the Pope?

The Lord Cobham answered, As I said before, he and you together maketh whole the great Antichrist, of whom he is the great Heade; yow Byshops, Priestes, Prelates and Monkes, are the Body, and the begging Friars are the Taile, for they couer the Filthinesse of you both with their subtile Sophistrie: Neuer will I in Conscience obey any of you all, tyll I see you with *Peter* follow Chryst in Conuersation.

Than redde the Doctour againe: The fourth Pointe is this, Holy Church hath determined, that it is meritoriousse to a Chrysten Manne to go on Pilgrimage to holy Places, and there specially to worship holy Relikes and Ymages of Saintes, Apostles, Martirs, Confessours, and all other Saintes besydes, approued by the Church of *Rome*: Sir, what say ye to this?

Whereunto he answered, I owe them no Seruice by any Commaundment of God, and therefore I minde not to seke them for your Covetousnes: It were best ye swept them fayre from Copwebs and Duste, and so layed them up for catching of Scathe; or els to bury them faire in the Ground, as ye do other aged Peple which are Gods Ymages. It is a wonderfull thing, that Saintes now being dead, shuld become so covetous and nedye, and therevpon so bitterly begge, which al their Lyfe time hated all Covetousnesse and Begginge. But this I saye vnto you, and I wold all the World shuld marke it, That with your Shrines and Idolles, your fayned Absolutions and Pardons, ye drawe vnto you the Substaunce, Welthe, and chefe Pleasures of all Christen Realmes.

Why, Syr (said one of the Clerkes) will ye not worship good Ymages?

What Worship shuld I geue vnto them? sayd the Lord Cobham.

Than sayde Fryer *Palmyr* vnto him, Sir, ye well worshyp the Crosse of Christ that he dyed vppon.

Where is it? said the Lord Cobham.

The Fryer sayd, I put ye the Case, Sir, that it were here euen now before you?

The Lord Cobham answered, This is a great wyfe Manne, to put me an ærnest Question of a thing, and yet he his selfe knoweth not where the thing it selfe is: yet ones againe aske I you, what Worshyp I shuld do unto it?

A Clerke said unto him, Such Worship as *Paul* speaketh of, and that is this, *God forbidde that I shuld joye but onely in the Crosse of Jesu Christ*.

Then sayd the Lord Cobham, and sprede his Armes abroad, This is a very Crosse, yea and so moche better than your Crosse of Woode, in that it was created of God; yet will not I leke to haue it worshipped.

Than said the Bishop of *London*, Sir, ye wote wel that he died on a material Crosse.

The Lorde Cobham sayd, Yea, and I wote also that our Saluacion came not in by that materyall Crosse, but alone by him which dyed thervpon. And well I wote that holy Saint *Paul* rejoyced in none other Crosse, but in Christes Passion and Death onely, and in his own Sufferings of like Persecution with him, for the same selfe Verite that he had suffered for afore.

And other Clerke yet asked him, Wyll ye than do none Honour to the holy Crosse?

He answered him, Yes, if he were myne, I wolde lay him vp honestlye, and see vnto him that he shuld take no more Scathes abroad, nor be robbed of his Goodes as he is now a dayes.

Than sayd the Archbishop vnto him, Sir *Johan*, ye haue spoken here many wonderfull Wordes, to the flaundrous Rebuk of the whole Spirituaite, geuing a great yll Example vnto the common fort here, to haue vs in the more disdayne. Moche time haue we spent here about you, and al in vaine so farre as I can see. Well, we must be now at this short Point with you, for the day passeth away; ye muste eyther submit your selfe to the Ordinaunce of holy Church, or else throwe your self (no remedy) into moost depe Daunger; se to it in time, for anon it will be els to late.

The Lorde Cobham said, I knowe not to what purpose I shuld otherwise submitte me; moch more haue you offended me, than euer I offended you, in thus troubling me before thys Multitude.

Than sayd the Archbishop againe vnto him, We ones againe require you to remembre your selfe wel, and to haue none other Opinion in these maters, than the universall Fayth and Beleue of the holy Church of *Rome* is: and so lyke an obedient Child to return againe to the Vnite of your Mother. Se to it, I say in time, for yet ye may have Remedy, where as anon it will be to late.

The Lord Cobham sayd expressely before them all, I will none otherwise beleue in these Pointes than I haue tolde ye here afore, do with me what ye will.

Finally, than the Archbishop sayd, Wel, than I see none other but we must needs do the Lawe, we must procede forth to the Sentence diffinitive, and both judge ye and condempne ye for an Heretike.

And with that the Archbyshoppe stode vp, and redde there a Byll of his Condemnacion, all the Clergye and Layte awaylyng their Bonnettes; and thys was thereof the Tenour:

The diffinitive Sentence of his Condempnacion.

IN Dei Nomine, Amen. Nos Thomas, permissione diuina, Cantuariensis Ecclesie Archiepiscopus, Metropolitanus totius Anglie primas, & Apostolice sedis Legatus, and so forth in barbarous Latin, which we haue here translated into English, for a more playne Vnderstanding to the Reader.

In the Name of God, so be it. We Thomas, by the Sufferaunce of God, Archbishop of *Caunterbury*, Metropolitane and Primate of all *England*, and Legate from the Apostolyke Seate of *Rome*, willesh this to be knowen vnto all Men. In a certein Cause of Heresy, and vpon diuerse Articles, where vpon Sir *John Oldcastle* Knight, and Lord Cobham, after a diligent Inquisition made for the same, was detected, accused, and presented before vs in our last Conuocation of all our Province of *Canterbury*, holden in the Cathedrall Church of *Paules* at *London*; at the lausfull Denouncement and Request of our universall Clergy in the seyd Conuocation, we proceeded against him according to the Lawe (God to witnes) with al the Fauer possible. And folowing Christes Example in all that we might, which willesh not the Death of a Synner, but rather that he be conuerted and lyue, we took vpon vs to correct him, and sought all other ways possible to bring him againe

again to the Churches Vnite, declaring vnto hym what the holie and vniuersall Church of Rome hath sayd, holden, determined, and taught in that behalfe. And though we found him in the Catholike Faith farre wyde and so stifnecked, that he wold not confesse his Erroure, nor purge him selfe, nor yet repent him thereof; we yet pyteing hym of fatherly Compassion, and intierlye desyrynge the Helthe of his Soule, appoynted him a competent tyme of Delyberacion, to se if he wold repent and seke to be reformed; and sens we haue found him worse and worse. Considering therefore that he is incorrygible, we are driuen to the very Extremite of the Lawe, and with great Heuynes of Hart, we now procede to the Publicacyon of the Sentence diffinityue agaynst him.

Than brought he forth an other Byll, conteyning the sayd Sentence, and that he redde also in his banger *Latyne*; *Christi nomine inuocato, ipsumque solum pre oculis habentes, quia per acta mactitata*, and so forth; which I haue also translated into *Englisch*, that Men may understand it.

Christ we take unto witnes, that nothing els we seke in this our whole Enterpryse, but his only Glory. For as much as we haue found by dyuerse Actes done, brought forth and exhibited by sondry Euidences, Sygnes, and Tokens, and also by many most manifest Proues, the said Sir *Johan Oldcastell* Knight, and Lord *Cobham*, not only an evident Heretyke in hys own Parson, but also a mighty Mainteyner of other Heretikes, against the Faith and Relygion of the holy and vniuersal Church of Rome, namely, about the two Sacramentes of the Alter, and of Penance, besides the Popes Power and Pilgrimages: And that he, as the Chylde of Iniquite and Darkenes, hath so hardened his Hart, that he will in no case attend vnto the Voice of hys Pastour: neyther wyll he be alured by strayght Admonishments, nor yet be brought in by fauourable Wordes. The Worthenes of the Cause first wayde on the one side, and his Vnworthynes again considered on the other syde, his Fautes also aggrauated, or made double through his damnable Obstinacy. We being loth that he which is nought shuld be worse, and so with hie Contagiousnes infect the Multitude; by the sage Councell and Assent of the very discret Fathers, our honorable Brethren and Lordes Bishopes here present, *Richard of London*, *Henry of Wynchester*, and *Benit of Bangor*, and of other great, learned, and wyse Men here, both Doctours of Diuinite and of the Lawes, Canon and Ciuyle, Seculars and Religious, with dyuerse other expert Men assisting vs, we sentencyally and dyffinituely, by thys present Writeing, judge, declare, and condemne the seid Sir *Johan Oldcastell* Knyght, and Lord *Cobham*, for a most pernicious and detestable Heretyke, conuicted vpon the same, and refusing vtterly to obey the Church agayne, committing hym here from hens forth as a condemned Heretik to the secular Iurisdiction, Power, and Judgment, to do him ther vpon to death. Furthermore, we excommunicate and denounce acursed not only this Heretike here present, but so many els besydes as shall here after, in fauer of his Errour, eyther receive him or defend him, counsell him or helpe him, or any other way maintein him, as very Fauters, Receiuers, Defenders, Counselers, Ayders, and Maynteyners of condemned Heretiks.

And that these Premysse maye be the better knowen to all faythfull Chrysten Men, we commit yt here vnto your Charges, and gaue you strayght Commaundement thervpon by thys Wrytyng also, that ye cause this Condemnacion and diffinityue Sentence of Excommunycacyon, concerning both thys Heretyke and his Fawters, to be publyshed through oute all Dyoces in Cytyes, Townes, and Vyllages, by your Curates and Parysh Priestes, such time as they shall have most recourse of People, and se that it be done after this sort. As the People are thus gathered deuoutlye together, lett the Curate euery where go into the Pulpit, and there open, declare, and expounde thys Proceff in the Mother Tonge, in an audyble and intelligible Voyce, that it maye well be perfeued of all Men; and that vppon the feare of this Declaracion also, the People maye fall from their yll Opinions conceiued now of late by fediciouse Preachers. More ouer, we will that after we haue deliuered vnto yche one of you Bishoppes (which are here present) a Coppye hereof, that ye cause the same to be written out again into dyuers Coppies, and so to be sent vnto the other Bishoppes and Prelates of our whole Prouince, that they may also see the Contents thereof solempnely published within their Dioces and Cures. Finally we wyll that both you and they signifye again vnto vs seriously and distinctly by your Wrytinges, as the matter is without fayned Colour in euery Point perfourmed, the Daye wheruppon ye receyued thys Proceffe, the tyme when it was of you executed; and after what sort it was done in euerye Condicion, according to the Tenour hereof, that we may knowe it to be iustly the same.

A Coppye of thys Wrytinge sent *Thomas Arundel* the Archbishop of *Caunterbury*, afterward from *Maydeston* the x. Daye of *October*, within the same Yere of oure Lorde M. CCCC. and xiii. unto *Richard Clifford* the Bishop of *London*, which thus beginneth, *Thomas Per-*
missione Diuina, &c.

See this,
P. 50.

The sayde *Richard Clifford* sent an other Coppye thereof, enclosed within hys owne Letters, unto *Robert Mascall*, a Carmelite Fryer, which was than Bishop of *Herford* in *Walis*, writen from *Hadhram* the xxiii. Day of *October*, in the same Yere; and the beginning thereof is this, *Reuerende in Christo Pater, &c.*

The said *Robert Mascall* directed an other Copy thereof from *London* the xxvii. Day of *November* in the same Yere, enclosed in his owne Commission also, vnto his Archdeacons and Deanes in *Herford* and *Shrewisburie*. And this is thereof the beginning, *Venerabilibus & discretis viris, &c.*

In like maner did the other Bishopes within their Dioces.

After that the Archebishop had thus red the Byll of his Condemnation, with most Extremite, before the whole Multitude; the Lord *Cobham* sayd with a most cherefull Countenance, Though ye judge my Body, which is but a wretched thing, yet am I certein and sure, that ye can do no harme to my Soule, no more than could Sathan vpon the Soule of *Job*. He that created that, will of his infinite Mercy and Promess save it, I haue therein no manner of doubt. And as concerning these Articles before reherfed, I will stande to them, euen to the very Death, by the Grace of my eternall God.

And

And therewith he turned him vnto the People, casting hys Handes abroade, and saying with a very loude Voice, Good Christen People, for Gods loue be well ware of these Men: for they will els begyle you, and leade you blindelyng into Hell with themselues. For Christ saith plainly vnto you, *If one blind Man leadeth another, they are lyke both to fall into the Dytche.*

After thys he fell downe there vppon his Knees, and thus before them all prayed for his Enemies, holding vp both his Handes and his Eyes towards Heauen and saying, Lord God eternal, I beseeche the for thy great Mercies sake to forgeue my pursuers, if it be thy blessed will. And than he was delyuered to Syr Robert Morleye, and so ledde forth againe to the *Tower of London*. And thus was there an ende of that Dayes worke.

Whyle the Lord Cobham was thus in the *Tower*, he sent out priuily vnto his Friends; and they at his desire wrote this lytle Bill here following, causing it to be set up in diuerse Quarters of *London*, that the Peple shulde not beleve the Slaunders and Lyes that his Ennemies the Bishops Seruants and Priestes had made on him abroade. And this was the Letter.

For as much as Sir John Oldecastell Knight and Lord Cobham, is vntuly conuicted and imprisoned, falsely reported, and slaundred among the comen People by his Aduersaries, that he shuld otherwise both fele, and speake of the Sacraments of the Church, and specially of the Blessed Sacrament of the Aulter, than was written in the Confession of his Belieue, which was indinted and taken to the Clergy, and so set up in diuerse open places in the Cite of London, Knownen be it here to all the World, that he neuer sens varied in any Poynt therfro; but this is plainly his Beleue, that all the Sacraments of the Church be proffyttable and expedient also to all them that shal be saued, taking them after the intent that Christ and his true Church hath ordayned. Further more he beleued that in the Blessed Sacrament of the Aulter is verely and truly Christes Body, in fourme of Bread.

After thys the Bishops and Pryestes were in moche Obloquie, both of the Nobilite and Comens, partly for that they had so cruelly handled the good Lord Cobham; and partlye againe, because hys Opinion (as they thought at that tyme) was persyght concerning the Sacrament. As they feared thys to grow to further inconuenience towards them both wayes, they drew their Heads together, and at the last consented to use an other Practise, somewhat contrary to that they had done afore.

They caused it by and by to be blowne abroade by their feed Seruants, Fryendes and babeling Sir Jobnes, that the sayde Lord Cobham was becomen a good Man, and had lawlye submitted him selfe in all things vnto Holy Church, vtterly chaunging his Opinion concerning the Sacrament. And thervppon they contrefayted an Abjuration in his Name, that the Peple shuld take no hold of that Opinion by any thing they had hearde of him before, and to stande so in the more Awe of them, considering hym so great a Man, and by them subdued.

This is the Abjuration (say they) of Syr Johan Oldecastell Knight, sometime the Lord Cobham.

An Abjuration counterfayted of the Bishoppes.

IN Dei nomine, Amen. I Johan Oldecastell denounced, detested and conuicted of and vppon

diuerse Articles fauering both heresy and Errour, before the Reuerend Father in Christ, and my good Lord Thomas, by the Permission of God, Lord Archebishop of *Caunterburye*, and my laulful and rightful Judge in that behalfe, expressly graunt and confesse, That as concerning the Ystate and Power of the moost Holy Father the Pope of *Rome*, of his Archbishops, his Bishops, and his other Prelates, the Degrees of the Church, and the Holy Sacramentes of the same, specyally of the Sacramentes of the Aulter, and of Penance, and other Obseruaunces besides of our Mother Holy Church, as Pilgrimages and Pardons; I affyrme (I say) before the said Reuerend Father Archebishop, and els where, that I being yl seduced by diuerse sediciouse Preachers, haue greuously erred and heretically persifted, blasphemously answered, and obstinately rebelled. And therefore I am by the sayd Reuerend Father, before the Reuerend Fathers in Christ also the Bishops of *London*, *Winchestre* and *Bangor*, lawfullye condemned for an Heretyke.

Neuertheles yet, I now remembring my selfe, and coueting by this meane to auoide that temporal Payne, which I am worthy to suffer as an Heretike, at the Assignacion of my most excellent Christen Prince and Liege Lord King Henry the Fift, nowe by the Grace of God most worthy Kyng of both *Englande* and of *France*; minding also to preferre the whollom Determinacyon, Sentence and Doctryne of the Holy and Uniuersal Church of *Rome*, before the vnhollosom Opinions of my self, my Teachers, and my Followers: I frely, willyngly, deliberately, and throughly confesse, graunt, and affyrme the mooste Holye Fathers in Christ, Sainct Peter the Apostle, and his Successours Bishoppes of *Rome*, specially now at thys tyme my moost blessed Lorde Pope Johan, by the Permyssyon of God the xxiii. Pope of that Name, which now holdeth Peter's Seate (and each of them in their Succession) in full Strength and Power, to be Chrystes Vycar in Ærth, and the Head of the Church Milytaunt. And that by the Strength of hys Office (what thogh he be a great Sinner, and afore knowne of God to be damned) he hath full Auctorite and Power to rule and gouerne, bind and lose, saue and destroy, accurse and asfoyle, al other Christen Men.

And agreably styl unto this, I confesse, graunt, and affyrme all other Archbishoppes, Bishoppes, and Prelates, in their Prouinces, Dyocesces, and Parishes (appointed by the seid Pope of *Rome*, to assyst him in his Doinges or Busyness) by his Decrees, Canons, or Vertue of his Office, to haue had in tymes past, to haue now at this tyme, and that they ought to haue in tyme to come, Auctorite and Power to rule and to gouerne, binde and lose, acurse and asfoyle the Subjectes or Peoples of their aforeseid Prouinces, Dyocesces, and Parishes; and that theyr said Subjectes or Peoples ought of right in all things to obey them. Furthermore I confesse, graunt and affyrme, that the sayde Spyrytuall Fathers, as our moost Holy Father the Pope, Archbishops, Bishops and Prelates, haue had, haue now and ought to haue hereafter, Auctorite and Power for the Estate, Order and Gouernaunce of theyr Subjectes or Peoples, to make Lawes, Decrees, Statutes and Constitucions; yea, and to publysh, commaunde and compell theyr said Subjectes and Peples to the Obseruation of them.

More:

Moreouer, I confesse, graunt and affyrme that all these forsayd Lawes, Decrees, Statutes and Constitucions, made, publyshed and commaunded accordyng to the fourme of Spirituall Lawe, all Christen Peple and euery Man in him selfe is straightly bound to obserue, and mekelye to obeye, accordyng to the diuersite of the forsayd Powers. As the Lawes, Statutes, Canons and Constitucions of our most Holy Father the Pope, incorporated in his Decrees, Decretals, Clementynes, Codes, Chartes, Rescriptes, Sextiles and Extrauagauntes the World over all; and as the Prouincial Statutes of Archebishops in their Prouinces, the Sinodall Actes of Byshoppes in theyr Diocefes, and the commendable Rules and Customes of Prelates in their Colleges, and Curates in their Parishes, all Christen People are both bound to obserue, and also moost mekely to obeye. Ouer and besides all this, I *Johan Oldcastle*, vtterly forsakinge and renouncynge all the aforesayd Errours and Heresydes, and all other Errours and Heresydes lyke vnto them, lay my Hande here vppon this Boke, of Holy Euangelye of God, and swear, that I shall neuermore from hens forth hold these forsaide Heresydes, nor yet any other lyke vnto them wetingly. Neyther shall I geue counsell, ayde, helpe nor fauer at any tyme to them that shall holde, teache, affyrme or mainteine the same, as God shall helpe me and these Holy Euangelyes.

And that I shall from hens forth faithfully obeye, and inuolably obserue all the Holy Lawes, Statutes, Canons, and Constitucions of all the Popes of *Rome*, Archebishops, Bishops and Prelates, as are contayned and determined in theyr Holye Decrees, Decretals, Clementines, Codes, Chartes, Rescriptes, Sextyles, Summes Papall, Extrauagantes, Statutes Prouincyall, Actes Synodall, and other ordinary Rules and Customes constituted by them, or that shall chaunce hereafter dyrectly to be determined or made. To these and all such other, wyll I my selfe with al Powr possible apply. Besydes all this, the Penauance which it shal please my said Reuerend Father, the Lorde Archbishop of *Caunterbury*, hereafter to enioyne me for my Sinnes, I will mekely obeye and faithfully fulfill. Finally, all my Seducers and false Teachers, and all other besydes, whom I shall hereafter knowe suspected of Heresyde or Errours, I shall effectuallye present, or cause to be presented, vnto my sayd Reuerend Father Lord Archbishop, or to them which hath his Auctorite, so sone as I can conueniently do it, and see that they be corrected to my vttermoost power. *Amen.*

The cruell Complaint of the Clergy, and Tyrannouse Acte ther vppon made.

NEuer came this Abjuracyon to the Handes of the Lord *Cobham*, neyther was it compyled of them for that purpose; but onely therwyth to bleare the Eyes of the unlearned Multitude. And whan they perceyued that Polycye wolde not helpe, but made more and more against them, than sought they out an other false Practyse. They went vnto the King with a most greuous Complaint, lyke as they did afore in his Fathers tyme, that in euery Quarter of the Realme, by reason of *Wickleues* Opinions, and the said Lord *Cobham*, were wonderful Contentions, Rumours, Tumultes,

Vprouers, Confederations, Diffencions, Diuisions, Differences, Discordes, Harmes, Slaunders, Scismes, Sectes, Sedicions, Perturbacions, Parelles, vnlawfull Assemblies, Variaunce, Strifes, Fyghtinges, rebellious Ruffelinges and dayly Insurrections. The Church (they said) was hated; the Diocefanes were not obeyed; the Ordinaries were not regarded; the Spirituall Offycers, as Suffraganes, Archdeacons, Chauncelers, Doctours, Commissaries, Officals, Deanes, Lawyers, Scribes and Sommeners were euery where despyed; the Lawes and Liberties of Holy Church were troden vndre fote; the Chrysten Fayth was ruynouslye decayed; Gods Seruice was laught to Scorne; the Spiritual Jurisdiction, Auctorite, Honour, Power, Polycy, Lawes, Rytes, Ceremonies, Curses, Keyes, Censures and Canonical Sanctions of the Church were had in an vtter Contempt.

So that all in a maner was come to nought.

And the cause of this was, that the Heretikes and Lollards of *Wickleues* Opinion, were suffered to preach abroad, so boldly to gether Conuenticles vnto them, to kepe Scholes in Mens Houses, to make Bokes, compyle Treatises, and wryte Ballets, to teach priuately in Angles and Corners, as in Wodes, Feldes, Medowes, Pastours, Groues, and in Caues of the Ground. This wolde be (they sayd) a Destruction to the Commonwelth, a Subuersion to the Land, and an utter Decay of the Kinges Estate Ryall, if remedy were not sought in tyme. And this was their Policy, to couple the Kinges Auctorite wyth that they had done in theyr former Councell of Craft, and so to make it thereby the stronger. For they perceiued themselves very farre to weake els to follow against their Ennemies, that they had so largely enterprised. Upon this Complaint, the King immediately called a Parliament at *Leichestre*; it might not in those Daies be holden at *Westmynstre*, for the great fauer that the Lord *Cobham* had both in *London*, and abought the Cyte. Yet were they deceiued; that they doubted most, lyghted there sonest upon them.

A Byll was put in there again by the Commons, against their continuall wasting of the Temporalities, lyke as it had bene twise afore by procurement of the said Lord *Cobham*, both in the Daies of *Richard* the Second, *Anno* 1365. and also of King *Henry* the iiiii. *Anno Domini* 1410. wher vpon was growne all this Malice afore specified; but this was than workemanly defeated by an other proper practise of theyrs.

They put the King in remembraunce to claime his Right in *Fraunce*, and graunted him therevnto a Dime, with other great Subsidy of Mony. Thus were Christes People betrayed euery way, and their Liues bought and sold by these most cruell Theues. For in the said Parliament, the King made this most blasphemouse and cruell Acte, to be as a Law for euer, That whatsoever they were that should rede the Scriptures in the Mother Tong (which was than called *Wickleue's* Larning) they shuld forfeit Land, Catel, Body, Lif and Godes from theyr Heyres for euer, and so be condemned for Heretykes to God, Ennemies to the Crowne, and most errant Trayters to the Lande.

Besides this, it was inacted that neuer a Sanctuary, nor priuileged Ground within the Realme, shulde holde them, though they were still permitted both to Theues and Murtherers. And if in case they wold not gyue ouer, or were after their

their Pardon relapsed, they shulde suffer Death in two manner of kindes; That is, they shulde first be hanged for Treason against the King, and then be burned for Heresy against God, and yet neither of both committed.

The beginning of that Act is this, *Pro eo quod magni rumores, &c.* Anon after was it proclaymed throughout the Reame, and than had the Bishops, Priests, Monkes and Fryers, a Worlde somewhat to theyr Mindes. For than were many taken in diuerse Quarters, and suffered most cruel Death. And many fled out of the Lande into *Germany, Bohem, Fraunce, Spain, Portingale*, and into the Weld of *Scotland, Wales* and *Ireland*, working ther many Maruels against their false Kingdom, to long to wryte. In the *Christmas* followinge was Syr Roger Aston Knight, Master Johan Browne Esquire, Sir Johan Beuerlaye, a learned Preacher, and dyuerse other more attached for quarrelling with certeine Priestes, and so imprisoned. For all Men at that time could not paciently suffre theyr blasphemouse Braggies.

The Complaint was made vnto the King of them, that they had made a greate Assemble in Sainct Gyles Felde at *London*, purposing the Destruction of the Land, and the Subuercyon of the Comonwelth. As the King was thus informed, he erected a Banner (saith *Walden*) with a Crosse thereupon, as the Pope doth comonly by his Legate, whan he pretendeth to warre against the *Turke*; and with a great nombre of Men entered the same Felde, where as he found no such Company, yet was the Complaint judged true, because the Byshoppes had spoken it at the Information of their Priestes. All this hath *Thomas Walden* in diuerse of his Workes, which was at the same tyme a Whight or Carmelite Frire, and the King's Confessor; and partly it is touched both by *Robert Fabian*, and by *Polidorus Virgilius* in their *English* Chronicles: but not in all pointes rightly. In the meane * season Sir John Oldecastell the Lord Cobham, escaped out of the Towr of *London* in the Night, and so fledde into *Wales*, whereas he continued more than iiii. Years after †.

Some Wryters haue thought this escape to come by the said Syr Roger Aston, and other Gentlemen, in dispiasure of the Priestes, and that to be the chiefe occasion of their Deathes, which might well be; but *Walden* doth not so vtter it, which reigned the felie same time. In *January* next following was the aforementioned Syr Roger Aston, Master Johan Browne, Syr Johan Beuerlaye and xxxvi. more (of whom the more part were Gentylnen of Byrthe) conuicted of Heresy by the Byshops, and condemned of Treason by the Temporalte, and according to the Acte, were fyrste hanged and than brent in the sayd Saint Gyles || Feld. In the same Yeare also was one Johan Claydon a Skinner, and one Richard Turmin a Baker, both hanged and brent in *Smythilde* by that vertuous Act; besides that was done in al other Quarters of *England*, which was no small number, if it were now thoroughly known.

[In the mean while the Lord Cobham, who shifted from Place to Place to escape the Hands of them who he knew

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would be glad to lay hold on him, had convey'd himself in secret wife into an Husbandman's House not far from *St. Albans*, within the Precinct of a Lordship belonging to the Abbot of that Town: the Abbot's Servants getting Knowledge hereof, came thither by Night, but they missed their Purpose, for he was gone; but they caught diuers of his Men, whom they carried streight to Prison. The Lord Cobham herewith was fore dismay'd for that some of them, who were taken, were such as he trusted most, being of Counsel in all his Deuices.

In the same Place were found Books written in *English*, and some of those Books in time past had been trimly gilt, limned and beautified with Images, the Heads whereof had been scrap'd off; and in the Litany they had blotted out the Name of our Lady and other Saints, till they came to the Verse *Parce nobis Domine*. Diuers Writings were found there also in derogation of such Honour as then was thought due to our Lady.

The Abbot of *St. Albans* sent the Book so disfigur'd with Scrapings and Blottings out, with other such Writings as there were found, unto the King, who sent the Book again unto the Archbishop, to show the same in his Sermons at *Paul's-Cross* in *London*, to the end that the Citizens and other People of the Realm might understand the Purposes of those that were called *Lollards*, to bring them farther into discredit with the People.]

The latter Enprisoning and Death of the Lord Cobham.

IN the Yeare of oure Lorde a M.CCCC. and xv. dyed *Thomas Arundell*, which had bene Archbishop of *Caunterbury* more than xxxii. Yeares, to the great Destruction of Chrysten Be-leue. Yet died not his prodigiouse Tyrannye with hym; but succeeded with his Office in *Henry Chicheley*, and in a great sort more of the spyghtful Spirituallie. For their Malice was not yet fared against the good Lord Cobham. But they confedered with the Lord *Porreys* (which was at that time a great Gouvernour in *Wales*) feeding him with lordly Giftes and Promises, to accomplysh their Desyre. He at the last, thus monied with *Judas*, and outwardly pretending him great Amity and Fauor, moost cowardlye and wretchedly toke hym, and in conclusion so sent him up to *London*, whereas he remayned a Moneth or two imprysoned again in the *Tower*. Upon the 14 Dec. he was brought before the Parliament, and after long Proceffe they condemned him againe of Heresy and Treason by force of the afore named Act †. He rendering Thanks unto God that he had so appointed him to suffre for his Names sake.

And upon the Day appointed he was brought out of the *Tower*, with his Armes bound behynd him, hauing a very cherful Countenance. Than was he layd vpon an Hurdle, as though he had been a moost haynouse Traittoure to the Crowne, and so drawn forth into Sainct Gyles Felde, where as they had set vp a newe paire of Galowes. As he was comen to the Place of Execution,

* On the Feast of St. Simon and Jude.

† See the King's Proclamation, with a Promise of Reward for apprehending him, 11 Jan. 1414. Rym. Fæd. Vol. 9. p. 89.

|| From hence, as some suppose, call'd Ty-burn.

‡ It is pretended by some Historians, that he had been indicted and out-law'd for High Treason, and was executed upon this Out-lawry: The Indictment it self is extant [See the Appendix] but it appears by many Marks to be a Forgery [for which see Fox's Acts and Mon. Vol. 1. p. 655.] the Sentence is self plainly shewing he was executed in pursuance of the late Act.

Execution, and was taken from the Hardle, he fell down deuoughtly upon his Knees, desyringe Almightye God to forgeue his Ennemies. Than stode he up and beheld the Multitude, exhorting them in most godly maner to folow the Laws of God, written in the Scriptures; and in any wyse to beware of such Teachers as they se contrary to Christ in their Conuersacion and Liuing, with many other special Councels †. [When at his last Hours he was urg'd to confesse himself to a Priest, whose Service was offer'd for that Purpose, he not only with a noble Scorn rejected him, but openly protested, *That if the Apostles Peter and Paul were there, he would not confesse to them, since one infinitely greater, God himself, was present; and as from him only he implor'd and hoped for Pardon, so to him alone he would make Confession of his Sins.* The cruel Preparations of his Torments could make no Impression of Terror upon him, nor shock his

illustrious Constancy: but in him were seen united the fearless Spirit of a Soldier, and the holy Resignation of a true Christian.] Than he was hanged vp ther by the middle in Chaynes of Yron, and so consumed alyue in the Fyre, praising the Name of God, so long as his Life lasted. In the ende, he commended his Soule into the Handes of God, and so departed hens most Christenly, his Body resolu'd to Athes.

And this was done in the Yeaere of our Lord M.CCCC. and xviii. which was the sixt Yere of the Reygne of King *Henry* the Fift, the People ther present shewyng great Dolour. How the Priestes that time fared, blasphemed, and cursed, requiring the People not to pray for hym, but to judge him dampned in Hell, for that he departed not in the Obedience of their Pope; it were too long to wryte.

*Archiepiscopus Cantuariensis contra
Dominum Oldcastle, 1 Hen. 5. A. D.
1413.*

*The Archbishop of Canterbury against
the Lord Oldcastle, 1 Hen. 5. in
the Year 1413.*

[*Extracted from the Records at Lambeth, and may
be found in Rymers's Fœdera, Tom. 9. p. 61.*]

‘**T**homas, Permissione Divina Cantuariensis
‘*Archiepiscopus*, totius Angliæ Primas
‘ & Apostolicæ Sedis Legatus, venerabili Fratri
‘ nostro, Domino *Richardo*, Dei Gratia, *Lond-*
‘ *nenſi* Episcopo, salutem & fraternam in Domino
‘ Charitatem.

‘ Nuper coram Nobis, in Convocatione Præla-
‘ torum & Cleri nostræ Cantuariensis Provinciæ in
‘ Ecclesia nostra Sancti Pauli ultimo celebrata cum
‘ iisdem Prælatiſ & Clero, super Unione & Re-
‘ formatione Ecclesiæ Anglicanæ tractantibus, in-
‘ ter cetera, per nos, & eosdem Prælatos & Cle-
‘ rum conclusum extitit, quasi pro impossibili,
‘ scissuram Tunicæ Domini inconsutilis reformare,
‘ nisi prius certi magnates Regni, Autores, Fau-
‘ tores, Protectores, Defensores, & Receptores
‘ horum Hæreticorum qui dicuntur Lollardi, essent
‘ rigide reprehensi, ac, si opus fuerit, per Cen-
‘ suras Ecclesiæ, una cum invocatione Brachii
‘ Secularis, a suis Deviis revocati:

‘ Et facta subsequenter, in eadem Convoca-
‘ tione, inter Procuratores Cleri & alios, qui, de
‘ singulis Diocesibus ejusdem nostræ Provinciæ,
‘ ibidem in magno numero interfuerunt, inquisi-
‘ tione diligenti, repertum fuit inter eosdem, ac
‘ nobis detectum & delatum, quod Dominus *Jo-*
‘ *hannes Oldcastellus* Miles, fuerat & est principalis
‘ Receptator, Fautor, Protector & Defensor eo-
‘ rumdem.

‘ Ac quod præsentium in Diocesibus *Londi-*
‘ *nenſi*, *Roffensi*, & *Herfordensi*, ipsos Lollardos, ab
‘ Ordinariis sive Diocesanis locorum minime li-
‘ centiatis, contra Constitutionem Provinciale
‘ inde factam, ad prædicandum transmisit, ac eo-
‘ rum prædicationibus nefariis interfuit, & Con-
‘ tradictores, si quos repererat, Minis & Terro-
‘ ribus, ac Gladii Secularis potentia, compeſcuit:

‘ Afferens & affirmans, inter cætera, quod nos,
‘ & Confratres nostri, Suffraganei nostræ Provin-
‘ ciæ,

Thomas, by Divine Permission, Archbishop
of *Canterbury*, Primate of all *England*, and
Legate of the Apostolick See, to our venerable
Brother *Richard*, by the Grace of God, Bi-
shop of *London*, Health and brotherly Love in the
Lord.

Whereas in our late Consultation, concerning
the Unity and Reformation of the Church of *Eng-*
land, in Convocation of the Prelates and Clergy
of our Province of *Canterbury*, last held in our
Church of *St. Paul's*, with the said Prelates and
Clergy; among other things it was concluded by
us, and the said Prelates and Clergy, next to im-
possible, to repair the rending of our Lord's
seamless Coat, unless first of all certain great Men
of the Kingdom, the Authors, Abettors, Protec-
tors, Defenders and Entertainers of those Here-
ticks, who are called Lollards, were severely re-
prehended, and reclaim'd from their Errors, if
other means fail'd, by the Censure of the Church,
assisted by the Secular Arm:

And accordingly, upon the most diligent En-
quiry in the said Convocation, by the Proxies of
the Clergy, and others there assembled in great
Numbers from each Diocess of our said Province,
it was found by them, and made known and pre-
sented to us, that Sir *John Oldcastle* Knight, was
and is the principal Receiver, Abettor, Patron
and Defender of the same.

And that he sent the Lollards to preach about
in the Diocesſes of *London*, *Rocheſter*, and *Hereford*,
without any Licences from the Ordinaries or Dio-
cesans of the Places, contrary to the Synodical
Constitution made for that purpose; and that he
was present at the wicked Preachings of the same,
and silenced all Opposers he met with, with
Threatnings and Terrors, and the power of the
Secular Sword:

Asserting and affirming, amongst other things,
that we and our Brethren the Suffragans of our Pro-
vince,

† Stow's Annals, 355 b; Holin. Chro. 561 b. 1 Hall's Chro. 58 b.

ciæ, non habuimus nec habemus Potestatem aliquam hujusmodi Constitutionem faciendi.

Aliterque sensit & sentit, ac dogmatizat & docet de Sacramentis Altaris & Pœnitentiæ, Pereginationibus, & Adorationibus Imaginum, & Clavibus, quam Romana & Universalis Ecclesia docet & affirmat.

Quare, ex parte eorundem Prælatorum & Cleri, tunc fuimus requisiti, ut de & supra Præmissis, contra eundem Dominum *Oldcastellum* procedere dignaremur.

Nos tamen, ob reverentiam Domini nostri Regis (cujus & tunc idem Dominus *Johannes* Familiaris extiterat) ac ob honorem nihilo minus Ordinis Militaris, una cum omnibus Confratribus & Suffraganeis nostris dictæ nostræ Provinciæ, tunc præsentibus, & magna parte Cleri ejusdem nostræ Provinciæ, ad præsentiam dicti Domini nostri Regis, tunc in Manerio suo de *Kennington* existentis, personaliter accidentes, contraque eundem Dominum *Johannem* querelam deponentes, defectus ejusdem Domini *Johannes* partim recitavimus.

Sed ad Rogatum ipsius Domini nostri Regis, ipsum Dominum *Johannem* sine dedecore ad unitatem Ecclesiæ reducere cupientes, omnem Executionem præmissorum ad tempus magnum distulimus.

Sed demum quia præfatus Dominus noster Rex circa Reductionem ejusdem, post magnos labores, non profecit, prout idem Dominus noster Rex nobis, tam verbo, quam in scriptis, referre dignabatur; nos subsequenter eundem Dominum *Johannem*, de & super Præmissis personaliter responsurum coram nobis, ad certum terminum effluxum, decrevimus evocandum, ac Nuncium nostrum cum his nostris Citationibus ad dictum Dominum *Johannem* transmisimus, tunc in Castro suo de *Couulyng* degentem.

Cui nuncio nostro dedimus in mandatis, ut Castrum dicti Domini *Johannis* nullo modo ingrederetur nisi licentiatus, sed per medium cujusdam *Johannis Botteleri*, Oltarii Cameræ dicti Domini nostri Regis, ipsum Dominum *Johannem* requireret quatenus aut daret dicto Nuncio nostro Licentiam ingrediendi ut citaret eundem, aut saltem extra Castrum suum prædictum faceret sui Copiam, ut sic Citationem posset apprehendi.

Qui tamen Dominus *Johannes* dicto *Johanni Bottelero*, ex parte Domini nostri Regis sibi Præmissa exponenti publice respondit, quod nullo modo citari voluit, nec Citationem ipsius aliquammodo tolerare.

Nosque præterea, de præmissis nobis facta fide, ulterius legitime procedentes, facta nobis primitus fideli Relatione quod idem Dominus *Johannes* personali Citationem apprehendi non potuit, decrevimus eundem citandum per Edictum, in valvis Ecclesiæ Cathedralis *Roffensis*, sibi vicinæ, & non nisi modicum ultra tria Milia *Anglicana* a dicto Castro de *Couulyng* distantis, publice affingendum: prout eum sic citari fecimus, & hujusmodi Edictum nostrum in valvis dictæ Ecclesiæ publice & patenter affigi, ad comparandum coram nobis secundo Die *Septembris* jam præteriti de & super præmissis, atque nihilo minus certis aliis Hæreticam pravitatem concernentibus, personaliter responsurum.

Quo Die adveniente, nobis, in Capella majori, infra Castrum de *Ledys*, nostræ Diocesis, Vol. I. quod

vince, never had, nor have Authority to make any Constitution of this kind.

And concerning the Sacraments of the Altar and Penance, Pilgrimages, Adorations of Images, and the Power of the Keys, he has believed, and does believe, and dogmatizes and teaches otherwise than the *Roman* and Universal Church holds and affirms.

Wherefore the said Prelates and Clergy then besought us, that we would be pleased to proceed against the said Sir *John Oldcastle*, for and upon the Premises.

But in reverence to our Lord the King, (with whom the said Sir *John* was a great Favourite) and as much out of respect to the Order of Knighthood, with all our Brethren and Suffragans of our said Province, and a great part of the Clergy of our said Province, we waited on our said Lord the King, at his Palace at *Kennington*; and making complaint against the said Sir *John*, we in some measure represented the Errors of the said Sir *John*.

But at the Instance of our Lord the King, and our own Desire to reduce the said Sir *John* to the Unity of the Church, without bringing him to open Shame, we deferr'd for a long time all execution of the Premises.

But forasmuch as we had it from the King's own Mouth, and under his Hand, that all his pains to reclaim this Man had proved vain and ineffectual; we thereupon decreed to summon the said Sir *John* to appear before us at a certain time now past, to answer for and concerning the Premises; and we sent our Officer with these our Citations to the said Sir *John*, then dwelling at his Castle of *Cowling*.

To which our Officer we gave in Command, that he should not in any wise enter the Castle of the said Sir *John* without leave; but by the Mediation of one *John Buttlr*, Door-Keeper to the Privy-Chamber of our Lord the King, he shou'd apply to Sir *John* himself, for his leave to enter his Castle, in order to give him a Citation; or at least that he wou'd appear without the Castle, and suffer the Citation to be serv'd upon him.

But Sir *John* publicly answered the said *John Buttlr*, tho' in the Premises he had made use of the King's Name, that he wou'd by no means be cited, nor suffer any manner of way such Citation to be served upon him.

Upon this faithful Account given us, that it was impossible to serve the said Sir *John* personally with a Citation; and we being fully persuaded thereof, decreed that he should be cited by an Edict, which should be publicly fix'd on the great Doors of the Cathedral Church in *Rocheſter*, which is but three *English* Miles from his said Castle of *Cowling*. Accordingly we caus'd him to be cited, and our Edict to be fix'd in publick and open View on the great Doors of the said Church, charging him to appear before us on the second Day of *September* now past, personally to answer to and for the Premises, and other Allegations of Heretical Pravity against him.

On the Day appointed we held a Court in the greater Chapel in our Castle of *Leedes*, in

quod tunc inhabitabamus, & ubi tunc residebamus cum Curia nostra, pro Tribunali sedentibus, facta fide quæ requiritur, in præmissis, ac audita per nos & recepta relatione, juxta assertionem, & prout communiter prædicatur in partibus ubi dictus Dominus *Johannes* se incastellat & fortificat in Castro suo prædicto, ac Opinioniones suas defendit, Claves Ecclesiæ ac Potestatem Archiepiscopalem multipliciter contemnendo :

Nos eundem Dominum *Johannem*, sicut præmittitur, citatum publice & alta Voce præconizari fecimus, ac sic præconizatum, diutius expectatum, & nullo modo comparentem, reputavimus, prout erat, meritò contumacem, & in poenam contumaciæ suæ hujusmodi ipsum in Scriptis excommunicavimus tunc ibidem.

Et quia ex serie Præmissorum, & aliis perspicuis Indiciis, & factorum Evidentiis, concepimus quod idem Dominus *Johannes* in defensionem hujusmodi Erroris sui, contra Claves Ecclesiæ se fortificat & incastellat, ut præmittitur (quorum prætextu vehemens suspicio Hæresis atque Schismatis infurgit) contra eundem decrevimus ipsum Dominum *Johannem* iteratò personaliter, si apprehendi poterit, alioquin per Edictum, ut prius, citandum, ut compareat coram nobis Die Sabbati, proximo post Festum Sancti Matthæi Apostoli & Evangelistæ, proxime futuro, causam rationabilem, si quam habeat, quare contra eundem ad graviora procedi non debeat tanquam publicum Hæreticum, Schismaticum, ac Hostem universalis Ecclesiæ, quare etiam pro tali pronunciari non debeat, ac auxilium Brachii Secularis contra eundem solemniter invocari; personaliter propositurum, ulteriusque responsurum, facturum, & recepturum, circa omnia & singula Præmissa, quod Justitia suadebit.

Quo termino (videlicet, Die Sabbati proximo post Festum Sancti Matthæi, prædicto 23. die ejusdem Septembris adveniente) coram nobis, in Domino Capitulari Ecclesiæ Sancti Pauli Londinensis, pro Tribunali sedentibus, assidentibusque nobis universalibus Confratribus nostris, Dominis *Riccardo Londinensi*, & *Henrico Wintoniensi*, Dei gratia Episcopis, comparuit personaliter Dominus *Robertus de Morley* Miles, Custos Turris Londinensis, secumque præfatum Dominum *Johannem Oldcastellum* Militem adduxit, & coram nobis collocavit :

Nam parum ante per Regios Ministros comprehensus est, & in Turri clausus.

Cui quidem Domino *Johanni Oldcastello* sic personaliter præsentī, nos totam seriem facti, prout in Actis diei præcedentis continetur, bonis & modestis terminis, ac modo multum suavi recitavimus; videlicet,

Quomodo idem Dominus *Johannes*, de & super Articulis superius recitatis, in Convocatione Prælatorum & Cleri dictæ nostræ Provinciæ, ut præmittitur, detectus & delatus extiterat.

Quomodoque citatus & propter suam contumaciam excommunicatus.

Et, postquam ad hoc devenit fuerat, nos obtulimus paratos ad absolvendum eundem.

Ipse tamen Dominus *Johannes*, ad hujusmodi oblationem non advertens, dixit quod libenter recitaret nobis & dictis Confratribus meis, Fidem suam quam tenet & affirmat.

Sicque, Licentia petita & obtenta, extraxit de Sinu suo quandam Schedulam indentatam, & contenta

our Diocesis, in which we then lived and resided with our Court; and after the necessary proof of the Premises, and we had heard and receiv'd the Relation, as it is commonly reported in the Parts where the said Sir *John* immures and fortifies himself in his said Castle, and defends his Opinions, by contemning the Keys of the Church, and impugning the Archiepiscopal Authority :

We caused Proclamation aloud and in open Court, to be made for the said Sir *John* to appear; and after Proclamation made, and we had long waited, and he not appearing, we justly pronounced him, as he was, Contumacious; and then and there return'd him excommunicated, in Punishment for so high a Contumacy.

And because from the Series of the Premises, and other plain Demonstrations and Evidences of Fact, we apprehend that the said Sir *John* strengthens and fortifies himself in defence of his Errours against the Authority of the Church, as is premised, (which gives great handle to suspect him of Heresy and Schism) we decreed against the said Sir *John*, that he shou'd be a second time cited personally, if he could be found; if not, by Edict, as before, to appear before us on the Saturday next after the Feast of the Apostle and Evangelist St. *Matthew* next ensuing, to shew, if he has reasonable Cause, why he ought not to be proceeded against as a publick Heretick, Schismatick, and an Enemy of the Catholick Church, and why he ought not to be adjudg'd as such, and the Assistance of the Secular Arm be solemnly call'd for against him; personally to propound, and further to answer, do, and receive concerning all and singular the Premises, what in Justice is meet.

At which time (namely, the Saturday next after the Feast of St. *Matthew*, being the 23d day of *September*) as we held our Court in the Chapter-house of St. *Pauls* in *London*, with our Brethren, *Richard* Lord Bishop of *London*, and *Henry* of *Winchester* in Sessions with us, Sir *Robert Merley* Knight and Lieutenant of the *Tower* of *London*, appear'd in Court with the said Sir *John Oldcastle* Knight, and deliver'd him to us :

For he had been arrested a little before by the King's Order, and confin'd to the *Tower*.

To the said Sir *John Oldcastle* thus personally appearing, we repeated, in soft and moderate Terms, and in a manner very courteous and obliging, all our Proceedings against him, as they stand upon the Journal of the former Day; namely,

How he the said Sir *John* stood presented and charg'd by and upon the Articles above-mention'd, in Convocation of the Prelates and Clergy of our said Province.

And how he had been cited and excommunicated for his Contumacy.

And, tho' by his Default it was come to this, we notwithstanding shew'd our selves ready and willing to absolve him.

But he the said Sir *John* taking no notice of this our Overture, answer'd, He would gladly make Profession, before us and my said Brethren, of the Faith which he believ'd and maintain'd.

For which we giving leave, as he desir'd, he drew out of his Bosom an indented Writing, and there

‘ contenta in eadem publice ibidem perlegit, eandemque Schedulam nobis realiter tradidit & Articulorum, super quibus extitit examinatus quæ est talis.

‘ *Ego Johannes Oldcastellus, Miles, Dominus de Cobham, cupio omnibus innotescere Christianis, testemque adhiberi Deum, nunquam me aliter induxisse Animum, nec inducturum, ducente Domino, quam ut firma indubitataque fide omnia illius Sacramenta amplectar, quæcumque ab ipso ad usum suæ Ecclesiæ sunt tradita :*

‘ *Præterea, ut in quatuor his Generibus Fidei meæ apertius exponam Sententiam,*

‘ *Principio, Credo reverendum hoc Altaris Sacramentum Christi existere Corpus sub Panis specie, id ipsum inquam quod a Maria natum Matre, pro nobis crucifixum, mortuum ac sepultum, sit demum post triduanam mortem redivivum, ac subductum ad dextram immortalis Patris, nunc cum ipso triumphat sempiternæ Gloriæ particeps.*

‘ *Tum de Pœnitentiæ Sacramento ita habet Fides mea, ut credam apprime necessariam quibuscunque ad salutem anhelantibus, peccatricis Vitæ correctionem, talemque subeundam prioris Vitæ Pœnitentiam, ex vera Confessione, indissimulata Contritione, legitimæque Satisfactione, qualem divina nobis præscribunt Literæ alioqui nullam futuram salutis spem.*

‘ *Tertio de Imaginibus hunc in modum sentio, ut non meræ Fidei esse illas existimem, sed, post Christi in Orbem invec̃tam fidem, permittente Ecclesia, in usum irrepsisse, ut Laicis ac Ignaris subserviant pro Calendario, quarum admonitu tum Christi tum Sanctorum aliorum Martyria ac pia exempla facilius in memoriæ Oculis traducantur : Cæterum, si quis hac Representatione secus abutatur, ut his ipsis Sanctorum Simulacris cultum eum præstet qui debetur iis quos representant, imo huic potius cui Divi ipsi universum honorem debeant, hanc in eis collocantes fiduciam quæ in Deum unice fit transferenda, sive ita erga mutas has Imagines affecti, ut his aliqua parte sint affixi, aut huic quam illi addictiores, mea Sententia nihil abscedant ab Idololatria, criminaliter peccantes in Deum omnis honoris autorem.*

‘ *Postremo, sic mihi persuadeo, nullum in terris inquilinum esse, quin sive ad vitam sive ad supplicium peregrinetur : Quisquis ita vitam instituerit ut in Præcepta Dei, quæ aut nescit aut doceri non vult, impingat, huic frustra salutem expectari, etiamsi Orbis omnes angulos expatiatur, contraque, qui illius observat Præcepta iusta, haud posse interire, quamvis nusquam ille in toto vita perambulet Peregrinationis ergo, neque Romam, neque Cantuariam, neque Compostellam, sive quocunque perambulare solet vulgus hominum.*

‘ *Qua Scheda, cum istis Articulis contentis, in eadem, ut præfertur, per dictum Dominum Johannem perlecta, nos cum Confratribus nostris prædictis, aliisque pluribus Doctoribus & Peritis, super his communicavimus, ac demum, de consilio & assensu eorundem, præfato Domino Johanni Oldcastello duximus tunc ibidem.*

there openly read the Contents of it, and afterwards with his own hand presented to us the said Writing, touching the Articles whereof he was accus'd; of which this is the Copy.

I *John Oldcastle* Knight, and *Lord Cobham*, desire it may be known to all Christians, and I call God to witness, that I never have entertain'd, and, by the help of God, never will entertain any Persuasion, which is not consistent with a firm and undoubting belief of all the Sacraments, which were ordain'd and appointed by Christ himself for the use of his Church.

Moreover, that my Faith, as to the four Points alledg'd against me, might be more clearly understood, I declare,

First of all, That I believe that in the adorable Sacrament of the Altar, the very Body of Christ does exist, under the Species of Bread: the same Body, I mean, that was born of his Mother *Mary*, that was crucify'd for us, that dy'd and was bury'd, and rose again the third day from the Dead, and was exalted to the right hand of his eternal Father, where he now sits Partaker with him in his Glory.

Then for the Sacrament of Penance, I believe it is chiefly necessary for all that desire to be sav'd, to amend their wicked Lives, and undergo such a Penance for the sinful Part of them, as by a true Confession, an undissembled Contrition, and lawful Satisfaction, manifests it self to be agreeable to the Holy Scriptures, without which none can hope for Salvation.

Thirdly, With respect to Images, I hold that they are no Ingredient in the Christian Belief, but, long after the Publication of the Faith of Christ, were introduc'd into the World, by the permission of the Church, to be as a Calendar to the Laity and the Ignorant, that by visible Representations of the Sufferings of Christ, and of the pious Lives and Martyrdoms of the Saints, the remembrance of those things might the more easily be impress'd on their Minds: but if one so abuses this Representation, as to give that Worship to these Images of the Saints, which is due to the Saints themselves, or rather to him to whom the Saints themselves owe all Honour and Adoration, and putteth his Confidence in them, which is only to be plac'd in God, or is so affected towards these senseless Images, as to be more devoted to them than God, in my Opinion he is guilty of Idolatry, and wickedly sins against God, the only Object of Worship.

Lastly, I am fully persuaded, that there is no abiding place upon Earth, but that we are all Pilgrims either on the way to Happiness, or tending to Misery: He that either knows not, or will not be instructed in, nor live in the Practice of the Commandments of God, it is in vain for him to expect Salvation, tho' he went on Pilgrimage into all Quarters of the World: And on the other side, he that lives in Obedience to the Holy Commandments of God, will undoubtedly be sav'd, tho' he never went a step on Pilgrimage in his Life, either to *Rome*, or *Canterbury*, or *Compostell*, or to any other Places.

Sir *John* having thus read his Writing, we with our Brethren the Bishops abovemention'd, and divers other Doctors and learned Men, held a Consultation about the Contents of it: and by the Advice and Agreement of the same, we thus apply'd to the said Sir *John Oldcastle*, at the same Time and Place.

‘ Ecce Domine *Johannes* ! in hac Scheda plura bona continentur & fatis Catholica ; sed vos habetis terminum istum ad respondendum super aliis, Errores & Hæreses sapientibus, quibus per contenta in hac Scheda non est plene responsum, & propterea vos oportet ad eadem & fidem vestram, atque assertiones, in eadem Scheda expressas, circa eadem plenius declarare, (videlicet)

‘ An teneatis, credatis, & affirmetis quod in Sacramento Altaris, post Consecrationem rite factam, remaneat Panis materialis vel non ?

‘ Item, an teneatis, credatis, & affirmetis, quod in Sacramento Pœnitentiæ, necessarium fuerit, quod habens copiam Sacerdotis, confiteatur de peccatis suis Presbytero, per Ecclesiam ordinato ?

‘ Quibus sic datis, inter multa & varia, per dictum *Johannem Oldcastellum* dicta, respondit expressè,

‘ *Se nolle prædicta aliter declarare, nec aliter quam in dicta Scheda continetur, aliquialiter ad eadem respondere.*

‘ Unde nos ipsi Domino *Johanni* compatientes benigno & affabili modo diximus tunc ibidem : Caveatis, Domine *Johannes* ! quia si ad hæc, vobis objecta, clare non respondeatis in termino legitimo, vobis jam dato per Judicem, poterimus vos pronunciare & declarare Hæreticum.

‘ Ipse tamen Dominus *Johannes* se tenuit ut prius, & noluit aliter respondere.

‘ Consequenter tamen nos cum dictis Confratribus nostris & aliis de Concilio nostro consulimus, & de communicato Consilio eorundem declaravimus eidem Domino *Johanni Oldcastello*, quid sancta Romana Ecclesia, in hac materia sequens dicta beatorum *Augustini*, *Hieronimi*, & *Ambrosii*, ac aliorum Sanctorum, determinavit ; quas determinationes oportet quoscunque Catholicos observare.

‘ Ad quæ idem Dominus *Johannes* respondit,

‘ *Quod bene voluit credere & observare quicquid sancta Ecclesia determinavit, ac quicquid Deus voluit se credere & observare, sed quod Dominus noster Papa, Cardinales, Archiepiscopi, & Episcopi, ceterique Prælati Ecclesiæ haberent potestatem talia determinandi, noluit ad tunc aliquialiter affirmare.*

‘ Unde nos, adhuc sibi compatientes, sub spe melioris deliberationis, promissimus eidem Domino *Johanni* quod certas Determinationes, in materia antedicta, ac super quibus idem Dominus *Johannes* debuit clarius respondere, sibi ederemus in Scriptis, terminis Latinis, pro leviori intellectu ejusdem, in Anglicum translatis.

‘ Super quibus jubebamus eundem ac cordialiter rogavimus, ut in Die Lunæ, proximo tunc sequente, plene & clare suum daret Responsum.

‘ Quas quidem Determinationes eodem die transferri fecimus, ac eidem Die Dominica proxima sequenti, realiter liberari ; quarum Determinationum tenor sequitur, & est talis :

‘ *Fides ac Determinatio Sanctæ Ecclesiæ Catholiæ de sacrosancto Sacramento Altaris est hæc, quod post Consecrationem in Missa à Sacerdote factam, materialis Panis commutetur in materiale Corpus Christi, Vinumque*

Look you, Sir *John* ! in this Writing of yours, it must be confess'd there are contain'd many good things and right Catholick ; but this day was appointed you to answer to other Points, which favour of Error and Heresy, which your Declaration has not fully answer'd ; and therefore you ought to explain your self more clearly as to those Points, and more particularly declare your Faith and Assertions express'd in the said Writing, viz.

Whether you hold, believe, and affirm, that in the Sacrament of the Altar, after Consecration by the Priest, there remaineth material Bread or not ?

Also, whether you hold, believe and affirm, that in the Sacrament of Penance, it is necessary, where a Priest can be had, to confess your Sins to the Priest, ordain'd by the Church ?

To which State of the Questions, amongst many other things said by the said Sir *John*, he answer'd expressly,

That he would not declare himself otherways, nor return any other Answer, than in his said Writing.

Upon this we reply'd to the said Sir *John*, with much Patience, and in a courteous and affectionate manner ; Sir *John*, it behoves you to consider well of this matter, because if you don't return a clear Answer to the Articles exhibited against you, within the time assign'd by the Judge, we may proceed to pronounce and declare you an Heretick.

But Sir *John* would abide by his former Answer, and afford us no other.

We therefore advis'd with our Brethren the Bishops above-mention'd, and others of our Council, and by their Advice we declar'd to the said Sir *John Oldcastle*, what the holy Roman Church, following the Doctrines of St. *Austin*, St. *Jerom*, and St. *Ambrose*, and other Fathers, in these Points, had determin'd ; which Determinations all Catholicks were oblig'd to submit to.

To which the said Sir *John* gave for Answer,

That he would readily assent to and observe the Determinations and Decisions of holy Church, and all that God requir'd him to believe and observe ; but that our Lord the Pope, the Cardinals, the Archbishops, and Bishops, and other Prelates of the Church, had power to determine such things, he would by no means affirm.

We, still patiently bearing with him, in hopes he might be better inform'd by mature Deliberation, promis'd the said Sir *John*, That certain Determinations, relating to the Points above-mention'd, and to which he ought to give a clearer Answer, should be translated from the *Latin* into *English*, that he might the more easily understand them, and they be publish'd for his Use.

And we commended and affectionately entreated him to prepare and deliver in a full and clear Answer to the same, on Monday next following.

And we caus'd these Determinations to be translated the same day, and to be deliver'd into his own hands the next Sunday, the Tenor of which Determinations is as follows :

The Faith and Determination of the holy Catholick Church, concerning the Sacrament of the Altar, is this, That after Consecration by a Priest at Mass, the Substance of the Bread is chang'd into

‘ *Vinumque materiale in materialem Sanguinem Christi; itaque jam nec Panis nec Vini post Consecrationem ulla manet substantia quæ prius aderat.*

‘ Quid huic respondes Articulo?

‘ *Item, Sancta Ecclesia determinavit quod quemlibet oportet Christianum, in Terris degentem, peccata Sacerdoti, per Ecclesiam ordinato, confiteri si liceat accedere.*

‘ Ut hunc sentis Articulum?

‘ *Christus ordinavit Sanctum Petrum suum Vicarium in Terris, cujus Sedes est Ecclesia Romana, concedens ac permittens eandem Auctoritatem, quam tribuit Petro, & omnibus Petri Successoribus, qui nunc dicuntur Papæ Romani; quorum Potestate in Ecclesiis particularibus ordinantur ac constituuntur Prælati, utpote Archiepiscopi, Episcopi, Curati, & erique Gradus Ecclesiastici; quibus Christianus Populus debet Obedientiam, juxta Traditiones Romanæ Ecclesiæ.*

‘ Hæc est Determinatio sanctæ Ecclesiæ.

‘ Ut sentis hunc Articulum?

‘ *Ad hæc, sacrosancta Ecclesia determinavit quod sit necessarium cuivis Christiano peregrinari ad sancta loca, ibique maxime adorare sanctas reliquias Apostolorum, Martyrum, ac Confessorum, omniumque Sanctorum quoscumque approbavit Romana Ecclesia.*

‘ Ut hunc sentis Articulum?

‘ *Quo Die Lunæ (videlicet) 25. Die dicti Mensis Septembris, coram nobis ac Confratribus nostris prædictis, adjunctoque venerabili Fratri nostro, Benedicto, Dei gratia, Bangorensi Episcopo, jussu & mandato nostro.*

‘ *Consiliarii & Ministri nostri (videlicet) Magister Henricus Ware, Curiae nostræ Cantuariensis Officialis; Philippus Morgan, utriusque Juris Doctor; Howells Kyffen, Decretorum; Johannes Kemp & Willielmus Karleton, Legum Doctores; ac Johannes Witnam, Thomas Palmer, Robertus Womberwel, Johannes Withead, Robertus Chamberlayne, Richardus Dodington & Thomas Walden, sacre Paginæ Professores; necnon Jacobus Cole & Johannes Seelyns, Notarii nostri, in hac parte assumpti; jurati erant omnes & singuli ad sancta Dei Evangelia, tacto Libro, quod de & super materia prædicta, ac in tota Causa hujusmodi suum fidele Consilium & Ministerium præberent, atque toto mundo.*

‘ *Consequenterque comparuit dictus Dominus Robertus de Morley Miles, Custos Turris Londoniæ, ad Dominum Johannem Oldcastellum secum adduxit, & coram nobis statuit.*

‘ *Cui nos affabiliter & suaviter recitavimus Acta prioris Diei, ac, ut prius, recitavimus quomodo excommunicatus fuerat & est idem Dominus Johannes, ac rogavimus & requisivimus eundem quatenus peteret & admitteret in forma debita Ecclesiæ Absolutionem.*

‘ *Cui idem Dominus Johannes expresse respondit tunc ibidem:*

‘ *Quod nullam Absolutionem in hac parte peterit nobis, sed a solo Deo.*

‘ *Consequenter nos suavi & modesto modo rogavimus & requisivimus eundem Dominum Johannem quatenus, de & super Articulis sibi oppositis, suum clarum daret responsum.*

‘ Et

into the material Body of Christ, and the Substance of the Wine into the material Blood of Christ; therefore after Consecration, there remaineth not any of the Substance of Bread and Wine, which were in both before it.

What Answer do you give to this Article?

Also Holy Church hath determin'd, that it is the Duty of every Christian living in the World, to confess his Sins to a Priest, ordain'd by the Church, if he has the Opportunity of such an one.

What are your Sentiments of this Article?

Christ ordain'd St. Peter to be his Vicar on Earth, whose See is the Church of Rome; and that all the Successors of Peter, who are now call'd the Popes of Rome, should succeed in the same Power and Authority with which Christ invested him; by whose special Power are constituted and ordain'd Prelates in particular Churches, as Archbishops, Bishops, Curates, and the rest of the Ecclesiastical Order; to which all Christians owe Obedience, according to the Traditions of the Roman Church.

This is the Determination of Holy Church, and what is your Opinion of this Article?

Besides these, the Holy Church hath ordain'd, that it is the indispensable Duty of every Christian Man to go on Pilgrimage to holy Places, and there to adore the sacred Relicks of the Apostles, Martyrs, and Confessors, and of all the Saints in the Calender of the Roman Church.

How do you hold this Article?

On Monday the 25th of the said Month of September, we assembled with our Brethren the Bishops above-mention'd, with the Addition by our Order and Command, of our venerable Brother Benedict, by the Grace of God Bishop of Bangor.

And our Counsellors and Officers, namely, Mr. Henry Ware, Official of Canterbury; Philip Morgan, Doctor of both Laws; Howel Kyffen, John Kemp and William Carleton, Doctors of the Canon Law; and John Witnam, Thomas Palmer, Robert Womberwel, John Withead, Robert Chamberlain, Richard Dodington, and Thomas Walden, Doctors in Divinity; also James Cole and John Stevens, our Notaries, both called to assist, and take the Examinations, in the Trial, were all and every of them sworn upon the holy Evangelists, as they would answer it to God and the World, faithfully to discharge their Duty that day, in the Matter and Cause abovemention'd.

After this Robert Morley Knight, and Lieutenant of the Tower of London, brought Sir John Oldcastle into Court, and set him before us:

To whom we affably and courteously repeated the Proceedings of the former Day, and, as before, told him, How he had been, and still stood, excommunicated; and we intreated and besought him to desire and accept of Absolution, in the usual Form of the Church.

To which Sir John then answered in these words:

That he desired no Absolution from us, but only from God.

Upon this we pray'd the said Sir John, with an Air of Kindness and Concern, to give his full Answer to the Articles exhibited against him.

And

‘ Et primo circa Sacramentum Eucharistiæ ; ad quem Articulum, inter cætera, dixit & respondit,

‘ *Quod sicut Christus, hic in Terra degens, habuit in se Divinitatem & Humanitatem, Divinitatem tamen velatam & invisibilem sub Humanitate, quæ in eo aperta & visibilis fuerat ; sic in Sacramento Altaris, & verum Corpus & verus Panis (vide licet) quem videmus, & Corpus Christi, sub eodem velatum, quod non videmus.*

‘ *Ac Fidem circa Sacramentum hujusmodi, in Scheda prædicta, sibi per nos transmissa, per sanctam Romanam Ecclesiam & Doctores sanctos determinatam, expresse negavit, Determinationem Ecclesiæ, fore aut esse ; sed si est Determinatio Ecclesiæ, dixit quod est facta contra sacram Scripturam, & postquam Ecclesia fuit dotata, & venenum effusum in Ecclesia, & non ante.*

‘ Quo etiam ad sacrum Pœnitentiæ & Confessionis dixit & asseruit expresse tunc ibidem ;

‘ *Quod, si quis, in aliquo gravi Peccato constitutus, a quo ipse surgere nescivit, expediret & bonum esset sibi adire aliquem sanctum & discretum Sacerdotem pro Consilio ab eo habendo ; sed quod confiteretur Peccatum suum proprio seu alteri Presbytero, etiamsi haberet Copiam ejusdem, non est necessarium ad salutem, quia sola Contritio Peccatum hujusmodi deleri posset, & ipse Peccator purgari.*

‘ Circa Adorationem sanctæ Crucis dixit & asseruit tunc ibidem, — *Quod solum Corpus Christi, quod pendeat in Cruce, debuit adorari, quia illud Corpus solum fuit & est Crux adoranda.*

‘ Et interrogatus, quem honorem faceret imagini ipsius Crucis ? respondit verbis expressis,

‘ *Quod illum solum honorem faceret sibi, quod bene mundaret eam, & poneret in bona custodia.*

‘ Quoad potestatem Clavium, Dominum nostrum Papam, Archiepiscopos, Episcopos, & alios Prælatos dixit,

‘ *Quod Papa est verus Antichristus, hoc est Caput ejusdem, Archiepiscopi, Episcopi, necnon alii Prælati, Membra, & Fratres Cauda illius ; quibus Papæ, Archiepiscopis, & Prælati non est obediendum, nisi quatenus fuerint imitatores Christi & Petri, in vita, moribus, & conversatione : & quod ipse est Successor Petri, qui est in vita melior, & moribus purior, & nullus alius.*

‘ Ulterius dixit idem Dominus Johannes alta voce, manibus expansis, alloquendo circumstantes :

‘ *Isti qui judicant & volunt damnare me, seducunt vos omnes & seipsos, & vos ducent ad Infernum, ideo caveatis ab eis.*

‘ Quibus sic per eum dictis, nos iterum ac facpius, flebili vultu, dictum Dominum Johannem alloquebamur eundem, verbis, quibus potuimus, exhortando ut ad Unitatem Ecclesiæ rediret, crederet & teneret quod Ecclesia Romana credit & tenet, qui respondebat expresse :

And first we demanded what he had to say about the Sacrament of the Eucharist ? To which Article, among other things, he answer'd and said,

That as Christ, when he liv'd upon Earth had the Divine and Human Nature united together in him, and the Divine was veil'd and cover'd under the Human, and only the Human visible and outward ; so in the Sacrament of the Altar, there is the very Body of Christ, and real Bread too ; the Bread is the thing we see with our Eyes, and the Body of Christ, which is hidden under it, we do not see.

And the Faith about this Sacrament of the Altar, express'd in the Writing which we sent to him, as determin'd by the holy Roman Church and the Fathers, he expressly deny'd to be the Determination of the Church ; or if it was the Determination of the Church, he asserted such Determination to be made contrary to the Holy Scriptures, and after the Church was aggrandiz'd and corrupted, and not before.

To the Articles about Penance and Confession, he answer'd in these Words :

That if any one is so intangled in the Snares of Sin, that he knows not how to extricate himself, it is advisable and expedient for him to apply to some pious and discreet Minister for Ghostly Counsel : but that he should confess his Sin to his own or any other Priest, tho' he had never so good an Opportunity, is not at all necessary to Salvation, because such a Sin can be forgiven only upon Contrition, and on that alone can the Sinner be clear'd.

Concerning the Adoration of the holy Cross, he then declar'd and asserted, — That the Body of Christ, which hung upon the Cross, ought only to be worshipp'd, because that Body was and is the only adorable Cross.

And being ask'd what Honour he allow'd to the Image of the Cross ? he answer'd in these express words ;

That to keep it clean and in his Closet, was the only Honour he vouchsafed it.

As to the Power of the Keys, our Lord the Pope, Archbishops, Bishops, and other Prelates, he said,

The Pope and we together made up the true Antichrist : the Pope was the Head, the Archbishops, Bishops, and other Prelates the Body and Limbs, and the Friars the Tail of Antichrist : To which Pope, Archbishops, and Prelates there was no Obedience due, any further than they imitated Christ, and Peter, in their Lives, Manners, and Conversation ; and that he is the Successor of Peter, who follows him in the Purity of his Life and Conversation, and no other.

The said Sir John added, addressing himself with a loud Voice, and extended Hands, to the People that were present :

Those who sit in Judgment upon me, and are desirous to condemn me, will seduce you all, and themselves, and lead ye to Hell ; take therefore good heed of them.

Upon his saying this, we apply'd to the said Sir John, and besought him, with Tears in our Eyes, and exhorted him in the most compassionate manner we could, to return to the Unity of the Church, to believe and embrace the Faith and Doctrine of holy Church. To which he return'd this peremptory Answer ;

Se aliter non credere nec tenere quam superius expressit.

Videntes ergo quod in eo, prout apparuit, proficere non potuimus, tandem, cum cordis amaritudine, processimus ad Sententiæ diffinitivæ prolationem in hunc modum.

In Dei nomine, Amen. Nos Thomas, permissione Divina, sanctæ Cantuariensis Ecclesiæ Archiepiscopus, & Minister humilis, totius Angliæ Primas, & Apostolicæ sedis Legatus.

In quadam Causa sive Negotio Hæreticæ Prævitatis, de & super diversis Articulis, super quibus Dominus Joannes Oldcastellus Miles, Dominus de Cobham, coram nobis, in ultima Convocatione Cleri nostræ Cantuariensis Provinciæ, in Ecclesia Sancti Pauli Londini celebrata, post Inquisitionem diligentem ibidem inde factam, detectus & delatus extiterat, & per nostram Cantuariensem Provinciam notorie & publice diffamatus, ad Denunciationem & Requisitionem totius Cleri prædicti in eadem Convocatione, inde nobis factam, favore possibili, Deo teste, quo potuimus, legitime procedentes contra eundem, ac Christi vestigiis inhærendo, qui non vult mortem Peccatoris, sed magis ut convertatur & vivat; nitebamur eundem corrigere, ac viis & modis, quibus potuimus atque scivimus, reducere ad Ecclesiæ Unitatem, declarantes eidem quod in hac parte sancta Romana, & universalis Ecclesia docet, tenet, determinavit, & prædicat.

Et quamvis eundem, in Fide Catholica devium invenerimus adeo duræ cervicis, quod Errorem suum noluit confiteri, aut se purgare de eodem, nec etiam detestari; eidem paterno nichilominus compatiens affectu, ac ipsius salutem cordialiter affectantes, præfiximus eidem certum terminum competentem ad deliberandum, & si voluisset, poenitendum & reformandum seipsum.

Ac demum, eo quod eundem consideravimus incorrigibilem, servatis primitus quæ in hac parte de Jure requiruntur, cum dolore & amaritudine Cordis, ad diffinitivæ Sententiæ prolationem procedimus in hunc modum.

Christi Nomine invocato, ipsumque solum habentes præ oculis, quia, per Acta inactitata, producta, exhibita, Signa, Evidentias, & Indicia, diversa insuper probationem genera, reperimus eundem Dominum Joannem Militem fore & esse Hæreticum, Hæreticisque credentem, in fide & observantia sacrosanctæ Romanæ & universalis Ecclesiæ, & præsertim circa Sacramenta Eucharistiæ & Pœnitentiæ, quod, tanquam Iniquitatis & Tenebrarum Filius, in tantum obduravit Cor suum, ut non intelligat vocem sui Pastoris, nec velit Monitionibus allici, nec reduci Blanditiis, investigatis primitus, rimatis, & diligenter pensatis meritis Causæ antedictæ, ipsiusque Domini Joannis demeritis Culpis per ipsius damnabilem pertinaciam aggravatis:

Nolentes quod is, qui nequam est, fiat nequior, & alios inficiat sua Labe, de Consilio & Assensu, magnæ Discretionis & Sapientiæ Virorum, venerabilium Fratrum nostrorum, Dominorum, Ricardi Londoniensis, Henrici Wintoniensis, & Benedicti Bangorensis, Episcoporum, & aliorum non nullorum,

That he would not believe nor maintain otherwise than he had before declar'd.

Seeing therefore he was so harden'd in his Errors, that we had no hopes of working on him to renounce them, we proceeded, with regret and bitterness of Heart, to pronounce the following definitive Sentence.

In the Name of God, *Amen.* We Thomas, by Divine Permission, Archbishop and humble Minister of the holy Church of *Canterbury*, Primate of all *England*, and Legate of the Apostolick See.

Whereas in our last Convocation of the Clergy of our Province of *Canterbury*, holden in the Cathedral Church of *St. Paul, London*, after Consultation upon several heretical Tenets, and strict Inquiry made who were the Authors and Abettors of the same, Sir *John Oldcastle* Knight, and Lord *Cobham*, was detected and presented of and for the said Heresies, as having given great Scandal throughout our Province of *Canterbury*, by openly and avowedly professing the same; upon the Address and Representation of all the Clergy in the said Convocation for a Process, we proceeded according to Law against the said Sir *John*, and (as God knows) with all the Equity and Favour that could possibly be shew'd: and following the steps of Christ, who would not the Death of a Sinner, but rather that he should be converted and live, we endeavour'd to reclaim the said Sir *John*, and try'd all ways and means that we could devise to reduce him to the Unity of the Church, declaring unto him the Doctrines, Tenets, and Determinations of the Holy Roman and Universal Church, relating to those Points.

And tho' we found he had apostatiz'd from the Catholick Faith, and was so confirm'd in his Error, that he would not confess it, nor clear himself of it, nor disavow it; yet forbearing him in paternal Love, and out of a sincere Desire of his Salvation, we allow'd him a competent time for Deliberation, and wherein he might repent and reform himself.

But forasmuch as we have experienc'd the said Sir *John* to be incorrigible and irreclaimable, we at last with Grief and Heaviness of Heart, in obedience to what the Law requires, proceed to give Sentence definitive against him.

In the Name of Christ, and having his Honour only in view; forasmuch as we have found by divers Acts done, produc'd, and exhibited by Indications, Presumptions and Proofs, and many other kinds of Evidence, that Sir *John Oldcastle* Knight is really and truly an Heretick, and a Follower of Hereticks, against the Faith and Religion of the holy Roman and Catholick Church, and particularly with respect to the Sacraments of the Eucharist and Penance; that, as a Child of Darkness and Iniquity, he had hardened his Heart to that degree, that he refuses to hear the Voice of his Pastor, and will not be prevailed upon by gentle Monitions, nor reduc'd by soft Persuasions, tho' the Merits of our Cause, and the Demerits of his own, he had diligently canvass'd and weigh'd, and so aggravated the Wickedness of his Error by his damnable Obstinaçy:

We unwilling that he should contract further Degrees of Guilt, by infecting others with the Contagion of Heresy, by the Advice and Consent of Men famous for Discretion and Wisdom, our venerable Brothers, the Lords, *Richard* Bishop of *London*, *Henry* Bishop of *Winchester*, and *Benedict* Bishop

‘ nullorum, in sacra Theologia, Decretis, & Jure
 ‘ Civili Doctorum, aliarumque religiosarum & peri-
 ‘ tarum Personarum, nobis assistentium, præfatum
 ‘ Dominum Joannem Oldcastellum Militem, Domi-
 ‘ num de Cobham, de & super hujusmodi detestabili
 ‘ reatu convictum, & ad Ecclesie Unitatem pœni-
 ‘ tentialiter redire nolentem, Hereticum, ac in his
 ‘ quæ tenet, docet, determinavit, & prædicat sacro-
 ‘ sancta Romana & universalis Ecclesia, & præser-
 ‘ tim in Articulis superscriptis, errantem judicavi-
 ‘ mus, declaravimus, & condemnavimus sententiali-
 ‘ ter & diffinitive in his Scriptis, relinquentes eun-
 ‘ dem exnunc, tanquam Hereticum, Judicio secu-
 ‘ lari.

‘ Ipsumque nihilominus Hereticum, omnesque alios
 ‘ & singulos, qui eundem de cætero, in sui favorem
 ‘ Erroris, receptaverit vel receptaverint, defensave-
 ‘ rit seu defensaverint, sibi Consilium, Auxilium, seu
 ‘ Favorem in hac parte præbuit vel præbuerint, tan-
 ‘ quam Fautores, Receptatores, & Defensores
 ‘ Hæreticorum, excommunicavimus, & excommuni-
 ‘ catos denunciamus etiam in his Scriptis.

‘ Et ut ista Præmissa omnibus in Christo cre-
 ‘ dentibus, innotescant, vestræ Fraternitati com-
 ‘ mittimus & commendamus, quatenus præfatum
 ‘ Dominum Joannem Oldcastellum, sicut præmittit-
 ‘ tur, per nos fuisse & esse damnatum, Hereticum,
 ‘ Schismaticum, & in Articulis superscriptis er-
 ‘ rantem, omnesque alios & singulos, qui eundem
 ‘ Dominum Joannem de cætero, in sui favorem
 ‘ Erroris, receptaverit vel receptaverint, defensa-
 ‘ verit vel defensaverint, aut sibi Auxilium, Con-
 ‘ silium, vel Favorem in hac parte præbuerit vel
 ‘ præbuerint, tanquam Receptatores, Fautores,
 ‘ & Defensores Hæreticorum, per dictam nos-
 ‘ tram Sententiam diffinitivam, excommunicatos
 ‘ in Ecclesia vestra, per vestras Civitates & Diœ-
 ‘ ceses, per singulos Subditos vestros & Curatos
 ‘ earundem, in Ecclesiis suis, cum major in eis-
 ‘ dem affuerit Populi Multitudo, alta & intelli-
 ‘ bili Voce & in Lingua materna, prout supra se-
 ‘ riosius continetur in hoc processu, declarent,
 ‘ publicent, & exponent, ut sic Opiniones erro-
 ‘ neæ Populi, qui aliter concepit forte in hac ma-
 ‘ teria quemadmodum se habet rei veritas, hac
 ‘ Declaratione publica rescindantur.

‘ Quod idem per vos singulis Confratribus nos-
 ‘ tris, nostræ Cantuariensis Provinciæ Suffraga-
 ‘ neis, de verbo ad verbum, rescribi & innotesci
 ‘ volumus & mandamus, ut ipsi omnes & singuli,
 ‘ per suas Civitates & Diœceses, modum & for-
 ‘ mam hujus nostri processus, dictam etiam per
 ‘ nos latam Sententiam, & cætera omnia & singula
 ‘ contenta in iisdem, publicent, intiment, & de-
 ‘ clarent, & consimiliter per Subditos suos & Cu-
 ‘ ratos faciant publicari.

‘ De Die vero Receptionis præsentium, & quid
 ‘ feceritis in Præmissis, & quomodo hoc nostrum
 ‘ Mandatum fueritis & fuerint executi, debite &
 ‘ distincte certificetis & certificent, dicto Negotio
 ‘ expedito, Litteris vestris & suis Patentibus, ha-
 ‘ bentibus hunc tenorem.

‘ Datum in Manerio de Maydeston, x. die Men-
 ‘ sis Octobris, Anno 1413, & nostræ Translationis
 ‘ Anno 18.

Bishop of Bangor, and some other Doctors of Di-
 vinity, and of Canon and Civil Law, and o-
 ther religious and learned Persons, call’d to our
 Assistance; we do peremptorily and definitively,
 by this present Writing, judge, declare, and con-
 demn the said Sir John Oldcastle for an Heretick,
 convicted of the detestable Crime of Heresy, and
 utterly refusing to be reconcil’d to the Church by
 Repentance, and an Apostate from those Doc-
 trines, in the above-mention’d Articles especially,
 which the holy Roman and Catholick Church
 holds, teaches, and hath determin’d; and we leave
 him from henceforth as an Heretick, to the secular
 Judgment.

And furthermore, we have excommunicated,
 and by these Presents do denounce excommuni-
 cated, the said Heretick, and all others, who
 shall hereafter, in favour of his Error, counte-
 nance, defend, or afford him any Counsel, Aid,
 or Comfort; deeming such Person or Persons as
 Abettors, Encouragers, and Defenders of Here-
 ticks.


And that these Premises might be promulg’d
 and known to all Christians, we charge and enjoin
 you, forasmuch as the said Sir John Oldcastle was
 and is condemn’d by us for an Heretick, a Schis-
 matick, and as erroneous in the above-mention’d
 Articles, and also all other Persons, who out of
 Favour or Affection to his Error, shall hereafter
 countenance, defend, or afford him any Counsel,
 Aid, or Comfort, are excommunicated, as deem’d
 Abettors, Encouragers, and Patrons of Here-
 ticks, according to our said definitive Sentence,
 to give Orders and Directions to your Priests and
 Curates of your respective Cities and Dioceses,
 in their respective Churches, when there is the
 greatest Congregation of People, to declare, pub-
 lish, and expose with loud and audible Voice,
 and in our Mother-Tongue, the said Heretick,
 and Hereticks, according to our said definitive
 Sentence, and the Order observ’d in this Pro-
 cess; to the end that any wrong Notions, which
 possibly the People may have given into con-
 cerning these Matters, and our Proceedings upon
 them, might be rectify’d by this publick Declara-
 tion.

Moreover, we will and command you the Bi-
 shops here present, to take Copies hereof word
 for word, and send one to each Bishop of our
 Province of *Canterbury*, that so all and every of
 them may publish, intimate, and declare, and
 cause by their respective Priests and Curates to be
 publish’d, in their several Cities and Dioceses, the
 Manner and Form of this our Proceeding, and
 also the said Sentence pronounc’d by us, and all
 and singular Contents of the same.

And, Lastly, we require of you and them, that
 this Business be dispatch’d with all convenient
 Expedition; and that you and they do duly and
 punctually advise and certify us of the time of
 receiving these Presents, and how this our Com-
 mand has been executed, by your and their Let-
 ters Patent, according to the Tenor hereof.

Given at our Palace at *Maydstone*, on the 10th
 day of *October*, in the year of our Lord 1413, and
 of our Translation the 18th.

IV. *The Trial of Sir THOMAS MORE Knight, Lord Chancellor of England, for High-Treason in denying the King's Supremacy, May 7. 1535. the 26th of Henry VIII.*

 Bill being preferred in Parliament, November 1534 to attaint *Elizabeth Barton*, and severall others of High-Treason, Bishop *Fisher* and Sir *Thomas More* were also brought into it for Misprision of Treason, for the refusing of the Oath of Succession—Says my Lord *Herbert*. The same Author avows the Bill did so pass; but Sir *Thomas's* Great-Grandson, in his Life, shews the contrary, and that notwithstanding the Archbishop of *Canterbury*, the Lord Chancellor, Duke of *Norfolk*, and Secretary *Cromwell*, by the King's Command, went to him and pressed him to a Compliance; yet the Chancellor influenc'd the King so far, that the matter of Misprision was dropt.

Sir *Thomas* was also examin'd at other times by the Lord Chancellor, Dukes of *Norfolk* and *Suffolk*, Mr. Secretary, and others of the Privy-Council, who press'd him, with all the Arguments they could think of, to own the King's Supremacy in direct and open Terms, or plainly to deny it; but he being loth to aggravate the King's Displeasure, would say no more than that the Statute was like a two-edged Sword, for if he spoke against it, he should be the Cause of the Death of his Body; and if he assented to it, he should purchase the Death of his Soul. Those Examinations being over, *Richard Rich*, newly made Solicitor General, and afterwards Lord *Rich*, with Sir *Richard Southwell*, and Mr. *Palmer*, Secretary *Cromwell's* Man, were sent by the King to take away his Books. *Rich* pretending Friendship to him, and protesting he had no Commission to talk with him about the former Affair of the Supremacy, he put a Case to him thus: If it were enacted by Parliament that *Richard Rich* should be King, and that it should be Treason in any body to deny it, what Offence it were to contravene that Act? Sir *Thomas More* answer'd, That he should offend if he said so, because he was bound by the Act; but that this was *casus levis*. Whereupon Sir *Thomas* said, he would propose a higher Case: Suppose it were enacted by Parliament, *Quod Deus non sit Deus*, and that it were Treason to contravene, whether it were not an Offence to say it according to the said Act? *Rich* reply'd, yea; but said withal, I will propose a middle Case, because this is too high: The King, you know, is constituted supreme Head of the Church upon Earth; why should not you, Master *More*, accept him for such? as you would me, if I were made King by the afore said Supposition. *More* answered, the Case was not the same, because, said he, a Parliament can make a King, and depose him; and that every Parliament-Man may give his Consent thereunto, but that a Subject cannot be bound so in the Case of Supremacy. *Quia consensus ab eo ad Parlamentum præbere non potest* (so says my Lord *Herbert* it is in my Copy if

it be not mistaken,) *Et quanquam Rex sic acceptus sit in Anglia, plurimæ tamen Partes extræ idem non affirmant.*

Sir *Thomas* having continued a Prisoner in the Tower somewhat more than a Twelvemonth, for he was committed about the middle of April 1534, and was brought to his Trial on the 7th of May 1535. he went into the Court leaning on his Staff, because he was much weakened by his Imprisonment, but appeared with a cheerful and composed Countenance. The Persons constituted to try him, were,

Sir *Thomas Audley*, Lord Chancellor,
Thomas Duke of Norfolk,
 Sir *John Fitz-James*,
 Lord Chief Justice,
 Sir *John Baldwin*,

Sir *Richard Leicester*,
 Sir *John Port*,
 Sir *John Spelman*,
 Sir *Walter Luke*,
 Sir *Anthony Fitz-Herbert*.

The Indictment was very long, but where to procure a Copy of it, I could never learn; it's said in general, it contain'd all the Crimes that could be laid to the charge of any notorious Malefactor; and Sir *Thomas* professed it was so long, that he could scarce remember the third part of what was objected therein against him. It was read aloud by the Attorney-General; and Sir *Thomas's* mortal Sin seem'd plainly to be his refusing the Oath of Succession, already mention'd.

To prove this, his double Examination in the Tower was alledged against him, the first before Secretary *Cromwell*, *Thomas Beade*, *John Tregonnel*, &c. to whom he professed he had given over all Thoughts of Titles either to Popes or Princes, tho' the whole World should be given him, he being fully determined only to serve God. The second time before the Lord Chancellor, the Duke of *Suffolk*, Earl of *Wiltshire*, and others, before whom he compared that Oath to a two-edged Sword, as before observed.

Presently after the Indictment was read, the Lord Chancellor and the Duke of *Norfolk* spoke to him to this effect: *You see now how grievously you have offended his Majesty; yet he is so very merciful, that if you will lay aside your Obstinacy, and change your Opinion, we hope you may obtain Pardon and Favour in his sight.* But Sir *Thomas* stoutly reply'd, Most Noble Lords, I have great reason to return thanks to your Honours for this your great Civility, but I beseech Almighty God, that I may continue in the Mind I am in, thro' his Grace, unto Death.

Then having Intimation given that he might say what he thought fit in his own Defence, he began thus: When I consider the length of my Accusation, and what heinous Matters are laid to my charge, I am struck with Fear, lest my Memory and Understanding, which are both im-

paired, together with my bodily Health, thro' a long Indisposition contracted by my Imprisonment, should now fail me so far, as to make me incapable of making such ready Answers in my Defence, as otherwise I might have done.

The Court being sensible of his Weakness, ordered a Chair to be brought in, wherein he might seat himself, which he did accordingly, and then went on thus. This my Indictment, if I mistake not, consists of four principal Heads, each of which I purpose, God willing, to answer in order. As to the first Crime objected against me, that I have been an Enemy out of stubbornness of Mind to the King's second Marriage; I confess, I always told his Majesty my Opinion of it, according to the Dictates of my Conscience, which I neither ever would, nor ought to have concealed: for which I am so far from thinking my self guilty of High-Treason, that on the contrary, being required to give my Opinion by so great a Prince in an Affair of so much importance, upon which the Peace of the Kingdom depended; I should have basely flatter'd him, and my own Conscience, had not I spoke the Truth as I thought: Then indeed I might justly have been esteemed a most wicked Subject, and a perfidious Traitor to God. If I have offended the King herein; if it can be an Offence to tell one's Mind freely when his Sovereign puts the Question to him; I suppose I have been sufficiently punish'd already for the Fault, by the great Afflictions I have endured, by the loss of my Estate, and my tedious Imprisonment, which has continued already near fifteen Months.

The second Charge against me is, That I have violated the Act made in the last Parliament: that is, being a Prisoner, and twice examined, I would not, out of a malignant, perfidious, obstinate and traitorous Mind, tell them my Opinion, whether the King was Supreme Head of the Church or not; but confessed then, that I had nothing to do with that Act, as to the Justice or Injustice of it, because I had no Benefice in the Church: yet then I protested, that I had never said nor done any thing against it; neither can any one Word or Action of mine be alledged, or produced, to make me culpable. Nay, this I own was then my Answer to their Honours, that I would think of nothing else hereafter, but of the bitter Passions of our Blessed Saviour, and of my Exit out of this miserable World. I wish no body any harm, and if this does not keep me alive, I desire not to live; by all which I know, I would not transgress any Law, or become guilty of any treasonable Crime: for this Statute, nor no other Law in the World can punish any Man for his Silence, seeing they can do no more than punish Words or Deeds; 'tis God only that is the Judge of the Secrets of our Hearts.

* *Christopher Hales.* *Attorney.* Sir Thomas, tho' we have not one Word or Deed of yours to object against you, yet we have your Silence, which is an evident sign of the Malice of your Heart: because no dutiful Subject, being lawfully ask'd this Question, will refuse to answer it.

Sir Thomas More. Sir, my Silence is no sign of any Malice in my Heart, which the King himself must own by my Conduct upon divers Occasions; neither doth it convince any Man of the Breach of the Law: for it is a Maxim amongst the Civilians and Canonists, *Qui tacet consentire videtur*, he that holds his peace, seems to give his

Consent. And as to what you say, that no good Subject will refuse to give a direct Answer; I do really think it to be the Duty of every good Subject, except he be such a Subject as will be a bad Christian, rather to obey God than Man; to be more cautious to offend his Conscience, than of any thing else in the whole World; especially if his Conscience be not the Occasion of some Sedition and great Injury to his Prince and Country: for I do here sincerely protest, that I never revealed it to any Man alive.

I come now to the third principal Article in my Indictment, by which I am accused of malicious Attempts, traitorous Endeavours, and perfidious Practices against that Statute, as the Words therein do alledge, because I wrote, while in the Tower, divers Packets of Letters to Bishop Fisher; whereby I exhorted him to violate the same Law, and encouraged him in the like Obstinacy. I do insist that these Letters be produced and read in Court, by which I may be either acquitted or convinced of a Lye; but because you say the Bishop burnt them all, I will here tell you the whole truth of the matter. Some of my Letters related only to our private Affairs, as about our old Friendship and Acquaintance: One of them was in answer to his, wherein he desired me to let him know what Answers I made upon my Examinations concerning the Oath of Supremacy; and what I wrote to him upon it was this, That I had already settled my Conscience, and let him satisfy his according to his own Mind. God is my Witness, and as I hope he will save my Soul, I gave him no other Answer; and this I presume is no Breach of the Laws.

As to the principal Crime objected against me, that I should say upon my Examination in the Tower, That this Law was like a two-edged Sword; for in consenting to it, I should endanger my Soul, and in rejecting it should lose my Life: it's evidently concluded, as you say, from this Answer, because Fisher made the like, that he was in the same Conspiracy. To this I reply, That my Answer there was conditional, if there were both danger either in allowing or disallowing that Act; and therefore, like a two-edged Sword, it seem'd a hard thing it should be put upon me, who had never hitherto contradicted it either in Word or Deed. These were my Words; what the Bishop answered, I know not: if his Answer was like mine, it did not proceed from any Conspiracy of ours, but from the Similitude of our Learning and Understanding. To conclude, I do sincerely avouch, that I never spoke a Word against this Law to any Man living, tho' perhaps the King's Majesty has been told the contrary.

There was little or no reply made to this full Answer, by Mr. Attorney, or any body else; the word Malice was what was principally insisted on, and in the mouths of the whole Court, tho' for proof of it no body could produce either Words or Actions: nevertheless, to set the best gloss that could be upon the matter, Mr. Rich was called to give Evidence in open Court upon Oath, which he immediately did, affirming what we have already related concerning a Conference between him and Sir Thomas in the Tower. To which Sir Thomas made answer, If I were a Man, my Lords, that had no regard to my Oath, I had had no occasion to be here at this time, as is well known to every body, as a Criminal; and if this Oath, Mr. Rich, which you have taken be true,

true, then I pray I may never see God's Face, which, were it otherwise, is an Imprecation I would not be guilty of to gain the whole World.

More having recited in the Face of the Court all the Discourse they had together in the *Tower*, as it truly and sincerely was, he added: In good Faith, Mr. *Rich*, I am more concerned for your Perjury, than my own Danger; and I must tell you, that neither my self, nor any body else to my knowledge, ever took you to be a Man of such Reputation, that I or any other would have any thing to do with you in a Matter of Importance. You know that I have been acquainted with your manner of Life and Conversation a long time, even from your Youth to the present Juncture, for we lived in the same Parish; and you very well know, I am sorry I am forced to speak it, you always lay under the Odium of a very lying Tongue, of a great Gamester, and of no good Name and Character either there or in the *Temple*, where you was educated. Can it therefore seem likely to your Lordships, that I should in so weighty an Affair as this, act so unadvisedly, as to trust Mr. *Rich*, a Man I had always so mean an Opinion of, in reference to his Truth and Honesty, so very much before my Sovereign Lord the King, to whom I am so deeply indebted for his manifold Favours, or any of his noble and grave Counsellors, that I should only impart to Mr. *Rich* the Secrets of my Conscience in respect to the King's Supremacy, the particular Subject, and only Point about which I have been so long pressed to explain my self? which I never did, nor never would reveal, when the Act was once made, either to the King himself, or any of his Privy-Counsellors, as is well known to your Honours, who have been sent upon no other account at several times by his Majesty to me in the *Tower*. I refer it to your Judgments, my Lords, whether this can seem credible to any of your Lordships.

But supposing what Mr. *Rich* has sworn should be true, seeing the Words were spoke in familiar and private Conversation, and that there was nothing at all asserted, but only Cases put without any offensive Circumstances; it cannot in justice be said, that they were spoke maliciously, and where there is no Malice, there is no Offence. Besides, my Lords, I cannot think so many reverend Bishops, so many honourable Personages, and so many virtuous and learned Men, of whom the Parliament consisted in the enacting of that Law, ever meant to have any Man punish'd with Death, in whom no Malice could be found, taking the Word *Malitia* for *Malevolentia*; for if *Malitia* be taken in a general Signification for any Crime, there is no Man can be free: Wherefore this word *Maliciously* is so far significant in this Statute, as the word *Forcible* is in that of *Forcible Entry*; for in that Case if any enter peaceably, and puts his Adversary out forcibly, it is no Offence; but if he enters forcibly, he shall be punished by that Statute.

Besides, all the unspeakable Goodness of his Majesty towards me, who has been so many ways my singular good and gracious Lord, who has so dearly loved and trusted me, even from my first Entrance into his Royal Service, vouchsafing to honour me with the Dignity of being one of his Privy-Council, and has most generously promoted me to Offices of great Reputation and Honour, and lastly to that of Lord High-Chancellor, which Honour he never did to any Lay-

man before, the same being the highest Dignity in this famous Kingdom, and next to the King's Royal Person, so far beyond my Merits and Qualifications; honouring and exalting me by his incomparable Benignity, for these twenty Years and upwards, heaping continual Favours upon me; and now at last, at my own humble Request, giving me liberty to dedicate the Remainder of my Life to the Service of God for the better saving of my Soul, has been pleased to discharge and free me from that weighty Dignity; before which he had still heaped more and more Honours upon me: I say, all this his Majesty's Bounty, so long and so plentifully conferred upon me, is enough, in my opinion, to invalidate the scandalous Accusation so injuriously surmized and urged by this Man against me.

This touched the Reputation of Mr. *Rich* to the very quick, and was a Slur that could not be effaced, without the utmost difficulty; and the only way to do it, was, if possible, to produce substantial and creditable Witnesses to attest the contrary: and therefore he caused Sir *Richard Southwell*, and Mr. *Palmer*, who were in the same Room with Sir *Thomas* and Mr. *Rich* when they conferred together, to be sworn as to the Words that passed between them. Whereupon Mr. *Palmer* deposed, *That he was so busy in thrusting Sir Thomas's Books into a Sack, that he took no notice of their Talk.* And Sir *R. Southwell* likewise swore, *That because his Business was only to take care of conveying his Books away, he gave no ear to their Discourse.*

Sir *Thomas* having urged other Reasons in his own Defence, to the discrediting of Mr. *Rich*'s Evidence; the Judge proceeded to give the Charge to the Jury. Whether Sir *Thomas* had challenged any of the Pannel, when they were returned to serve, does not appear; but the twelve Persons on whose Verdict his Life now depended, were these:

Sir <i>Thomas Palmer</i> , Knt.	<i>Jasper Leake</i> , Gent.
Sir <i>Thomas Peirt</i> , Knt.	<i>William Browne</i> , Gent.
<i>George Lovell</i> , Esq;	<i>Thomas Billington</i> , Gent.
<i>Thomas Burbage</i> , Esq;	<i>John Parnel</i> , Gent.
<i>Geoffrey Chamber</i> , Gent.	<i>Richard Bellame</i> , Gent.
<i>Edward Stockmore</i> , Gent.	<i>George Stoakes</i> , Gent.

Now the Jury having withdrawn, scarce were out a quarter of an Hour before they return'd with their Verdict, by which they found the Prisoner guilty; upon which the Lord Chancellor, as chief in the Commission for this Trial, immediately began to proceed to Judgment: which Sir *Thomas* observing, he said to him, My Lord, when I was concern'd in the Law, the Practice in such Cases was to ask the Prisoner before Sentence, whether he had any thing to offer why Judgment should not be pronounced against him. The Lord Chancellor hereupon stopping his Sentence, wherein he had already proceeded in part, asked Sir *Thomas*, *What he was able to say to the contrary?* who presently made Answer in these words: For as much as, my Lords, this Indictment is grounded upon an Act of Parliament, directly repugnant to the Laws of God and his Holy Church, the Supreme Government of which, or of any part thereof, no Temporal Person may by any Law presume to take upon him, being what of right belongs to the See of *Rome*, which by special Prerogative was granted by the Mouth of our Saviour Christ himself to St. *Peter*, and the Bishops of *Rome* his Successors only, whilst he lived,

lived, and was personally present here on Earth: it is therefore, amongst Catholick Christians, insufficient in Law, to charge any Christian to obey it. And in order to the Proof of his Assertion, he declared among other things, That whereas this Kingdom alone being but one Member, and a small part of the Church, was not to make a particular Law disagreeing with the general Law of Christ's universal Catholick Church, no more than the City of London, being but one Member in respect to the whole Kingdom, might enact a Law against an Act of Parliament, to be binding to the whole Realm: so he shewed farther, That Law was even contrary to the Laws and Statutes of the Kingdom yet unrepealed, as might evidently be seen by *Magna Charta*, wherein are these Words; *Ecclesia Anglicana libera sit, & habet omnia jura integra, & libertates suas illesas*: And it is contrary also to that sacred Oath which the King's Majesty himself, and every other Christian Prince, always take with great Solemnity, at their Coronations. So great was Sir Thomas's Zeal, that he further alledg'd, that it was worse in the Kingdom of England to refuse Obedience to the See of Rome, than for any Child to do to his natural Parent: for, as St. Paul said to the *Corinthians*, *I have regenerated you, my Children, in Christ*; so might that worthy Pope of Rome, St. Gregory the Great, say of us Englishmen, *Ye are my Children, because I have given you everlasting Salvation*: for by St. Augustine and his Followers, his immediate Messengers, England first received the Christian Faith, which is a far higher and better Inheritance than any carnal Father can leave to his Children; for a Son is only by Generation, we are by Regeneration made the spiritual Children of Christ and the Pope.

Here the Lord Chancellor took him up, and said; That seeing all the Bishops, Universities, and the most learned Men in the Kingdom had agreed to that Act, it was much wondered that he alone should so stiffly stickle, and so vehemently argue there against it.

His Answer was, That if the Number of Bishops and Universities were so material as his Lordship seem'd to make it; then, my Lord, I see no reason why that thing should make any Change in my Conscience: for I doubt not, but of the learned and virtuous Men now alive, I do not speak only of this Realm, but of all Christendom, there are ten to one of my mind in this matter; but if I should take notice of those learned Doctors and virtuous Fathers that are already dead, many of whom are Saints in Heaven, I am sure there are far more, who all the while they lived thought in this Case as I do now. And therefore, my Lord, I do not think my self bound to conform my Conscience to the Counsel of one Kingdom, against the general Consent of all Christendom.

Here it seems the Lord Chancellor, not willing to take the whole Load of his Condemnation upon himself, asked in open Court the Advice of Sir John Fitz-James, the Lord Chief Justice of England, Whether the Indictment was valid, or no? who wisely answered thus: *My Lords all, By St. Gillian (for that was always his Oath) I must needs confess, That if the Act of Parliament be not unlawful, then the Indictment is not in my Conscience invalid.* Some have wrote, That the Lord Chancellor should hereupon say, *Quid adhuc desideramus testimonium, reus est mortis*, and then presently proceeded to give Sentence to this effect:

That he should be carried back to the Tower of London, by the Help of William Kingston, Sheriff, and from thence drawn on a Hurdle through the City of London to Tyburn, there to be hanged till he should be half dead; that then he should be cut down alive, his Privy Parts cut off, his Belly ripped, his Bowels burnt, his four Quarters set up over four Gates of the City, and his Head upon London-Bridge.

This was the Judgment pronounc'd upon this great Man, who had deserv'd so well both of the King and Kingdom, and for which Paulus Jovius calls King Henry VIII. another Phalaris.

This severe Sentence was afterwards, by the King's Pardon, chang'd to beheading, because he had borne the greatest Office in the Kingdom; of which Mercy of the King's, word being brought to Sir Thomas, he merrily said, God forbid the King should use any more such Mercy to any of my Friends, and God bless all my Posterity from such Pardons.

When he had receiv'd Sentence of Death, he spake thus with a resolute and sedate Aspect: Well, seeing I am condemn'd, God knows how justly, I will freely speak for the disburdening my Conscience, what I think of this Law. When I perceiv'd it was the King's Pleasure to sift out from whence the Pope's Authority was deriv'd; I confess I study'd seven years together to find out the truth of it, and I could not meet with the Works of any one Doctor, approv'd by the Church, that avouch a Layman was, or ever could be the Head of the Church.

Chancellor. Would you be esteem'd wiser, or to have a sincerer Conscience than all the Bishops, learned Doctors, Nobility and Commons of this Realm?

More. I am able to produce against one Bishop which you can produce on your side, a hundred Holy and Catholick Bishops for my Opinion; and against one Realm, the Consent of Christendom for a thousand years.

Norfolk. Sir Thomas, you shew your obstinate and malicious Mind.

More. Noble Sir, it's no Malice or Obstinacy that makes me say this, but the just Necessity of the Cause obliges me to it for the Discharge of my Conscience; and I call God to witness, that nothing but this has excited me to it.

After this the Judges kindly offering him their favourable Audience if he had any thing else to say; he answer'd most mildly and charitably, I have no more to say, but that as the blessed Apostle St. Paul, as we read in the Acts of the Apostles, was present, and consenting to the Protomartyr Stephen, keeping their Clothes that stoned him to death, and yet they are both now holy Saints in Heaven, and there shall continue Friends to Eternity; so I verily trust, and shall therefore heartily pray, that albeit your Lordships have been on Earth my Judges to Condemnation, yet that we may hereafter meet joyfully together in Heaven to our everlasting Salvation: and God preserve you, especially my Sovereign Lord the King, and grant him faithful Counsellors.

Sir Thomas, after his Condemnation, was conducted from the Bar to the Tower, an Axe being carry'd before him, with the Edge towards him.

SIR Thomas More having remain'd a Prisoner in the Tower about a Week after his Sentence, on the 6th of July early in the Morning, his old Friend

Friend Sir Thomas Pope came to him with a Message from the King and Council, to acquaint him, That his Execution was appointed to be before Nine that Morning. Whereupon Sir Thomas said, He thank'd him heartily for his good News. *I have been, says he, much obliged to his Majesty for the Benefits and Honours he has most bountifully confer'd upon me; yet I am more bound to his Grace, I do assure you, for confining me in this Place, where I have had convenient Place and Opportunity to put me in mind of my last End. I am most of all bound to him, that his Majesty is pleased to rid me out of the Miseries of this wretched World.* Then Sir Thomas Pope acquainted him, it was the King's Pleasure he shou'd not use many Words at the Place of Execution. Sir, said he, *you do well to acquaint me with the King's Pleasure; for I had otherwise design'd to have made a Speech to the People; but it matters not, and I am ready to conform myself to his Highness's Pleasure. And I beseech you, Sir, you wou'd become a Suitor to his Majesty, that my Daughter Margaret may attend my Funeral.* To which Pope reply'd, That the King was willing his Wife and Children, and other Friends should be present. Sir Thomas Pope being about to take his Leave, cou'd not refrain from Tears. Whereupon Sir Thomas More said, *Let not your Spirits be cast down, for I hope we shall see one another in a better Place, where we shall be free to live and love in Eternal Bliss.* And to divert Pope's Grief, he took up his Urinal and shook it, saying merrily, *I see no Danger but that this Man may live longer, if the King please.*

About Nine he was brought out of the Tower; his Beard was long, his Face pale and thin, and carrying a Red Cross in his Hand, he often lift up his Eyes to Heaven; a Woman meeting him with a Cup of Wine, he refus'd it, saying, *Christ*

at his Passion drank no Wine, but Gall and Vinegar. Another Woman came crying, and demanded some Papers she said she had left in his Hands, when he was Lord Chancellor, to whom he said, *Good Woman, have Patience but for an Hour, and the King will rid me of the Care I have for those Papers, and every thing else.* Another Woman followed him, crying, he had done her much Wrong when he was Lord Chancellor, to whom he said, *I very well remember the Cause, and if I were to decide it now, I shou'd make the same Decree.*

When he came to the Scaffold, it seem'd ready to fall; whereupon he said merrily to the Lieutenant, *Pray, Sir, see me safe up; and as to my coming down, let me shift for myself.* Being about to speak to the People, he was interrupted by the Sheriff, and thereupon he only desired the People to pray for him, and bear witness he died in the Faith of the Catholic Church, a faithful Servant both to God and the King. Then kneeling, he repeated the *Miserere Psalm* with much Devotion; and rising up, the Executioner asked him forgiveness. He kiss'd him, and said, *Pluck up thy Spirits, Man, and be not afraid to do thine Office; my Neck is very short, take heed therefore thou strike not awry for saving thine Honesty.* Laying his Head upon the Block, he bid the Executioner stay till he had put his Beard aside, for that had committed no Treason. Thus he suffered with much Chearfulness; his Head was taken off at one Blow, and was placed upon London-Bridge, where having continued for some Months, and being about to be thrown into the Thames to make room for others, his Daughter Margaret bought it, inclos'd it in a Leaden Box, and kept it for a Relique: *Hall's Chron. Vol. 2. f. 2.*

V. The Trial of Sir NICHOLAS THROCKMORTON * Knight, in the Guildhall of London, for High-Treason, the 17th of April, 1554. the 1st of Mary.

The Commissioners appointed to try him were,



IR Thomas White Knight, Lord Mayor of London;
The Earle of Shrewesbury;
The Earle of Derby;
Sir Thomas Bromley Knyght, Lorde

Chief Justice of Englande;

Sir Nicholas Hare Knyght, Mayster of the Rolles;

Sir Frauncis Englefelde Knight, Maister of the Courte of Wardes and Liberties;

Sir Richard Southwell Knight, one of the Privy-Council;

Sir Edward Walgrave Knight, one of the Privy-Council;

Sir Roger Cholmeley Knight;

Sir Wylliam Porteman Knyght, one of the Justices of the King's Benche;

Sir Edward Saunders Knight, one of the Justices of the Common Place;

Maister Stanford, } Sergeants;
Maister Dyer, }

Maister Edward Griffin, Attourney-General;

Maister Sendall, } Clerkes of the Crowne.
Peter Tichbourne, }

Firste, after Proclamation made, and the Commission read, the Lieutenant of the Tower, Master Tho. Bridges, brought the Prisoner to the Barre; then Silence was commaunded, and Sendall said to the Prisoner as followeth:

Sendall. Nicholas Throckmorton Knyghte, hold up thy hande, Thou art before this time indited of High Treason, &c. that thou then and there didst falsly and traiterously, &c. conspire and imagine the Death of the Queenes Majestie, &c. and falsly and traiterously didst leue Warr againste the Queen within hir Realm, &c. and also thou wast adherente to the Queenes Enimies within hir Realm, giving

giuing to them Ayde and Comfort, &c. and also falsly and trayterously didst conspire and intend to depose and deprive the Queen of hir Royal Estate, and so finally destroy hir, &c. and also thou didst falsly and traiterously deuise and conclude to take violently the *Tower of London*, &c. Of al which Treasons and euery of them in Manner and Forme, &c. art thou gilty or not gilty?

Throckmorton. May it please you my Lords and Maisters, which be authorisid by the Queenes Commission to be Judges this day, to giue me leaue to speake a few words, which doth both concerne you and me, before I aunswere to the Enditement, and not altogether impertinente to the Matter, and then pleade to the Enditement.

Bromley. No, the Order is not so, you must first pleade whether you be gilty or no.

Throckmorton. If that be your Order and Law, judge accordingly to it.

Hare. You must firste aunswer to the Matter wherwith you are charged, and then you may talke at your pleasure.

Throckmorton. But things spoken out of place wer as good not spoken.

Bromley. These bee but delays to spende time, therefore answer as the Law willeth you.

Throckmorton. My Lords, I pray you make not too much haste with me, neither thinke not long for your Diner, for my Case requireth leysure, and you haue well dined when you haue done Justice truly. Christ said, *Blessed are they that hunger and thirst for Righteousnesse*.

Bromley. I can forbear my Dinner as well as you, and care as little as you peraduenture.

Shrewsbury. Come you hither to checke us, *Throckmorton*; we will not be so used, no, no, I for my part haue forborne my Breakfast, Dinner and Supper, to serve the Queene.

Throckmorton. Yea, my good Lord, I know it right well; I meant not to touche your Lordship, for youre Service and Paines is evidently knowen to all Men.

Southwell. M. *Throckmorton*, this Talke neede not, we know what we haue to do, and you would teach us our Duties; you hurt your Mater, go to! go to!

Throckmorton. M. *Southwell*, you mistake me, I meant not to teach you, nor none of you, but to remember you of that I trust you all be well instructed in, and so I satisfie my selfe, since I shall not speake, thinking you all know what you haue to doe, or oughte to know, so I will aunswer to the Inditement, and do pleade not gilty to the whole, and to euery part thereof.

Sendall. How wilt thou be tried?

Throckmorton. Shall I be tried as I would, or as I shuld?

Bromley. You shall be tried as the Law will, and therefore you must say by God and by the Countrey.

Throckmorton. Is that your Law for me? it is not as I wold; but since you wil haue it so, I am pleased with it, and do desire to be tried by faithful just Men, which more fear God than the World.

The Names of the Jurours.

Lucas.
Yong.
Martyn.
Beswike.

Bascaseeld.
Kightley,
Lowe.
Wheiston.

Pointer.
Bankes.

Calthrop.
Cater.

What time the Attorney went forthwith to Mr. *Cholmley*, and shewed him the Sheriffs Returne, who being acquainted with the Citizens, knowing the Corruptions and Dexterities of them in such Cases, noted certaine to be challenged for the Q. (a rare case) and the same Men being known to be sufficient and indifferent, that no Exceptions were to be taken to them, but only for their upright Honesties, notwithstanding the Attorney prompting Sergeant *Dier*; the said Sergeant challenged one *Bacon*, and another Citizen peremptorily for the Queen. Then the Prisoner demanded the cause of the Challenge: the Sergeante aunswered, we neede not shew you the cause of the Challenge for the Queen. Then the Inquest was furnished with other honest Men, that is to say, *Whetstone* and *Lucas*, so the Prisoner vsed these Words.

Throckmorton. I trust you have not provided for me this Day, as in times past I knew another Gentleman occupying this woful place was provided for. It chanced one of the Justices upon Jealousie of the Prisoner's acquittall, for the goodnesse of his Cause, said to another of his Companions a Justice, when the Jury did appeare, I like not this Jury for our purpose, they seeme to be too pitiful and too charitable to condemne the Prisoner. No, no, said the other Judge (*viz. Cholmley*) I warrant you, they be picked Fellowes for the nonce, he shall drink of the same Cup his Fellowes haue done. I was then a loker on of the Pageant as others be now here, but now wo is me, I am a Player in that woful Tragedie. Well, for these and such other like the black Oxe hath of late troden on some of their Feet, but my trust is, I shall not be so used. Whylest this Talke was, *Cholmeley* consulted with the Attorney aboute the Jury, which the Prisoner espied, and then sayde as heere ensueth, Ah, ah Maister *Cholmely*, will this foule packing neuer be left?

Cholmeley. Why what do I, I pray you, M. *Throckmorton*? I did nothing, I am sure you do picke Quarrels to me.

Throckmorton. Well Maister *Cholmely*, if you do well, it is better for you, God help you.

The Jury then was sworne, and Proclamation made, that whosoever woulde giue Euidence againste Sir *Nicholas Throckmorton* Knight, shoulde come in and be heard, for the Prisoner stood upon his Deliuerance: whereupon Sergeant *Stanford* presented hymself to speake.

Throckmorton. And it may please you Maister Sergeante, and the others my Masters of the Quenes learned Counsel, like as I was minded to haue said a few Words to the Commissioners, if I mighte haue had leaue, for their better remembrance of their Duties in this place of Justice, and concerning direct indifferency to be used towards me this Day; so by your Patience I do thinke good to say somewhat to you, and to the rest of the Quenes learned Counsell, appointed to giue Euidence againste mee. And albeit you and the rest by Order be appointed to gyue euidence againste mee, and enterneynd to sette forth the Depositions and Matter against me, yet I pray you remember I am not alienate from you, but that I am your Christian Brother; neither you so charged, but you ought to consider Equitie, nor yet so priuiledged, but that you haue a Duetie of God appoynted you how you shall

shal do youre Office, whiche if you excede, wil be greuouſly required at youre hands. It is lawfull for you to vse your Gifts, which I know God hathe largely giuen you, as youre Learning, Arte and Eloquence, ſo as thereby you do not ſeducethe Minds of the ſimple and vnlearned Jury, to credite Matters otherwiſe than they be. For Maiſter Sergeant, I knowe howe by Perſwaſions, Enforcements, Preſumptions, applying, implying, inferring, conjecturing, deducing of Arguments, wreſting and exceeding the Law, the Circumſtances, the Depoſitions and Confeſſions, that vnlearned Men maye bee enchanted to thinke and iudge thoſe that bee things indifferente, or at the worſt but ouerſights, to be great Treafons; ſuch power Orators haue, and ſuch Ignorance the Vnlearned haue. Almighty God by the Mouth of his Prophete, doth conclude ſuch Advocates bee curſed, ſpeaking theſe Words, Curſed bee hee that doth his office craftily, corruptly, and maliciously. And conſider alſo, that my Bloud ſhall be required at your hands, and puniſhed in you and yours, to the third and fourth Generation. Notwithſtanding you and the Juſtices excuſe alwayes ſuch erronious doings, when they be after called in queſtion by the Verdict of the twelve Men; but I aſſure you, the Purgation ſerueth you as it did *Pilate*, and you waſhe your Handes of the Bloudſhed, as *Pilate* did of Chriſts. And now to your matter.

Stanford. And it pleaſe you, my Lords, I doubt not to proue evidently and manifeſtly, that *Throckmorton* is worthely and rightly indicted and arraigned of theſe Treafons, and that he was a principall deuifer, procurer and contriver of the late Rebellion, and that *Wyat* was but his Miniſter. How ſay you, *Throckmorton*, dyd not you ſend *Winter* to *Wyat* into *Kent*, and did deuife that the Tower of *London* ſhoulde be taken, with other Inſtructions concernyng *Wyat*'s Sturre and Rebellion?

Throckmorton. May it pleaſe you that I ſhall aunſwer particularly to the matters objected againſt me, in as muche as my Memorie is not good, and the ſame much decayed ſince my greuous Emprifonment, with want of Sleep, and other Diſquietneſſe: I confeſſe I did ſay to *Winter*, that *Wyat* was deſirous to ſpeake with him, as I underſtoode.

Stanford. Yea Sir, and you deuifed together of the taking of the Tower of *London*, and of the other great Treafons.

Throckmorton. Noe, I did not ſo; proue it.

Stanford. Yes Sir, you met with *Winter* ſundry times, as ſhall appeare, and in ſundry Places.

Throckmorton. That graunted, proveth no ſuch matter as is ſuppoſed in the Inditement.

Stanford red *Winter*'s Confeſſion, whyche was of this effect; That *Throckmorton* mette with *Winter* one Day in *Tower-ſtreet*, and told him, that Sir *Thomas Wyat* was deſirous to ſpeak with him, and *Winter* demanded where *Wyat* was: *Throckmorton* aunſwered, at his Houſe in *Kente*, not farre from *Gillingham*, as I heard ſay, where the Shypſ lye. Then they parted at that time, and ſhortly after *Throckmorton* met with *Winter*, vnto whome *Winter* ſayd, Maiſter *Wyat* dothe much miſlike the comming of the *Spanyardes* into this Realme, and feareth their ſhort arriual here in as much as dayly he heareth thereof; dothe ſee daily diuers of them arrive heere, ſcattered like Soldyers; and therefore he thinketh good the Tower of *Lon-*

don ſhould be taken by a ſleighte, before the Prince came, leaſt that peece be deliuered to the *Spanyardes*. How ſay you *Throckmorton* to it? *Throckmorton* aunſwered, I miſlike it for diuers reſpects; euen ſo do I, ſayde *Winter*. At another tyme *Throckmorton* mette me the ſayd *Winter* in *Poules*, when hee had ſent one to my Houſe to ſeeke me before; and he ſaid to me you are Admiral of the Fleet that now goeth into *Spayne*. I aunſwered yea. *Throckmorton* ſaide, when will your Shippes be ready? I ſaide, within tenne Dayes. *Throckmorton* ſayde, I vnderſtand you are appointed to conſult and carrie the Lord Priuie Seale into *Spayne*; and conſidering the Daunger of the *Frenchmen*, which you ſay arme them to the Sea apace, me thinke it well done, you put my ſayde Lorde and his Traine on Lande in the Weſt Country to avoyde all Daunger. *Throckmorton* ſaide alſo, that *Wyat* changed his purpoſe, for taking the Tower of *London*: I ſaid I was glad of it; and as for the *Frenchmen*, I care not much for them, I will ſo handle the matter, that the Queenes ſhippes ſhall bee I warrante you in ſafe-gard. Another time I met with M. *Throckmorton* when I came from the Emperours Ambaſſadors, vnto whome I declared, that the Emperour had ſent me a ſayre Cheyne, and ſhewed it unto *Throckmorton*, who ſaid, for this Cheyne you haue ſold your Country. I ſaide, it is neyther *French* King nor Emperoure that can make me ſell my Country, but I will be a true *Engliſhman*: then they parted. This is the ſumme of the Talke betwixt *Throckmorton* and *Winter*.

Stanford. Now my Maſters of the Jury, you haue heard my ſayings confirmed with *Winter*'s Confeſſion: how ſay you *Throckmorton*, can you denie it? if you will, you ſhall haue *Winter* juſtifie it to your Face.

Throckmorton. My Lords, ſhall it pleaſe you that I ſhal anſwer?

Bromley. Yea, ſay your mind.

Throckmorton. I may truly denye ſome part of this Confeſſion; but bycauſe there is nothing material greatly, I ſuppoſe the whole to be true, and what is herein depoſed, ſufficiente to bring me within the compaſ of the Enditement.

Stanford. It appeareth that you were of Counſel with *Wyat*, in as much as you ſente *Winter* downe to him, who uttered unto him diuers traitorous Deuiſes.

Throckmorton. This is but conjectural; yet ſithence you will conſtrue ſo maliciously, I will recompte how I ſent *Winter* to *Wyat*: and then I pray you of the Jury, iudge better than Maiſter Sergeante doth. I met by chance a Seruant of Maiſter *Wyat*'s, who demanded of me for *Winter*, and ſhewed mee, that his Maiſter woulde gladly ſpeake with him; and ſo without any further Declaration, deſired me, if I met *Winter*, to tel him Maiſter *Wyat*'s mind, and where he was. Thus much for the ſending downe of *Winter*.

Attorney. Yea, Sir, but how ſay you to the taking of the Tower of *London*, which is Treason?

Throckmorton. I aunſwere, though *Wyat* thought meete to attempt ſo daungerous an Enterpriſe, and that *Winter* enformed me of it, you cannot extende *Wyat*'s Deuiſes to be mine, and to bring me within the compaſ of Treason; for what maner of reaſoning or prooſe is this, *Wyat* woulde haue taken the Tower, ergo *Throckmorton* is a Traitor? *Winter* doth make my Purgation in his owne Confeſſion, euen now redde as it was by

Maister Sergeante, though I say nothing; for *Winter* doth auowe there, that I did much mislike it. And because you shall the better understand that I did alwayes not alow these Master *Wyat's* Deuises, I had these Words to *Winter*, when he enformed me of it; I think M. *Wyat* would no *Englisman* hurt, and this Enterprise cannot be done without the hurt and slaughter of both Parties; for I know him that hath the Charge of the Peece, and his Brother, both Men of good Service; the one had in charge a peece of great Importance, *Bolloyne* I meane, which was stoutly assayed, and notwithstanding he made a goode accompt of it for his time, that like I am sure he will do by this his Charge. Moreover, to accompte the taking of the *Tower* is uery dangerous by the Law. These were my Wordes to *Winter*. And besides, it is very unlike, that I of all Men would confederate in such a matter against the Lieutenant of the *Tower*, whose Daughter my Brother hath married, and his House and mine ayed together by Mariage sundry times within these few Yeres.

Hare. But how say you to this, that *Wyat* and you had Conference together sundry times at *Warner's* House, and in other places?

Throckmorton. This is a very general Charge, to haue Conference; but why was it not as lawful for me to confer with *Wyat*, as with you, or any other Man? I then knew no more by *Wyat*, than by any other; and to proue to talke with *Wyat* was lawful and indifferent, the last Day I did talke with *Wyat*, I sawe my Lord of *Arundel*, with other noble Men and Gentlemen, talke with him familiarly in the Chamber of Presence.

Hare. But they did not conspire nor talke of any stur against the *Spaniards* as you did pretend, and meant it against the Queen; for you, *Croftes*, *Rogers* and *Warner*, did oftentimes deuise in *Warner's* House aboute youre traitorous purposes, or else what did you so often there?

Throckmorton. I confesse I did mislike the Queenes Mariage with *Spain*, and also the comming of the *Spaniards* hither; and then me thought I had reason to do so, for I did learne the Reasons of my misliking of you M. *Hare*, M. *Southwell*, and others in the Parliament House; there I did see the whole Consent of the Realm against it; and I a Hearer, but no Speaker, did learne my misliking of those Matters, confirmed by many sundry Reasons amongst you: but as concerning any sturre or vprore againste the *Spaniards*, I neuer made any, neyther procured any to be made; and for my much resort to M. *Warner's* House, it was not to conferre with M. *Wyat*, but to shew my Friendship to my very good Lord the Marques of *Northampton*, who was lodged there when he was enlarged.

Stanford. Did not you, *Throckmorton*, tell *Winter* that *Wyat* had changed his Mind for the taking of the *Tower*; whereby it appeared euidently that you knew of his doings?

Throckmorton. Truly I did not tell him so, but I care not greatly to giue you that Weapon to play you withal: now let us see what you can make of it?

Stanford. Yea, Sir, that proueth that you were priuie to *Wyat's* Mind in all his Deuises and Treasons, and that there was sending betwixt you and *Wyat* from time to time.

Throckmorton. What M. Sergeante, doth this proue

against me, that I knew *Wyat* did repent him of an euil deuised Enterprise? Is it to know *Wyat's* Repentance, Sinne? No, it is but a Venial Sinne; if it be any, it is not deadly. But where is the Messenger or Message that *Wyat* sent to me touching his Alteration? and yet it was lawful ynough for me to heare from *Wyat* at that time, as from any other Man, for any acte that I knew he had done.

Dyer. And it may please you my Lordes, and you my Maisters of the Jurie, to prove that *Throckmorton* is a principal doer in this Rebellion, there is yet many other things to be declared: amongst other, there is *Croftes* Confession, who sayeth, that he and you and your Accomplises, did manye times deuise aboute the whole Matters, and hee made you priuie to all his Determinations, and you shewed him that you would go into the West Countrey with the Earle of *Deuon*, to Sir *Peter Caroe*, accompanied with others.

Throckmorton. M. *Croftes* is yet liuing, and is here this day; how hapneth it he is not brought Face to Face to iustifie this matter, neither hathe bin of all this time? Will you knowe the Trueth? either he sayd not so, or he wil not abide by it, but honestly hath reformed himself. And as for knowing his Deuises, I was so well acquainted with them, that I can name none of them, nor you neyther, as matter knowen to mee.

Attourney. But why did you aduise *Winter* to land my Lord Priuie Seale in the West Countrey?

Throckmorton. He that told you that my mind was to land him there, doth partly tel you a reason why I said so, if you would remember as well the one as the other; but because you are so forgetful, I will recite wherefore: In communication betwixt *Winter* and me, as he declared to me that the *Spaniards* provided to bring their Prince hither, so the *Frenchmen* prepared to interrupt his Arrival, for they began to arme to the Sea, and had already certain Shippes on the West Coast, (as he heard) unto whom I saide, that peraduenture not onely the Queenes Shippes under his Charge might be in jeopardy, but also my Lorde Priuie Seale, and all his Trayne, the *Frenchmen* beeing wel prepared to meete with them; and therefore for all Euent it were good you should put my said Lord in the West Countrey, in case you espie any jeopardie. But what doth this proue to the Treasons, if I were not able to giue conuenient Reasons to my talke?

Stanford. Mary Sir, now commeth the Prooofes of youre Treasons: you shal heare what *Cutbert Vaughan* sayth against you.

Then Sergeant *Stanford* did reade *Vaughan's* Confession tending to this effect, That *Vaughan* comming out of *Kent*, met with *Throckmorton* at M. *Warner's* House, who after he had don Commendations from *Wyat* to him, desired to know where *Crofts* was; *Throckmorton* answered, either at *Arundel* House where he lodgeth, or in *Poules*. Then *Vaughan* desired to know howe thyngs went at *London* saying, M, *Wyat* and we of *Kent* do much mislike the Mariage with *Spaine*, and the comming of the *Spaniards* for diuers respectes; howbeit, if other Countries mislike them as *Kent* doth, they shall be but hardly welcome: and so they parted. Shortly after *Throckmorton* met with *Vaughan* in *Poules*, unto whom *Throckmorton* declared with sundry Circumstances, that the Western Men were in readinesse to come forwards; and that

that Sir *Peter Caroe* had sent unto him euen now, and that he had in order a good Band of Horsemen, and an other of Footemen. Then *Vaughan* demanded what the Erle of *Devon* would do; *Throckmorton* answered he will marre all, for he will not go hence; and yet Sir *Peter Caroe* wold mete him with a Band both of Horsemen and Footemen, by the way of *Andeuer*, for his Safe-guard; and also he should haue bin well accompanied from hence with other Gentlemen, yet all this wyl not moue him to departe hence. Moreouer, the said Erle hath, as is said, discovered, al the whole matter to the Chancellor, or else it is comen out by his Taylor, aboute the trimming of a Shirte of Mayle, and the making of a Cloke. At another time, *Vaughan* saith, *Throckmorton* shewed him, that he had sent a Poste to Sir *Peter Caroe* to come forward with as much speede as might be, and to bring his force with him. And also *Throckmorton* aduised *Vaughan* to will M. *Wyat* come forward with his Power, for nowe was the time, in as much as the *Londoners* would take his part, if the matter were presented unto them. *Vaughan* said also, that *Throckmorton* and *Warner* should haue ridden with the said Erle Westward. Moreouer, the said *Vaughan* deposed, that *Throckmorton* shewed him in talke of the Erle of *Pembroke*, that the said Earle would not fight against them, though hee would not take their partes. Also *Vaughan* said, That *Throckmorton* shewed hym that he would ride downe to *Barkeeshire* to Sir *Francis Englefield's* House, there to meete his eldest Brother, to moue him to take his part. And this was the Summe of *Cutbert Vaughan's* Confession:

Stanford. How say you, doth not heere appeare euident matter to proue you a Principal, who not onely gave order to Sir *Peter Caroe* and his Adherents, for their rebellious actes in the West Countrey; but also procured *Wyat* to make his Rebellion, appointing him and the others also, when they should attempt their Enterprise, and how they should order their doings from time to time? Besides all this euident Matter, you were specially appointed to go away with the Earle of *Devon*, as one that would direct all things, and give order to all Men; and therefore *Throckmorton*, since this matter is so manifest, and the euidence so apparent, I would aduise you to confesse your fault, and submit your selfe to the Queenes Mercy.

Bromley. Howe say you, will you confesse the matter? and it will be best for you.

Throckmorton. No, I will neuer accuse my selfe unjustly; but in as much as I am come hither to bee tried, I pray you let me haue the Law favourably.

Attourney. It is apparent that you lay at *London* as a Factor, to giue Intelligence as well to them in the West, as to *Wyat* in *Kent*.

Throckmorton. How proue you that, or who doth accuse me but this condemned Man?

Attourney. Why, will you denie this matter? you shall haue *Vaughan* iustifie his whole Confession here before your Face.

Throckmorton. It shal not neede, I know his unshamefastnes, he hath aduowed some of this vntrue talk before this tyme to my Face; and it is not otherwise like, considering the price, but he wil do the same again.

Attourney. My Lords and Maisters, you shall haue *Vaughan* to iustifie this heere before you all, and confirm it with a Booke Oth.

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Throckmorton. He that hath said and lyed, will not, being in this case, sticke to sweare and lye.

Then was *Cutbert Vaughan* brought into the open Court.

Sendall. How say you, *Cutbert Vaughan*, is this your own Confession, and wil you abide by all that is here written?

Vaughan. Let me see it, and I will tell you.

Then his Confession was shewed him.

Attourney. Bycause you of the Jury the better may credite him, I pray you my Lords let *Vaughan* be sworn.

Then was *Vaughan* sworne on a Booke to say nothing but the Truth.

Vaughan. It may please you my Lords and Maisters, I could haue bin well content to haue chose seauen Yeres Imprisonment, though I had bin a free Man in the Law, rather than I would this Day haue gyuen Euidence against Sir *Nicholas Throckmorton*, vnto whome I bear no displeasure; but sithence I must needs confesse my Knowledge, I must confesse all that is there written is true. How say you M. *Throckmorton*, was there any displeasure betwene you and me, to moue me to say aught against you?

Throckmorton. Not, that I know: how say you *Vaughan*, what Acquaintance was there between you and me, and what Letters of Credit, or Token did you bring me from *Wyat*, or any other to moue me to trust you?

Vaughan. As for Acquaintance, I knew you as I did other Gentlemen; and as for Letters, I brought you none other but Commendations from M. *Wyat*, as I did to diuers other of his Acquaintance at *London*.

Throckmorton. You might as well forge the Commendations as the rest; but if you haue done with *Vaughan*, my Lords, I pray you giue me leaue to aunswere.

Bromley. Speak, and be short.

Throckmorton. I speak generally to all that be heere present, but especially to you of my Jury, touching the Credit of *Vaughan's* Depositions against me, a condemned Man; and after to the Matter: and note I pray you the Circumstances, the better to induce somewhat material. First I pray you remember the small Familiaritie betwixt *Vaughan* and me, as he hath auowed before you. And moreouer, to procure Credite at my hand, he brought neither Letter nor Token from *Wyat*, nor from any other to me, which he also hath confessed here, and I will suppose *Vaughan* to be in as good Condition as any other Man here, that is to say, an uncondemn'd Man; yet I referre it to your good Judgment, whether it were lyke that I knowing onely *Vaughan's* Person from another Man, and having none other Acquaintance with him, would so frankly discouer my mind to him in so dangerous a matter. How like, I say, is this, when diuers of these Gentlemen now in Captiuitie, being my very Familiars, coulde not depose any such matter against me, and neuertheless vpon their Examinations haue said what they could? And thogh I be no wise Man, I am not so rash to vtter to an unknowen Man (for so may I call him in comparison) a matter so dangerous for me to speake, and him to heare; but bycause my Truth and his False-

hood shall the better appear unto you, I will declare his Inconstancy in vttering this his Euidence; and for my better Credite, it may please you, Mr. *Southwell*, I take you to witnes, when *Vaughan* first justified this his unjust Accusation against me before the L. *Paget*, the L. Chamberlaine, you M. *Southwell*, and others, he referred the Confirmation of this surmised matter to a Letter sent from him to Sir *Thomas Wyat*; which Letter doth neither appeare, nor any Testimony of the said M. *Wyat* against mee touching the matter: for I doubt not Sir *Thomas Wyat* hath bin examin'd of me, and hathe sayde what he could directly or indirectly. Also *Vaughan* saith, that yong *Edward Wyat* coulde confirme this matter, as one that knew this pretended Discourse betwixt *Vaughan* and me; and thereupon I made sute that *Edward Wyat* might either be brought face to face to me, or otherwise be examined.

Southwell. M. *Throckmorton*, you mistake your matter, for *Vaughan* said, that *Edward Wyat* did know some part of the matter, and also was priuie to the Letter that *Vaughan* sent to Sir *Thomas Wyat*.

Throckmorton. Yea, Sir, that was *Vaughan's* last shift, when I charged him before the Master of the Horse, and you, with his former Allegations touching his witnes; whom when hee espyed, woulde not do so lewdly as hee thought, then he vsed this Alteration: but where is *Edward Wyat's* Depositions of any thing against me, now it appeareth neither his firste nor his last Tale to be true? For you knowe, M. *Bridges*, and so doth my Lord your Brother, that I desired twice or thrice *Edward Wyat* shuld be examined; and I am sure, and most assured, he hathe bin willed to say what he could, and here is nothing depofed by him against me, eyther touching any Letter or other Conference; or where is *Vaughan's* Letter sent by Sir *Thomas Wyat* concerning my Talke?

But now I will speake of *Vaughan's* present Estate, in that he is a condemned Man, whose Testimonie is nothing worthe by any Lawe; and bycause false Witnes be mentioned in the Gospel, treating of Accusation, hearke I pray you what S. *Jerome* sayeth, expounding the place: it is demanded why Christes accusers be called false Witnes, which did report Christ's Words not as he spake them; they be false witnes, saith S. *Jerome*, which do ad, alter, wrest, double, or do speake for hope to auoid Death, or for malice to procure another Man's Death: for all Men may easily gather he cannot speake truely of me, or in the case of another Man's Life, where he hath hope of his owne by Accusation. Thus much speaketh S. *Jerome* of false Witnes. By the ciuil Law there be many Exceptions to be taken agaynst such Testimonies; but bycause we be not gouerned by that Law, neither I haue my Trial by it, it shal be superfluous to trouble you therewith, and therefore you shall heare what your owne Lawe doth say. There was a Statute made in my late Soueraigne Lord and Maister his time, touching Accusation, and these be the Words:

Be it enacted, That no Person or Persons, &c. shall be indited, arraigned, condemned, or conuicted for any Offence of Treason, Petit Treason, Misprision of Treason, for which the same Offendor shal suffer any Paynes of Death, Imprisonment, Losse or Forfeiture of his Goodes, Lands, &c. vnlesse the same Offendor be accused by two

sufficient and lawful Witnes, or shall willingly without Violence confesse the same. And also in the sixth Yere of his Raigne, it is thus ratified as ensueth:

That no Person nor Persons shall bee indited, arraigned, condemned, conuicted or attainted of the Treasons or Offences aforefaide, or for anye other Treasons that now bee, or hereafter shall be, vnlesse the same Offendor or Offendors be thereof accused by two lawfull and sufficient Accusers; whiche at the time of Arraignment of the Parties so accused (if they be then liuing) shall be brought in Person before the said Partie accused, and auowe and mainteine that they haue to say againste the saide Partie, to proue him giltye of the Treasons or Offence contained in the Byll of Inditement layd against the Partie arraigned, vnlesse the sayd Partie arraigned shall be willing without Violence to confesse the same.

Here note I pray you, that our Lawe dothe require two lawfull and sufficient Accusers to be brought face to face, and *Vaughan* is but one, and the same most vnlawfull and insufficient; for who can be more unlawful and insufficient than a condemned Man, and suche one as knoweth to accuse me is the meane to saue his owne Lyfe? Remember, I pray you, howe long and how many times *Vaughan's* Execution hathe bin respited, and how often hee hathe bin conjured to accuse, (whych by Goddes Grace hee withstoode vntill the last Houre) what time perceyuing there was no way to liue, but to speake againste mee or some other (his former Grace beeyng taken away) did redeeme his Lyfe most unjustly and shamefully, as you see.

Hare. Why shoulde he accuse you more than any other, seeyng there was no displeasure betwixte you, if the matter had not bin true?

Throckmorton. Bycause he must eyther speake of some Man, or suffer Deathe; and then he did rather choose to hurte him he did least know, and so loued least, than any other well knownen to him, whome he loued most. But to you of my Jury I speake especially, and therefore I pray you note what I say: In a matter of lesse weight than Trial of Life and Lande, a Man may by the Law take Exceptions to suche as be impaneld, to trie the Controuersies betwixt the Parties: as for example, a Man may chalenge that the Sheriffe is hys Enemie, and therefore hathe made a parciall Returne, or bycause one of the Jury is the Sheriffe my Aduersaries Seruante; and also in case my Aduersaries Villaine or Bondman be empanelled, I may lawfully chalenge him, bycause the Aduersarie parte hathe power ouer hys Villayne's Landes and Goodes, and hathe the vse of hys Bodye for seruile office: muche more I may of right take exception to *Vaughan's* Testimonie, my Lyfe and all that I haue depending therevpon; and the same *Vaughan* beeyng more bounde to the Queenes Highnesse, my Aduersarie (that wo is me therefore, but so the Lawe dothe here so tearme hyr Majestie) than anye Villayne is to hys Lord; for hir Hyghnesse hath not onely Power ouer hys Bodye, Lands, and Goodes, but ouer his Lyfe also.

Stanford. Yea, the Exceptions are to be taken agaynst the Jury in that case; but not agaynst the Witnes or Accusor, and therefore youre Argument serueth little for you.

Throckmorton. That is not so, for the vse of the Jurie,

Jurie, and the Witnes, and the Effect of their doings doth serue me to my purpose, as the Law shall discusse. And thus I make my Comparison: By the Ciuil Law the Judge doth giue Sentence upon the Depositions of the Witnes, and by your Law the Judge doth giue Judgement upon the Verdict of the Jury, so as the effect is both one to finish the matter, Trial in Law, as well by the Depositions of the Witnes, as by the Juries Verdict, though they varie in Forme and Circumstance; and so *Vaughan's* Testimonie being credited, may be the material Cause of my Condemnation, as the Jury may be induced by his Depositions to speak their Verdict, and so finally therevpon the Judge to giue Sentence. Therefore I may use the same Exceptions against the Jury, or any of them, as the principal mean, that shall occasion my Condemnation.

Bromley. Why, do you denie, that euery part of *Vaughan's* Tale is untrue?

Attourney. You may see he will denie all, and say there was no such Communication betwixt them.

Throckmorton. I confesse some part of *Vaughan's* Confession to be true, as the Name, the Places, the Time, and some part of the Matter.

Attourney. So you of the Jury may perceiue the Prisoner doth confesse something to be true.

Throckmorton. As touching my sending to Sir *Peter Caroe*, or his sending to me, or concerning my Aduice to *M. Wyat* to sturre, or to repaire hither, or touchyng the Earl of *Deuon* parting hence, and my going with him, and also concerning the matter of the Earle of *Pembroke*, I do aduow and say that *Vaughan* hath said untruely.

Southwell. As for my Lord of *Pembroke*, you neede not excuse the matter, for he hath shewed himselfe cleere in these matters like a Nobleman, and that we all know.

Hare. Why what was the talke betwixt *Vaughan* and you so long in *Poules*, if these were not so, and what meant your oft Meetings?

Throckmorton. As for our often Meetings, they were of no set purpose, but by chance, and yet no oftner than twice; but sithence you would know what Communication passed betwixt us in *Poules* Church, I will declare. We talked of the Incommodities of the Marriage of the Queene with the Prince of *Spayne*, and how grievous the *Spaniards* would be to vs here. *Vaughan* said, that it should be very dangerous for any Man that truly professed the Gospel to liue here, such was the *Spaniards* Crueltie, and especially against Christian Men. Whereunto I answered, it was the Plague of God come justly vpon us; and now Almighty God dealt with us, as he did with the *Israelites*, taking from them for their vnthankfulness their Godly Kings, and did send Tirants to raige ouer them; even so he handled us *Englishmen*, whiche hadde a most godly and vertuous Prince to raigne ouer vs, my late Soueraigne Lord and Maister King *Edwarde*, vnder whome we might both safely and lawfully professe Gods Word; which with our lewd doyngs, demeanour, and liuing, we handled so irreuerently, that to whip vs for our Faultes, he woulde send vs Straungers, yea such very Tyrants to exercise great Tyrannie ouer vs, and did take away the vertuous and faithfull King from amongst us; for euery Man of euery Estate did colour his naughty Affections with a pretence of Religion, and made the Gospell a staulking Horse to bring their euil desires to effect. This

was the summe of our talke in *Poules*, somewhat more dilated.

Stanford. That it may appeare yet more euidently howe *Throckmorton* was a principal Doer and Counsellor in this matter, you shall heare his owne Confession of his own hand writing. The Clerke did begin to reade; *Throckmorton* desired *M. Stanford* to read it, and the Jury well to marke it. Then *M. Stanford* did read the Prisoner's own Confession to this effect, that *Throckmorton* had Conference with *Wyat*, *Caroe*, *Croftes*, *Rogers* and *Warner*, as well of the Queenes Mariage with the Prince of *Spayne*, as also of Religion, and did particularly confer with euery the forenamed of the matters afore said. Moreouer, with Sir *Thomas Wyat*, the Prisoner talked of the brute, that the Western Men should much mislike the comming of the *Spaniards* into this Realme, beeing reported also that they intended to interrupt theyr arriual here. And also that it was said, that they wer in consultation about the same at *Exeter*. *Wyat* also did say, that Sir *Peter Caroe* could not bring the same matter to good effect, nor was there any Man so mete to bring it to good effect, as the Erle of *Devon*; and especially in the West Country, in as much as they did not draw al by one line. Then *Throckmorton* ask'd how the *Kentishmen* were affected to the *Spaniards*? *Wyat* said, the People like them euill ynough, and that appeared now at the comming of the Count *Egmont*, for they were ready to sturre against him and his Traine, supposing it had bin the Prince; but said *Wyat*, Sir *Robert Southwell*, *M. Baker*, and *M. Moyle*, and their Affinitie, which bee in good Credite in some places of the Shire, wil for other malicious Respects hinder the Libertie of their Country. Then *Throckmorton* should say, though I know ther hath bin an vnkindnesse betwixt *M. Southwell* and you for a Money matter, wherein I trauelled to make you Friends, I doubt not, but in so honest a matter as this is, he will for the safeguard of his Country joyne with you, and so you may be sure of the Lord *Burgainey* and his Force. Then *Wyat* said, it is for another matter than for Money that we disagree, wherein he hath handled me and others very doubly and vnneighbourly; howbeit; he can do no other, neither to me, nor to anye other Man, and therefore I forgive him. Item, with Sir *Peter Caroe*, *Throckmorton* had Conference touching the Impeachment of the landing of the said Prince, and touchyng Prouision of Armour and Munition, as ensueth; that is to say, that Sir *Peter Caroe* told *Throckmorton*, that he trusted his Countrymen would be true *Englishmen*, and would not agree to let the *Spaniards* to gouerne them. Item, the said Sir *Peter Caroe* sayd, the matter importing the French King as it did, he thought the French King would work to hinder the *Spaniards* coming hither, with whome the said Sir *Peter* dyd thinke good to practise for Armour, Munitions and Money. Then *Throckmorton* did aduise him to beware that he brought any Frenchmen into the Realme forceably, in as much as he could as euill abyde the Frenchmen after that sort as the *Spaniards*. And also *Throckmorton* thought the French King vnable to give aide to us, by meanes of the great Consumption in their own Warres. *M. Caroe* said, as touching the bringing in of Frenchmen, he meant it not, for he loued neither Partie, but to serue his own Countrey, and to help his Countrey from Bondage; declaring further to *Throckmorton*,

morton, that he had a small Barke of his owne to worke his practise by; and so he said, that shortly he intended to depart to his own Countrey to vnderstand the Deuotion of his Countrymen. *Item*, *Throckmorton* did say, he would for his part hinder the comming in of the *Spaniards* as much as he could by Perswasion. *Item*, to Sir *Edward Warner*, he had and did bemone his owne Estate, and the Tyrannie of the tyme extended upon dyuers honest Persons for Religion, and wished it were lawfull for all of each Religion to liue safely according to their Conscience; for the Law (*Ex officio*) will be intolerable, and the Cleargies discipline now may rather be resembled to the *Turks* Tyrannie, than to the teaching of Christian Religion. This was the Summe of the matter, whiche was red in the foresaid Confession, as matters most grievous against the Prisoner. Then *Throckmorton*, said, sithence M. Sergeant you haue red and gathered the place as you think, that maketh most against me, I pray you take the Paynes, and reade further, that hereafter whatsoeuer become of me, my Words be not peruerted and abused to the hurt of som others, and especially against the great Personages, of whome I haue bin fundry times (as appeareth by my Answers) examined; for I perceiue the Net was not cast only for little Fishes, but for the great ones, *juxta adagium*.

Stanford. It shall be but losse of tyme, and we haue other things to charge you withall, and this that you desire doth make nothing for you.

Dyer. And for the better Confirmation of al the Treasons objected against the Prisoner, and therein to proue him gilty, you of the Jury shall heare the Duke of *Suffolkes* Depositions against him, who was a Principal, and hath suffered accordingly. Then the said Sergeant red the Dukes Confession touching the Prisoner, amounting to this effect; That the Lord *Thomas Grey* did informe the said Duke, that Sir *Nicholas Throckmorton* was priue to the whole Deuises against the *Spanyardes*, and was one that shoulde goe into the *West-Country* with the Earle of *Deuonshire*.

Throckmorton. But what doth the principall Author of thys matter say against me, I mean the Lord *Thomas Gray*, who is yet liuing? Why is not his Deposition brought against me, for so it ought to bee, if he can say any thing? Will you know the Trueth? Neyther the Lord *Thomas Grey* hath sayd, can say, or will say any thing against me, notwithstanding the Duke his Brothers Confession and Accusation, who hath affirmed manye other things besides the Trueth. I speake not without certaine knowledge: for the Lord *Thomas Grey*, being my Prison-Fellow for a small time, informed me, that the Duke his Brother had misreported him in many things, amongst others in matters touching me, which he had declared to you Mr. *Southwell*, and other the Examinors not long ago. I am sure if the Lord *Thomas* could or would haue said any thing, it should haue bin here now: And as to the Dukes Confession, it is not material, for he doth referre the matter to the Lord *Thomas's* Report, who hath made my Purgation.

Attorney. And it please you my Lordes, and you my Maisters of the Jury, besides these matters touching *Wyats* Rebellion, Sir *Peter Caroes* Treasons, and confederating with the Duke of *Suffolke*; and besides the Prisoners Conspiracie with the Earle of *Deuon*, with *Crofts*, *Rogers*, *Warner*, and sundry others in sundrye Places, it

shall manifestly appeare vnto you, that *Throckmorton* did conspire the Queenes Majesties Death with *William Thomas*, Sir *Nicholas Arnold*, and other Traitors intending the same; which is the greatest matter of all others, and most to be abhorred; and for the Prooofe hereof you shall heare what *Arnold* sayth. Then was Sir *Nicholas Arnold's* Confession redde, affirming that *Throckmorton* shewed vnto him, riding betwixt *Hinam* and *Crosse Laund* in *Glocestershire*, that *John Fitzwilliams* was very much displeased with *William Thomas*.

Attorney. *William Thomas* devised, that *John Fitzwilliams* should kyll the Quene; and *Throckmorton* knew of it, as appeareth by *Arnold's* Confession.

Throckmorton. First I denie that I saide anye suche thing to Mr. *Arnold*; and though he be an honest Man, he may either forget himself, or deuise meanes how to vnburthen himselfe of so weightie a matter as this is; for he is charged with the matter as principal, which I did perceiue when he charged mee with his Tale; and therefore I do blame him the lesse, that he seeketh how to discharge himself, vsing me as a witnes, if he could so transferre the Deuice to *William Thomas*. But truely, I neuer spake anye suche wordes vnto him; and for my better Declaration, I did see *John Fitzwilliams* here euen now, who can testifie, that he neuer shewed me of any Displeasure betwixt them: and as I know nothing of the Displeasure betwixt them, so I know nothing of the Cause. I pray you, my Lordes, let him bee called to depose in thys matter what hee can. Then *John Fitzwilliams* drew to the Barre, and presented himselfe to depose his knowledg in the mater in open Court.

Attorney. I pray you, my Lordes, suffer him not to be sworne, neither to speake; we haue nothing to do with him.

Throckmorton. Why shulde hee not bee suffered to tell Trueth? And why bee yee not so well contented to heare Troth for mee, as Untroth against me?

Hare. Who called you hither *Fitzwilliams*, or commaunded you to speake? you are a verye busie Officer.

Throckmorton. I called him, and do humbly desire that he may speake and be heard as well as *Vaughan*, or else I am not indifferently used; specially seeing Maister Atturney doth so presse this matter against me.

Southwell. Goe youre wayes *Fitzwilliams*, the Courte hath nothing to doe with you; peradventure you woulde not bee so readie in a good Cause.

Then *John Fitzwilliams* departed the Court, and was not suffered to speake.

Throckmorton. Since this Gentlemans Declaration maye not bee admitted, I trust you of the Jurie can perceyue, it was not for anye thinge hee had to say against me; but contrariwise, that it was feared he would speake for mee. And nowe to Maister *Arnoldes* Depositions against me, I say I did not tell him anye such wordes; so as if it were material, there is but his yea and my nay. But because the wordes be not fore strayned against me, I praye you, Maister Atturney, why might not I haue tolde Maister *Arnolde*, that *John Fitzwilliams* was angrie with *William Thomas*, and yet knowe no cause of the Anger? it might be vnderstande, to disagree oftentimes. Who doth confesse that I knowe any thing of *William Thomas* Deuise

Deuise touching the Queenes Death? I will aunswere, no Man: For Maister *Arnolde* doth mention no worde of that matter, but of the Displeasures betwixte them; and to speake that, dothe neyther prooue Treason, nor knowledge of Treason. Is here all the Euidence againste me that you haue to bring mee within the compasse of the Inditement?

Stanford. Methinke the Matters confessed by others against you, together with your owne Confession, will weye shrewdlye. But howe saye you to the Rising in *Kent*, and to *Wiat's* Attempte againste the Queenes Royal Person at hir Palace?

Bromley. Whye do you not reade *Wiat's* Accusation to him, whiche dothe make him Partener to his Treasons?

Southwell. *Wiat* hath grievouslye accused you, and in manye thinges that others haue confirmed.

Throckmorton. Whatsoeuer *Wiat* hath saide of me in hope of his Life, he vsayde it at his Death. For since I came into this Hall, I hearde one saye (but I knowe him not) that *Wiat*, upon the Scaffold, diddenot onelye purge my Ladie *Elizabeth* hir Grace, and the Earle of *Deuonshire*, but also all the Gentlemen in the Tower, saying, they were all ignoraunt of the Sturre and Commotion; in whiche number I take my selfe.

Hare. Notwithstanding he saide, all that he had written and confessed to the Counsayle, was true.

Throckmorton. Nay, Sir, by your patience, Maister *Wiat* sayde not so, that was Maister Doctors Addicion.

Southwell. It appeareth you haue added good Intelligence.

Throckmorton. Almightye God prouided that Reuelation for mee this Daye since I came hither: for I haue bene in close Prison these lviij. Dayes, where I hearde nothing but what the Birdes tolde mee, which did flie ouer my heade. And now to you of my Jurie I speake especiallye, whome I desire to marke attentively, what shall be sayde: I haue been indited, as it appeareth, and now am arreigned of compassing the Queenes Majesties Death, of levying Warre againste the Queene, of taking the Tower of *London*, of deposing and depriuing the Queene of hir Royall Estate, and finally to destroy hir, and of adherence to the Queenes Enimies. Of all whiche Treasons, to proue mee guiltie, the Queenes learned Counsayle hath giuen in Euidence these Pointes materiall: that is to saye, for the compassing or imagining the Queenes Death, and the Destruction of hir Royal Person, Sir *Nicholas Arnolde's* Depositions; whiche is, that I shoulde saye to the said Sir *Nicholas* in *Glocestershire*, that Maister *John Fitzwilliams* was angrie with *William Thomas*. Whereunto I haue aunswered, as you haue hearde, bothe denying the matter; and for the prooue on my side, doe take Exception, bicause there is no Witnesse but one. And neuerthelesse, though it were graunted, the Depositions proue nothing concerning the Queenes Death. For levying of Warre againste the Queene, there is alledged my Conference with Sir *Thomas Wiat*, Sir *James Crofts*, Sir *Edward Rogers*, Sir *Edward Warner*, againste the Marriage with *Spaine*, and the comming of the *Spaniards* hither; which talke I do not denie in sorte as I spake it, and ment it; and notwithstanding the malicious gathering this Day of my Conference, proueth yet no levying of Warre. There is also alledged for prooue of the same Article, Sir *James Crofts's* Confession,

which as you remember, implieth no such thing, but generall talk againste the Mariage with *Spaine*, and of my departing Westwarde with the Earle of *Devon*, which the sayde *James* doth not auowe, and therefore I praye you consider it as not spoken. There is also for prooue of the sayde Article; the Duke of *Suffolkes* Confession, with whom I neuer had Conference; and therefore he aduouched the tale of his Brother's Mouth, who hath made my Purgation in those Matters, and yet if the matter were proued, they be not greatly materiall in Lawe. There is also alledged for the further prooue of the same Article, and for deposing and depriuing the Queene of hir Royall Estate, and for my adhering to the Queenes Enimies, *Cutbert Vaughan's* Confession, whose Testimonie I haue sufficiently disproued by fundrie Authorities and Circumstances, and principally by your owne Lawe, which dothe require two lawfull and sufficient Witnesse to be brought face to face. Also for the taking of the Tower of *London*, there is alledged *Winter's* Depositions, which vttereth my miliking, when he vttered vnto mee Sir *Thomas Wiat's* Resolution and Deuise for attempting of the sayde peece. And last of all, to enforce these matters, mine owne Confession is engriued greatly against me, wherein there doth appeare neyther Treason, neyther concelement of Treason, neyther whispering of Treason, nor procurement of Treason. And for as much as I am come hither to be tried by the Lawe, though my Innocencie of all these Pointes materiall objected, be apparent to acquite mee, wherevnto I doe principallye cleaue; yet I will for your better Credit and Satisfactions shewe you euidentlye, that if you woulde beleue all the Depositions layde against me, which I trust you will not doe, I ought not to be attainted of the Treason comprised within my Inditement, considering the Statute of Repeale the last Parliament, of all Treasons, other than suche as be declared in the xxv. Yeare of King *Edwarde* the Thirde; both which Statutes I pray you my Lords my be redde here to the Enquest.

Bromley. No, for there shall be no Bookes brought at your desire; we know the Law sufficiently withoute Booke.

Throckmorton. Do you bring me hither to trie mee by the Lawe, and will not shewe me the Lawe? What is your Knowledge of the Lawe to these Mens Satisfactions, which haue my Triall in hande? I pray you, my Lordes, and my Lordes all, let the Statutes bee redde, as well for the Queene, as for mee.

Stanford. My Lord Chief Justice can shew the Lawe, and will, if the Jurie doe doubt of any Poynt.

Throckmorton. You knowe it were indifferent that I should knowe and heare the Law whereby I am adjudged; and forasmuch as the Statute is in *Englishe*, Men of meaner Learning than the Justices, can vnderstande it, or else now shoulde we know when we offend?

Hare. You knowe not what belongeth to youre case, and therefore we must teach you: it appertaineth not to vs to provide Bookes for you, neyther fit wee here to be taught of you; you should haue taken better hede to the Law before you had come hither.

Throckmorton. Bicause I am ignoraunt, I woulde learne, and therefore I haue more neede to see the Law, and partlye as well for the Instructions of

of the Jurie, as for my owne Satisfaction, which mee thinke, were for the Honor of this Prefence. And now if it please you my Lorde Chiefe Justice, I do direct my Speech specially to you. What time it pleased the Queenes Majestie, to call you to this Honourable Office, I did learne of a great Personage of hir Highnesse Priue Counsayle, that amongst other good Instructions, hir Majestie charged and enjoined you to minister the Law and Justice indifferently without respect of Persons. And notwithstanding the old Error amongst you, whiche did not admit any Witnesse to speake, or any other matter to be hearde in the favor of the Aduersarie, hir Majestie being partie, hir Highnesse pleasure was, that whatsoeuer could be brought in the fauor of the Subject, shoulde be admitted to be hearde. And moreouer, that you specially, and likewise all other Justices, shoulde not perswade themselves to sit in Judgment otherwise for hir Highnesse, than for hir Subject. Therefore this maner of indifferent proceeding being principally enjoined by Gods Commandement, which I had thought partly to haue remembred you and others here in Commission in the beginning, if I might haue had leaue; and the same also being commanded you by the Queenes owne Mouth, me think you ought of right to suffer me to haue the Statutes red openly, and also to reject nothing that coulde be spoken in my Defence: and in thus doing you shal shew your selves worthy Ministers, and fit for so worthie a Mistresse.

Bromley. You mistake the matter, the Queene spake those Wordes to maister *Morgan* Chiefe Justice of the Common Place; but you haue no caute to complaine, for you haue been suffered to talke at your pleasure.

Hare. What would you doe with the Statute-Booke? the Jury doth not require it, they haue hearde the Euidence, and they must vpon their Conscience trie whether you bee guiltie or no, so as the Booke needeth not: if they will not credite the Euidence so apparent, then they know what they haue to doe.

Cholmley. You ought not to haue any Bookes red here at your Appointment, for where doth aryse any doubt in the Law, the Judges fitte here to informe the Court; and now you doe but spende time.

Attourney. I pray you my Lorde Chiefe Justice repeate the Euidence for the Queene, and giue the Jurie their Charge, for the Prisoner will keepe you here all day.

Bromley. How saye you, haue you any more to saye for your selfe?

Throckmorton. You seeme to giue and offer mee the Lawe, but in very dede I haue only the Forme and Image of the Lawe; neuerthelesse, since I cannot be suffred to haue the Statutes red openly in the Booke, I will by your Pacience gesse at them, as I may, and I pray you to help me if I mistake, for it is long since I did see them. The Statute of Repeale made the last Parliament hath these Wordes, Be it enacted by the Queene, that from henceforth none Acte, Deede, or Offence, being by Acte of Parliament or Statute made Treason, Petit Treason, or Misprision of Treason, by Wordes, Writing, Printing, Ciphering, Deedes, or otherwise whatsoever, shall be taken, had, deemed, or adjudged Treason, Petit Treason, but only such as be declared, or

expressed to be Treason, in or by an Acte of Parliament made in the xxv. Yeare of *Edward III.* touching and concerning Treasons, and the Declaration of Treasons, and none other. Here may you see this Statute doth referre all the Offences aforesayde, to the Statute of the xxv. of *Edward III.* which Statute hath these Wordes touching and concerning the Treasons that I am indited and arraigned of; that is to saye, Whosoever doth compasse or imagine the Death of the King, or leuie War against the King in his Realm, or being adherent to the Kings Enimies within this Realme, or elsewhere, and bee thereof probably attainted by open Deede by People of their Condicion, shall be adjudged a Traytor. Now I pray you of my Jurie which haue my Lyfe in Triall, note well what things at this daye bee Treasons, and howe these Treasons must be tried and decerned, that is to saye, by open Deede, which the Lawes doth at some time terme *ouert acte*. And now I aske, notwithstanding my Inditement, which is but matter alledged, where doth appeare the open Deede of any compassing or imagining the Queenes Death; or where doth appeare any open Deede of being adherent to the Queenes Enimies, giving to them ayde and comfort; or where doth appeare any open Deede of taking the Tower of *London*?

Bromley. Why doe not you of the Queenes learned Counsell aunswere him? Me thinke, *Throckmorton*, you neede not to haue the Statutes, for you haue them meetely perfectly.

Stanford. You are deceyued, to conclude all Treasons be by the Statute of the xxv. Year of *Edward* the Thirde; for that Statute is but a Declaration of certaine Treasons, whiche were Treasons before at the Common Lawe. Euen so there doth remayne diuers other Treasons at this day at the Common Lawe, which be not expressed by that Statute, as the Judges can declare. Neuerthelesse, there is matter sufficient alledged and proued against you to bringe you within the compasse of the same Statute.

Throckmorton. I pray you expresse those Matters that bring me within the compasse of the Statute of *Edward* the Third; for the Wordes be these, And be thereof attainted by open Deede by People of like Condicion.

Bromley. *Throckmorton*, you deceyue your selfe, and mistake these Wordes, by People of their Condicion; for thereby the Lawe doth vnderstande the discouering of your Treasons. As for example, *Wiat* and the other Rebelles, attainted for their great Treasons, already declare you to be his and their adherent, in as much as diuerse and sundrie times you had Conference with him and them aboute the Treason; so as *Wiat* is now one of your Condicion, who as the Worlde knoweth, hath committed an open trayterous Fact.

Throckmorton. By your leaue, my Lorde, this is a very straunge and singular Understanding. For I suppose the meaning of the Lawe-makers did vnderstande these Wordes, By People of their Condicion, of the State and Condition of those Persons whiche shoulde bee on the Inquest to trie the Partie arreygned, guiltie or not guiltie, and nothing to the bewraying of the Offence by another Man's act, as you say: for what haue I to doe with *Wiat's* actes, that was not nigh him by one hundred Myles?

Attourney.

Attorney. Will you take vpon you to skill better of the Lawe than the Judges? I doubt not but you of the Jurie will credit as it becommeth you.

Cholmley. Concerning the true vnderstanding of these Words, By People of their Condicion, my Lord Chief Justice here hath declared the Truth; for *Wiat* was one of your Condicion, that is to say, of your Conspiracie.

Hare. You doe not denie, *Throckmorton*, but that there hath bene Conference, and sending betweene *Wiat* and you, and he and *Winter* doth confesse the same, with others; so as it is playne, *Wiat* may well be called one of your Condicion.

Throckmorton. Well, seeing you my Judges rule the vnderstanding of these Wordes in the Statute, By People of your Condicion, thus straungely against mee, I will not stande longer vpon them. But where dothe appeare in mee an open Deede, wherevnto the Treason is specialllye referred?

Bromley. If thre or foure do talke, deuise, and conspire together of a trayterous Acte to be done, and afterwards one of them doth commit Treason, as *Wiat* did; then the Lawe doth repute them, and euerye of them as their Actes; so as *Wiat*'s Actes do implie and argue your open Deede, and so the Lawe doth terme it and take it.

Throckmorton. These be marueylous Expofitions, and wonderfull Implications, that another Man's acte, whereof I was not privy, should be accounted myne; for *Wiat* did purge me that I knew nothing of his stirre.

Hare. Yea, Sir, but you were a principal Procurer and Contriuier of *Wiat*'s Rebellion, though you were not with him when he made the stirre. And as my Lord here hath sayd, the Lawe always doth adudge him a Traytor, which was priue and doth procure Treason, or any other Man to committe Treason, or a trayterous acte, as you did *Wiat*, and others; for so the Ouert Acte, of those whiche did it by your Procurement, shall in this case be accounted your open Deede. We have a common case in the Lawe, if one by Procurement shoulde disseyse you of your Lande, the Lawe holdeth vs both wrong doers, and giueth remedie as well against the one as the other.

Throckmorton. For God's sake applie not such Construccions against me; and though my present Estate doth not moue you, yet it were well you shoulde consider your Office, and think what measure you giue to others, you your selues I say shall assuredly receyue the same agayne. The state of mortall Life is such, that Men know full little what hangeth ouer them. I put on within this xii. Moneths such a Mind, that I moiste wofull Wight, was as unlike to stande here, as some of you that sit there. As to your case last recited, whereby you woulde conclude, I haue remembred and learned of you Master *Hare*, and you Master *Stanforde* in the Parliament House, where you did sit to make Lawes, to expounde and explaine the Ambiguities and Doubtes of Lawe sincerely, and that without Affections: There, I say, I learned of you, and others my Masters of the Lawe, this difference betwixt such Cases as you remembred one euen nowe, and the Statute whereby I am to be tried. There is a Maxime or Principle in the Lawe, which ought not to be violated, That no penal Statute may, ought, or shoulde be construed, expounded, extended, or wrested, otherwise than the simple

Wordes and nude Letter of the same Statute doth warrant and signifie. And amongst diuers good and notable Reasons by you there in the Parliament House debated, Maister Sergeant *Stanforde*, I noted this one, why the said Maxime ought to be inuiolable: you said, considering the priuate Affections many tymes both of Princes and Ministers within this Realme, for that they were Men, and woulde and coulde erre, it shoulde be no Securitie, but very daungerous to the Subject, to referre the Construccions, and extending of Penall Statutes to anye Judges Equitie, as you termed it, which might eyther by feare of the higher Powers be seduced, or by Ignorance and Follye abused. And that is an answer by procurement.

Bromley. Notwithstanding the principle, as you alledge it, and the precisenesse of your sticking to the bare wordes of the Statute, it doth appeare and remaine of recorde in our Learning, that diuerse Cases haue bene adjudged Treason, without the expresse wordes of the Statute, as the Quenes learned Counsell there can declare.

Attorney. It doth appeare, the Prisoner did not only intise or procure *Wiat*, *Caroe*, *Rogers*, and others, to committe their trayterous Actes, and there doth his open factes appear, whiche *Vaughan*'s Confession doth witnesse; but also he did mynde shortly after to associate himselfe with those Traytours; for he minded to haue departed with the Earle of *Deuonshire* Westwardes.

Throckmorton. My Innocencie concerning these matters, I trust, sufficiently appeareth by my former Answers, notwithstanding the condemned Man's unjust Accusation. But because the true vnderstanding of the Statute is in question; I saye, procurement, and specially by words onely, is without the compasse of it: and that I doe learne and proue by the principle which I learned of Maister *Stanforde*.

Stanforde. Maister *Throckmorton*, you and I maye not agree this Day in the vnderstanding of the Lawe, for I am for the Queene, and you speake for your selfe: the Judges must determine the matter.

Bromley. He that doth procure another Man to commit a Felony or a Murther, I am sure you know well ynough, the Lawe doth adudge the Procurer there, a Felon or a Murtherer; and in case of Treason, it hath bene alwayes so taken and reputed.

Throckmorton. I doe and must cleave to my Innocencie, for I procured no Man to committe Treason; but yet for my Learning I desire to heare some case so ruled, when the Lawe was as it is nowe. I do confesse it, that at suche time there were Statutes provided for the procurer, counsaylour, ayder, abetter, and suche like, as there were in King *Henrie* the VIIIth's tyme, you might lawfullye make this cruell Construccions, and bring the procurer within the compasse of the Lawe. But these Statutes being repealed, you ought not nowe so to doe; and as to the principal procurer in Felonie and Murther, it is not lyke as in Treason, for the Principal and Accessaries in Felonie and Murther be triable and punishable by the common Law; and so in those cases the Judges may use their Equitie, extending the determinacion of the fault as they thinke good: but in Treason it is otherwise, the same being limited by Statute Law, which I say and aduow is restreyned from any Judges Construccions by the Maxime that I recited.

Stanforde. Your Lordships do know a case in R. 3. time, where the Procurer to counterfeyt false Money, was judged a Traytor, and the Law was as it is now.

Hare. Maister Sergeaunt doth remember you *Throckmorton*, of an Experience before our time, that the Lawe hath bene so taken, and yet the procurer was not expresse in the Statute, but the Lawe hath ben always so taken.

Throckmorton. I neuer studied the Law, wherof I do much repent mee; yet I remember, whylest Penall Statutes were talked of in the Parliament-House, you the learned Men of the House remembred some Cases contrarie to this last spoken of. And if I misreport them, I pray you helpe me. In the like case you speake of concerning the Procurer to counterfeyt false Money, at one time the Procurer was judged a Fellon, and at another time neither Fellon nor Traytor; so as some of your Predecessours adjudged the Procurer no Traytour in the same case, but leaned to their principle, though some other extende their Constructions too large. And here is two cases with me, for one against me.

Bromley. Bicause you replie so sore upon the principle, I will remember, where one taking the Great Seale of *Englande* from one Writing, and putting it to another, was adjudged a Traytour in *Henry* the IVth's tyme, and yet his act was not within the expresse words of the Statute of *Edward* the Third. There be diuerse other such like cases that maye be alledged and need were.

Throckmorton. I pray you my Lord Chief Justice, call to your good Remembraunce, that in the selfe same case of the Seale, † Justice *Spilman*, a graue and well learned Man, since that time, woulde not condemn the Offender, but did reprove that former Judgment by you last remembred, as erroneous.

Stanforde. If I had thought you had bene so well furnished with Booke Cases, I woulde haue bene better prouided for you.

Throckmorton. I haue nothing but I lerned of you specially M. Sergeant, and of others my Masters of the Law in the Parliament House; and therefore I may say with the Prophet, *Salutem ex inimicis nostris.*

Southwell. You haue a very good Memorie.

Attorney. If the Prisoner may auoyde his Treasons after this maner, the Queenes Suretie shall bee in great jeopardy. For *Jack Cade*, the Blacksmith, and diuerse other Traytors, sometime alledging the Law for them, sometime they ment no harm to the King, but against his Counsell; as *Wiat*, the Duke of *Suffolke*, and these did against the *Spanyardes*, when there was no *Spanyardes* within the Realme. The Duke and his Brethren did mistake the Lawe, as you doe, yet at length did confesse their Ignorance, and submitted themselves. And so were you best to doe.

Throckmorton. As to *Cade* and the Blacksmith, I am not so well acquainted with their Treasons as you bee; but I haue red in the Chronicle, they were in the Fielde with a force against the Prince, whereby a manifest acte did appeare. As to the Duke of *Suffolke*'s doings, they appertaine not to mee. And tho you woulde compare my speache and talke against the *Spanyardes*, to the Duke's actes, who assembled a force in Armes, it is euident they differ much: I am forie to engreue any other Mans doings; but it serueth me for a piece of my Defence, and therefore I wish that no Man

should gather euil of it, God forbid that words and acts be thus confounded.

Attorney. Sir *William Stanley* used this shifte that the Prisoner useth now, he sayde he did not leuie War against King *Henry* the VII. but sayde to the Duke of *Buckingham*, that in a good Quarrell he wold aid him with 500 Men; and neverthelesse *Stanley* was for those Words attainted, who, as all the Worlde knoweth, had before that time serued the King very faithfully and truly.

Throckmorton. I pray you Maister Attorney do not conclude me by blinde contraries. Whether you alledge *Stanley*'s case trulye or no, I knowe not. But admitte it be as you saye, what dothe this proue against me? I promised no ayde to Maister *Wiat*, nor to anye other. The Duke of *Buckingham* leuied Warre against the King, with whom *Stanley* was confederate so to doe, as you saye.

Attorney. I pray you, my Lords, that be the Queenes Commissioners, suffer not the Prisoner to vie the Queenes learned Counsell thus; I was neuer interrupted thus in my Life, nor I neuer knewe any thus suffered to talke, as this Prisoner is suffered: some of us will come no more at the Barre, and we be thus handled.

Bromley. *Throckmorton*, you must suffer the Queenes learned Counsell to speake, or else we must take order with you; you haue had leaue to talke at your pleasure.

Hare. It is proued that you did talke with *Wiat* against the coming of the *Spanyardes*, and deuised to interrupt their arrivall, and you promised to doe what you coulde againste them; wherevpon *Wiat* being encouraged by you, did leuie a force, and attempted Warre against the Queenes Royal Person.

Throckmorton. It was no Treason, nor no procurement of Treason, to talke againste the coming hither of the *Spanyardes*, neyther it was Treason for me to saye, I woulde hynder their commyng hither as muche as I coulde, vnderstanding me rightly as I meant it; yea though you would extend it to the worste, it was but Words, it was not Treason at this day as the Law standeth: and as for *Wiat*'s doings, they touche me nothing, for at his Death, when it was no tyme to report untruly, he purged me.

Bromley. By fundry Cases remembred here by the Queenes learned Counsell, as you haue hearde, that procurement which did appear no otherwyse but by Words, and those you would make nothing, hath bin of long tyme, and by fundry well learned Men in the Lawes adjudged Treason. And therefore your procurement being so euident as it is, we may lawfully say it was Treason, bycause *Wiat* perfourmed a trayterous acte.

Throckmorton. As to the said alledged fore Precedents against me, I haue recited as many for me, and I would you my Lord Chief Justice shuld incline your Judgments rather after the example of your honourable Predecessors, Justice *Markham*, and others, which did eschewe corrupte Judgments, judging directly and sincerely after the Law, and the Principles in the same, than after such Men, as swaruing from the Truth, the Maxime, and the Law, did judge corruptely, maliciously, and affectionately.

Bromley. Justice *Markham* had reason to warrant his doings; for it did appeare, a Merchant of *London* was arraigned and slanderously accused of Treason for compassing and imagining the King's Death,

† See *Leak's Case*, Kel. Rep.

Death, he did say he would make his Sonne Heire of the Crown, and the Merchant meant it of a House in *Cheapside* at the Signe of the *Crowne*; but your Case is not so.

Throckmorton. My Case doth differ, I graunt, but specially bicause I haue not suche a Judge: yet there is another cause to restraine these your strange and extraordinarie Constructions; that is to say, a Prouiso in the latter ende of the Statute of *Edwarde* the Thirde, hauyng these Wordes: Provided always, if any other Case of supposed Treason shall chaunce hereafter to come in Question or Trial before any Justice, other than is in the said Statute expresse, that then the Justice shall forbear to adjudge the sayd case, untill it be shewed to the Parliament to trie, whether it should be Treason or Felonie. Here you are restrained by expresse Words to adjudge any case that is not manifestly mentioned before, and untill it be shewed to the Parliament.

Portman. That Prouiso I understand of cases, that may come in trial, which hath bin in vre, but the Law hath always taken the Procurer to be a principal Offender.

Sanders. The Law alwayes in cases of Treason dothe accompte all Principalles, and no Accessaries as in other Offences; and therefore a Man offending in Treason, either by couert acte or procurement, whereupon an open Deede hath ensued, as in this case, is adjudged by the Lawe a principal Traytoure.

Throckmorton. You adjudge (mee thinke) Procurement very hardly, beydes the Principall, and besides the good Example of your best and most godly learned Predecessors, the Judges of the Realme, as I haue partly declared; and notwithstanding thys grievous racking and extending of this worde Procurement, I am not in the daunger of it, for it doth appear by no Deposition, that I procured neyther one or other to attempt any acte.

Stanforde. The Jurie haue to trye, whether it bee so or no, let it weygh as it will.

Hare. I knowe no Meane so apparent to try Procurement as by Words, and that Meane is probable ynoughe agaynst you, as well by youre owne Confession, as by other Mennes Depositions.

Throckmorton. Totalke of the Queenes Maryage with the Prince of *Spayne*, and also the commyng hyther of the *Spanyardes*, is not to procure Treason to be done; for then the whole Parliament-house, I meane the common House, didde procure Treason: but since you wyll make no Difference betwixte Wordes and Actes, I praye you remember an Estatute made in my late Soueraigne Lorde and Maisters tyme, Kyng *Edward* the Sixth, whiche apparently expresseth the Difference; these bee the woordes: Who so euer dothe compassse, or imagine to depose the Kyng of his Royall Estate by open Preaching, expresse Wordes or Sayings, shall for the first Offence lose and forfayte to the King all his and their Goodes and Cattails, and also shal suffer Imprisonment of their Bodies at the King's Will and Pleasure. Whosoeuer, &c. for the second Offence shall lose and forfayte to the Kyng the whole Issues and Profytes of all his or their Landes, Tenementes, and other Hereditaments, Benefices, Prebendes, and other spiritual Promotions. Whosoeuer, &c. for the thirde Offence, shall for Term of Lyfe or Lyues of suche Offendour or Offenders, &c. and shall also forfeite to the Kynges Majestie all his or their Goodes and Cattails, and suffer during

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his or their Liues perpetuall Imprisonment of his or their Bodies. But whosoeuer, &c. by Writing, Cipheryng, or Acte, shall for the first Offence be adjudged a Traitour, and suffer the Paines of Deathe. Here you may perceiue howe the whole Realme and all your Judgementes hathe beefore this vnderstande Wordes and Actes, diuerslye and apparantlye; and therefore the Judgementes of the Parliamente did assigne Diuerlitie of Punishmentes, because they woulde not confounde the true Vnderstanding of Wordes and Deedes, appointing for compassing and imagining by Worde, Imprisonment; and for compassing and imagining by open Deede, Paines of Death.

Bromley. It is agreed by the whole Bench, that the Procurer and the Adherent be deemed alwayes Traytors, when as a trayterous Acte was committed by anye one of the same Conspiracie; and there is apparent Prooofe of youre adhering to *Wiat*, both by your owne Confession and other wayes.

Throckmorton. Adhering and procuring bee not all one; for the Statute of *Edwarde* the Thirde doth speake of adhering, but not of procuring, and yet adhering ought not be further extended, than to the Queenes Enimies within her Realme, for so the Statute doth limit the Vnderstanding. And *Wiat* was not the Queenes Enemie, for hee was not so reputed, when I talked with him last; and our Speech implied no Enmitie, neyther tended to anye Treason, or procuring of Treason: and therefore I praye you of the Jurie note, though I argue the Lawe, I alledge my Innocencie, as the best part of my Defence.

Hare. Your adhering to the Queenes Enimies within the Realme is evidently proued: for *Wiat* was the Queenes Enemie wythin the Realme, as the whole Realme knoweth it, and he hath confessed it, both at his Arrainement and at his Death.

Throckmorton. By your leaue, neither *Wiat* at his Arreignment, nor at his Death, did confesse, that he was the Queenes Enemie, when I talked last with him, neyther he was reputed nor taken in xiiij. dayes after, vntill he assembled a Force in Armes, what time I was at your House, Master *Inglefielde*, where I learned the first Intelligence of *Wiat's* Stirre. And I aske you, who doth depose that there passed anye maner of Aduertisement betwixt *Wiat* and mee, after he had discouered his Doings, and shewed himselfe an Enemie? If I had bene so disposed, who did let mee, that I did not repaire to *Wiat*, or to sende to him, or to the Duke of *Suffolke* eyther, who was in myne owne Countrey? and thither I might haue gone and conueyed my selfe with him, vn suspected for my departing homewards.

Inglefielde. It is true that you were there at my House, accompanied with others your Brethren, and, to my knowledg, ignorant of these Matters.

Bromley. *Throckmorton*, you confessed you talked with *Wiat* and others against the commyng of the *Spanyardes*, and of the taking of the *Tower* of *London*; wherevpon *Wiat* levied a Force of Men against the *Spanyardes* he sayde, and so you saye all, but in Deede it was against the Queene, which he confessed at length: therefore *Wiat's* Actes doe proue you Counsayler and Procurer, howsoeuer you woulde auoyde the matter.

Throckmorton. Me think you would conclude me

with a mishapen Argument in Logicke, and you will giue mee leaue, I will make another.

Stanforde. The Judges sit not here to make Disputations, but to declare the Law, which hath bene sufficiently done, if you woulde consider it.

Hare. You haue hearde Reason and the Lawe, if you will conceyue it.

Throckmorton. Oh mercifull God! Oh eternall Father, which seest all things, what maner of Proceedings are these? To what purpose serueth the Statute of Repeale the last Parliament, where I hearde some of you here present, and diuerse other of the Queenes learned Counsayle, grievously inuey against the cruell and bloudie Lawes of King *Henrie* the Eyght, and against some Lawes made in my late Sovereigne Lorde and Maisters time, King *Edwarde* the sixth? some termed them *Draco's Lawes*, whiche were written in Bloude: Some sayde they were more intolerable than any Lawes, that *Dionysius* or any other Tyrant made. In conclusion, as many Men, so manye bitter Termes and Names those Lawes had. And moreouer, the Preface of the same Estatute doth recite, that for Wordes onely, many great Personages, and others of good Behauiour, hath bene most cruelly cast away by these former sanguinolent thirstie Lawes, with many other Suggestions for the Repeale of the same. And now let vs put on indifferent Eyes, and throughly consider with our selues, as you the Judges handle the Construtions of the Statute of *Edwarde* the Thirde, with your Equitie and Extensions, whether we be not in much wors Case now than we were when those cruel Lawes yoked vs. These Lawes albeit they were grievous and captious, yet they had the verie Propertie of a Lawe after *S. Paules* Description: For those Lawes did admonish us, and discover our Sinnes plainly vnto vs; and when a Man is warned, hee is halfe armed. These Lawes, as they bee handled, be very Baytes to catche us, and onely prepared for the same, and no Lawes; for at the first sight they ascertain vs we be deliuered from our olde Bondage, and by the late Repeale the last Parliament we liue in more Securitie. But when it pleaseth the higher Powers to call any Mannes Lyfe and Sayings in question, then there be Construtions, Interpretations, and Extensions referued to the Iustices and Judges Equitie, that the Partie triable, as I am now, shall finde himselfe in much worse case, than before when those cruell Lawes stooode in force. Thus our Amendement is from Gods Blessing into the warme Sunne; but I require you honest Men, whiche are to trie my Life, consider these Opinions of my Life: Judges be rather agreeable to the Time, than to the Truth; for their Judgments be repugnant to their owne Principle, repugnant to their godly and best learned Predecessors Opinions, repugnant, I say, to the Prouiso in the Statute of Repeale made in the last Parliament.

Attorney. Maister *Throckmorton*, quiet your selfe, and it shall be the better for you.

Throckmorton. Maister *Attorney*, I am not so vnquiet as you be, and yet our Cases are not alike; but bicause I am so tedious to you, and haue long troubled this Presence, it may please my Lorde Chief Justice to repeate the Euidence, wherewith I am charged, and my Aunswers to all the Objections, if there be no other matter to laye against me.

Then the Chief Justice *Bromley* remembred par-

ticularly all the Depositions and Euidences giuen against the Prisoner, and eyther for wante of good Memorie, or good Will, the Prisoners Aunsweres were in part not recited: wherevpon the Prisoner craued Indifferencie, and did helpe the Judges olde Memorie with his owne Recital.

Sendall. My Maisters of the Jurie, you haue to inquire, whether Sir *Nicholas Throckmorton* Knight, here Prisoner at the Barre, be guiltie of these Treasons, or any of them, whereof he hath bene indited and this daye arreigned, yea or no: And if you finde him guiltie, you shall enquire what Landes, Tenements, Goodes, and Catteltes he had at the Day of his Treasons committed, or at any time since; and whether he fledde for the Treasons or no, if you finde him not guiltie.

Throckmorton. Haue you sayde what is to be sayd?

Sendall. Yea, for this time.

Throckmorton. Then I pray you giue me leaue to speake a fewe Words to the Jurie: The Weyght and Grauitie of my Cause hath greatly occasioned me to trouble you here long, and therefore I minde not to entertain you here long with any prolixie Oration: You perceyue notwithstanding this daye great Contention betwixt the Judges and the Queenes learned Counsayle on the one partie, and mee the poore and wofull Prisoner on the other partie. The Triall of our whole Controuersie, the Triall of my Innocencie, the Triall of my Lyfe, Landes, and Goodes, and the Destruction of my Posteritie for euer, doth rest in your good Judgements. And albeit many this daye haue greatly inueyghed against me, the finall Determination thereof is transferred onely to you: howe grievous and horrible the shedding of Innocents Bloude is in the sighte of Almighty God, I trust you do remember. Therefore take heede, I saye, for Christes sake, do not defile your Consciences with such heynous and notable Crimes; they bee grievously and terribly punished, as in this Worlde and Vale of Miseric vpon the Childrens Children to the thirde and fourth Generation, and in the worlde to come with euerlasting Fire and Damnation. Lift up your Minds to God, and care not too muche for the Worlde; looke not backe to the Flehpots of *Egypte*, whiche will allure you from heauenly Respectes to worldly Securitie, and can thereof neyther make you anye Suretie. Beleeve I pray you, the Queene and hir Magistrates be more delighted with favourable Equitie, than with rashe Crueltie; and in that you be al Citizens, I will take my leaue of you with *S. Paules* farewell to the *Ephesians*, Citizens also you be, whome he tooke to recorde that he was pure from shedding any Bloude; a special Token, a Doctrine left for your Instruction, that euerye of you may washe his Handes of Innocents Bloudefhedde, when you shall take your leaue of this wretched Worlde; the Holy Ghost be amongst you.

Sendall. Come hither, Sergeaunt, take the Jurye with you, and suffer no Man to come at them, but to be ordered as the Lawe appointeth, vntill they be agreed vpon their Verdit.

Throckmorton. It may please you my Lordes and Maisters which be Commissioners, to give order, that no Person haue Access or Conference with the Jurie, neither that any of the Queenes learned Counsayle be suffered to repayre to them, or to talke with any of them, vntil they present themselves here in open Court, to publish their Verdit.

Upon the Prisoners Suite on this behalfe, the Benche

Benche gaue Order, that two Sergeauntes were sworne to suffer no Man to repaire to the Jurie, vntill they were agreed.

Then the Prisoner was by Commandement of the Benche withdrawne from the Barre, and the Court adjourned vntill three of the Clocke at Afternoone; at whiche houre the Commissioners returned to the *Guildeball*, and there did tarrie vntill the Jurie were agreed vpon the Verdit. And aboute five of the Clocke, their Agreement being aduertised to the Commissioners, the sayde Prisoner, Sir *Nicholas Throckmorton*, was again brought to the Barre, where also the Jurie did repaire; and being demaunded whether they were agreed vpon their Verdit, aunswered vniuersally with one Voyce, Yea. Then it was asked, who shoulde speake for them; they aunswered, *Whetston* the Foreman.

Sendall. *Nicholas Throckmorton* Knight, holde vp thy Hande.

Then the Prisoner did so vppon the Summons.

Sendall. You that bee of the Jurie, looke vppon the Prisoner.

The Jurie did as they were enjoyned.

Sendall. Howe saye you, is Maister *Throckmorton* Knight, there Prisoner at the Barre, guiltie of the Treasons whereof he hathe bin indicted and arraigned in manner and forme, yea or no?

Whetston. No.

Sendall. How say you, did he flie upon them?

Whetston. No, we finde no such thing.

Throckmorton. I hadde forgot to aunswere that Question before; but you haue founde according to Truth: And for the better Warrantie of your Dooings, vnderstande that I came to *London*, and so to the *Queenes* Counsell vnbroughte, when I vnderstoode they demaunded for me; and yet I was almoste an hundred miles hence, where if I had not presumed vppon my Truthe, I coulde haue withdrawn my selfe from catching.

Bromley. How saye you the reste of ye, is *Whetston's* Verdict all your Verdicts?

The whole Inquest answered yea.

Bromley. Remember youre selues better, haue you considered substantially the whole Euidence in sorte as it was declared and recited? the Matter dothe touche the *Queenes* Highnesse, and your selues also, take good heede what you doe.

Whetston. My Lorde, wee haue throughly considered the Euidence laide agaynste the Prisoner, and his Aunsweres to all these Matters, and accordingly wee haue founde him not guiltie, agreeable to all our Consciences.

Bromley. If you haue done well, it is the better for you.

Throckmorton. It is better to be tried, than to liue suspected: *Blessed be the Lord God of Israell, for he hath visited and redeemed his People, and hath raised up a mightie Saluation for vs in the House of his Seruaunte Dauid.* And it maye please you my Lorde Chiefe Justice, forasmuche as I haue ben indicted and arraigned of sundry Treasons, and haue according to the Lawe put my Triall to God and my Countrey, that is to say, to these honest Men whiche haue founde me not gilty; I humbly beseeche you to giue me such Benefite, Acquittall, and Judgement, as the Lawe in this Case doth appointe.

When the Prisoner had saide these wordes, the Commissioners consulted together.

Throckmorton. Maye it please you my Lorde Chiefe Justice, to pronounce Sentence for my Discharge.

Bromley. Where as you doe aske the Benefite that the Lawe in suche Case dothe appointe, I will giue it you, viz. That where you haue bene indicted of sundrye highe Treasons, and haue bene here this Daye before the *Queenes* Commissioners and Justices arraigned of the saide Treasons, wherevnto you haue pleaded not guiltye, and haue for Triall therein putte youre selfe on God and youre Countrey, and they haue founde you not guiltye, the Courte dothe award that you be clerly discharged paying your Fees. Notwithstanding, Mayster Lieutenant, take hym with you agayne, for there are other Matters to charge hym with.

Throckmorton. It may please you my Lords and Maisters of the *Queenes* Highnes Priuie Counsel, to be on my behalfe humble Sutors to hir Majestie, that like as the Lawe this daye (God be praised) hathe purged mee of the Treasons wherewith I was most dangerously charged, so it might please hir Excellent Majestie to purge me in hir priuate Judgemente, and both forgyue and forgette my ouer rashe Boldenesse, that I vsed in Talke of hir Highnesse Marriage with the Prince of *Spaine*, Matters too farre aboue my Capacitie, and I very vnable to consider the Gravitie therof; a Matter impertinent for me a private Person to talke of, which did appertain to hir Highnesse Priuy Counsel to haue in Deliberation: and if it shall please hir Highnesse of hir bountifull Liberalite, to remitte my former Ouersightes, I shall thinke my selfe happye for Triall of the Daunger that I haue this daye escaped, and may thereby admonishe mee to eschewe thinges aboue my reache, and also to instructe mee to deale with matters agreeable to my Vocation; and God saue the *Queenes* Majestie, and graunte the same long to raigne ouer us, and the same Lorde bee praised for you the Magistrates, before whom I haue hadde my Triall this daye indifferentlye by the Lawe, and you haue proceeded with mee accordinglye, and the Grace of God bee amongst you now and euer.

There was no Aunswere made by any of the Benche to the Prisoners Sute, but the *Attorney* did speake these wordes:

Attorney. And it please you, my Lordes, forasmuche as it seemeth these Men of the Jurie which haue straungely acquitte the Prisoner of his Treasons whereof hee was indicted, will forthwith departe the Courte; I praye you for the *Queene*, that they, and euery of them, maye bee bounde in a Recognizance of fve hundrethe Pounds apeece, to aunswere to suche Matters as they shall be charged with in the *Queenes* behalfe, whensoever they shall be charged or called.

Whetston. I praye you, my Lordes, be good vnto vs, and let us not be molested for discharging our Consciences truely; we bee poore Marchant-men, and haue great Chardge vpon our hands, and our Luynges doe depende vppon our Trauailes; therefore it maye please you to appoynte vs a certaine Daye for our Appearance, bycause perhappes else some of vs maye bee in forreigne Partes aboute our Businesse. The Court being dissatisfy'd with the Verdict, committed the Jury to Prison.

Pro-

Proceedings against Sir Nicholas Throckmorton's Jury.*

ON Friday the 26th of October, those Men who had been of *Throckmorton's* Inquest, being in number eight (for the other four were delivered out of Prison, for that they submitted themselves, and said they had offended) whereof *Emanuel Lucar* and *Whetston* were chief, were call'd before the Council in the Star-Chamber, where they affirmed, that they had done all things in that matter according to their Knowledge, and with good Consciences, even as they should answer before God at the Day of Judgment; and *Lucar* said openly before all the Lords, that they had done in the matter like honest Men, and true and faithful Subjects; and therefore they humbly besought the Lord Chancellor and the other Lords to be means to the King's and Queen's Majesties, that they might be discharg'd and set at liberty, and said, that they were all contented to submit themselves to their Majesties, saving and reserving their Truth, Consciences and Honesties. The Lords taking their Words in evil part, judged them worthy to pay excessive Fines; some said they were worthy to pay a thousand Pounds apiece, others that *Lucar* and *Whetston* were worthy to pay a thousand Marks apiece, and the rest five hundred Pounds apiece. In conclusion, Sentence

was given by the Lord Chancellor, that they should pay a thousand Marks apiece the least, and that they should go to Prison again, and there remain, 'till further Order were taken for their Punishment.

Upon Saturday the 10th of November, the Sheriffs of London had commandment to take an Inventory of each one of their Goods, and to seal up their Doors, which was done the same Day.

Whetston, *Lucar* and *Kightlie* were adjudged to pay two thousand Pounds apiece, and the rest a thousand Marks apiece, to be paid within one Fortnight after. From this Payment were exempted those four, who had confessed their Fault, and submitted themselves, viz. *Loe*, *Pointer*, *Beswicke*, and *Cater*.

Upon Wednesday the 12th of December five of the eight Jurors, who lay in the Fleet, were discharg'd and set at Liberty upon paying their Fines, which were two hundred and twenty Pounds apiece. The other three put up a Supplication, therein declaring their Goods did not amount to the Sum of that, which they were appointed to pay; and so upon that Declaration, paying three-score Pounds apiece, they were deliver'd out of Prison on St. Thomas's Day, being the 21st of December.

VI. *The Trial of JAMES Earl BOTHWELL, for the Murder of Henry Lord Darnley, Husband to Mary Queen of Scots, at the Senate-House of Edinburgh, April 12. 1567. the 9th of Eliz †.*

AT the Justice Court of our Sovereign Lady the Queen, held and begun in the Senate-House of *Edinburgh*, the 12th Day of April, 1567. by the noble and potent Lord *Archibald* Earl of *Argyle*, Lord *Campbel*, and Lord Justice General for our Sovereign Lady, in all the Parts of her Realm, where there's a Convention and lawful Assembly of Judges.

In this Court appear'd personally in Judgment Mr. *John Spence* of *Conde*, and *Robert Crichton* of *Choc*, Advocates for our Sovereign Lady, and in her Name; and there the said Mr. *John Spence* produc'd Letters from our said Sovereign Lady, executed and indors'd with the Summons: the Tenor of which Letters, Endorsements, and Summons hereafter follows.

The Commission of Mary Queen of Scots, to try James Earl Bothwell, for the Murder of her Husband Henry Lord Darnley.

MARY, by the Grace of God, Queen of Scotland. To our beloved Masters *William Purves*, *William Lawson*, *Gawin Ramsay* Messen-

gers, ours Sheriffs in that part conjunctly and severally constitute, Greeting. Whereas it has been most humbly remonstrated to us by our beloved and faithful Counsellors, Mr. *John Spence* of *Conde*, and *Robert Crichton* of *Choc*, our Advocates, that they are inform'd that our well-beloved Cousin and Counsellor *Matthew* Earl of *Lennox*, Father of our most dear Spouse, has asserted, That *James* Earl *Bothwell*, Lord *Hallis* and *Creyghton*, &c. and some others, were the Contrivers of the traitorous, cruel, detestable, and abominable Murder of his Highness, committed the 9th day of February last past, in the dead of the Night, in his Palace, for the time being, in our City of *Edinburgh*, near the Church in the Fields, wilfully and with premeditated Felony; and have declar'd their Suspicion of the said Earl and others, as having committed the said cruel and horrid Murder. And having therefore resolv'd that the Truth of it should be try'd, in a Course of Justice, with all possible Diligence and Brevity, we have, by Advice of the Lords of our Privy-Council, and also at the humble Request and Petition of the said Earl *Bothwell* made to us, and in our Presence, offering to submit himself to a fair Trial of what

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* Holin. Vol 3. p. 1121, 1126.

† Buchan. Hist. of Scotl. Book 18. Appendix to Buchan. Hist. p. 30.

he is charg'd with, according to the Laws of the Land, order'd a Court of Justice to meet in the Senate-House of *Edinburgh* on the 12th of *April* next ensuing, in order to do Justice upon the said Earl and others for committing the said cruel and abominable Crime and Offence, as is more at large set forth in an Act inserted in the Registers of our said Privy-Council. Therefore it is our Pleasure, and we enjoin and command you most expressly, that, incontinent these our Letters seen, you proceed, and, in our Name and Authority, summon the said *Matthew Earl of Lennox*, at his own House, to appear together with all others of our Subjects, having and pretending to have Interest in this Cause, by publick Proclamation made at the Mercat Crosse of our Towns of *Edinburgh, Dumbarton, Glasgow, Lanerk*, and other Places necessary, to the end that they may appear before our Judges, or their Deputies, in our Senate-House at *Edinburgh*, on the said 12th day of *April* next ensuing, and join with us in the Prosecution of this Cause, by giving them a Summons. And in case that they don't appear, we order that our Judges, or their Deputies, shall proceed and give Sentence the same day, according to the Laws and Customs of our Realm, without any farther Delay or Prolongation; and that you summon every one of them to appear the same day, under the Penalty of a Fine of 40*l.* Sterling, for which they shall answer before us as for their own Act and Deed. And for this end, we give to every one of you conjunctly and severally our full Power, by these our Letters, to the intent that you may deliver and execute them duly, and indorse them to him who shall be the Bearer thereof. Given under our Seal at *Edinburgh* the 27th day of *March*, and of our Reign the 25th, in the year 1567. Sign'd accordingly by Advice of the Queen's Council,

M A R Y.

What was indors'd on the back of the said Commission.

The 19th day of *March*, 1567. I *William Purves*, Messenger and Sheriff constitute for that part, according to the Command of the Letters of our Sovereign Lady, and in her Name and Authority, have summon'd *Matthew Earl of Lennox*, and all others of her Majesty's Subjects, having and pretending to have Interest in what is within specify'd, by publick Proclamation, made at the Mercat Crosse of the City of *Edinburgh*, in order to appear before the Judges or their Deputies, in the Senate-House at *Edinburgh*, the 12th day of *April* next ensuing, and to prosecute and join with our said Sovereign Lady, in the Cause herein set forth, with the Summons as it is mention'd in the said Commission; a Copy of which I have affix'd to the Crosse of the said Mercat, in presence of *John Andersoun* and *David Land*, and many others. And in further Testimony of this my Execution and Indorsement, I have hereunto set my Seal. Sign'd *William Purves*.

Another Summons.

The last day of *March* but one, the first and second days of *April*, in the year above-mention'd, I *Gawin Ramsay* Messenger, and one of the Sheriffs constitute for that part, went according to the Command contain'd in the Letters of our Sovereign Lady, and in her Name and Authority summon'd the said *Matthew Earl of Lennox*, particularly at his Houses in *Glasgow* and *Dumbarton*. And whereas I sought him, but could not find him in Person,

nor her Majesty's other Subjects, pretending to have Interest in the Prosecution of the Cause herein set forth, I made a Proclamation at the Mercat Crosse of the Towns of *Glasgow, Dumbarton, and Lanerk*, in order to make them appear before the Judge or his Deputy, at the said Senate-House of *Edinburgh*, on the said 12th day of *April* next ensuing, and to join in the Prosecution with the Queen our said Sovereign Lady, in the Action within-mention'd, with the Summons, as it is there declar'd, and according to the Form and Tenour of her Letters, of which I have set up a Copy on each of the said Crosse in those Markets. I have done and executed the above before the Witnesses that follow, viz. *George Herbessoun, Nicholas Andrew, Robert Letterie* Messenger; *William Smollet, John Hamilton, Jam. Bannatine, Robert Hamilton*, and many others. And in further Testimony hereof, I have sign'd these Presents with my Sign Manual. *Gawin Ramsay*, Messenger.

Another Summons.

The first day of *April*, 1567. I *William Lawson*, Messenger, and Sheriff constitute for that part, went according to the Command signify'd in the Commission of our Sovereign Lady to the Mercat Crosse of *Perth*, and there, by publick Proclamation made according to Law, I summon'd *Matthew Earl of Lennox*, and all other Subjects of our said Sovereign Lady, having and pretending to have Interests, in order to prosecute *James Earl Bothwell*, Lord of *Hallis* and *Creygchton*, &c. and others, for the cruel Murder committed on the King; and have affix'd a Copy on the said Crosse, according to the Form and Tenour of these Presents. And this in Presence of the Witnesses hereafter named, viz. *James Marechal, Alexander Borthwith*, and *John Anderson* Messengers, and many others. And in further Testimony of this my Execution and Indorsement, I have sign'd these Presents with my Sign Manual. Signed accordingly, *William Lawson*, Messenger, with my own hand.

The Indictment.

You *James Earl Bothwell*, Lord of *Hallis, Creyghchton*, &c. are indicted on account of the cruel and horrid Murder of the most Excellent, most High and most Mighty Prince the King, the late most dear Spouse of the Queen's Majesty, our Sovereign Lady, committed in the Dead of the Night, at his House near the Church of the Fields in this City, as he was taking his Rest, by treasonably setting fire to a great quantity of Gunpowder in the said House, by the violence whereof the whole House was blown up into the Air, and the King himself by you kill'd traitorously and cruelly, wilfully, and by premeditated Felony. And this you did the 9th day of *February* last past, in the Dead of the Night as aforesaid, as is notorious, and you cannot deny.

Upon the producing of which Letters, so executed, indors'd, and publish'd, the said Advocate demanded an Act and Instrument in the Court, and requir'd that the Judge should proceed according to the Form of them.

These Letters being read in Judgment with the Indorsements, the Judge, by virtue thereof, order'd the said *James Earl Bothwell* to be call'd as Defendant of the one part, and *Matthew Earl of Lennox*, and all other Subjects of our said Sovereign

reign Lady, pretending to prosecute this Matter, as Plaintiffs on the other part; that they might appear in Court, and exhibit their Complaints and Defences, according to the Laws of the Realm.

And immediately appear'd in Judgment the said *James Earl Bothwell*, and enter'd the Court in Person; after which he chose Master *David Bothwick* of *Lutchill*, and Mr. *Edmund Hay* for his Advocates, who appearing also in Judgment, were admitted by the Judge for that effect.

Appear'd also Mr. *Henry Kinloch*, calling himself Proctor for his Master *Andrew Lord Errol*, Constable of *Scotland*, and alledg'd, that the Constable of the Realm had at all times been own'd to be the only Judge Competent of Men of that Quality, when accus'd of having committed Murder and Bloodshed near the Prince's Chamber, and four Miles round; and therefore his said Master being at present Constable of this Realm, ought to be Judge to *James Earl Bothwell*, and others his Accomplices, summoned to appear this day, and to be charg'd with the above-mention'd Act of the cruel Murder of *Henry King of Scotland*. And in case that *Archibald Earl of Argyle*, as Justice-General of this Realm, proceed and take cognizance of this Fact, the said Mr. *Henry*, Proctor above-mention'd, protested solemnly that this Trial should not be prejudicial to the said Constable, his Office, Right, Title, Profit, Jurisdiction, and Possession, in any manner whatever; but that he might exercise his said Jurisdiction in all such Causes for time to come, according to the Seisin of his Office, and take cognizance of them, as his Predecessors had been us'd to do in the like case. This he would make appear, by the possession which his Predecessors had of it at all times and otherwise; and he requir'd that this Protestation should be register'd in the Acts, and affirm'd that the Jurisdiction of the present Judge ought not to be allow'd in this Case.

The Judge having no regard to this Protestation, did, by Advice of his Assessor, decree, that he would take cognizance of the Fact notwithstanding, since nothing had been produc'd by the said Mr. *Henry*, to verify the Contents of what he had alledg'd and protested: Of all which the Earl *Bothwell* demanded an Act and Instrument.

The said *Matthew Earl of Lennox*, and other Subjects of our Sovereign Lady, having and pretending to have Interest in this Prosecution, being called several times to appear, and to join with the said Advocates in prosecuting the said Action, there appear'd *Robert Cunningham*, who called himself Servant to the said *Matthew Earl of Lennox*, and exhibited a Writing, sign'd with his own hand in full Court, as being authoriz'd thereunto, and made a Protestation and Requisition of the whole, agreeable to the said Writing; of which the Tenor follows.

The Protestation of the Earl of Lennox.

My Lords, I am come hither, being sent by my Master my Lord of *Lennox*, to declare the Cause why he is this day absent, having full Power from him for that effect, as the Truth is. The Cause then of his Absence is the shortness of the Time allowed him, and that he is hinder'd to have his Friends and Servants, who ought to accompany him for his Honour, and the Safety of his Person, considering the Strength of the opposite Party, and that he has no Assistance from any of his Friends, but must stand by himself: Therefore his Lordship has commanded me to

require another competent Day, according to the Importance of this Cause, that he may be here present; but if you will proceed now, I protest, that I may, without Offence to any Person, make use of the Authority committed to me by my said Lord and Master, of which I demand an Act.

Item, I protest, that if those who assist in this Judgment and Inquest upon the Persons accus'd, do undertake to acquit them of the King's Murder, that it shall be held as a voluntary Error, and not of Ignorance; since 'tis notoriously known who they are that have murder'd the King, as my said Lord and Master affirms; of which Protestation I require an Act thus sign'd, *Robert Cunningham*: of the Production of which Writing and Protestation the said *Robert* demanded an Act and Instrument.

The Judge considering the Writing and Protestation produced by the said *Robert Cunningham*, and having regard to the Letters sent to our Sovereign Lady, by *Matthew Earl of Lennox*, also produc'd and read in Judgment, the Tenor of which is hereafter inserted; by which Letters and Writing the said Earl of *Lennox* requires, that a brief and summary Trial may be made of this Cause: And having also regard to the Act, and the Order thereupon taken by the Lords of the Privy-Council, and other such things; and to what the Advocates insist upon as to the same Fact, requiring that Justice may be done to the said Earl *Bothwell*; and taking notice likewise of the Request and Demand which he has made, that the whole may be thorowly examin'd; the Judge, by the Advice of the Lords and Barons his Assistants, found that they ought to proceed to the Decision of the said Cause the same Day, according to the Laws of the Realm, notwithstanding the Writing and Protestation produc'd by the said *Robert Cunningham*, and that in the mean time he shall be admitted to join with and assist the said Advocates, for the final Trial of the said Cause, if he thinks good.

Copies of the Letters sent to the Queen by the Earl of Lennox.

Madam, I return most humble Thanks to your Majesty for the gracious and consolatory Letters which I receiv'd the 24th of this present Month; by which I perceive that 'tis your Majesty's Pleasure to put off the Trial of this late execrable Fact, till the Parliament meets. May it please your Majesty to consider, that tho' I be assur'd that your Highness must needs think the time long till the Truth of this Fact be found out, and the Authors of it punish'd according to their Demerits; yet I most humbly beg pardon of your Majesty for troubling and importuning you so often as I am forc'd to do, the Affair being such as touches me so near; and therefore most humbly request, that your Majesty would take in good part my Advice as follows: It is, that it is too long to wait for the meeting of the Parliament; besides, this is not an Affair of that sort, which uses to be treated of in Parliament, but being such, and of so great Importance, it is evident to every one, it ought rather to be inquir'd into with all Diligence, that the Authors may suffer an exemplary Punishment. I know that your Majesty is much more able to judge of it than I; but being inform'd that certain Placarts or Writings have been affix'd to the Gate of the Senate-House of *Edinburgh*, which answer'd to your Majesty's first and second Proclamation, and nam'd some Persons as Authors of the said cruel Murder, I most humbly request

request of your Majesty, for the Honour of God, and for that of your Majesty and your Realm, and for the Welfare and Peace of it, that you would be pleased not only to cause those who are named in the said Placarts to be apprehended and put in safe Custody, but likewise to assemble your Nobility with all possible Diligence, and then to summon by Proclamation the Authors of the said Placarts to appear for the Ends therein mentioned; and if they appear not, your Majesty may, by the Advice of your Nobility and Council, set at liberty those who are therein named. Your Majesty will do an honourable Act in bringing this matter to this Issue, that according as the matter shall appear to your Majesty, you may punish and chastise the Authors of this cruel Fact; or if the said Placarts shall be found false and of no validity, those who are charged may be acquitted and set at liberty, according to your Majesty's good Pleasure. Madam, I pray God Almighty to take your Majesty into his Protection and Safeguard, and to preserve you in Health and happy Prosperity. From *Howstoun* the 26th of February.

A second Letter from the Earl of Lennox.

Madam, I beseech your Majesty to attend to what follows: Your Highness in your last Letters acquainted me, that if there were any Names in the Placarts, which were set up at the Door of the Senate-House of *Edinburgh*, of such Persons as I thought worthy of Condemnation, for the Murder of the King your Majesty's Husband, you would, according to my Advice, make it your Business to bring them to Trial, according to the Laws of this Realm, and as the Nature of the Crime required. May it therefore please your Majesty to know, that from the time I received your said Letters, I always expected that some of those bloody Murderers would be made openly known to you; but since I perceive they are not, I cannot find in my heart to conceal them from you any longer. Your Majesty therefore has here the Names of those whom I greatly suspect, viz. The Earl of *Bothwell*, Sir *James Balfour*, and *Gilbert Balfour* his Brother; *Maister David Chambers*; *Black Maister John Spence*; the *Sieur Francisus Bastian*, *John de Bourdeaux*, and *Joseph*, the Brother of *Davy Rizio*: Whom I most humbly beseech your Majesty, according to my former Petition, not only to cause to be apprehended and committed to safe Custody, but also with all Diligence to assemble your Nobility and Council, and then to take such Advice about the Fact of the Persons above-mentioned, as they may be duly examined. And as I hope, so I make no doubt, but that by proceeding in this manner, the Spirit of God will assist toward bringing it to a good Conclusion. Herein your Majesty will do an Act holy and honourable for your self, who are a Party, and highly satisfy those who stand in any Relation to the Deceased, whom you loved so dearly. And not doubting that your Majesty will give proper Orders for the whole, according to the importance of the Matter (as I most humbly beseech you to do) I shall pray to Almighty God to take you into his Protection, and to give you long Life and Health with Grace, that your Reign may be both long and prosperous. *Howstoun*, March 17.

The Names of the Judges or Jury deputed for the Absolution of the Earl of Bothwell.

Andrew Earl of Rothes, George Earl of Caithness, Gilbert Earl of Cessils, Lord John Hamilton, Com-
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mendator of Arbroth, Son to the Duke, James Lord Ross, Robert Lord Semple, John Maxwell Lord Harris, Lawrence Lord Oliphant, John Master of Forbes, John Gourdon of Lochinvar, Robert Lord Boyde, James Cockburn of Lanton, John Sommerville of Cumbusnetban, Moubray of Barnboul, and Ogilbye of Boyne.

The above-named being chosen, admitted, and sworn to give Sentence according to Custom, and the Earl of *Bothwell* being accused by Indictment of the Crime above declared, and submitting and referring himself to the Sentence of the said Judges, they went out of the Senate-House to another Place; and after having long disputed together upon all the Articles of the said Accusation, they did each of them, one after another, declare the said *James Earl of Bothwell* quit and absolved of the whole, and every part of the Murder of the King, and in general of whatever depended on the said Accusation.

Afterwards the said *George Earl of Caithness*, Chancellor or President at the said Trial (*i. e.* Foreman of the Jury) as well in his own Name as that of the other Judges, demanded an Act, to the end that as well the Advocates, as the said *Robert Cunningham*, having a Proxy from the Earl of *Lennox*, and all others whomsoever, might be debarred hereafter from producing any other Writing or Proofs whatsoever, in order to support the said Indictment, and that the Judges might not be induced to give any other Opinion than they had done before; the rather because no body had proved the Truth of the Accusation, nor so much as any part of it, and that no Accuser appeared but the above-mentioned, who were presented in order to carry on the Trial: and therefore the Judges having regard to the same, declared him free as far as they could have any knowledge of the Fact, with a Protestation, that this might not be afterwards imputed to them as a Fault. Which Act and Protestation, when the said Earl of *Caithness* President and some of the Judges above-mentioned, returned to the Court in the Senate-House, and before the pronouncing of the aforesaid Sentence, was, at the request of the said Earl of *Caithness*, read publicly, and in full Court, and he demanded an Act and Instrument of it, protesting as above.

Extracted from the Registers of the Acts of our Sovereign Lady's Court of Justice, by me *John Bellenden* of *Auchnoul* Knight, and Clerk General of the said Court, under my Sign Manual.
Signed, *John Bellenden*, Clerk of the Court.

Note, That at the same time Protestation was made by *George Earl of Caithness*, Chancellor of the said Assize, that the said Dictate or Indictment was not in this Point true, viz. alledging the Murder to be committed the 9th day of February, for that indeed the Murder was committed the next day, being the 10th day in the Morning, at two hours after Midnight, which in Law was and ought to be truly accounted the 10th day; and so the Acquittal that way, but cavillingly defended.

The Proclamations and Placarts, in answer to them mentioned in the Trial, and others that happened after, were as follows.

Incontinent after the Murder of the King, the 10th of February, 1566. a Proclamation was issued, setting forth, that whoever would discover the Murderers should have 2000 *l.* Sterling. This

Proclamation was answer'd by a Placart, fix'd on the door of the Senate-house of *Edinburgh*, on the 16th day of *February*, in form as follows :

Whereas publick Notice has been given, that whosoever will discover the Murderers of the King, should have 2000 *l.* Sterling ; I who have made Enquiry by those who committed the Act it self, affirm, that the Authors of the said Murder are the Earl of *Bothwell*, Sir *James Balfour*, the Curate *Fisk*, Master *David Chambers*, and black Master *John Spens*, who above all was the principal Author of this Murder ; and the Queen, who consented to it at the Persuasion of the said Earl of *Bothwell*, by the Witchcraft of the Lady *Buccleugh*.

Upon this, another Proclamation was issued the same day, requiring the Person who had set up the Placart to appear, own, and subscribe it in Person, that he might have the Sum promis'd by the former Proclamation, and more if he deserv'd it, as the Queen and her Council should think fit.

To this the following Answer was given and set up at the same Place the day following.

Forasmuch as a Proclamation has been issued since I set up my former, requiring that I should come to subscribe and own it ; for Answer I do likewise require, that the Money may be consign'd into the hands of some Man of Substance, and I will appear next Sunday, and four others with me, and then I will subscribe and maintain what I have said. Moreover, I require that the *Sieur Francis Bastein*, and *Joseph* the Queen's Goldsmith, may be apprehended ; and I will declare what each of them and their Accomplices did in particular.

To this no Answer was return'd.

Tho' the Earl of *Bothwell* was acquitted as above-mentioned, yet knowing that the World did still esteem him guilty, he did, in order to clear himself further, set up a Paper in the Market-place, bearing, that albeit he had been acquitted by Law, yet to make his Innocence the more manifest, he was ready to try the same by single Combat, with any Man of honourable Birth and Reputation, who would accuse him of the King's Murder.

To which Answer was made by another Placart, set up immediately after in the same Place, That forasmuch as the said Earl of *Bothwell* had caus'd a

Placart to be set up, sign'd with his own Hand, whereby he challeng'd any Man of Quality, and of a fair Reputation, who would and dar'd to say that he was guilty of the Death of the King ; adding, that he who said it, or went about to support that Charge, should be forc'd to eat his Words : A Gentleman of Honour and good Renown accepted his Offer, and said, he would prove by the Law of Arms that he was the principal Author of that horrid Murder, of which the Judges had rashly acquitted him for fear of Death, after so much Inquiry had been made into it. And whereas the King of *France* and the Queen of *England* requir'd, by their Ambassadors, that the said Murder might be punished, he also intreats their Majesties to insist with the Queen, his Sovereign Lady, that by her Consent a Time and Place may be appointed in their Countries to combat the Earl, according to the Law of Arms, in their Presence, or in that of their Deputies ; at which Time and Place he promises and swears, on the word of a Gentleman, to be present and do his Duty, provided their Majesties will, by Proclamation, grant Safe-conduct to him and his Company, to pass and repass thro' their Dominions without any molestation. He refers it to the Judgment of the Readers and Hearers what just Cause he has to desire this of the King of *France* and the Queen of *England*, and by this he advertises the rest of the Murderers to prepare themselves ; for he will give each of them the like Challenge, and publish their Names in Writing, that they may be known to every body.

To this *Bothwell* made no Reply *.

Some time afterwards, *Bothwell* was constrain'd to fly the Kingdom, and went first to the *Orcades*, and then to the Isles of *Schotland*, where being reduc'd to extreme want, he turn'd *Pirate* : But being in danger of being taken, he went to *Denmark* ; where, not being able to give a good Account of himself, he was taken into Custody, and afterwards being known by some Merchants, he was clapt up close Prisoner ; and after a loathsome Imprisonment for ten Years, that and other Miseries made him distracted ; and thus he came to a most ignominious Death, suitable to his vile and wicked Course of Life.

VII. *The Trial of THOMAS HOWARD Duke of Norfolk, before the Lords at Westminster, for High-Treason, January 16.*

1571. 14 Eliz.

FIRST of all, there was prepar'd in *Westminster-Hall* a large Scaffold, about a Foot distant from the *Chancery-Court* ; and to the same Scaffold a long Passage, about six foot broad, and high built all the way as far as to the *Common-Pleas Bar*. In the middle, on the South-side of the Scaffold, was erected a Chair, somewhat higher than the rest, with a Cloth of State for the Lord High Steward of *England*, who for that day was *George Earl of Shrewsbury*. On both sides of the Lord High Steward, sat the Lords in this Order :

On the right Hand of the Ld High Steward.

Reynold Earl of Kent,
Thomas Earl of Suffex,

On the left Hand.

Earl of Worcester,
Earl of Huntingdon,

On the right Hand of the Ld High Steward.

Ambrose E. of Warwick,
—Earl of Pembroke,
Robert Earl of Leicester,
Lord Clinton, Lord High
Admiral of England,
William Lord Burleigh,
James Lord Mountjoy,
Lord Wentworth,
Lewis Lord Mordant,
Lord Chandois,
Oliver Lord St. John of
Bleishoe.

On the left Hand.

Francis Earl of Bedford,
Edward E. of Hertford,
Viscount Hereford,
William Lord Howard of
Effingham,
Lord Grey of Wilton,
Lord Sandes,
Lord Burgh,
Lord St. John,
Lord Rich,
Lord North,
Thomas Lord Buckhurst,
Lord De La Ware.

* See *State-Trials*. Vol. VIII. p. 323.

On both sides of the Lord High Steward, on a lower Form, at the Lords Feet, sat the Judges, viz. on the right hand;

Sir Robert Catlin, Lord Chief Justice of England;
Sir James Dyer, Lord Chief Justice of the Common Pleas;
Sir Edward Saunders, Lord Chief Baron of the Exchequer.

On the left hand, the rest of the Judges sat according to their Order.

At the feet of the Lord High Steward, directly before him, in a hollow Place cut in the Scaffold for that purpose, sat Mr. Miles Sands Clerk of the Crown with his Secondary. Next, beneath the Justices in the same Row, sat at the right Hand, viz. on the East-side, Sir Francis Knowles, with three of the Queen's Household, and Sir Walter Mildmay Chancellor of the Exchequer, with several others of the Queen's Privy-Council. On the left side, on the West part of the said Scaffold in the same Degree, sat next the Judges, Dr. Wilson, Master of the Requests, and several other Persons of Note.

On the North part of the Scaffold, directly before the Bar where the Prisoner came, sat Mr. Nicholas Barrkam the Queen's Serjeant, Mr. Gilbert Gerard the Queen's Attorney-General, Mr. Thomas Bromley Solicitor-General, and Mr. Thomas Wilbraham the Queen's Attorney of the Court of Wards. On the right hand, by Permission, sat Mr. William Fleetwood Recorder of London; and on their left hands were Mr. Thomas Norton, who wrote down this Trial upon the Scaffold, as also Garter King at Arms, two Gentlemen Ushers, and two Serjeants at Arms.

The Lord High Steward being set in his Chair, and all the Lords and others set in their Places, with a great Number of People in the Hall, the Hall being kept by the Knight Marshal, and the Warden of the Fleet and their Servants with Tipstaves; about half an hour past eight in the Morning the Lord High Steward stood up at his Chair bare-headed, and Mr. Norris the Gentleman-Usher holding the white Rod before him, Littleton the Serjeant at Arms made Proclamation as follows:

My Lord's Grace, the Queen's Majesty's Commissioner, High-Steward of England, commandeth every Man to keep silence on pain of Imprisonment, and to hear the Queen's Majesty's Commission read. Which then was read by the Clerk of the Crown.

Then the said Lord High Steward sat down again in his Chair, and the Gentleman-Usher deliver'd him the white Rod, which he held in his hand a great while; and after the Indictment read, redeliver'd it to the Gentleman-Usher, who held it up before him all the time of the Arraignment. Then Littleton the Serjeant again made Oyer, and proclaim'd thus: *Thomas Edwards, Serjeant at Arms, return thy Precept*; which being put in immediately, he deliver'd to the Clerk of the Crown the Names of the Peers summon'd for the Trial.

Then Littleton the Serjeant again made Oyer, and proclaim'd thus: *All Earls, Viscounts, and Barons, summon'd to appear this day, every one answer to your Names on pain of future Peril.* Then were all the Lords call'd in order by their Names of Baptism, and Surnames of Dignity, beginning at the antientest; and every one severally, as he was called, stood and signify'd their Appearance.

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* See State-Trials, Vol. VIII. p. 331.

Their Order of Ancientry, as they were call'd, was thus:

Reynold Earl of Kent,	Lord Grey of Wilton,
William E. of Worcester,	James Lord Mountjoy,
Thomas Earl of Suffex,	Lord Sandes,
Henry E. of Huntingdon,	Lord Wentwor
Ambrose E. of Warwick,	Lord Burgh,
Francis E. of Bedford,	Lewis Lord Mordant,
—E. of Pembroke,	Lord St. John,
Edward E. of Hertford,	Robert Lord Rich,
Robert E. of Leicester,	Lord North,
Walter Visc. Hereford,	Lord Chandois,
—Lord Clinton,	Oliver Lord St. John of
William Lord Howard	Bletsboe,
of Effingham,	Thomas Lord Buckhurst,
William Lord Burleigh,	Lord De La Ware.

Then the Serjeant again made Oyer, and proclaim'd thus: *Robert Catlin Knight, Chief Justice of England, return thy Certiorari and thy Precept*; which was immediately deliver'd to the Clerk of the Crown, and read. The Serjeant again made Oyer, and proclaim'd thus: *Lieutenant of the Tower of London, return thy Habeas Corpus, and bring forth thy Prisoner Thomas Duke of Norfolk.*

Then was the Duke brought upon the long half Pace to the Bar, Sir Owen Hopton Lieutenant of the Tower leading him by the right hand, and Sir Peter Garowe by the left, and so he was placed at the Bar, they still holding him by the Arms; the Chamberlain of the Tower, with the Axe of the Tower standing with the Edge towards Sir Peter: while behind the Duke stood Mr. Henry Skipwith, who after the Duke's Imprisonment, was appointed to attend on him in the Tower.

Then the Duke with a haughty Look, and oft biting his Lip, survey'd the Lords on each side him. In the mean time the Lieutenant of the Tower deliver'd in his Return; then the Serjeant made Oyer and Proclamation of Silence, while the Clerk of the Crown said to the Duke thus: *Thomas Duke of Norfolk, late of Remming-hall in the County of Norfolk, hold up thy Hand: Which the Duke did very lustily.* Then the Clerk of the Crown read the Indictment*, the Tenour whereof is thus:

Middlesex.

THE Jury present and say, in behalf of our Lady the Queen, That Thomas Duke of Norfolk, late of Remming-hall in the County of Norfolk, as a false Traitor against the most Illustrious and Christian Princess Elizabeth, Queen of England, France, and Ireland, Defender of the Faith, &c. and his Sovereign Lady, not having the Fear of God in his Heart, nor weighing his due Allegiance, but seduc'd by the Instigation of the Devil, contrary to that cordial Affection and bounden Duty that true and faithful Subjects of our said Lady the Queen do bear, and of right ought to bear towards our said Lady the Queen; and intending to cut off and destroy the said Queen Elizabeth, the 22d day of September, in the 11th year of the Reign of our said Sovereign Lady Queen Elizabeth, and divers other Days and Times before and after, at the Charter-House in the County of Middlesex, hath falsely, maliciously, and traitorously conspired, imagin'd and gone about, not only to deprive, depose, and cast out the said Queen, his Sovereign Lady, from her Royal Dignity, Title, Power, and Government of her Kingdom of England; but, also to bring about and compass the Death and final Destruction of our said Sovereign Lady the Queen,

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and

and to make and raise Sedition in the said Kingdom of *England*, and to spread a miserable Civil War amongst the Subjects of our said Lady the Queen, and to procure and make an Insurrection and Rebellion against our said Lady the Queen, his supreme and natural Lady; and so to make publick War within the Realm of *England*, contrary to our said Lady the Queen, and the Government of her said Kingdom, and to endeavour a Change and Alteration of the sincere Worship of God, well and religiously establish'd in the said Kingdom; and also totally to subvert and destroy the whole Constitution of the said State, so happily instituted and ordain'd in all its Parts; with divers Aliens and Foreigners, not the Subjects of our said Lady the Queen, hostilely to invade the said Kingdom of *England*, and to make cruel War against our said Lady the Queen and her Dominions.

And for the compassing and bringing to pass all the said wicked and notorious Treasons, Imaginations, and Intentions propos'd as aforesaid, he the said *Thomas Duke of Norfolk*, well and truly knew and understood, that *Mary late Queen of Scots* had laid Claim, and pretended a Title and Interest to the present Possession and Dignity of the Imperial Crown of this Kingdom of *England*; well and truly knowing and understanding, that the aforesaid *Mary*, late Queen of *Scots*, had falsely, wickedly, and unjustly said and affirmed, That our aforesaid Lady, Queen *Elizabeth*, had no Right and Title to the Crown of this Realm of *England*: And also well and truly knowing and understanding, that the aforesaid *Mary*, late Queen of *Scots*, had falsely, wickedly, and unjustly usurp'd the Stile, Title, and Regal Name of this Kingdom of *England*; and that she, the aforesaid *Mary*, late Queen of *Scots*, had impaled and joined the Arms of the Kingdom of *England* with the Arms of the Kingdom of *Scotland*, as well in her Seals and Plate, as other things, without any Difference and Distinction. And furthermore, well and truly knowing and understanding, that the said *Mary*, late Queen of *Scots*, had not revok'd or renounc'd her wicked and unjust Claims and Usurpations aforesaid, the 23d day of *September*, in the 11th Year of our said Lady, now Queen of *England*, and divers other Days and Places before and after the said time, at the *Charter-House* aforesaid, in the County of *Middlesex* aforesaid, falsely, subtly and traitorously fought and endeavour'd, without the Assent, Consent, or Agreement of the aforesaid our Lady Queen *Elizabeth*, his Supreme and Sovereign Lady, to be join'd in Marriage with the aforesaid *Mary*, late Queen of *Scots*. And for this Reason and Cause, he the said Duke aforesaid, the 23d day of *September* in the 11th Year aforesaid, and divers other Days and Places before and after, at *Charter-House* aforesaid, in the County of *Middlesex* aforesaid, falsely, subtly and traitorously writ divers Letters to the aforesaid *Mary*, late Queen of *Scots*; and as well as Letters, sent several Pledges or Tokens to the aforesaid *Mary*, late Queen of *Scots*, the 23d day of *September* aforesaid, in the year aforesaid, and divers other Days and Times before and after. And also on the said 23d day of *September*, in the 11th Year of the Reign of the said Queen *Elizabeth*, and divers other Days and Places before and after, at *Charter-house* aforesaid, in the County of *Middlesex* aforesaid, falsely, subtly, and traitorously gave to, and accommodated the said *Mary*, late Queen of *Scots*, with divers Sums of Money; which the said *Mary*,

late Queen of *Scots*, falsely and traitorously had and receiv'd of him the said *Thomas Duke of Norfolk*, the 23d day of *September* aforesaid, in the year aforesaid, at *Charter-house* aforesaid, in the County of *Middlesex* aforesaid; notwithstanding the aforesaid Duke had been distinctly and especially forbid and prohibited by the aforesaid Lady Queen *Elizabeth*, upon his Allegiance, that he should upon no account whatsoever hold Correspondence, or treat with the aforesaid *Mary* late Queen of *Scots*, concerning Marriage with her the said *Mary* late Queen of *Scots*; and notwithstanding the aforesaid Duke, by divers Letters and Instruments writ with his own hand to the said Lady Queen *Elizabeth*, his supreme Sovereign Lady, publicly deny'd and renounced the aforesaid Marriage, protesting that he the said Duke was never engag'd, or had proceeded in the said Marriage.

And also the said Jurors, upon their corporal Oaths, further present and say, That *Thomas Earl of Northumberland*, late of *Topcliffe* in the County of *York*, and *Anne* his Wife; *Charles Earl of Westmoreland*, late of *Branspeth* in the County of *Durham*; *Richard Norton*, late of *Norton Comers* in the County of *York*; *Thomas Markenfield*, late of *Markenfield* in the said County, Etcs; together with several other false Traitors, Rebels, and publick Enemies of our said Lady Queen *Elizabeth*, not having the fear of God before their Eyes, nor considering their due Allegiance, but seduced by the Instigation of the Devil, imagined, devised, and conspired to deprive and depose the said Lady Queen *Elizabeth* from her Royal Dignity, Title, and Power of her Kingdom of *England*; and also to bring about and compass the Death and final Destruction of the said Lady Queen *Elizabeth*, with the Intention and Design to compleat and fulfil all their traitorous Conspiracies and Devices, on the 16th Day of *November*, in the 11th Year of the Reign of the said Queen, at *Rippon* in the said County of *York*; by their own Consent and Appointment, they did falsely and traitorously meet and assemble themselves together, with a great Multitude of People, to the Number of four thousand Men and more, ready arm'd and prepar'd for open War against their said Queen *Elizabeth*, their Supreme and Sovereign Lady, at *Rippon* aforesaid, the 16th Day of *November* aforesaid, in the Year aforesaid, falsely and traitorously they were ready prepar'd and arm'd to execute all and singular the Treasons and Conspiracies aforesaid, of the said *Thomas E. of Northumberland* and *Anne* his Wife, *Charles E. of Westmoreland*, *Richard Norton*, and *Thomas Markenfield*, with many others of the said false Traitors and Rebels aforesaid, by due Form of Law legally indicted, and afterwards upon that legally outlaw'd and attainted, as they now stand upon Record in her said Majesty's Court of *Queen's-Bench*.

And after the Perpetration and Commission of the aforesaid wicked Treasons, in manner aforesaid by them committed, the aforesaid *Thomas Earl of Northumberland*, and *Anne* his Wife; *Charles Earl of Westmoreland*, *Richard Norton*, and *Thomas Markenfield*; with many other false Traitors and Rebels aforesaid, the 20th Day of *December*, in the 12th Year of the Reign of our said Sovereign Lady the Queen, for those Treasons fled out of this Kingdom into the Kingdom of *Scotland*; and there resided, and were receiv'd, aided and assisted by several Noblemen, and other great Men of the said Kingdom of *Scotland*, viz. by *James Duke of Chastelleroi*, the Earl of *Hunley*, Mr.

Mr. Harris, Mr. Hume, and Mr. Firmberst, and other Scots, then Subjects of the said Kingdom of Scotland, detain'd from our said Lady Queen Elizabeth: in and towards which Noblemen, and other great Men of the aforesaid Kingdom of Scotland, the said Lady Queen Elizabeth afterwards proclaim'd, and caus'd War to be made upon the said Rebels, as publick Enemies to her Kingdom of England, by Thomas Earl of Suffex, her Majesty's Lord Lieutenant, and Lieutenant-General of the North, with a powerful and strong Army to oppose the Enemy. Upon which account, Charles Earl of Westmoreland, Anne Wife of Thomas Earl of Northumberland, Richard Norton, and Thomas Markenfield, fled from the aforesaid Kingdom of Scotland, and transported themselves to Antwerp in Brabant, where they resided. And there the same Charles Earl of Westmoreland, Anne Wife of the said Thomas Earl of Northumberland, Richard Norton, and Thomas Markenfield, contrary to their due Allegiance, staid in manifest contempt of the said Queen and her Laws. Yet the aforesaid Thomas Duke of Norfolk, not ignorant of the Premises, but well and truly knowing all and singular the Transactions in manner and form aforesaid, the 6th Day of August, in the 12th Year of the Reign of the said Queen Elizabeth, at Charter-House aforesaid, in the County of Middlesex aforesaid, and divers other Days and Places afore and after, falsely and traitorously took care, and caused to be sent, deliver'd and distributed, several Sums of Money, to aid, assist, and support the aforesaid Charles Earl of Westmoreland, and Anne Wife of Thomas Earl of Northumberland.

And further, That the said Thomas Duke of Norfolk, the 16th Day of July, in the 13th Year of the Reign of the said Lady Elizabeth, Queen of England, at Charter-House aforesaid, in the County of Middlesex aforesaid, and divers other Days and Places afore and after, falsely and traitorously adhered to, aided and assisted James Duke of Chastellero, Earl of Huntley, Mr. Harris, Mr. Hume, Mr. Burleigh, and Mr. Firmberst, publick Enemies to our said Lady Elizabeth, then Queen of England.

And further, the Jurors aforesaid, upon their Oaths, present and say, That whereas Pius Quintus, sometime Bishop of Rome, was and is known to be a deadly and publick Enemy to our said Lady Queen Elizabeth, and her Kingdom of England; that the said Thomas Duke of Norfolk well and truly knowing and understanding this, the 10th Day of March, in the 13th Year of the Reign of the said Lady Queen Elizabeth, at Charter-House aforesaid, in the County of Middlesex aforesaid, and divers other Days and Places afore and after, with intention to produce the said traitorous Effects, falsely, subtilly, and traitorously consented, consulted, advised, and procured one Robert Ridolph, a foreign Merchant beyond the Seas, and out of the Kingdom of England, to send to the aforesaid Bishop of Rome, to Philip King of Spain, and to the Duke of Alva, to obtain of the aforesaid Bishop of Rome certain Sums of Money, towards the raising and maintaining of an Army to invade this Kingdom of England, and to make war in the said Kingdom, against the aforesaid Lady Elizabeth, Queen of England, &c. And that the said King of Spain, by the Mediation of the said Duke of Alva, did send into this Kingdom of England a certain Army of Germans to invade and make open and cruel War against the said Lady Queen Elizabeth.

And also that the same Thomas Duke of Norfolk, the same 10th Day of March, in the said 13th Year of the Reign of the said Lady Queen Elizabeth aforesaid, and divers other Days and Places afore and after, at Charter-House aforesaid, in the County of Middlesex aforesaid, falsely, wickedly, and traitorously conspired, consented, and agreed with the aforesaid Robert Ridolph, to advance, stir up, and raise within this Kingdom of England, all the Forces and Power that he the aforesaid Thomas Duke of Norfolk and his Confederates were by any means capable of raising, or engaging others to raise within this Kingdom of England, to join with the aforesaid Army, and with other Subjects of this Kingdom of England, whom the same Duke of Norfolk could gather together and join with the said Army by the said King of Spain, in order to make open War against our said Lady Queen Elizabeth, within this her Kingdom of England; and to take away and free Mary, late Queen of Scots, out of the custody and possession of our said Lady Elizabeth, Queen of England; and at the same time to deprive, depose, and eject the most Illustrious and Christian Princess Queen Elizabeth, from her Royal Dignity, Title, Power, Preheminence, and Government of this Kingdom of England: and at the same time, him the said Thomas Duke of Norfolk, to join himself in Marriage with the aforesaid Mary, late Queen of Scots.

And further, the Jurors upon their Oaths present and say, That the aforesaid Robert Ridolph had writ and compos'd three distinct and separate Letters of Credit, in the name of the aforesaid Thomas Duke of Norfolk, for him the said Robert Ridolph, in his false, wicked, and treasonous Messages aforesaid; viz. One of those Letters to the aforesaid Duke of Alva, another to the aforesaid Bishop of Rome, and a third to the aforesaid Philip King of Spain. That afterwards the same Thomas Duke of Norfolk falsely and traitorously intending, willing, and desiring Success and Effect from the aforesaid false and traitorous Messages; by the aforesaid Robert Ridolph, as appeareth by his sending one William Baker Gent. one of the Servants of the said Thomas Duke of Norfolk, the 20th Day of March, in the 13th Year of the Reign of the Queen, at Charter-House aforesaid, in the County of Middlesex aforesaid, falsely and traitorously sent to Guerrawe Despeis, Embassador of the said Philip King of Spain, to declare, shew, and affirm to the aforesaid Embassador of the aforesaid Philip King of Spain, that he the said Thomas Duke of Norfolk had affirm'd and would affirm the aforesaid Credential Letters to the aforesaid Duke of Alva, the Bishop of Rome; and Philip King of Spain, compos'd and writ in his Name, were as valid to all intents and purposes, as if he the said Thomas Duke of Norfolk had writ them with his own Hand.

And further, the said Jurors upon their Oaths present and say, That the aforesaid Robert Ridolph, the 24th Day of March, in the 13th Year of the Reign of the said Lady Elizabeth Queen of England aforesaid, at Dover in the County of Kent, took his Journey to several Parts beyond the Seas, in order to execute, perfect, and compleat the said treasonable Messages, with the Consent and Agreement of the aforesaid Thomas Duke of Norfolk. And afterwards the aforesaid Robert Ridolph convey'd, declar'd, and communicated the said wicked and traitorous Messages in foreign Countries and Parts beyond the Sea, as well to the aforesaid Duke

Duke of *Alva*, as to the aforefaid Bishop of *Rome*. And that the aforefaid *Robert Ridolph*, amongst his many other falſe and traitorous Meſſages, convey'd one Letter in unuſual Characters call'd Cyphers, which the aforefaid Duke of *Alva* cauſed to be writ and ſent to *Thomas Duke of Norfolk*; which very Letter, as declared to be writ and ſent; he the ſaid Duke of *Norfolk*, the eighteenth Day of *April*, in the thirteenth Year of the Reign of the ſaid Queen *Elizabeth* aforeſaid, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly received and had; and then and there gave and delivered to the aforeſaid *William Baker* his Servant ſeveral written Pages in known Letters, commonly to be decipher'd: And the ſaid Papers in common and known Cyphers or Characters he the ſaid Duke afterwards, on the 25th Day of *April*, in the 13th Year of the Reign of the ſaid Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly received, inſpected, and read over the ſaid Papers, and then and there falſely and traitorouſly retained and kept them. By which Letters of the ſaid *Robert Ridolph* to him the ſaid *Thomas Duke of Norfolk*, amongst other things, are ſignify'd, and he makes known what a kind Audience and Reception he the ſaid *Robert* met with from the aforeſaid Duke of *Alva*, in his wicked and traitorous Meſſages aforeſaid. And that the ſaid Duke of *Alva* required and willed the Friends and Abettors of the ſaid Confederacy to be ready, whenſoever a foreign Power ſhould be ſent into this Kingdom of *England*.

And furthermore, the ſame Jurors upon their Oaths preſent and ſay, That the ſaid *Thomas Duke of Norfolk*, the 16th Day of *June*, in the 13th Year of the Reign of the ſaid Lady Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly receiv'd a Letter directed to him the ſaid Duke, from *Pius Quintus* Biſhop of *Rome*; by which the ſaid Biſhop of *Rome* promiſed to the ſaid Duke of *Norfolk*, Aid, Help, and Aſſiſtance towards executing the ſaid wicked and traitorous Deſigns of the aforeſaid *Mary*, late Queen of *Scots*, contrary to their due Allegiance, and the Peace of our Sovereign Lady *Elizabeth*, now Queen of *England*, her Crown and Dignity, and in manifeſt Contempt of the Laws of this Kingdom, as well as the worſt and moſt pernicious Example of all other Delinquents in the like caſe, and contrary to the Form of ſeveral Statutes in this caſe made and provided.

After the reading of the Indictment, the Clerk of the Crown ſaid to the Duke; How ſay'ſt thou, *Thomas Duke of Norfolk*, art thou guilty of theſe Treasons whereof thou art indicted, in manner and form as thou art thereof indicted, *Yea or No*?

Thereupon the Duke began, and ſaid to this effect:

May it pleaſe your Grace, and you the reſt of my Lords here, The hearing of this Indictment giveth me occaſion to enter into the making of a Suit, which I meant not to have done before my coming hither: I beſeech you, if the Law will permit it, that I may have Counſel allow'd me for the answering of this Indictment.

The Lord Chief Juſtice answer'd, That in caſe of High-Treason he cannot have Counſel allow'd: And that he was to answer to his own Fact only, which himſelf beſt knew, and might without Counſel ſufficiently answer.

Duke. That you may underſtand that I ſpeak it

not without ſome ground, theſe be the Cauſes that move me to make this Suit: I was told before I came here, that I was indicted upon the Statute of the 25th of *Edward III*. I have had very ſhort warning to provide to answer ſo great a matter; I have not had fourteen Hours in all, both day and night, and now I neither hear the ſame Statute alledged, and yet I am put at once to the whole Herd of Laws, not knowing which Particularity to answer unto. The Indictment containeth ſundry Points and Matters to touch me by Circumſtance, and ſo to draw me into matter of Treason, which are not Treasons themſelves: Therefore with Reverence and humble Submiſſion I am led to think I may have Counſel. And this I ſhew, that you may think I move not this Suit without any ground. I am hardly handled, I have had ſhort warning, and no Books; neither Book of Statutes, nor ſo much as the Breviate of Statutes. I am brought to fight without a Weapon: yet I remember one Caſe in Law, I think it is in the Firſt Year of King *Henry VII*. It is the Caſe of one *Humphrey Stafford*, which was indicted of High-Treason, and had Counſel allowed him: If the Precedent in his Caſe be ſuch, as it may extend to me, I require it at your hands, that I may have it allow'd: I ſhew you my ground why I crave it, I refer me to your Opinions therein.

Then Sir *James Dyer*, Lord Chief Juſtice of the Common-Pleas, ſaid; My Lord, That Caſe of *Humphrey Stafford* in *primo* of *Henry VII*, was about pleading of Sanctuary, for that he was taken out of Sanctuary at *Culneham*, which belong'd to the Abbot of *Abingdon*: So the Queſtion, was whether he ſhould be allowed Sanctuary in that Caſe, and with that Form of Pleading, which was matter of Law: In which Caſe he had Counſel, and not upon the Point or Fact of High-Treason; but only for the Allowance of Sanctuary, and whether it might be allowed, being claimed by Preſcription, and without ſhewing any former Allowances in *Eier*, and ſuch like Matters; but all our Books do forbid allowing of Counſel in the Point of Treason; but only it is to be answered Guilty, or not Guilty.

Duke. *Humphrey Stafford's* Caſe was High-Treason, and he had Counſel. I muſt ſubmit my ſelf to your Opinions: I beſeech you, weigh what Caſe I ſtand in. I ſtand here before you for my Life, Lands and Goods, my Children and my Poſterity, and that which I eſteem moſt of all, for my Honesty; I forbear to ſpeak of my Honour. I am unlearn'd: if I aſk any thing, and not in ſuch Words as I ought, I beſeech you bear with me, and let me have that Favour that the Law allows me. If the Law do not allow me Counſel, I muſt ſubmit me to your Opinions. I beſeech you, conſider of me; my Blood will aſk Vengeance, if I be unjuſtly condemn'd: I honour your Learnings and your Gravities: I beſeech you, have Conſideration of me, and grant me what the Law will permit me. I am now to make another Suit to you, my Lords the Judges: I beſeech you, tell me, if my Indictment be perfect and ſufficient in Law; and whether in Whole, or in the Parts, and in which Parts, that I may know to what I ſhould answer.

Lord Chief Juſtice *Catlin*. The Lord Ch. Juſtice ſaid, For the Sufficiency of your Indictment, it hath been well debated and conſider'd by us all; and we have all, with one Aſſent, reſolv'd, and ſo do certify you, that if the Cauſes in the Indictment expreſſed, be true in Fact, the Indictment is wholly and in every Part ſufficient.

Duke.

Duke. Be all the Points Treasons?

L. Ch. Just. *Catlin*. All be Treasons, if the Truth of the Case be so in Fact.

Duke. I will tell you what moveth me to ask you this: I have heard of the Case of the Lord *Scroope*; it was in the time of *Henry the IVth* (*the Judges said Henry the Vth*) he confess'd the Indictment, and yet travers'd that the Points thereof were no Treasons.

L. Ch. Just. *Catlin*. My Lord, he had his Judgment for Treason upon that Indictment, and was executed.

Then the Clerk of the Crown said again, How sayest thou, *Thomas Duke of Norfolk*, art thou guilty of the Treasons whereof thou art here indicted, in Manner and Form as thou art indicted, Yea, or No?

The Duke answer'd, Not Guilty.

The Clerk said, By whom wilt thou be try'd?

The Duke said, By God and my Peers.

Then the Duke spake to the Lords, and said thus: Now I am not to use a short Speech, which I meant before to have used, but that the reading of the Indictment hath driven me to other Occasions. Altho' these heinous Treasons and outrageous Faults objected against me, do much abash me; yet I conceive no small Comfort, to think under how gracious a Queen and Sovereign Lady I live, which well appeareth by her most gracious Proceeding with me according to the Course of Law. Her Majesty seeketh not my Blood, but giveth me the Trial which the Laws admit, and in the most favourable manner that I can require; for which I am most bounden to her Majesty. Now I am to make two Suits: the one to your Grace, my Lord High Steward, That as your Place requireth to do justice, so it may please you to extend to me your lawful Favour, that I may have Justice, and that I may not be overlaid in Speeches: My Memory was never good, it is now much worse than it was; fore Troubles, fore Cares, Closeness in Prison, evil Rest, have much decay'd my Memory; so as I pray God that this day it fail me not, and another time I will forgive it: I beseech this of you, my Lord High Steward. The second Request, I thought to make to you, my Lords, my Peers: I think myself happy to have my Trial in such a Company. A much greater Matter, if I could have greater, I durst put it into your hands, and (a very few excepted) even into every one of your hands singly; that Opinion I have of you. I know Religion beareth a stroke among you, which, I hope, so ruleth your Consciences, that for no Respect you will swerve from Justice; you will not bring a Worm into your own Consciences; you will not burden your Souls with condemning me wrongfully; you will not do what God's Law and Right alloweth not: This above all things comforteth me, next unto her Majesty's most gracious Favour of my lawful Trial. If I had not made a full Account to have this for the way of my lawful Purgation, I needed not to have been here at this time, neither for Matters pass'd two Years ago, nor for that whereof I am charg'd at this present. I have chosen, my Peers, I have chosen rather to come here to be try'd by you, than with needles and cowardly running away, to have left a Gap open for my Enemies slanderously to lay to my charge in my absence what they could maliciously invent. I have this day (tho' I am sorry for any Cause to come in this Case before you) even the day that I could wish to be

tried by such Peers. I will not enter into Particularities, and discourse my whole Cause at large, but answer from Point to Point, as I shall be charged; for my Memory was never good, and it is now worse than ever it was. Yet one Request more I beseech of you, my Peers, which I with Favour may ask, and you with Justice may grant: Unhappy Man that I am, tho' I have to this Indictment pleaded Not Guilty of the Treasons therein objected against me, nor of no Treasons; yet I confess, as I have with all Humility, and with Tears confess'd, and as some of you, my Lords, here present can witness, that I have neglected my Duty to the Queen's most Excellent Majesty, in Cases inferiour to Treason, and that be no Parts of Treason: I have laid them at her Majesty's feet, and pour'd them forth before her in Confession, so far as my Conscience will suffer me to declare. Let, I beseech you, neither my Confession already made of inferiour Faults, that be not in compass of Treason; nor, if I shall now in mine Answers confess them again, if they be objected against me; lead you to judge the worse of me in the greater Case. Let each Fault have his own Pine; I beseech you, remember the Differences and Degrees of Offences, and not to mix my smaller Faults with this great Cause: let these mean Crimes rest at her Majesty's Feet, where I with all humility have laid them. Thus I beseech you all, have consideration of me.

Then spake the Queen's Serjeant, *Mr. Barrham*, and said to this effect: It hath appear'd to your Grace and your Lordships all, that the Duke of *Norfolk* is by this Indictment charged with three principal Points of High Treason: the first is, That forgetting his Allegiance and Duty to his Sovereign Lady the Queen, he hath traitorously imagin'd, devis'd and practis'd, to deprive and depose the Queen's Majesty of and from the Crown of this Realm, and her Royal Style, Name and Dignity, and to bring her to Death and Destruction; and so to alter the whole State of Government of this Realm. The second Point is, That he hath traitorously reliev'd and comforted the *English* Rebels that levy'd War against her Majesty within her Realm, and which since fled into *Scotland*, and from thence beyond the Sea. The third Point is, That he hath traitorously given Relief and Maintenance to the Duke of *Chastelleroi*, the Earl of *Huntley*, the Lord *Harris*, the Lord *Hume*, and other *Scots*, the Queen's Majesty's publick Enemies, Succourers and Detainers of the said Rebels. To prove these great Treasons, there is in this Indictment set forth unto you good and sufficient Matter; first, to prove that the Duke of *Norfolk* sought, imagin'd, compass'd and practis'd to deprive and depose the Queen's Majesty of her Royal Crown, Estate and Dignity; and consequently to bring her to Death and Destruction, are alledg'd two matters: The first is, That the Duke knowing the *Scottish* Queen falsely and unjustly to claim and pretend Title, to have and enjoy the present possession of the Crown of *England*; and that she untruly usurp'd the Name and Style of this Realm; and that she gave and quarter'd the Arms of *England* without Difference; and that she continu'd in that Fact, and usurp'd Claim without Renunciation thereof, and without acknowledging her Error unto the Queen's Majesty, tho' she hath been thereto requir'd: He, I say, knowing all this, yet without the Queen's Majesty's Assent, against her Majesty's special and expresse Commandment

mandment upon his Allegiance, and against his own Promise and Protestation upon his Faith, hath nevertheless secretly sought and practis'd to join himself with the said *Scotish* Queen in Marriage, and to advance and maintain her said false and pretended Title to the present Possession of the Crown of this Realm; which cannot be without purpose to depose and deprive the Queen's Majesty, and consequently to bring her to Death and Destruction. The second is, that the Duke of *Norfolk* hath conspired and practised to procure Strangers to enter into this Realm, and invade the same, and to make open War against her Majesty, within her own Realm; and so forcibly to work her Deposing, Deprivation, Death and Destruction. Hereupon the said Duke hath pleaded Not Guilty, and for his Trial hath put himself upon his Peers; yours therefore is the Trial. And now for Evidence to prove him guilty of the Treasons contain'd in the said Indictment, it may please your Lordships to hear such a Matter as I shall for the Queen bring forth against him.

Duke. I am occasion'd, by the Speech of Mr. *Serjeant*, to gather what I shall find in the rest of them; a Meaning with Circumstance to draw me into Treason, with Eloquence to overlay me, and to exasperate Matters extremely against me, and to enforce things that be not Treasons indeed. I beseech you, my Masters, for God's sake do your Duty, remember Equity, consider Conscience, and what I am: I am no Stranger, I am a Christian Man, and an *English* Man. You may do your Duties to the Queen sufficiently, and yet deal conscionably with me, and heap not, unconscionably, Circumstances to cloy my Memory. Go directly to the Indictment: It is no Praise nor Glory for you to overlay me. I am unlearned, unable to speak, and worst of all to speak for my self; I have neither good Utterance, as the World well knoweth, nor Understanding: For God's sake do not overlay me with superfluous Matter. One thing I had forgotten: I know a Man suspected is half condemn'd. Now as it happen'd in my last Trouble, so at this time there want not to put abroad to the World, and heap up things which I never thought; a great number of such there be, as I see many here at this present. They have publish'd, that I took an Oath of things which afterwards prov'd contrary; blame me not that I mistrust the worse, because I have found the worst. But to take away scruple from you, true it is, that I took an Oath, but not generally, but to special Points. And now when I take an Oath to Points, to draw me to the Whole, and to take *Pars pro Toto*, is great Injury. To prove that I took that Oath to Parts, and not to the Whole, I refus'd to set my Hand without expressing of the Point; for my Hand, my Oath, and my Heart shall go all together. And for further Proof that my Oath was but to special Points, I can name good Witnesses to whom I did presently, within three hours after my Oath taken, specially report the three Points that I made mine Oath unto. This, I say, to take from you the Scruple of such Matter as I have been charg'd with, and which perhaps you have heard of me to my discredit.

Then said Mr. *Serjeant Barrham*, I have yet given no Evidence, and for that Oath you are not once yet charged withal. I have done nothing yet, but recited the Matters contain'd in the Indictment: now will I bring forth Matter for the Queen in Evidence, and will prove the things in

the Indictment to be true. There are alledg'd three great Treasons, as I have before said; the first only I will deal with, that is, to prove that the Duke of *Norfolk* imagin'd, compass'd and conspir'd, to deprive and depose the Queen's Majesty, our Sovereign Lady, of her Crown and Royal Estate and Dignity: and I will use the second Matter but for Inducement of the first, by shewing how the *Scotish* Queen falsely and unjustly claim'd the present Possession of the Crown of this Realm; and that he knowing that the *Scotish* Queen so unjustly claim'd the said Crown, that she quarter'd the Arms of *England*, that she usurp'd the Style and Royal Name; that she hath not acknowledged her Error, nor renounc'd her untrue and unjust Claim and Usurpation, tho' she hath been requir'd thereunto; and whereto himself hath been privy, and hath dealt in Treaty, as a chief Commissioner for the Queen's Majesty for that purpose: This Matter, I say, I will set out; how he knowing all this, yet without the Assent of the Queen's Majesty, against her Highness's express Commandment upon his Allegiance, against his own Faith and Promise to the contrary, practis'd to join himself in Marriage with the said Queen of *Scots*: and I mean to join thereto an Intent of his, to advance and maintain that unjust Title of the *Scotish* Queen. If then this attempting to join himself in Marriage with the *Scotish* Queen shall be prov'd unto you, and that he knew of her unjust Claim and Pretence of Title, and that thereby he join'd himself to advance and maintain the said Title, this must needs tend to a Purpose and imagining to depose and deprive the Queen's Majesty, and thereupon consequently to bring her to Death and Destruction, which is High-Treason within the Compass of the Statute of 25 of King *Edward III.* For who so shall imagine and go about to maintain a Title to the present Possession of the Queen's Crown, and to join himself in Marriage with her that so claimeth, without doubt he meaneth to aspire to the Crown himself; and so meaning, it plainly followeth, that he cannot suffer her Majesty to reign, and his Jealousy cannot suffer her to live where he desireth to reign. Now will I show you the manner of his procuring to match himself in Marriage with the *Scotish* Queen, and first the beginning thereof: First of all, to prove how secretly he dealt to that end, by Suits and Means, before he was a Commissioner, to examine Causes between the *Scotish* Queen, and the young King her Son, and other the Lords of *Scotland*. Before that time there were secret Suits and Practices between them by Motions, by Messages, by Letters and Tokens, and pleaded so far forth, as that the *Scotish* Queen took it, that she was assur'd of his Good-Will. For when Commission was directed to him, and to the Earl of *Suffex*, and to Sir *Ralph Sadler*, Counsellors of the Dutchy of *Lancaster*, the *Scotish* Queen had repos'd full Affiance in the Duke of *Norfolk*, to have at his Hands favourable hearing; and so she reported, and so indeed it follow'd. And where you speak of an Oath, and seem so loth to be disprov'd, and would so feign have it taken, that your Oath, Hand, and Heart go all together; there was an Oath specially appointed for the Commissioners, that they should deal in that matter between the *Scotish* Queen and her Son and Nobility, directly, sincerely, and uprightly, and to weigh all things that should be objected or answer'd on either part indifferently without

without all Partiality. Then after this Oath taken, the Duke being the first nam'd Commissioner, this Oath notwithstanding, dealt indirectly, deceiv'd the Queen's Majesty's Trust, and demean'd him partially against his said Oath, wherein he committed wilful Perjury: Besides that, without regard of his Oath of a sworn Counsellor to the Queen's Majesty of her Privy Council, he disclosed her Majesty's Secrets, and fell to practising for matching himself with the *Scotish* Queen in Marriage. Now shall I prove his knowledge at the same time, that the *Scotish* Queen pretended Title to the present Possession of the Crown of this Realm.

Duke. Then the Duke ask'd, if all the Treasons contain'd in his Indictment were upon the Statute of King *Edward III.* and it was answered by Mr. *Serjeant* and Mr. *Attorney-General*, that they were grounded upon the same Statute only. Then the Duke began thus:

Here the Matters that Mr. *Serjeant* hath prov'd against me stand in two Points; by which he chargeth me with imagining the Deprivation and Death of the Queen's Majesty, and with indirect and untrue Dealing in the *Scotish* Queen's Cause; and therein he burdeneth me with Perjury. The *Scotish* Cause hath divers Pleas, and therefore bear with me, I pray you, if I cast back again to rehearse my Doing therein, for my Memory is not good: As for my Dealing therein, God is my Witness, that I have done uprightly.

Serj. Then Mr. *Serjeant* urged him to confess if he had knowledge that the *Scotish* Queen pretended Title to the present Possession of the Crown of *England*; offering, if the Duke would deny it, to make proof of it.

Duke. The Duke said, I will make mine own Confession; I pray you to teach me not how to answer or confess, because it is the first ground that you build upon against me: and because I know not whether my Peers do all know it or no, I will make a short Declaration of my Doings in that Matter with the *Scotish* Queen.

Serj. First we pray your Grace (speaking to the Lord High Steward) that he may directly answer, whether he knew that the *Scotish* Queen so claim'd or no; if he say no, we will prove it.

Duke. Then being ruled over by the Lord High Steward, that he should answer directly to that Question, he answer'd, that indeed he knew that she had so claim'd, but with Circumstance.

Serj. Say plainly, Did you know it or no? for if you say nay, we can prove it.

Duke. You handle me hardly, you would so trap me by Circumstance, and infer upon me that she was the Queen's Enemy, and so make me a Traitor. I will answer directly to the whole Matter of my Dealing with her.

Serj. Answer to the parts as they fall out. Did you know that she claim'd the present Possession of the Crown? That she usurp'd the Arms and Royal Style of this Realm? and that she made no Renunciation of that usurp'd Pretence? If you say you knew it not, we will prove every part of it.

Duke. I did not know it in such sort as is alledg'd; I know that Renunciation of that Claim was offer'd, and upon certain Causes respited.

Serj. It is well known, and yourself then knew it, That the *Scotish* Queen claim'd the present Possession of the Crown of *England*, quarter'd the Arms of *England* with the Arms of *Scotland*, and usurp'd the Style of this Realm; and that there was a *French* Power sent to prosecute it by inva-

ding this Land by the way of *Scotland*: your self was made the Queen's Majesty's Lieutenant, and levy'd an Army to expulse them. Afterward the Queen's Majesty sent her Embassadors, which met with the *French* Lords and *Scotish* Queen's Commissioners at *Edinburgh*, and agreed upon a Treaty of Peace; in which one special Article was, that the *Scotish* Queen should acknowledge her Error, and should renounce her pretended Claim to the present Possession of the Crown of this Realm. It was not done, nor yet is done. My Lord of *Norfolk* was at this Treaty; and when this last Commission went out, when the Commissioners sat at *York* about the Matter between the *Scotish* Queen, her Son, and the Nobility of *Scotland*, wherein were Commissioners the Duke of *Norfolk*, the Earl of *Suffex*, and Mr. *Chancellor* of the Dutchy; one special Instruction was for the *Scotish* Queen's Recognition of her unjust Claim, and to require that she should ratify the former Treaty of Peace. The Duke knoweth well it was not done.

Duke. What is this to me? I need not enter to defend her Doings, I like them not. It is not my Case, but that you make it my Case; else I would not meddle with it, answer it who would for me. Indeed I have heard, that being Covert-Baron then, marry'd to the *French* King, in her Husband's Life she made Claim to the Crown of *England*, and quarter'd the Arms of *England* with the Arms of *Scotland*. I have heard also, That Sir *Nicholas Throckmorton* made complaint thereof, and mov'd for Redress, and thereupon it was laid down. I have heard that she hath been requested to make Renunciation of that Claim when the Peace was concluded, when *Montmorancy* came over, and time was taken for it. After this there grew Amity between the Queen's Majesty and the *Scotish* Queen; the Queen took her for her Friend, sent Embassadors unto her, and christened her Child; all this excluded Enmity. And when my Lord of *Bedford* was there, and mov'd her for ratifying of the Treaty, and for the Renunciation, she refus'd not; but said, she would send to shew Causes why she did it not presently. And then it was refused not absolutely, but upon certain Words, and the treating thereof committed to my Lord *Burleigh* and Mr. *Wotton*. As for our Commission at *York*, it took no end; the Matter was brought up hither, and here was sat upon at *Westminster* in the Parliament-Chamber. And this is my understanding, that she claim'd the Crown, and I have not otherwise known it.

Serj. Thus have you confess'd far enough, That you knew that she did pretend Title to the present Possession of the Crown; That she quarter'd the Arms, and usurp'd the Royal Style of this Realm.

Duke. It was in her Husband's time, when she was Covert-Baron.

Serj. You knew also, how since her Husband's Time, she hath not renounced that Claim; and you had, in special, Instruction to require it when you were Commissioner.

Duke. A full Renunciation was offer'd when the Lord *Burleigh* was with her, and our Commission was ended, and the Matter brought up hither.

Serj. But what was the Cause why it took no end by your Commission? Your self was the Cause that the Commission broke up, because you dealt indirectly; you set out your own Affection and Partiality, and behav'd your self partially, without regard to the Queen's Majesty's special Commandment, without regard of your Oath, then specially

taken for that Commission, or of your Oath as a Counsellor: you utter'd your Partiality, you disclos'd to the other side aforehand the Queen's Secrets: you devis'd with the one side, and gave them Counsel how to deal for stay of the Matter: you did prevaricate the Queen's Intention; and when you were by your Commission to examine the *Scotish* Queen's Adulteries, and her Murdering of her Husband, you practis'd with those that were Dealers for the *Scotish* Queen, and you told them, by way of Advice, That if these Matters went forwards to Hearing, the Earl *Murray*, and his Side, would disclose all the foul Matter that they could, both by her Letters and other Evidences, to her Dishonour; and that the Queen's Majesty had some such Counsellors about her, as if these things were once produc'd, she would cause them to be publish'd, that all foreign Princes should understand them, to the *Scotish* Queen's great Infamy, and to move foreign Princes to proceed no further suing for her. And this was the Cause of the Breach and Dissolution of your Commission.

Duke. You said you would prove that I knew of the *Scotish* Queen's claiming the present Possession of the Crown.

Serj. Your self have confessed it; for you know there was yet no Renunciation made, and you were special Commissioner for that purpose; and tho' your Commission took no effect, yet by that, that the requiring of the Renunciation was matter of your Instructions, and the same not done, it is plain that you knew sufficiently of her former unjust claiming of the present Possession of the Crown: And now will we by good Evidence prove your partial and indirect dealing in that Commission. Here I will produce Matter of your own Conference at *York* with *Ledington* and the Bishop of *Rosse*, and how your self told them, that you understood at *Lyth*, that rigorous Matter would be set out by the Earl *Murray* and the rest of that Side, against the *Scotish* Queen, touching her Whoredom and the Murder of her Husband. You gave Advice to stay the Earl of *Murray* from so doing; you told the *Scotish* Queen's Ministers, how the Queen of *England* had some Counsellors that could cause her to publish all those Matters to the *Scotish* Queen's Infamy; you practis'd with them to devise to qualify the Matter; you told the Way that you thought best to do it; you advis'd them to deal with the Earl of *Murray*, that the Matter might be compounded, or else so to handle it, that it might take no end.

Duke. Here the Duke took advantage of that Mr. Serjeant had said, That the Duke understood at *Lyth*; for the Duke then protested, that at that time he had never been at *Lyth*. Whereupon the Lord *Burleigh* dissolv'd that Knot, and said on the Duke's Behalf to Mr. Serjeant:

Burleigh. You were best proceed with your Evidence; you may mistake: my Lord *Norfolk* had not then been at *Lyth*, otherwise than he and I were there once secretly in a Morning. The Cause of this Error rose thus: In one *Scotish* Paper produc'd for that Matter, was contain'd, how the Duke understood at *Lyth*, which in *Scotch* is as much as at length; which Mr. Serjeant, in perusing the Matters for Evidence deliver'd unto him, took for *Lyth*, as the Clerk of the Crown also afterwards did in reading the same Paper.

Then was produc'd an Examination of the Bishop of *Rosse*, taken at the Tower, Nov. 5. 1571. as followeth:

The *Scotish* Queen told the Bishop of *Rosse*, that the Conference at *York* was to make the Earl of *Murray*, and other her disobedient Subjects, to answer before the Queen's Majesty of *England*'s Commissioners, for their unnatural and unjust Proceedings against her; and that after their Offences acknowledg'd for the Queen of *England*'s Pleasure, they should be remitted, and receiv'd into Favour again, and so all Matters compounded.

The Bishop's Answer to this was, That he was sorry she had agreed to any Conference wherein they should be accus'd; for he was assur'd in that Case, they would utter all that they could for their Defences, altho' it were for her Dishonour, and of the whole Realm: for they would be loth to confess openly that they were evil Subjects, and she a good Princess; and therefore he wish'd that the Matter might be treated by way of Concord, before any entry to Accusations: And to that end he counselled her to travel with her Friends at Court to *York*. To this she reply'd, that there was no such Danger in the matter as I suppos'd; for she trusted I would find the Judges favourable, principally the Duke of *Norfolk*, who was first in Commission; and doubted not but the Earl of *Suffex* would be ruled by him as his tender Friend, and Sir *Ralph Sadler* would not gainstand their Advice; and that *Liggon*s had been at *Bolton*, by whose Message, told by him to the Lord *Scroope*, he understood of the Duke's good Will towards her, and the Bruite was also spread abroad of a Marriage between the Duke and her; and besides, that she had many good Friends in the Country that did favour her, and seek to her, such as the Earl of *Northumberland* and his Lady, by whom she had many Intelligences and Messages; the *Nortons*, *Markenfield* and others, who would all be with the Duke at *York*, and would persuade him to favour her Case. In the mean time, before our Passage to *York*, *Robert Melvin* came to *Bolton* with Letters, sent by *Ledington* from *Faully Castle* to the Queen my Mistress, to advertise her, that the Earl of *Murray* was wholly bent to utter all that he could against her, and to that effect had carried with him all the Letters which he had to produce against her, for proof of the Murder, whereof he had recover'd the Copies, and had caus'd his Wife to write them, which he sent to the Queen; and that he had not come into *England* in the Earl of *Murray*'s Company, unless it had been to do her Service, and to travel for mitigation of those Rigors intended; desiring to be certified by *Robert Melvin*, that she wish'd to stay those rigorous Accusations: and because he was well acquainted with the Duke of *Norfolk*, desired him to travel with the Duke in his favour, and that he would confer with the Bishop of *Rosse*, by whom he should understand his whole Mind particularly from time to time. After this, *Robert Melvin* at *York* did bring me to *Ledington*'s Lodging, where we talk'd almost a whole Night; where he told, That he had conferr'd with the Duke, who seem'd to bear great Good-will to the Queen my Mistress, and had willed him to counsel the Earl of *Murray*, and others, to abstain from uttering any dishonest Matter against the Queen, but to grant to some Compositions amongst themselves: so that *Ledington* said, it appear'd to him, that the Duke had some Intention to marry with the Queen, as the Bruite was; and that he did verily believe, that if it were follow'd, the Marriage would take effect, which would be most of all other things for the Queen's Honour and

Weal:

Weal: and will'd me to speak with the Duke secretly alone, without the Commissioners, and *Ledington* should advertise the Duke to appoint the time convenient, as he did one day in the Morning by seven of the Clock, before the meeting of the Commissioners. I talk'd with the Duke alone in a Gallery, where he utter'd to me, That he bore good Will to the Queen my Mistress, and that he had talk'd with the Earl

* This was written in Scotland, Lyth; which occasioned the Error before.

Murray at length, and had seen the Letters which they had to produce against the Queen my Mistress, and other Defences, whereby there would such Matter be proved against her, that would dishonour her for ever; and if it were once published, the Queen's Majesty of England would get Counsel by such as lov'd not the Queen my Mistress, to publish the same to the World, and to send Embassadors to all other Princes, to make the same known to them; so that they would make no further Suit for her Delivery, and perhaps greater Rigour might ensue to her Person: Therefore he advis'd me to confer with *Ledington*; and that betwixt him and me, we might find some means to stay the Rigour intended; and promised all that he could do to that effect, by *Ledington's* Advertisement, he would do. I reply'd, that *Ledington* would have her to ratify the Dimission made at *Locklevin* for a time, for he had assur'd her it could hurt her no more, being kept Prisoner in England, than that which was done in *Locklevin*: for so should she stay the uttering of any matter against her, and within six Months she should be restor'd to her Country with Honour; and so might revoke all done by her.

To this the Duke: What if that were done, to be quit of the present Infamy and Slander, and let him work out the rest? I told him, we were come to that Conference for to make an Agreement, and not to answer to Accusations: and therefore wish'd him to further the Agreement amongst us. He answer'd, That their Commission was only to hear the Differences amongst us; and if I would propound any thing, he would like well of it, and should advertise the Queen's Majesty, his Mistress, thereof, and get her Answer. In this Conference, the Duke did oftentimes insinuate the good Will that he did bear to the Queen my Mistress, but spoke nothing to me particularly of the Marriage at that time; but referr'd all to *Ledington*. Upon this I did confer with *Ledington* divers times, by whose Advice I rode to *Bolton*, to speak with my Mistress, in the time of my Conference; and during my remaining there, the Conference was broken up, and the whole Commissioners for our part, came to *Bolton*. And so my Lord *Harris* and I were sent to *London*. In the mean time, *Robert Melvin* came to *Bolton* to the Queen, with Messages of *Ledington's*, of such Conference as he had with the Duke at the Hunting in the Fields, where I believe *Ledington* did well encourage the Duke to attempt the Marriage, as he told me afterwards; declaring her Properties, and the Honour and Commodities that might ensue to them both thereby; and that the Duke did give good Ear thereto, wishing to the Queen to follow that Course. In the mean time, the Duke had *Liggons*, and others, going between them and the Lady *Scroope*, who did entertain the Matter betwixt them. After this, the Duke coming to *Hampton-Court*, *Ledington* made the mean with

the Duke, to cause him to send *Liggons* to deal with me upon this behalf, and to give me some favourable Advertisement of the Weal for our Cause. And likewise the Duke caused the Lord *Lumley* sometimes to speak with me, to advise me what was best to be done, and especially when the Spanish Embassador had spoken to me of the Marriage of one of the House of *Austria*; the Duke, by my Lord *Lumley*, counselled me to open the matter to the Queen's Majesty, by my Lord of *Arundel*, which might be an occasion to move her to like better of the Match with him, than with any Foreigner. And then he sent me word by *Liggons*, that the Queen's Majesty was inform'd of such a like Bruite, of his Marriage with the Queen of *Scots*; but he had satisfy'd her well enough, and so still did follow the Matter, and did treat thereupon with the Earl of *Murray* and *Ledington* at *Hampton-Court*: by whose Advice *Robert Melvin* was sent to the Queen, my Mistress, at *Rippon*, to move the Matter upon the Earl of *Murray's* behalf, with a full Determination, that the Earl of *Murray* liked of it: Which Message I heard afterward that *Murray* alledg'd he did send it, for fear of some Enterprize against him at *Northallerton*, in his Return to *Scotland*. And so after this manner the Matter had been entertain'd betwixt the Queen and the Duke from time to time, as is at length declar'd in the former Examinations.

Serj. The Effect of all, is the Duke's partial and untrue Dealing; for that before the Bishop of *Rosse's* going to *York*, the *Scotish* Queen declar'd to the Bishop of *Rosse*, That she doubted not of the Favour of the Duke of *Norfolk*; for she told him that my Lady *Scroope* had by Motions and Means assur'd her of his good Will, and she doubted not of my Lord of *Suffex's*, for the great Friendship and tender Love he bare to the Duke; and she made account that Mr. *Sadler* would be friendly, for that he alone would not stand to them both. It appeareth also, for further proof of his partial Dealing, that tho' he were sworn, both as a Counsellor to the Queen's Majesty, and also specially for the Matter of this Commission; yet he indirectly, secretly, and underhand, dealt with *Ledington*, and told him, how that the Earl of *Murray* and his Side intended to utter sharp Matter against the *Scotish* Queen. The Duke gave his Advice how to stay it, and so dealt partially, and against the Queen's Majesty's special Trust and Commandment, and against his own Oath and Promise. Next after that, in Conference had with the Duke of *Norfolk* on the *Scotish* Queen's part, the Duke declar'd his good Will that he bare to the *Scotish* Queen: He shewed how, that if the same matter of Evidence against her, were once utter'd by the Earl of *Murray*, some of the Queen's Majesty's Counsellors of England would procure her Majesty to publish them. He advised that the matter should be compounded with the Earl of *Murray*; and that he should not stick, being here in England, and not at her own liberty, for the present time, to be content to ratify the Dimission of the Crown of *Scotland*, which she made at *Locklevin*; and so she might be restor'd into her own Country, and then she might undo all again at her pleasure: and upon pretence of Constraint and Fear, as well revoke that which she should do in England, as she before revoked that which she had done at *Locklevin* in Scotland. Also

the Duke at that time was privy to the Device, that *Ledington* accompany'd the Earl *Murray* only to understand his Secrets, and to betray him; and that *Ledington* stole away the Letters, and kept them one Night, and caused his Wife to write them out. Howbeit, the same were but Copies translated out of *French* into *Scotch*; which, when *Ledington's* Wife had written out, he caused them to be sent to the *Scotish* Queen: She laboured to translate them again into *French*, as near as she could to the Originals wherein she wrote them; but that was not possible to do, but there was some Variance in the Phrase; by which Variance, as God would, the Subtilty of that Practice came to light.

Duke. What if all this be true? What is this to the matter? Any dealing of mine with the *Scotish* Queen by my Sister *Scroope's* Means, I utterly deny. As for *Ledington*, and the Bishop of *Rosse*, what their Speeches were to me, I care not; I am to answer but for mine own Speeches.

Serj. The Bishop of *Rosse* accuseth you of your own Speeches, and this he doth, being examined freely, and without any Compulsion.

Duke. He is a *Scot*.

Serj. A *Scot* is a Christian Man.

Duke. At my being at *York* in Commission, *Ledington* broke with me himself to have the Matter compounded between the *Scotish* Queen and the Earl of *Murray*. I told him that our Commission was only to hear indifferently what should be alledged on both parts, and thereof truly to make report. What hurt is this? The Bishop of *Rosse* afterwards sent for me, that he might speak with me: when we met, he moved me for the compounding of the Matter, as *Ledington* had done. I told him, that our Commission was but to hear and report, as I had told *Ledington* before; and therefore if they would fall to compounding, I willed them to devise the Means themselves, and to make Offers; and thereupon we would advertise the Queen's Majesty thereof, as we would of all the Matters alledged. If it be otherwise, and as you say, let my Letters be looked on, and see if they contain any such Matter. If the Bishop of *Rosse*, for Fear or for Malice, have said untruly; if being a *Scot*, he care not how many *English* Men, by his false Testimony, he bring to destruction; I beseech you let not that hurt me.

Serj. You made the first Motion of compounding the Matter to *Ledington* your self; and another time to the Bishop of *Rosse*, you offered to further it all that you could.

Duke. I never saw the Bishop of *Rosse* before I came to *York*; and would I, think you, deal so dangerously with a *Scot* that I never saw before? Also, I did by my Letters signify to the Queen's Majesty our Proceeding, and my misliking of the *Scotish* Queen's part: Let that Letter be seen; which Letter was written after my Talk with *Ledington*. I wrote it when I went from *York*, and I never saw the Bishop of *Rosse* afterward, till I came to *London*.

Serj. The writing of your Letters to the Queen's Majesty, wherein you advertised against the *Scotish* Queen, and though the same were written after your Conference with *Ledington* and the Bishop of *Rosse*, is no proof but that you dealt partially for the *Scotish* Queen; for those Letters were written by others, as well as your self, namely, by my Lord of *Suffex*, and Mr. Chancellor of the Dutchy:

and you could not otherwise do, but so signify, notwithstanding your partial secret Dealing; for else you should have too openly bewrayed your Intention.

Duke. When *Ledington* moved me of the Marriage of the *Scotish* Queen, I utterly refused it.

Serj. That is not so: And for proof, as well of your partial Dealing in the Commission as for the Marriage, there shall be brought forth sufficient Evidence.

Here was alledged how a Letter had been written to the Earl of *Murray*, requiring to be advertised by him of so much as he knew concerning the Doings of the Duke of *Norfolk*, both for the Matter of the Commission, and the Practice of his Marriage with the *Scotish* Queen: And the Earl *Murray's* Answer to the same Letter was produced, and read, as followeth.

Note. That the beginning and ending of this Letter was not read; but so much only as pertained to the matter, viz.

IN *York*, at the meeting of all the Commissioners, I found very honourable and neutral Dealing with the Duke and others her Highness's Commissioners, in the beginning of the Cause, as in the making of the Oaths to proceed sincerely, &c. During which time, I only entered into general Speech, sticking at our just Defence in the Matters that were objected against us by the said Queen's Commissioners; looking certainly for none other thing but a summary Cognition in the Causes of Controversy, with a small Declaratory to have followed. Upon a certain Day, the Lord *Ledington's* Secretary rid with the Duke to *Cawood*; what purpose they held, I cannot say: but that night, *Ledington* returning, and entering in Conference with me upon the State of our Action, I was advised by him to pass to the Duke, and to require familiar Conference; by the which I might have some feeling to what Issue our Matters would tend. According to which Advice, having gotten Time and Place convenient in the Gallery of the House where the Duke was lodged; after renewing of our first Acquaintance made at *Berwick*, the time before the Siege of *Lyth*, and some Speeches passed betwixt us, he began to say to me how he in *England* had Favour and Credit, and I in *Scotland* Good-will and Friendship of many. It was thought there could be none more fit Instruments to travel for the Continuance of the Amity betwixt the two Realms, than we two. And from that Discourse upon the State of both, and how I was entered in that Action tending so far to the Queen's dishonour, I was willed by him to consider how Matters stood in this Isle, what Honour I had received of the Queen, and what Inconveniences her Defamation in the matters laid to her charge, might breed to her Posterity, whose Respect was not little to the Crown of *England*. There was but one Babe, the *Hamilton's*, my Unfriend, had the next Respect; and if I should, the Issue of her Body would be the more affectionate to me and mine, than any other that could attain to that Room: and so it should be meetest that she affirmed her Dismission made in *Lochevin*, and we to abstract the Letters of her Hand writ, that she should not be defamed in

in *England*. My Reply to that was, how the matter had pass'd in Parliament, and the Letters seen to many; so that the abstracting of the same, could not then serve her to any purpose: and yet should we in that Doing bring the Ignominy upon us, affirming it could not be sure for us that way to proceed, seeing the Queen's Majesty of *England* was not made privy to the matter, as she behoved to be, in respect we were purposely come into *England* for that End, and for the justifying of the Grounds of our Cause. The Duke's Answer was, he would take in hand to handle matters well enough at the Court. After this, at the Occasion of certain Articles that were required to be resolved in, before we entered directly in the Declaration of the very Ground of our Action, we came up to the Court; where some new Commissioners were adjoined to the former, and the hearing of the Matter ordain'd to be in the *Parliament-House* at *Westminster*. In presence of which Commissioners for the said Queen, and partly thro' the sharp rebuking of the Queen's Majesty of *England's* Commissioners, we utter'd the Grounds of the Action, and produc'd such Evidences, Letters, and Probations as we had, which might move the Queen's Majesty to think well of our Cause. Whereupon expecting her Highness's Declaration, and seeing no likelihood of the same to be suddenly given, but daily Motions made to come to an accord with the said Queen, our Matters at home in *Scotland* in the mean season standing in hazard and danger; we were put to the uttermost Point of our Wit to imagine whereunto the Matters would tend: for albeit we had left nothing undone for the Justification of our Cause, it appeared yet no End, but continual Motions made, to come to some accord with the Queen, and restore her to whole or half Reign. I had no other Answer to give them, but that I could neither do against Conscience nor Honour in that matter. Notwithstanding, seeing this my plain Answer wrought no End or Dispatch to us, and that I was informed that the Duke began to dislike of me, and to speak of me as that I had reported of the said Queen irreverently, calling her Whore and Murderer; I was advis'd to pass to him, and to give him good Words, and to purge myself of the things objected to me; that I should not upon the sudden enter in his evil Grace, nor have him to our Enemy, considering his Greatness: it being therewithal whisper'd and shew'd to me, that if I departed, he standing discontented and not satisfy'd, I might peradventure find such trouble in my way, as my Throat might be cut before I came to *Berwick*. And therefore since it might well enough appear that he aspired to her Marriage, I should not put him in utter despair that my Good-will cannot be had therein. So, few days before my departing, I came to the Park at *Hampton-Court*, where the Duke and I met together; and there I declared, that it was come to my ears how some Misreport should be made of me to him, as that I should speak irreverently and rashly of the said Queen, my Sovereign's Mother, such words as before express'd, that he might perceive my Affection to be so alienated from her, as I could not love her, nor be content of her Preferment. Howbeit, he might persuade

himself of the contrary; for as she once was the Creature in the Earth that I loved best, having that Honour to be so near unto me, and having received such Advancement and Honour by her, I was not so unnatural ever to wish her Body harm, or to speak of her as was untruly reported of me, howsoever the Truth were in itself. And as the Preservation of her Son, now my Sovereign, had moved me to enter in this Cause, and that her own pressing was the occasion of that which was uttered to her Infamy; so whensoever God shall move her Heart to repent of her by-past Behaviour and Life, and after her known Repentance, that she should be separate from that ungodly and unlawful Marriage that she was entered in, and then after were join'd with such a godly and honourable Personage, as were affectioned to the true Religion, and whom we might trust; I could find in my heart to love her, and to shew her as great Pleasure, Favour, and Good-will, as ever I did in my Life. And in case he should be that Personage, there was none whom I should better like of, the Queen's Majesty of *England* being made privy to the matter, and she allowing thereof; which being done, I should labour in all things that I could, to her Honour and Pleasure, that were not prejudicial to the King my Sovereign's Estate: and pray'd him not to think otherwise of me, for my Affection was rather bury'd and hid within me, waiting until God should direct her to know herself, than utterly alienate and abstracted from her. Which he seem'd to accept in very good part, saying, Earl of *Murray*, thou knowest of me that thing whereunto I will make none in *England* nor *Scotland* privy, and thou hast *Norfolk's* Life in thy hands. So departing, I came to my Lodging, &c.

Thus have I plainly declared how I have been dealt withal for this Marriage, and how just Necessity moved me not to repugn directly that which the Duke appear'd so bent unto. And for my Threatnings to assent to the same, I have express'd the manner. The Persons that laid the Terror before me, were of mine own Company, and the Duke since hath spoken, that it was his writing which saved my Life at that time. In conclusion, I pray you persuade her Majesty, that she let no Speeches, nor any other thing pass'd and objected to my prejudice, move her Majesty to alter her Favour towards me, or any ways to doubt of my assured Constancy towards her Highness: for in any thing that may tend to her Honour and Surety, I will, while I live, bestow my self, and all that will do for me, notwithstanding any Hazard or Danger; as proof shall declare, when her Majesty finds time to employ me.

Serj. Thus appeareth it, That the Duke of *Norfolk* first travell'd with *Ledington* for stay and compounding the matter, and afterward likewise with the Bishop of *Rosse*, and at both times first moved it of himself: so now the Earl of *Murray* also by his Letters doth testify, that in Conference with him, it came first of the Duke to move the stay of the Contention, and to what end the Duke did it, namely, for that he aspired to the Marriage of the *Scottish* Queen, and therein made account of her Respect to the Crown of *England*; and that without the Queen's Majesty's Assent or Knowledge. Now shall you also see, for further proof

poof thereof, the Bishop of *Roffe's* Letter to the *Scotish* Queen: For the Bishop of *Roffe* went from *York* to *Bolton*, as you have before heard in his Examination. On the way, before he came to *Bolton* to the *Scotish* Queen, from his Lodging he wrote a Letter to her, which Letter was lost by his Servant; but as good hap was, he reserv'd a Copy thereof, and negligently left it behind him in his Lodging at *Newcastle*, where the Earl of *Murray* half a year after being lodg'd in the same Chamber, found it, and sent it to the Queen's Majesty's Council; and here it is all written with the Bishop's own Hand, as himself, being examin'd thereof, hath confess'd. Here he setteth out the Conference between the Duke of *Norfolk* and *Ledington*, and himself. He sheweth the Duke of *Norfolk's* Advice to the *Scotish* Queen, for a Letter by her to be written to the Queen's Majesty; and also he openeth the Duke's Advice, how to work for the *Scotish* Queen, with disclosing the Queen's Majesty's Secrets.

Here was the said Letter produced, and read as followeth.

Copy of the Letter sent from York by the Bishop of Roffe to the Queen-Mother, to the Queen our Sovereign Lady, then remaining at Bolton.

A. Ledington. 'PLease your Majesty, I confer'd
' at great length with *A.* one
' great part of the Night; who as-
' sured me he had reason'd with *B.*
' this Saturday, as yesterday on
' the Fields who *C.* determined
' to him, that it was *D's* determi-
' nate Purpose not to end your Cause
' at this time, but to hold the same
' in suspense; and did what was in her
' power to cause us: *E.* pursued ex-
' tremely, to the effect *F.* and his
' Adherents might utter all that they
' could to your dishonour; to the
' effect, as was suppos'd, to cause you
' come in disdain with the whole Subjects of this
' Realm, that you may be the more unable to
' attempt any thing to her disadvantage; and to
' this effect is all her Intention. And when they
' have produced all they can against you, the
' Queen will not appoint the matter instantly, but
' transport you up in the Country, and reserve
' you there till she think time to shew you Favour;
' which is not able to be hastily, because of your
' Uncles in *France*, and the fear she hath of your
' self to be her Unfriend. And therefore their
' Counsel is, that you write a Writing to the
' Queen, meaning that you are informed con-
' cerning your Subjects, which have offended
' you, this in effect; That your Majesty hearing
' the Estate of your Affairs, as they proceed in
' *York*, was inform'd that her Majesty was in-
' form'd of you, that you could not godly remit
' your Subjects in such sort, as they might credit
' you hereafter: which was one great cause of
' the stay of this Controversy to be ended. And
' therefore persuading her Grace effectuously not
' to trust any who made such Narration; but like
' as you had rendred you in her hands, as most
' tender you of any living, so pray'd her Grace
' to take no Opinion of you: but you would use
' her Counsel in all your Affairs, and would pre-
' fer her Friendship to all others, as well Uncles
' as others, and assure her to keep that thing you

' would promise to your Subjects by her Advice.
' And if her Grace discredit you, you would be
' glad to satisfy her in that point, to be removed
' within her Realm in secret and quiet manner,
' where her Grace pleased, unto the time her
' Grace were fully satisfy'd, and all occasion of
' Discredit removed from her; so that in the
' mean time your Realm were holden in quietness,
' and your true Subjects restored and maintained
' in your own Estate, and such other things tend-
' ing to this effect. And affirms, that they be-
' lieve that this may be occasion to cause her cre-
' dit you better, that you offer safer, and may
' come, that within two or three Months she may
' become better minded toward your Grace; for
' now-while she is not well minded, and will not
' shew you any pleasure, for the causes aforesaid.'

Duke. Here be many things and many parts
very hard for me to remember; and here be pro-
duced three Witnesses against me, *Ledington*, the
Bishop of *Roffe*, and the Earl of *Murray*. Here-
unto I will answer as my Memory will serve me:
Ledington, because he and I were acquainted at
Lytch, came to me and practis'd to search at my
hands, and to feel how the Queen's Majesty was
satisfy'd. I told him, that 'till I heard what the
Queen's Majesty would resolve, I could tell him
nothing: And so time spent away. And in the
mean season, upon a *Saturday*, I being at Dinner
with the Lord of *Suffex*, *Ledington* came in; and
after Dinner talking with me, he brake more ear-
nestly for me with the *Scotish* Queen, and for a
Marriage between her and me, which I utterly
refused, as by my Letters from *York* to the Queen's
Majesty it may appear; wherein I signify'd my
Opinion of the *Scotish* Queen, or else she must
be maintain'd by the Queen of *England*. I said
to him again, that the Queen's Majesty sought
the Quietness of that Realm; but for any Advice
of restoring the *Scotish* Queen into her Country,
I could not see how it might be consider'd: and
so I advis'd him to submit the whole Matter to
the Queen's Majesty's Judgment. Otherwise he
and I never talk'd. Of those other doings, be-
tween *Ledington* and the *Scotish* Queen, I know
nothing. The Bishop of *Roffe* shortly after said
to me, and intreated to have my help for com-
pounding of the Matter, as you know well he can
speak fair. I told him I could do nothing with-
out my Fellows, and only in such manner as was
prescrib'd by our Commission. I told him also,
that we were but to hear and certify; and for
the Matter of compounding, they were best to
make Offers themselves; for we were but to re-
ceive such Devices as they should chuse, and to
give advertisement of the same. To what end
should I need to utter the Matters of the Earl of
Murray's part to the other side, when *Ledington*
himself was present, and privy to all? I spake
not with the Bishop of *Roffe*, but at that time
only. And as for that Advice, to avoid the dis-
covering of those rigorous Matters by the Earl,
and the publishing thereof to the Queen's Ma-
jesty, to the *Scotish* Queen's Infamy; I never dis-
closed any such Secrets, nor gave any such Advice:
Only I did advise the Bishop of *Roffe*, that he
and that side should hold themselves contented with
the Queen's Majesty's dealing, and with the De-
termination taken at *Hampton-Court*, which was
such as might content them, and such as my Lord
Burleigh then mislik'd. As for the Earl *Murray*,
he

he began with me, and not I with him: He came to me at *Carwood*, and prayed me to tell him what end would come of the Matter. I said, I knew not; for it must come from the Queen's Majesty: We knew not of the differing of the Commission at that time, nor till such time as Mr. *Sadler* was sent for. How could I tell him, and knew it not my self? I never yielded to the Marriage between the *Scotish* Queen and me: I cannot gather such Matter of Looks alone, I never dealt more therein, but only that *Ledington* broke it. Have I not answered all these Matters? If I have not, put me in any thing I have omitted, and I will answer it.

Serj. Your Answer is but only Denial; *Ledington* and the rest write otherwise, that you made the first Motion to them: and therefore *Ledington*, by Practice between you and him, sent the Earl of *Murray* to you, under pretence of searching to learn the State of their own Cause, to be moved by you for the Marriage; upon your Answer, it is but yea and nay between you. If you meant directly, then needed you not to have dealt so secretly in Conference with *Ledington*, without the rest of the Commissioners; and besides *Ledington's* Conference with you, both the Bishop of *Rosse* and the Earl *Murray* affirm your practising with them to the same intent: which is sufficient Proof against your own bare denial.

Duke. The Earl *Murray* sought my Life, the other are not of Credit; yet all these prove not that I dealt in the matter of the Marriage with the *Scotish* Queen, in any respect of her Claim to the Crown of *England*. If the Bishop of *Rosse*, or any other, can say otherwise, let them be brought before me face to face. I have often so desired it, but I could not obtain it.

Serj. The Bishop of *Rosse* confesseth it; this is his own hand; and here you shall have, by Witness, proved the Duke's Assent to the Marriage with the *Scotish* Queen: and to practise the furtherance thereof, you shall see how that afterwards he was privy to a Device, that the Earl *Murray* should have been murdered at *Northallerton*, in his way homeward, by the *Nortons*, *Markenfield*, and other Rebels; and afterwards, being satisfy'd at the Earl *Murray's* hands, a Letter was written to stay that Device: containing also a Device of compounding the Matter, and how the Earl *Murray* had assented to the Marriage.

Here was contained the Bishop of *Rosse's* Confession, in Article the ninth; wherein appeareth,

That the Earl *Murray* should have been murdered by the way, going home into *Scotland*; and that the Bishop of *Rosse* wrote to the *Scotish* Queen, that the Duke of *Norfolk* advised her to stay that Murder, because the Earl *Murray* had yielded his good Will to the Marriage as followeth:

Out of the Bishop of Rosse's Examination, taken the 6th of November, 1571.

To the 9th he saith, That the Earl of *Murray* was in fear to have been murdered by the way, in his Return to *Scotland*; whereupon this Examinee, by the Duke's Advice, did write to the Queen of *Scots*, that the Attempt might be staid, for that *Murray* had yielded to the Duke to be favourable; and the Murder should have been executed about *Northallerton*, by the *Nortons*, *Markenfield*, and others, as this Examinee was advertised by the *Scotish* Queen's Servants that came from *Bolton*.

Serj. Thus it appeareth, that the Duke so far

assented to the Marriage, that rather than it should not have taken effect, he was contented that the Earl of *Murray* should have been murdered.

Duke. The Unkindness between the Earl *Murray* and me, was not about this Matter of his Mistress the *Scotish* Queen, but for another cause; it was because the Earl *Murray* had reported that I sought the Marriage of the *Scotish* Queen. I charg'd him therewith by Message, he excused himself thereof, and laid it upon the Earl *Moreton* and the Bishop of *Orkney*; and for the Device of murdering him, I was never privy to it. And where the Article saith, that I heard it by the *Scotish* Queen's Servants that came from *Bolton*, it is not true. I never heard of it till *Whitsuntide* after, when *John Wood* came, and then I heard it not but by the Bishop of *Rosse*; neither did I hear that it should have been done by the *Nortons*, but by my Brother of *Westmoreland* being an hunting, when the Earl *Murray* espied a great Company on the Hill-side, imagin'd that he should have been slain.

Serj. You shall also understand, that the Duke himself wrote to the Earl of *Murray*, wherein is plainly declared his Practice and Assent to the Marriage: which very Letter we have not, but the Copy thereof, under the Regent's own hand, which the Regent sent to the Queen's Majesty, whereby the Matter most plainly appeareth.

My good Lord,

I Have received your courteous Letter, whereby I do not only perceive you well affected for the Advancement of your common Weal, and the uniting of this Island, but also your good Mind towards me; which two Points I cannot but note to your special Commendation, and my great Comfort. As you shall prove me industrious to assist you with all my Power in the one, so shall you not find me ungrateful in the other, but really to requite you to my uttermost for your Friendship so frankly offered; the rather I shall have occasion to employ my self for the just Reward of your Deserts, the sooner I shall think my self in Nature, Friendship, and Conscience discharged of my Obligation. In the mean time, good my Lord, assure your self, that you have not only purchas'd a faithful Friend, but also a natural Brother, who is not, nor will not be less careful for your Weal and Surety, than his own Honour and Credit; whereof I am fully persuaded you doubt not: and therefore in that Point I need not to be over-tedious, but briefly to return to that you desire to be satisfy'd of, which is, for my Marriage with all Sincerity with your Sister; wherein I must deal plainly with your Lordship, as my only Friend, that I have so far proceeded herein, as I, with Conscience, can neither revoke that that I have done, nor never do mean, while I do live, to go back from this that is done, nor with Honour proceed further, until such time as you there shall remove such Stumbling-blocks, as be Impeachment to our more apparent Proceeding; which when by me it shall be finished, upon mine Honour the rest shall follow to your Contentment and Comfort. Wherefore my earnest Request, at this present, to my good Lord, is, that you will proceed herein with such Expedition, as the Enemies of this good Purpose, which will be no small number, against the uniting of this Land into one Kingdom in time coming, and the Maintenance of God's true Religion, may not

‘ not have Opportunity, thro’ the Delay given them, to hinder our intended Determination; against the which, I am of opinion, there will be no Practices by foreign Princes omitted. This I hope will be sufficient to resolve you, my Lord, of your Desire touching the Marriage; referring my self wholly, for your more ample Instruction and Satisfaction in all Points, to my Lord *Boid*, who hath Commission both by the Queen of *Scotland*, your Sister, and also by me, to resolve you of all Doubts, whom I wish you to credit as my self. You shall not want the furtherance in this Enterprize of the most part of the Noblemen of this Realm; whose faithful Friendship in this Case, and all other my Actions, I have to my Contentment sufficiently proved. Thus being persuaded that your Lordship’s Endeavour is for the Maintenance of God’s Glory, and the Advancement of the common Weal of this Island, I have adventured to impart my secret Determination, as to one whom I make account to be assured of, and unto whom I wish long Life and prosperous Health, to his Heart’s Desire. So with my hearty Commendations at this present, without further Molestation, I am,

From my House in
London, July 1.

My good Lord,

Your faithful and most assured Friend.

‘ I have heard you have been in the *North of Scotland*, and doubt not but you have satisfy’d the Request I made for the Bishop of *Rosse*, and have caused his Servants to be obeyed of his Benefices; and what is left undone, I pray you cause it to be effectually furthered. He hath the Queen of *Scots* Letter, directed to you for that effect; but trusting that my Request shall make him to be obeyed, ere the other come to your hands, wherein you shall do me singular Pleasure.

Norfolk.

Duke. All these are Letters, and answer’d two years ago, when Mr. *Sadler* and Mr. *Attorney* were sent to examine me upon Interrogatories. Indeed I must confess my Folly; it is an ill Cook that cannot lick his own Fingers. The Bishop of *Rosse* wrote the Letter, and he lick’d his own Fingers. The Earl of *Murray* wrote to me very humbly, and that he was at my Commandment, with such like words. I having no leisure to write Answer to him, drew Articles to give him thanks: but that the Noblemen liked of that Marriage, and that I wished no Man’s Friendship more than his in it, the Bishop of *Rosse* added of his own, and put it in Cipher in this Form, which Cipher I had not then.

Serj. This is the very Copy of your own Letter.

Duke. See my Answer made in my first Troubles, two years past.

Serj. The Queen’s Majesty understanding the Duke’s Intention to marry with the *Scotish* Queen, the Duke himself, by way of Prevention, complained to her Majesty of the Rumour that was spread against him, that he sought the *Scotish* Queen’s Marriage, and prayed it might be examined. In which her complaint, as I have heard her Majesty her self declare it, and some here of my Lords have likewise heard it, he said, among other things, To what end should I seek to marry her, being so wicked a Woman, such a notorious Adulteress and Murderer? I love to sleep upon a

safe Pillow: I account my self, to your Majesty’s good Favour, as good a Prince at home in my Bowling-Alley at *Norwick*, as she is, tho’ she were in the middle of her Kingdom. The Revenues of the Crown of *Scotland* (all the ordinary Charges deducted) about the necessary Affairs of the Realm, are not comparable to mine own that I enjoy by your Goodness, as I have heard of the chief Officers of that Realm; considering also that her Kingdom is not in her hand, but possess’d by another; if I should seek to match with her, knowing, as I do know, that she pretendeth a Title to the present possession of your Crown, your Majesty might justly charge me with seeking your own Crown from your Head. This the Duke spake to the Queen’s Majesty, in his Excuse, when the Fame went of his Marriage with the *Scotish* Queen, when yet, beside that time, he had dealt earnestly in it.

Duke. I may not nor will not stand against her Majesty’s Testimony, I must give place unto it; but hereof I was examined two years ago, and then I declared, as I now do, that at that time I intended not the Marriage. And true it is, that I have at sundry times, some at one time, and some at another, used some of those kinds of Speeches; but at that time I dealt not with that Marriage, nor minded it.

Serj. Your own Confession is otherwise; for your self have since confessed, that you concealed from the Queen your Conferences with *Ledington* and *Rosse* about the Marriage, both the Conferences had at *York* and at *Hampton-Court*.

Duke. I never consented to the Marriage at those times of their Conferences, and so I might well use their Speeches.

Then was produced his own Examination the 6th of *November, 1571.* and it was read, and he confessed his Concealment of those Speeches and Conferences before used about the Marriage, and that it had indeed been moved, but not concluded on: He remembreth that the Queen charged him straightly not to proceed in that Marriage; but he remembreth not that she charged him upon his Allegiance.

The Duke of Norfolk, the 6th of November, 1571.

To the first and second, he saith, That he remembreth that at *Hampton-Court*, upon a Report made by *Robert Melvin*, so declared by *Woolcock*, that this Examinant had gone about a matter of Marriage with the *Scotish* Queen for himself, wherein he took himself to be much wronged, and desired to have the Matter examined; for that he had not dealt in that Matter, and doth not remember what the Queen’s Majesty said unto him at that time: at which time he said for himself, That he intended no such thing, nor meant any such thing; and yet he confesseth, That he did not declare to the Queen’s Majesty, at that time, of any Speech that had been used unto him by *Ledington* at *York*, and the Earl of *Murray* at *Hampton-Court*, touching the said Marriage. Being at *Titchfield*, the Queen’s Majesty called him to her Gallery, asking of him, Whether he had dealt any wife for the Marriage of the Queen of *Scots*, as it was reported? Whereunto he answered, He thought her Majesty had heard by others. But she willed him to declare the Truth, because she had rather hear it of himself: And so he declared,

declar'd, That he had received Letters from her; that the matter had been mov'd and written unto her; but he had not made any Conclusion in that Matter with her. Whereupon her Majesty shewing her self to mislike thereof, commanded and charged him that he should not deal any further therein with the Queen of Scots, nor any other Person in that Matter: But that he was charg'd upon his Allegiance, he doth not certainly remember; but that he was straitly commanded, he doth well remember.

At length he confess'd, that he was charg'd upon his Allegiance.

Serj. At *Titchfield* the Queen's Majesty expressly commanded the Duke of *Norfolk* upon his Allegiance, as himself hath now confess'd, not to proceed in that Marriage with the *Scotish* Queen: Now, if we prove that this Commandment notwithstanding, and against his own Promise, he afterward still proceeded, and that much more earnestly than before; and yet nevertheless, that he had all the while conceived an evil Opinion against the *Scotish* Queen, and upon the sight of her Letters, and other Evidences, shewed he thought her plainly guilty of abominable Whoredom, of the Murder of her Husband, and signify'd it by Letters, and declar'd the same his Opinion to *Bannister*: And also, That he made no account of her Kingdom of *Scotland*, which she had not in Possession; or if she would have it, yet he counted it not comparable to his own Dukedom. He (I say) so doing, and so conceiving and so declaring, and yet still more and more prosecuting the Marriage, cannot be said to have prosecuted it, in respect of her Person but of some other thing (forsooth the Crown of *England*) which he hoped to attain under her pretended Title. You never saw her, you could not then be carried with Love of her Person; you conceiv'd ill Opinion of her, so could you not be led with Love of her Conditions; the Fame of her good Qualities and virtuous Conditions you never heard much of, except it were by her self, or the Bishop of *Rosse*, or some of her Ministers; her Kingdom of *Scotland* you esteemed not, both because she had it not in Possession, but it was in Possession of her Son, by her own Dimisse ratify'd by Parliament, and for that it was not of so good value as your own Possessions were. To what end then pursued you the Marriage? To no other End surely, but to advance and maintain the false and pretended Title to the present Possession of the Crown of *England*; and for the attaining thereof, to practise the Deprivation, Death and Destruction of the Queen's Majesty. If further, we shall plainly prove that after your departing from the Court, you meant not only to prosecute the Marriage, but also to prosecute it with Force, against the Queen in her own Realm; then it must needs be with intent of her Majesty's Deprivation and Destruction, and so High-Treason, within compass of the Statute of 25 of *Edward* the Third. For who-so shall take upon him to prosecute and maintain a Title to the Crown by force against the Queen, and within her own Realm, must needs make account that the Queen must and will resist that Force; if then that Force may overcome the Prince's Force, what is the likelihood then to ensue? There must needs follow Deprivation of

the Queen, and thereupon her Death and Destruction; for the Jealousy of an Usurper by Force, can in no wise suffer a rightful Prince to live. Now to prove your Intention to pursue the Marriage with Force against the Queen: In your Journey towards *London*, you entered into Conference and Device between another and you, for taking the *Tower of London*, with all the Queen's Ordnance, Ammunition and Treasure therein, and to have kept the *Tower* by Force against the Queen, and so to have brought the Marriage to pass by Force, whether the Queen would or no. But it took not effect: for the Queen's Majesty having understanding thereof before, provided for enforcing the Place with new Supply; and Mr. *Pelham*, Lieutenant of the Ordnance, was, for that purpose, put in with sufficient Power. Afterward being at your own House, the *Charter-House*, the Queen's Majesty understanding of these Attempts, sent for you; whereunto you make a feigned Excuse of doubt of Sicknes, and that you had taken Physick, so that for four or five Days you could not journey; promising after those four or five Days, to wait on her Majesty, according to your Duty. And immediately after this Excuse sent, without tarrying four or five Days, or any more Days, the same Night, you by and by stole away into *Norfolk*, and there intended to have levied Force; but that the Queen's Majesty and her Council suspecting your Purpose, had secretly sent into those Parts before, and taken Order for impeaching of your Intention. If this then be prov'd true, That you still prosecuted the Marriage, without liking of her Person, without Estimation of her Possessions, with only respect to her false Title to the Crown of *England*, and with Force; and sithence it cannot be pursued with Force against the Queen, nor Force levied against her Majesty, without Purpose to suppress her Majesty's Force, and to depose her from her Crown and Dignity; and he that so seeketh to depose her must needs be thought that he will not suffer her to live: All these Matters consider'd, the seeking of this Marriage in this Form, must needs be High-Treason, within Compass of the Statute of 25 of *Edward* the Third.

Here was produced the Duke's own Letter, and the other Commissioners, from *York* to the Queen's Majesty; wherein is signified the great Abomination of the *Scotish* Queen, appearing in her own Letters, and the Certainty of the Truth of those Letters, both by offer of Oath of those that exhibited them, and by Discourses of some Matters there; which could not be written but by herself, being known to none other. The Commissioners Letter is as followeth.

"A fterwards they shew'd unto us an horrible
"and long Letter of her own Hand (as they
"say) containing foul Matter, and abominable to
"be either thought of, or to be written by a Prin-
"cess, with divers fond Ballads of her own Hand;
"which Letters, Ballads, and other Writings be-
"fore specify'd, were closed in a little Coffer of
"Silver, and gilt, heretofore given to her by
"*Bothwell*. The said Letters and Ballads did dis-
"cover such inordinate and filthy Love, between
"her and *Bothwell*, her Loathsomness and Abhor-
"ring of her Husband that was murdered, and the
"Conspiracy of his Death, in such sort as every
"good and godly Man cannot but detest and
"abhor

“ abhor the same. And those Men here do constantly affirm the said Letters and other Writings, which they produce of her own Hand, to be her own Hand indeed, and do offer to swear and to take their Oath thereupon; as indeed the Matter contain’d in them being such as could hardly be invented or devis’d by any other than by herself; for that the Discourse of some things, which were unknown to any other than to herself and *Botwell*, doth the rather persuade us to believe that they be indeed of her own Hand-writing. And as it is hard to counterfeit so many and so long Letters; so the Matters of them, and the Manner how these Men came by them is such, as it seemeth that God, in whose sight the Murder and Blood of the Innocent is abominable, would not permit the same to be hid or conceal’d. In a Paper herein inclos’d, we have noted to your Majesty the chief and principal Points of their Letters, written (as they say) with her own Hand, to the intent it may please your Majesty to consider of them, and so to judge whether the same be sufficient to convince her of the detestable Crime of the Murder of her Husband; which in our Opinion and Consciences, if the said Letters be written with her own Hand (as we believe they be) is very hard to be avoided.”

Duke. This maketh for me; for this proveth that I so much misliking her, and signifying by my Letter so much against her, dealt not on that side when I was at *York*, where this Letter was written.

Serj. There were others join’d with you in the Letter, so that you could not otherwise write, however you otherwise dealt: but this maketh much against you, for it prov’d you had an evil Opinion of her, and so could not seek the Marriage in respect of her Person, but only in respect of her false Title; and that not to the Kingdom of *Scotland*, which she had not, and which you despis’d, but to the Crown of *England*. Now you shall, to the same end, hear your own Report against her to *Bannister*.

Duke. *Bannister* was shrewdly cramp’d when he told that Tale. I beseech you let me have him brought Face to Face.

Serj. No more than you were.

Then was read *Bannister’s* Confession, in *October*, 12 *Eliz.*

This sheweth that you had an evil Opinion of her, and so no Affection to the Person; therefore your seeking of that Marriage was for another Respect; and therefore *Ledington*, *Rosse*, and you practis’d the Matter at *York*.

Duke. They broke it to me. What is this to me? Did I consent?

Serj. You consented.

Duke. No.

Serj. They say plainly, that you practis’d to withdraw the things that might charge her.

Wilbram. You have said, that the Bishop of *Rosse* hath accus’d you of Malice; but you answer nothing to that which the Bishop of *Rosse* wrote to his Mistress, the *Scotish* Queen, in Secrecy, wherein could be no Malice.

Duke. *Ledington* broke it to me, and the Earl *Murray* broke it to me. I pray you, let them be brought face to face to me: I have often requir’d it, and the Law I trust is so.

Serj. The Law was so for a time, in some Cases of Treason: but, since, the Law hath been found too hard and dangerous for the Prince, and it hath been repeal’d. You intended to have proceeded with the Marriage by Force; and for proof thereof, you have heard of the Device for taking of the *Tower*. Now to prove further your Purpose to pursue your Enterprize by Force, let be read the Confession of the Bishop of *Rosse* to the second Article.

The Bishop of Rosse’s Confession the 3d of November, 1571.

To the second Article. The Duke being after conferr’d with by the Bishop of *Rosse*, from his Mistress, to know what he would do in the Matter of the Marriage, if the Queen would not assent, said, he knew she would, tho’ not at the first; because most of the Council and Noblemen thought it meet; and that he had known the Minds of most of the Noblemen. And after, when the Queen was offended with him coming from *Southampton*, he told the Bishop he would depart into his own Country, and so was resolv’d, by the Earls of *Arundel* and *Pembroke*, who would do the like; and there would take purpose, by the Advice of his Countrymen and Friends, and do that was likeliest for the Advancement of the Cause. The Bishop said, The Queen’s Majesty would by Force fetch him out of his Country. He answer’d, That no Nobleman in *England* would accept that Charge at her Commandment; for he knew their Minds, specially for those in the *North*, who would assist. And if that he might once have that open Quarrel against her, that she would first pursue him, he would have Friends enough to assist him, and that the *Scotish* Queen should be safely enough provided for; for that was the principal Mark he shot at, and would do what he could to have her in his hands. And the Earls of *Arundel* and *Pembroke* had promised to do as he did; and they in the *North* had promis’d the like. Item, *Liggon* told the Bishop, that the Duke was resolv’d to go thro’ with the Matter by Force, if the Queen would not assent to it. At this time common Messages pass between the *Scotish* Queen and the Duke, and them of the *North*.

Duke. All is false, saving that the Bishop of *Rosse* once spake with me; and then understanding him to be a suspected Man, I desir’d him to forbear to come to me; nevertheless, by his great Earnestness and Importunity, that I would but once admit him to come to me, at length he came, and then he mov’d me for certain Money of the *Scotish* Queen’s, about 2000 *l.* remaining in my keeping: One Letter he brought me, and no more Letters, ’till after my first Trouble. As for my going into *Norfolk*, I can bring good Witnesses, that I meant not to go into *Norfolk*, four Hours before I went, and that I spake not with him in two days before. It is of good ground that I have prayed to have the Bishop of *Rosse* brought to me in private Examination face to face, whereby I might have put him in remembrance of Truth; but I have not had him face to face, nor have been suffer’d to bring forth Witnesses, Proofs, and Arguments, as might have made for my Purgation. As for sending of Letters to my Lord of *Northumberland*, or my Brother of *Westmoreland*, all is false; I never received Letters from them in all my time. If ever I sent to them, or receiv’d from them any

Letters

Letters in three Quarters of a Year before, let me never be credited.

Serj. You shall have Proofs that the Bishop of *Rosse* hath said it. You stand much upon your own Credit: Now therefore to your Credit, I will say somewhat against your Oath specially taken, when you were appointed Commission for the Matter at *York*; and against your Oath of a Counsellor to the Queen's Majesty, you dealt indirectly and partially; you deceived the Queen's Majesty's Trust, and disclosed her Secrets.

Duke. I deny it.

Serj. It is well proved that at *Hampton-Court*, being examined of the Matter by the Queen's Majesty, you dissembled it: Being examined of Money lent by you to the *Scotish* Queen, you denied it: Being charged upon your Allegiance, you promised not to proceed further in the Matter. Notwithstanding that expresse Commandment of her Majesty; yet, against your Duty, against your Promise and Faith, you still proceeded.

Duke. I confess this was mine Error; but I have already made humble Petition to my Peers, not to confound my Faults together, nor to mingle my inferior Offences with this great Cause.

Serj. Sithence the Commandment given to you at *Titchfield*, not to proceed in Dealing with the *Scotish* Queen in any wise, you have continually dealt with her: You have lent her Money; you have maintained *Liggons*, your Man and your Solicitor, continually to advertise you, from the Bishop of *Glasgow*, and the Pope's Nuncio; and you have advertised him from hence. He hath had Money of you, and you have received Letters from him four times in Coffers.

Duke. *Liggons* is not my Solicitor.

Serj. He is your Solicitor, and so your self have expounded him; for where the *Scotish* Queen, in her Letters, speaketh of your Solicitor, being asked whom she meant thereby, you have answered, *Liggons*.

Duke. At the first indeed she so called him; but Solicitor is no Name of use. He hath not been so since my first Trouble; and so for her calling, it is no matter, she once called me *Legista*.

Serj. He is your Solicitor; for she so taketh him, and your self do so expound it.

Then was read his own Confession, of Money lent 2000*l.* and received, &c.

The Duke confessed this Receiving and Lending of Money.

Then was read the Bishop of *Rosse*'s Confession, concerning Money sent by *Barthwick* and of Money delivered to *Francis Bishop*.

Duke. This I deny not.

Serj. *Francis Bishop* was a Traitor.

Duke. I knew him not.

Serj. Now for the matter of taking the *Tower*.

Duke. I deny it.

Serj. Was it not mentioned unto you in the way, when you came from *Titchfield*, by one that came to you, and moved you a Device between you and another, for taking the *Tower*?

Duke. I have confessed that such a Motion was made to me, but I never assented to it.

Serj. You concealed it: And to what end should you have taken the *Tower*, but to have kept it against the Queen by Force? But you say you liked not the Motion, you asked advice of it.

Duke. Indeed I told one of it: *Owen* met me by the way from *Titchfield*, and told me how we were all in danger; and said, That some of our

Friends thought it was best to take the *Tower*. I refused to do it, and said, Take the *Tower*! that were a proper Device indeed! And thence I went to my Lord of *Pembroke*'s, and there din'd; and then I told my Lord of *Pembroke* of that Device; whereunto he answered, We are well, and safe enough: Let them that be faulty take the *Tower*, if they will. And to what end should I have taken the *Tower*?

Serj. To maintain by Force that which you had practised against the Queen's Majesty's Commandment, which was the Marriage with the *Scotish* Queen.

Duke. I had not then dealt with it.

Serj. It is well proved that you had; and afterward, at your House at *Charter-House*, you received Letters, Messages, and Tokens from the *Scotish* Queen; you received from her a Brooch, with a Hand cutting down a Vine, and this Poesy upon it, *Virescit vulnere Virtus*. But my Lord, do green Vines grow when they be cut? And a green Vine it was.

Wilbram. My Lord, you still say you dealt not at this time, or that time, against her Majesty's Commandment; I pray you at what time, since her Majesty's Commandment upon your Allegiance, did you forbear to deal with the *Scotish* Queen?

Serj. Beside this you have given advice as a Counsellor to the *Scotish* Queen, against the Queen's Majesty: namely, when in Treaty between the Queen's Majesty and her, there were three Articles propounded on the Queen's Majesty's part; the one for the Delivery of her Son into the Queen's Majesty's Custody; the other for delivering the *English* Rebels that were fled into *Scotland*; the third for delivering of certain Holds in *Scotland* into *English* Men's Possession: He gave Advice herein as a Counsellor, against the Queen his Sovereign Lady. The Articles were expressly sent to the Duke to have his Advice, before that the *Scotish* Queen would resolve of any Answer; and she respited her Answer to be made according to his Direction. He gave Advice, that she should in no wise deliver her Son, for it was against her own Safety, not knowing whether she delivered him into her Friends hands or no. As for the Rebels, she should in no wise deliver them, for it were against her Honour: And as for the Holds, she should not deliver any; for it were against the Safety of her Friends in *Scotland*.

Duke. For advising not to deliver the Rebels, I deny that ever I gave any such Advice. As for Delivery of her Son, I advised her no otherwise but thus, that I wished her to bestow him there, where she might have sure Friends.

Serj. Thus, contrary to your Oath, Allegiance, and Fidelity, and against the Credit that you would fain be thought of, you became, by your own Confession, a Counsellor to a foreign Prince against your own Sovereign Lady.

Burleigh. My Lord, did you ever desire to have any Proofs or Witnesses produced for your part, to prove any thing that might make for you? And were you denied?

Duke. I have divers times prayed, that if any thing were denied to be true which I said, I might be driven to my Proof of it.

Burleigh. I ask it, because I have not heard it reported to her Majesty that you made any such Request, to have any special Witnesses examined, or Proofs heard, on your part.

Here was produc'd and read the Confession of *Hickford* to the 3d Article.

Duke. I advis'd her, touching her Son, that she should first be well assur'd that he should be beflow'd among her Friends. For her Castles, I advis'd her, that she should in any wise take heed, that they might not after come into the hands of her Enemies; for so if she deliver'd *Edinburgh-Castle*, she should not be safe in *Holyrood-House*.

Serj. How standeth this with the Duty and Oath of a Counsellor, to give Advice to a foreign Prince against the Queen's Majesty?

Duke. I excuse it not, herein I confess my Error; I beseech you call not these my inferiour Faults, which I have confess'd, among the greater wherewith I am charg'd.

Serj. Thus appeareth how he hath given Advice against the Queen to the *Scotish* Queen. Now it shall be further prov'd unto you, that where the *Scotish* Queen is here in Custody as the Queen's Prisoner, he hath also been privy to Devices for conveying her away.

Here was produc'd the Confession of *Barker*, October 5. 1571. Article 13.

Duke. This is not true, saving that indeed Advice was broken to me of conveying her away at a Window, at a Gallery's-end, in one of my Lord of *Shrewsbury's* Houses, of the which Window the Bishop of *Rosse* had taken a measure; but this Device was overthrown at such time as it was told me. As for that which *Barker* hath here confess'd, it is utterly false.

Serj. Now shall you hear the Duke's own Confession.

Here was read the Duke's Examination, 13 Octobris.

Serj. Besides this, the Duke being in Prison in the Tower, made a Submission to the Queen's Majesty, confess'd his Error in dealing with the *Scotish* Queen, and promis'd, upon his Faith and Allegiance, never to deal with that Marriage, nor with any other Matter touching the *Scotish* Queen.

Duke. I confess I did so.

Serj. Before his subscribing his said Submission, he first made the *Scotish* Queen privy to it, and sent her a Double of it.

Duke. I sent it to the Bishop of *Rosse*.

Serj. All is one.

Duke. I confess it.

Serj. What should move my Lord of *Norfolk* now so earnestly still to pursue this Marriage? You see he lik'd not the Person, she was not of good Fame, he so signify'd to the Queen, he so reported to *Bannister*. The Kingdom of *Scotland* he esteem'd not, and also it was out of her Possession, in the hands of the King her Son, by her own Dismission ratify'd by Parliament. Forsooth he had an old blind Prophecy lying by him: *In exaltatione Luna Leo succumbet, & Leo cum Leone conjungetur, & catuli eorum regnabunt*; which belike is thus to be expounded, At the Exaltation of the Moon (which was the Rising of the Earl of *Northumberland*, that giveth the Moon) the Lion (which is the Queen's Majesty) shall be overthrown; then shall the Lion be join'd with a Lion (which is the Duke of *Norfolk* with the *Scotish* Queen, for they both bear Lions in their Arms) and their Whelps shall reign, (that is, their Posterity shall have the Kingdom.)

Duke. I do not remember any such Prophecy.

Serj. It was in your own keeping.

Duke. What should I do with it?

Serj. Such blind Prophecies have oft deceiv'd Noblemen.

Duke. This is nothing to the purpose; I kept it not to any such end.

Serj. You utter'd it to your Servant *Hickford*.

Here was produc'd and read *Hickford's* Testimony.

Duke. AToy! You see I call it a foolish Prophecy.

Serj. Where had you it?

Duke. I remember it not.

Serj. Hitherto have you heard the Evidence to prove the Duke's Imagination, Compassing, and Conspiracy, to deprive the Queen's Majesty of the Crown and her Royal Estate, and so to bring her Highness to Death and Destruction. For proving this his Intent, you have heard those Matters prov'd, his Practice to join himself in Marriage with the *Scotish* Queen, whom he then well knew falsely to claim and pretend Title to the present possession of the Crown of *England*: also his prosecuting the same Marriage without the Queen's Majesty's Knowledge, against her Highness's express Commandment upon his Allegiance, against his Faith, Promise, and Submission; yea, and to pursue that with force, and to use the Advice and Strength of his Friends, to maintain the same force against the Queen; his hearkening to blind Prophecies, Money by him lent to the *Scotish* Queen, and against the Queen his Sovereign Lady. If then his Purpose so were to pursue it with force, it must needs follow, that the same must be of Intent, Imagination, and Compassing, to deprive and depose the Queen's Majesty from her Crown, Royal Estate, and Dignity, and to advance and maintain that false and usurp'd Title of the *Scotish* Queen unto the present possession of the Crown of *England*, and so consequently, for maintenance of his Imagination and Purpose, to compass the Queen's Majesty's Death and Destruction. Now shall you further hear Proof of his own words, declaring the same intent to pursue the Marriage by force, and rather to lose his Life than to give it over.

Cavendish's Deposition.

That at his several Journies unto the Places of the Queen of *Scots* Abode, the Duke procur'd him to labour the Cause of his Marriage with her with all diligence. Item, That her Majesty being at *Southampton*, *Richard Candish*, a certain Night walking in his Chamber, and persuading him by all means to labour for the Queen's Favour concerning that Marriage; the Duke affirm'd, that before he lost that Marriage he would lose his Life: and said moreover, that if ever he handled thing wisely or cunningly, I would say it was the Matter of that Marriage, if I knew it from the beginning. Item, That the Monday at night, after the Duke's Departure from *Southampton*, *Richard Candish* being at *Hayward-House* with him, in the Company of the Lord *Lumley*, the Duke and the said Lord *Lumley* talking secretly together, suddenly the Duke brake out into this Speech: *Candish*, quoth he, *is able to accuse me of no dishonourable Practices*. Whereat the Lord *Lumley*, as it were wondering, *Can he not indeed*, quoth he? *No indeed*, quoth the Duke; and turning to *Candish*, said, *Candish*, *I in this Case defy thee, say thy worst*. To which *Candish* answer'd, *Besides the Practice of this Marriage, I truly can accuse you of none*. Item, The Duke, at another time, in the said House, ask'd *Candish*, *If God take away*

away the Queen's Majesty, whether he could assure him of his Brother Candish, and procure his said Brother to promise unto him Sir Robert Ningfield? Item, At his last being at Remming-Hall, among many others talking, he had this Speech; Candish (quoth he) *nothing will undo us but the Rising of the Northern Lords.* To whom I answered, *God forbid that any such thing should be, for it will undo us all;* whereat he replying, said, *I fear they will rise.*

Duke. The Duke looking upon Cavendish with a scornful and smiling Countenance, said, *You are an honest Man!* That which he saith of the Talk between him and me at Southampton, is utterly false: At that time you were most earnest on my part, and came to me as for Succour, for that as you said your Cousin Christmas was fallen out with you. When we rode to my Lord of Pembroke's, you came to me and told me, my Lord Burleigh findeth me well, I will ride with him and find his Humour, and I will face that Fellow thorowly; so from Salisbury you said you would ride to Leicester, and so home with my Lord Burleigh, and you doubted not to bring me such word from him as should satisfy me. You told me how my Lord of Leicester was firm, and Sir Nicholas Throckmorton my sure Friend, and that they would both join to deal with the Queen for me; and how Sir Nicholas Throckmorton sent me word, That he doubted not the Queen would take order to my Contentation at her next Coming to a staid House. Then came you to London, and tho' I had no great Liking of you, yet because you were loth to lie at Arundel's, and were somewhat ill at ease, I let you lie in my House. I never made great account of you; my Lord of Leicester made us first acquainted, your Brother you know was not my Friend, I then took you as I now find you. While you could hold on, you shew'd your Letters that you did write on my behalf; then you came to me and said, you had need, and borrowed Money of me; I had none at that time, but I sent it you by Bowes. I was warned by divers of my Friends to take heed of you; you dealt with Dier and with Straunge very maliciously. As for the Speech at Remming-Hall, that you speak of me, it is untrue; I dealt not with you there about any such matter; I left you at London, I looked not for you; when you came, I was glad to be rid of you; you said you were going to Norwich, and I was glad you were going, and willed you to look at my House at Norwich and tell me how you liked it: Out of the North I heard nothing in six Weeks before. You suddenly slipped away from me, and then came I up to London ward; you are an honest Man indeed, it is all false that he hath said.

Then Cavendish began to report and justify what he had said, and to put the Duke in remembrance, when the Duke gave him reproachful words of Discredit.

Serj. He is sworn, there needeth no more proving; you sent Havers to the Earl of Westmoreland.

Then was alledged the Examination of one Haveling touching Havers, whom the Duke sent to the Earl of Northumberland, with this Message, *That if the two Earls should rise, he were undone.*

Duke. This may be seen of two years old, and by me fully declared and answered.

Then was read the Confession of Havers.

Then was alledged a Letter of the Scottish Queen's in Cipher to the Duke, containing, that the Lord of Shrewsbury had told her, that the Earl of Northumberland was deliver'd to the Earl of

Suffex; for which she was very sorrowful three days together, for fear of cumbring of Friends if he were taken.

Serj. What Friends was she so careful for, that she wrote to the Duke, unless she thought it should light upon the Duke himself?

Duke. That Letter never came to my hands.

Serj. It was found in the Bag which you willed to be burned.

Then the said Letter was read.

Duke. All this is nothing to me.

Serj. This proveth in you a Practice to the Rebellion; for all her Sorrow of the yielding of the Earl of Northumberland was, for fear he should bewray and cumber her Friends.

Duke. That toucheth not me; for I am sure the Earl of Northumberland hath been sought for me, and yet he cannot accuse me.

Serj. Had it not concerned you, it had not been written to you.

Duke. Some Letters never came to my hands: sometime they came to the Bishop of Rosse, sometime to Bannister, sometime not all deciphered; as Straunge and Bowes, and other that have been Messengers for me, can tell.

Here Mr. Attorney began to prosecute the second part, and spake first to this effect.

Attorney. Now you have heard enough of the first matter. In this Indictment are contained three principal Treasons, whereof the first is imagining and conspiring the Deprivation, Death, and Destruction of the Queen's Majesty: for proof hereof, it hath been truly said, That to imagine, compass, or procure the Deposing or Death of the Prince, is High-Treason by the Statute of 25 Edward III. and at the Common Law; for the Statute is but a Declaration what was Treason at Common Law: which Imagination, when it appeareth by Overt-fact, must needs be judged Treason; for Overt-fact is but a shewing of a Man's mind, which when a Man by outward Speech or Deed hath uttered, it must needs be judged that so was his meaning; which must be gathered by such means, as it may be made to appear. For no Traitor is so bold, to say expressly, he will depose or kill the King; but often it hath been seen, that they go about indirectly, and by means that tend to that End: and therefore he that goeth about to stir the People to Rebellion, or to levy War within the Realm, to assail or withstand the Prince by Force, is taken to seek the Death of the Prince. Now therefore to prove that the Duke of Norfolk hath imagined and compassed the Deposing and Death of the Queen's Majesty, this hath been shewed you: first, by secret and indirect means, he sought to join himself in Marriage with the Scottish Queen, who pretendeth Title to the Queen's Crown. This he did without the Queen's Majesty's privity, against her Highness's express Commandment upon his Allegiance, against his own Promise and Submission. First, being at York, a Commissioner appointed by the Queen, contrary to his Oath and Charge, he dealt indirectly and partially, and play'd an untrue part with the Queen; he secretly practised for the Marriage. This being objected against him, he hath denied it: you have heard it testified by three Witnesses, the Earl of Murray, Ledington, and the Bishop of Rosse. So it appeareth, that all that Practice and indirect Dealing was to this end, to compass the Deprivation and Death of the Queen's Majesty; for he well knew that the Scottish Queen

Queen made Title to the present Possession of the Crown of *England*; that she denyed the Queen's Majesty to be lawful Queen of this Realm; that she usurped the Royal Style; that she quartered the Arms of *England* without any difference: all this he knew, he was of the Queen's Majesty's Privy Council at the same time; he knew that she made no Renunciation of her unjust Claim, tho' it were required of her. It was also one Article in the Commission where he himself was Commissioner, To require the Recognition of her Error, and of the Queen's Majesty's present Right: he knew well it was not done. If the *Scotish* Queen claimed such present Title, then was she no Friend to the Queen's Majesty, but a Seeker of her Highness's Overthrow and Destruction: and yet the Duke of *Norfolk* knowing this, practised to compass this Marriage. Wherefore, I pray you, fought he that Marriage? yea, and fought it as he meant to achieve it with Force? It was not in respect of her Person, for he knew her not; it could not be for any good Report of her virtuous Conditions, for he had an evil Opinion of her: he did by his writing certify against her, he declared to *Bannister* that he thought very ill of her. It was not for her Title to the Kingdom of *Scotland*, for neither was she possessed of it, neither did he esteem it though she had it. Wherefore fought he her then? Surely in respect of that unjust Claim and Title that she pretended to the present Possession of the Crown of *England*; which Title cannot be maintained without evident purpose to depose the Queen's Majesty, and to bring her to Death and Destruction, which is plain Treason by the Statute of 25 *Edward III.* for no more can *England* bear two Queens, than the World can bear two Suns. And how should we have maintained it, but with Force? And how could that have been, without depriving of the Queen's Majesty from the Royal Estate? And how could that have been done, without compassing her Highness's Death and Destruction? for the Jealousy of an Usurper cannot suffer the just Prince to live. This your Honours are to search and consider, and to your Judgments we refer it. Now my Lord of *Norfolk's* chief and only Answer is but his bare Denial, which is no sufficient Answer; specially sith he himself hath fallen into so great discredit, by doing against his Word, his Hand, his Oath. He promised, being commanded upon his Allegiance, never to deal in that matter; he promised, by his Submission under his own Hand, utterly to forsake it, and to deal no more with the *Scotish* Queen for that Marriage, nor any other matter: He promised by Oath specially taken when he was Commissioner for hearing the matter at *York*, to do therein directly and indifferently without partiality. All these Oaths and Promises he hath broken, beside the Oath of a Counsellor which he hath also broken, in disclosing the Queen's Secrets, and in secret practising against her express Commandment. Now also, since he was last apprehended and committed, he hath denyed certain things, which he hath afterward, being constrained with strength of proof, confessed; yea, he hath denyed those things upon his Oath, which he hath afterward granted to be true: so is he not to be believed upon his Word, if his own Word discredit him, how great soever he be in Degree.

Duke. Upon the Statute of 25 *Edward III.* he inferreth, that it is Treason to imagine or compass

the Deprivation and Death of the Queen's Majesty; as the Lord forbid, and I pray God I may sooner be buried in the Earth, than I should seek or attempt any thing to the Destruction of her Majesty's Person. There is a Maxim in Law, that penal Statutes must be construed strictly, and no penal Statute ought to be extended further than the very words: Now in all that my Accusers have deposed or said against me, how false soever it be, there is not one of them that say I went about any hurt to her Majesty's Person, or that I levied or practised to levy any Power against her, or to do any of those things that are contained for Treasons within the words of the Statute. Is the Bishop of *Rosse* a sufficient Witness against me? There be Points enough in the Law to prove him no sufficient Witness: He is a Stranger and a *Scot*; a Stranger can be no sufficient Witness, much less a *Scot*: for whereas when there is Peace between the Queen's Majesty and a foreign Realm, the People of that foreign Realm may freely come and traffick in this Realm; yet tho' there be a Peace between *England* and *Scotland*, if a *Scot* come into *England* without a Passport, he may be a lawful Prisoner. Again, I cannot tell what he may for fear. *Bracton* saith, That Witnesses must be *Liberi Homines*, Free Men, full Age, Honest, and of Good Report: the Bishop of *Rosse* is none such. So is nothing proved of any Overt-fact against me, neither am I accused by any but the Bishop of *Rosse*, who can be no sufficient Witness against me. What care I what *Hamelin* says? it toucheth me not. As for *Havers*, I never sent him with any such Message: indeed I asked him what Company he found with my Brother of *Westmoreland*. He told me, he found none but my Brother *Westmoreland*. But as for my Lord of *Northumberland*, I sent not to him. If I might have brought forth my Proofs, I could have brought forth Proofs of good fame, that I sent no such Message; I could have proved it by Confessions, and not by Hearsay. So is only the Bishop of *Rosse* Witness against me, and what he is, all you perceive. I never heard of the Rebellion, till Sir *Henry Nevill* told me of it. If I had had such a mind when I was in *Norfolk*, I needed not to have come hither; I could have made a shift well enough. If I had intended any such Rebellion or Treason, I would not have put my Lord of *Northumberland* in trust withal, nor yet my Brother of *Westmoreland*, nor would have come hither to put my Head in the Halter in the *Tower*: but being, as I was, in such place where I might have shifted, I would have kept me from coming here well enough. If Fear had moved me, and that I doubted of mine own Case, I could easily have avoided. So, I say, to prove me guilty of Treason, you must shew some Overt-fact that I have done against her Majesty's Person: And to the Witnesses, I think I have said sufficiently. As touching my dealing with the *Scotish* Queen, so far as I dealt without compass of Treason, this I say for my meaner Faults, inferiour to Treason, I have with all Repentance and Humility submitted my self to the Queen's Majesty, I beseech you confound not those with this Case: but in my dealing with her about Marriage, I pray you draw it not to such Intention, to advance her Title against the Queen; because, tho' she once made such Claim, yet considering what Amity hath since been between the Queen and her, to make her now an Enemy, is hard; and surely to marry her, tho' I treated

of it, I never concluded, minded, nor intended. Where it's said I was privy to the Device of her taking away, I utterly deny it. If I had been so, I would not have been against her, nor would have certified against her; I ever advised her to submit her self to the Queen's Majesty: but when no Overt-fact of Treason can be proved against me, to bring me in thus by Arguments and Circumstances, I think it very hard. If I should have stolen her away, I could not do it alone: was I so destitute of Friends, that I could not make any Man privy to it? And who is there that accuseth me of it, that may spend five Marks a year? Now sith nothing is proved against me by any Witnesses sufficient, I beseech you consider favourably of me. Indeed my Brother of *Westmoreland* sent me his Man with Recommendations; and I sent him, by his Man, a Ring which my Sister had sent me before; and also *Havers* with this Message, *Commend me to my Brother of Westmoreland, and tell him that I am well, mine Innocency shall deliver me*: but nothing touching any Rising at all. If ever I were privy to that Rebellion, then condemn me of all the Treasons that you lay against me.

Attorney. My Lord and I are now at issue upon this point; I affirm it with Proofs, and his Lordship barely denieth it. If his Intent were to compass the Marriage, knowing her to pretend Title to the present Possession of the Crown; then must this grow to an Imagining to depose the Queen, and then it is Treason.* An Overt-fact is a Declaration of the Mind; Letters, Tokens, Speeches, Messages, and such like, be Overt-facts. Now if you had married her, you must have maintained her pretended Title, which you could not have done without manifest Purpose and Compassing to depose the Queen, and to bring her to Death, which is High-Treason. Now beside, there is one other Fact, which I will give you in evidence; which most evidently proveth the Duke of *Norfolk's* Imagination and Compassing to depose and destroy the Queen. It is well known that *Pius V.* the Bishop of *Rome*, is the Queen's Majesty's notorious Enemy, he hath been so published; he hath shewed himself in his Proceedings; he hath shewed it in his Bulls, they have been brought into this Realm, and some have suffered for them. The Duke of *Norfolk* knowing it to be so, hath practised with his Factor, hath sent unto the Pope for Aid and Force against the Queen: he conferred with one *Rodolph* a Merchant Stranger, to go over Sea to the Duke of *Alva*, and to the Pope, in the name of the *Scotish* Queen and the Duke of *Norfolk*, to procure Power to invade this Realm, for the Advancement of the *Scotish* Queen's false Title to the Crown of this Realm of *England*; and in the mean time, the Duke promised to move her Friends to levy such Power as they were able, to assist the Strangers when they came in. If this be proved unto you, then is it flat Treason. To use Force against her Majesty in her own Realm, must needs be done with intent to depose her, which Force she must needs resist; which if she be not able to do, then followeth her Death and Destruction. My Lords, here goeth still all to one manner of purpose, his own bare denial, and allowing of no sufficient Witnesses; but here God himself shall be Witness: this is a matter opened by God himself. It was known, that a Treason was in hand; many Searches were made to understand it, no Man

could by any Travel find it out, till God himself opened it; so as the Saying is fulfilled, *What is done in secret shall be made open*. The Treasons my Lords of the Council knew of; it appeared in *April* last, that such a Treason was; but whom it toucheth was not known to them, no not to him that opened it. So as God hath opened it, to affirm these mean Men to be of credit. The Treason being known to the Privy-Council half a year together, yet could they not understand the Party, till God disclosed it by marvellous chance. In *August* last, there was six hundred Pound of Money prepared to be sent with Letters into *Scotland* to the Queen's Enemies, for their Relief and Maintenance, and by the Duke of *Norfolk's* appointment to be conveyed to his Man *Bannister*, and so into *Scotland*. This Money was delivered to one *Browne* of *Shrewsbury*, by one of the Duke's Servants, one *Hickford*; who said to *Browne*, *Here is 50 l. I pray you help that it be conveyed to Mr. Bannister's Dwelling near Shrewsbury*. *Browne* having received the Money, tho' the Bulk was somewhat like the proportion of 50 l. in Silver, yet the Weight, by reason it was Gold, made him suspect it: whereupon he went to one of the Queen's Privy-Council, and disclosed his Suspicion, that so he might learn what he carried. This Bag being opened, there was found 600 l. in Gold, and certain Letters withal, to the Queen's Enemies, and to *Bannister*: Whereupon, the Duke's Man, that sent the Money, was apprehended; and then, by God's good Providence, was it found that this Treason touched the Duke of *Norfolk*, under the Name and Cipher of *Quarante 40*, and another Nobleman was signified by the Cipher of *3 Trente*. Then fell out new Matters: Certain of the Duke's Servants examined, whether they knew of any Cipher used to any Man by the Name *Quarante*, they confessed that *Quarante* was the Duke of *Norfolk*; they were kept in several Places, the Bishop also a Prisoner in a place several from them all, and yet they all agreed in one. So God's Work hath enforced their Credit by their Agreement, being severally kept. Thus came it to light by God's own Work. Now see what the Cause was: The great Treason was contained in Letters written in Cipher, to one signified by the Number *Quarante*; this *Quarante* was for the Duke, and so the Duke confesseth. What Cause had they to suspect him? Letters from *Rodolph* made mention of great Treason, and of Provision of Men from beyond the Seas, to invade this Realm, according to his Order and Request, who was meant by *Quarante*. If then we shall prove unto you that *Rodolph* had this Message and Commission from the *Scotish* Queen and the Duke of *Norfolk*, to treat with the Pope, King *Philip*, and the Duke of *Alva*, for the bringing in of ten thousand Men to invade *England*, and to make War against the Queen in her own Realm; there must needs be compassing to depose the Queen, and to bring her to Death, and so High-Treason: For he that will levy Force to invade or make War in a Prince's Realm, and that in Maintenance of a Title to the present enjoying of the Crown, doth what he can to depose the Prince, and consequently also doth what he can to destroy the Prince. Now to prove that the Duke of *Norfolk* dealt in this manner, sent this Message, and practised to bring in this Force of Strangers, and to levy War against the Queen within

* See *Hale's Hist. P. C.* Vol. I. p. 120.

within the Realm, it shall be good first to shew what manner of Man this *Rodolph* was: He was one that lived divers Years here in this Realm, a notable Traitor and Enemy to the Queen and Realm of *England*, and of long time the Pope's Factor. In the Duke's first Trouble, this *Rodolph* was suspected of such Practices, and therefore by the Council committed to the Custody of Mr. *Walsingham* till *October* was Twelve-month; and for that no evident Matter appeared, he was delivered again in the *November* following: So soon as he was delivered, he by and by opened to the Bishop of *Rosse*, That he was Factor for the Pope; he shewed him his Commission, and sundry Letters written to him by the Pope's Nuncio in *France*, about Matters of the Practice a long time. This *Rodolph* was well known to the *Scotish* Queen, the Pope himself and his Nuncio recommending him to the *Scotish* Queen: The Duke was made privy of it, and made him privy to his Dealings, and kept it secret from the Queen and her Council. When the Bull was brought over, that *Felton* died for, this *Rodolph* had six Copies of it, and dispersed them; whereof he gave one to the Bishop of *Rosse*, one other to the *Spanish* Embassador, and the third to the *French* Embassador, and the rest we know not what he did with them. Now the Duke knowing him to be such a one, he was a fit Man to deal with. That he was such a one, and that the Duke well knew it, and sent him in Message to the Duke of *Alva*, and to the Pope, you shall see plainly proved. Then what his Message was, you shall see also disclosed, and how things hidden will, by God's Providence, come to light. The Letters were written in Cipher, and decipher'd, and the Cipher hid in the Tiles, and found by chance; so as it may appear God's own Work to open these Treasons.

Here the Duke took exception to his saying, that the Cipher was found in the Tiles; and said, it was not the Cipher that was found there, but the Alphabet: so the Duke always in his Speech called the Letters or Matter written in strange Characters, the Cipher; and the Paper of the Characters themselves he called the Alphabet, which Mr. Attorney usually called the Cipher.

Then was read the Bishop of *Rosse*'s Confession the 3d of *November*, to the 5th Article.

Also *Rosse*'s Confession ad 7 Artic. litera 6.

Also his Confession the last of *October*, Article 23.

All this the Duke denied, and said, I never saw any Letters from the Pope, but one, which I will speak of anon.

Then was read the Bishop of *Rosse* to the 6th, 7th, and 8th, making mention of a Pacquet, wherein was one Letter to the Duke, by the Title of *Quarante*.

Then was read the Bishop of *Rosse*'s Confession, 26th of *October*, Fo. 2. concerning *Andrew Beaton*'s coming.

Attorney. The Duke had these deciphered, and read them.

Then was read *Barker*'s Confession, 6th of *November*, Article 3.

Attorney. Thus plainly appeareth, that the Duke was privy to these Messages to the Pope, and Conference with his Factor: Now it resteth to understand what followeth of this Course begun with *Rodolph* the Pope's Factor; what Messages

were sent; what Practices devised; and what ensued. Upon this Letter, the *Scotish* Queen wrote a Letter to the Bishop of *Rosse*, wherein she wrote back a Discourse of her Estate and Device, what she thought best to be done, referring all to the Direction of the Duke of *Norfolk*. Here is the Letter itself to be seen.

This Letter came to the Bishop of *Rosse*; he sent it over to the Duke, with a Letter from the *Scotish* Queen to the Duke. This Letter was deciphered, and found hidden in the Duke's House under the Mats in an Entry, in the Way as the Duke went to his Bed-chamber; the Cipher it self was found in the Tiles of the House. This plainly declareth, how the Duke in dealing with the *Scotish* Queen and the Pope, pursued his Purpose of advancing the *Scotish* Queen to the Crown of *England*: That the *Scotish* Queen was in practice for it with the Pope, and referred the Dispatch of *Rodolph* to the Duke; and the Receipt of those Letters is confessed by *Hickford*, and by the Duke himself.

Here was read the Letter of the *Scotish* Queen to the Bishop of *Rosse*.

Attorney. By this Letter appeareth, how the *Scotish* Queen hath set out the whole Plot of the Treason: A Message should be sent for Aid from foreign parts; *Rodolph* the fittest Man to be the Messenger; and that *Rodolph* should be dispatched to go about it, when the Duke of *Norfolk* would. The Device was to move King *Philip* for Aid, upon a Consideration of her State here, to enter into Deliberation of the Time and Opportunities to set her Friends to Field, and to seize themselves of her. This is confessed by *Hickford*; and this Letter is also confessed by the Duke himself, that he received it about *January* was Twelve-month, and it was hid under the Mats.

Duke. I bid that the Letter should be burnt.

Attorney. God would not have it so; but that it should remain for disclosing the Matter.

Duke. As touching *Rodolph*, what manner of Man he was, is no matter to me: I know of no more, nor am to be charged with no more than I my self am privy to. I never dealt with him about any Cause of mine. I received no such Letter, but that which *Barker* said came from him, which was not that *January* that you speak of, about two Years ago; and as for Instructions and Letters about that *January* was Twelve-month, I receiv'd none.

Burleigh. Here the Lord *Burleigh* said to Mr. Attorney, You may mistake, it was this time Twelve-Month, for now we are in *January*. And so Mr. Attorney remembring this present Month to be *January*, referred the Letter to *January* now a Year past; and said, This Letter that I now charged you with, came to your hands at this *January* was Twelve-month: It came first to the *Scotish* Queen's hand; she took occasion upon considering her own Case here in *England*, in *France*, and in her own Country, that it was best for her to cleave unto *Spain*. She wrote to the Bishop of *Rosse* her Discourse to that end: She counted *Rodolph* the fittest Messenger; Matter was devised for his Instructions; she referred the Dispatch wholly to the Duke of *Norfolk*; the Duke dealt in it, his Message appeareth. And thus it continued till *March*; and then, according to the Plot before laid, *Rodolph* was dispatched, and went over indeed.

Duke.

Duke. What was deliver'd to *Barker*, I know not; that is nothing to me: I am sure they will not say they deliver'd it me, nor that I receiv'd any such Letters or Instructions. This I say, the Bishop sent me a Letter of the *Scotish* Queen's, together with a Letter of his own: In her Letter she complaineth of her own Subjects, and faith, she will seek other Means for her Relief. This Letter was decypher'd; I mislik'd the Device, and bad that the Letter should be burn'd; so the Letter in Cypher was burn'd, and the Alphabet was sav'd. I sent word that I mislik'd all those Devices, and I advis'd the *Scotish* Queen to depend only upon the Queen's Majesty, or else, if she would take any other Cause, both I, and all other her Friends in *England*, would give her over; and thereupon it was that I said, that the Queen, if she fell to such Practices, would publish her Letters and Doings to her Infamy. Upon which my Words, the Bishop of *Rosse* excus'd himself, and laid all this Matter, of this new Device, to *Beyton* and *Rewley*. It is not true that *Barker* made me privy to any such Message or Instructions, as hath been alledg'd. Also he is not to be allow'd for a Witness against me, for he hath confess'd Treason against himself; and Persons outlaw'd, or attainted of Treason, are no sufficient Witnesses.

Catlin. My Lord, there is none of those Witnesses, that have declar'd Matter against you, outlaw'd, or attainted of Treason, or yet indicted.

Duke. They are worse; for they have confess'd Treason.

Attorney. The Bishop of *Rosse*, at this time, was in Custody, and these Men also that have confess'd against you, were also kept in Custody, kept asunder in several Places, and severally examin'd, agreed all in one, and your own Confessions agree with them: How can this be imagin'd and false? All these do testify it with one Consent. The Bishop of *Rosse*, when he first came to the City, was examin'd of these things, he deny'd all, he stood in it earnestly; when questions were asked him, he said, He was an Ambassador, and not so to be dealt with, but to be referr'd to his own Mistress the *Scotish* Queen. When he was committed to the *Tower*, and there again examin'd, seeing things confess'd already; and by the manner of the Questions that were ask'd, perceiving some Light that the Truth was known; then he confess'd also, and in his Confessions doth agree fully with *Barker* and the rest: which Consent could not possibly be, if the Matter were not true; besides that, he hath in his Confession touch'd himself.

Duke. They have not agreed in Confession against me, that I told them any such thing; but one of them told another, and so from hand to hand it went among them.

Attorney. Well, you see what is confess'd, and with what Consent we are at Issue; here is but your Lordship's Denial; I leave it to my Lords here to consider of the Proofs. If you had been a good Subject, being then a Prisoner in your own House, when such dangerous Matter came to your Understanding, you would have open'd it, that the Queen's Majesty and her Council might have provided to withstand them, but you did it not. The Duke of *Norfolk* found flat Treason intended; *Rodolph* was the Messenger that procured it; the Duke knew it; *Rodolph* was referr'd to the Duke's Dispatch, upon the Conference of

the Bishop of *Rosse* and *Rodolph* about the Matter, and the *Scotish* Queen's Willingness to have him sent about the Matter. Thus it proceeded: It was agreed that *Rodolph* should have his Message in Writing; and at the same Conference, *Barker* being also among them, it was agreed, and set down in his Instructions, that his Message should be this: He should go to the Pope and the King of *Spain*, in the Name of the *Scotish* Queen and of the Duke of *Norfolk*, to require of them Money and Men for the Enterprize. *Rodolph* requir'd to speak with the Duke: *Barker* brought him to the Duke at *Howard-House*; there they talk'd together, the Duke and *Rodolph* a whole Hour, till it was nine of the Clock at Night. After this Talk, the Duke deliver'd to *Barker* a Paper, saying, that *Rodolph* left it with him; which Paper contain'd the Sum of the Treason, and therein was also a Paper of the Names of divers Noblemen, Knights, and Gentlemen in Cipher, whom they counted that they would take the Duke's part, but they counted without their Host; so that there was for every Name a Cipher, of the which 40 was for the Duke, and 30 for the Lord *Lumley*. *Barker* receiv'd it of the Duke, and deliver'd it again to *Rodolph*. Upon this Cipher of 40, fell out the understanding of the Treason.

Here was read *Barker's* Deposition, 10 October, Interr. 8.

Item, *Barker* to the 22 Interr.

Attorney. In this Bill the Duke is proved to be 40, the Duke himself hath also confess'd that 40 standeth for his own Name. *Barker* brought *Rodolph* to the Duke, which the Duke also confess'd, and that *Barker* brought him Instructions for *Rodolph's* Money.

Here Mr. Treasurer and Mr. Chancellor of the Exchequer, sworn, did testify that *Barker* made all these Confessions freely, without Compulsion.

Also Mr. *Wilson*, sworn, did testify the same; and that *Barker* was never offer'd Torture, nor was once in the Prison where the Rack was: but the Duke said *Barker* saw where his Fellow had been.

Attorney. Did not *Barker* bring *Rodolph* to you at nine of the Clock at Night? Did he not leave with you Instructions in *French*?

Duke. I confess it.

Then was read *Barker* to the 16th.

Attorney. *Rodolph* came also the second time to the Duke; after he was come from the Duke, he said to *Barker*, That the Duke, and he were agreed of his Journey, and that the Duke pray'd him to depart with speed.

This Message was to procure Men and Money for the Enterprize of the Treason; and on this Message the Duke dispatch'd him.

Duke. Touching *Rodolph's* coming, I have indeed confess'd that he came to me. I was in Summer was Twelve-Month bound in Recognizance for 1800 l. to *Rodolph*, for my Lord of *Arundel*, and for my Brother *Lumley*; the Day was pass'd whereby I stood in danger of my Recognizance. I sent to *Rodolph* to intreat him to cancel my Recognizance, and I offer'd to give him twenty Yards of Velvet; *Rodolph* would not be persuaded, but desired to speak with me himself, which *Barker* reported to me. I was very loth that he should come to me, for he was in Trouble at my last Trouble, and so I thought his

coming to me would be suspicious. *Barker* promis'd that he would bring him to me secretly, and at such a time as it should not be known to make any Suspicion. So *Rodolph* came to me, and I did what I could to intreat him about my Recognizance, and I could not persuade him more, than to promise that he would not sue me. He told me of his Trouble and of his Imprisonment at Mr. *Walsingham's*, and what Words Mr. *Walsingham* gave unto him, also of the *Scotish* Queen; and that he should deal with the Duke of *Alva* for Money for her to her own use, and for Necessaries, as he had done before. He pray'd also my Letters in the *Scotish* Queen's favour to the Duke of *Alva*: I began to dislike him, and was loth to write; I sought ways to shift me from him; I said I was not well at ease; I could not write, and it was late, and so I would not deal. As for the Bill of Names, I saw none such, nor understood of any such, till the Letter that came over from *Rodolph* about *Easter*. I deliver'd a Writing to *Barker*: I confess it; but it was about that Matter which I have confess'd already for my Recognizance; and so I dealt not with any such Matter as is alledg'd against me, nor receiv'd any other Instructions, but only as I have said, about my own Matters.

Attorney. My Lord, this is but your own saying, and it carrieth no Likelihood: But *Barker* goeth nearer to you; he telleth you plainly what the Instructions were: It was to King *Philip* for Men, and to the Pope for Money.

Duke. *Barker* hath confess'd himself a Traitor, and therefore is no sufficient Witness against me. I never knew of any such Bill of Names, nor such Instruction in *French*.

Attorney. It is sufficiently prov'd. Now *Rodolph* came to you again a second time.

Duke. I deny it: He came no more to me.

Attorney. That is not so: for *Barker* telleth plainly, not only the Time, but also the several Ways by which he himself brought *Rodolph* to you.

Duke. There be Ways enough, he might have devis'd also a dozen Ways more, if he would, in that House.

Here was read *Barker* ad 11.

Attorney. Lo! he telleth you which way *Rodolph* came to you.

Duke. So he may devise more Ways when he will.

Attorney. Now you shall also hear it confess'd by the Bishop of *Rosse*, who at the time of his Confession was in Prison, not knowing what *Barker* had said.

Here was read *Rosse's* Confession of that Matter. Here was also read *Rosse*, the sixth of *November*.

Attorney. Here you see how the Duke agreeth with *Barker*. And there was read *Rosse* more, the sixth of *November*; how *Rodolph* made account of his Time, and of his Return before the Parliament ended.

Then Mr. Attorney made a brief Rehearsal of the Matters contain'd in those Confessions, and shew'd the Agreement of *Rosse* and *Barker*; and then was read *Rosse*, Fol. 3. touching *Rodolph's* Account of his old Soldiers, that he could bring against the *English*, of the Duke of *Medina's* coming, of 7000 *Spaniards* to be spar'd. Now the Duke had satisfy'd *Rodolph* for his Credit, and tho' the Duke subscribed not, yet if the Duke were

a Christian Man, he was assured of him, and so would assure foreign Princes on the Duke's part.

Then was read the Confession of the Bishop of *Rosse*, to the 18th.

Now shall you hear further: *Rodolph*, before his Voyage, mov'd to have Letters of Credit, that he might deal with foreign Princes; whereupon three Letters were devis'd, to commend *Rodolph* to the Pope, the King of *Spain*, and the Duke of *Alva*, and to give him Credit in his Message, that he might be able to procure Aid for the *Scotish* Queen, and for the Advancement of the Catholick Faith. The Duke answer'd, I am loth to write; for if I write, the Queen's Majesty hath great Intelligence, and so if my Writing should come to light, all were marr'd; and so he would not write. Then the Bishop of *Rosse*, and *Barker*, travailed earnestly with him to subscribe the Letters; but he would not. Then, at length, it was advis'd and agreed among them, that if the Duke should send one to the *Spanish* Embassador, to declare his Assent to affirm the Letters, it should satisfy *Rodolph* and the foreign Princes, tho' he subscribed not: wherewith the Duke was content, and sent *Barker* with the Bishop of *Rosse*, and *Rodolph*, to declare to the *Spanish* Embassador, that the Duke was content to affirm the Letter, and to let it pass in his Name. And so the *Spanish* Embassador recommended *Rodolph's* Message in the Duke's Name, without the Duke's Subscription.

Here was read the Bishop of *Rosse*, ult. *Octob.* ad 20.

Also *Barker* was read of the same Matter.

Attorney. Thus it is plainly prov'd: and if they say true, as it cannot be that they can so agree, if it were not true; then can it not be deny'd that the Duke is guilty of all this Treason.

Duke. Here is too much at once for me to answer without Book; my Memory is not so good, to run thro' every thing, as they do that have their Books and their Notes lying before them: Therefore, I pray you, if I forgot to answer to any thing, remember me of it.

It is said, That there are two or three Witnesses against me; all this two or three are but one Witness: for *Rodolph* said it to the Bishop of *Rosse*, and of his Mouth the Bishop of *Rosse* told it to *Barker*, and so from Mouth to Mouth; they are all but one Witness. Besides that they have confess'd themselves wholly in Treason, and now they would bring me in with them too; and so are no sufficient Witnesses against me. Note, I pray you, the Advices, and see how likely they are: Ten thousand Men must be landed, whereof three or four thousand must be Horsemen; they must land at *Harwich*, and a Port in my Country; neither is *Harwich* a Port in my Country: And I am not of so little Skill, that I would have three or four thousand Horsemen land in *Essex*, the unfittest Place for Horsemen to land in all *England*, a Country best inhabited of Noblemen, Gentlemen, and other Ability to resist them: And who would land Horsemen in *Essex*, a Country all full of Lanes, Woods, Ditches, and Marshes? I would have chosen some other Country rather, if I had been so minded. Again, in respect of Religion, I would not have landed them in *Essex*, that came to destroy Religion, and so should have found

found but little Assistance. And would I have brought in Power, or join'd with them to the Overthrow of Religion? It hath lately been said by that side, that I could not be recover'd from my Religion: I would not be chang'd from my Religion; I had rather be torn with wild Horses. Besides that the County of *Essex*, adjoining to the County of *Suffolk*, is most unfit for that purpose; no County in *England* more replenish'd with Protestants nor of better Ability, and none more likely to withstand Papists. As for moving of Friends, I never dealt to move any Person in the matter; I never made Provision for it; I provided no Armour, Shot, Powder, nor Money; I made no Friends privy to any such Intent. Some Presumption it is, that if I had intended any such matter, I would have made some privy to it. I was no otherwise so destitute of Friends, I would have provided Armour, Shot, and Powder; I would have provided Money; I am sure there was not much Money found. For Armour, I had not at my house here past eight Armours which were of Proof, and a hundred Harquebusses; and besides this, I bestow'd not 10 *l.* in Armour these ten Years: Powder I have not two Barrels; yea, not above a Barrel in all. So see the likelihood of their Devices; no Conference of Friends to take part; no Provision of Furniture; a Country, both in Religion and Situation, unapt for the Matter.

Where they say *Rodolph* told *Barker*, and *Barker* told me; and *Barker* came from *Rosse* and from *Rodolph* to me, and from me to *Rosse*, to declare that I was content to affirm the Letters of Credit: I deny it. As for my Consent, that the *Spanish* Ambassador should affirm the Letters in my Name, how unlikely a thing it is, that I was content to affirm them, but not to subscribe them; as if I knew not how small is the Difference between subscribing and affirming; and as if I had such slender Wit. *Rodolph* never came to me but once; indeed I heard that *Rodolph* would fain have come to me again the second time, but I would not; *Barker* earnestly urg'd it, but I refus'd. To please the curious *Italian* Head of *Rodolph*, they devis'd it among them to deal with the *Spanish* Ambassador. As for me, I never heard from the *Spanish* Ambassador in the matter; I never saw him but once at my Lord Treasurer's. I was angry with *Barker* for going to him in my Name; and he excus'd it, and said, he could not otherwise content the Bishop of *Rosse* and *Rodolph*: and so that affirming of the Letters was *Barker's* own doing, and not mine. I would they might, in our private Examinations, have been brought face to face with me. I could have put them in mind of things; they have confess'd Treason of themselves, and they would bring me in with them, and lay it on my shoulders. I am hardly handled, I have been eighteen Weeks committed, I can speak with no body; if I might have had them face to face, and been allow'd to bring forth my Proofs, I would have brought forth direct Matter and Proofs, and therewith made them remember themselves. Consider, I beseech you, what they be that accuse me; the Presumptions be in all likelihood, that I should not so do as they accuse me; and as for them, they be Persons that have accus'd themselves of Treason, and so be of no Credit. As for mine own Examinations, they wholly agree in such sort as I have here declar'd in mine Answer.

Attorney. Your Answer is nothing but bare Denial; and here are three Witnesses against you, and

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all three severally examin'd, have agreed in one; and *Barker* hath directly confess'd; and if you doubt of Impulsion, you shall hear how willingly and how freely he confess'd it, because the same Examination was taken before Sir *Thomas Smith*, and subscrib'd with his Hand: Mr. *Wilson* upon his Oath declar'd the same to be Sir *Thomas Smith's* Hand.

Duke. Where it is said, that I should bid them to write, or should affirm their Writing, it is not true. Indeed *Bannister* spake to me to write for Money for the *Scotish* Queen, and I refused to do it. If I should have dealt in any such matter, I would have trusted one *Bannister* afore fifteen *Barkers*. And as for your number of Witnesses in this manner by Hands one from another, twenty Witnesses may prove but one Witness.

Attorney. You shall hear your own Confession agreeing with them; you were content *Rodolph* should use your Name to the Duke of *Alva*, and that he should assure the Duke you were a Catholic, and that he should shew Tokens to prove it, for that you kept Papists in your House, and were a Friend to Papists.

Here was read the Duke's Confession, 10 October, *ad interr.* 58.

Here his own Hand confesseth the Matter.

Duke. I saw the Instructions indeed, and this Matter was in it. They sought to have it thought I was a Catholic, to serve their Purpose, and did put it in of themselves; but I allowed it not, I would rather be torn with wild Horses, than forsake my Religion.

Attorney. These Instructions remained still in your custody: Why did you not burn these, as well as you say that you commanded the Letter to be burned?

Duke. Because it was their writing, and not mine.

Wilb. You are content it should be extant; to what purpose was that, if you mislik'd it?

Attorney. Your Lordship shall yet see further a Letter of the Bishop of *Rosse*, written to the *Scotish* Queen, wherein the whole Plot and Courte of the Treason is plainly set out at large; the Letter came to the *Scotish* Queen's hands while my Lord Steward was there, which my Lord Steward affirmed. So the Letter was read.

Duke. The Bishop of *Rosse* is no sufficient Witness against me, for the Causes that I have declared.

Attorney. I leave his Credit to my Lords here to consider, let them weigh it as they see cause. Now come to consider your own Doings; since your last Imprisonment, Letters have been conveyed unto you, and you have sent Letters abroad, by many subtle and secret Ways of Conveyance. One Letter you sent out, written with Red-Ocre, wherein plainly appeareth that you feared the Matter, and that something was confess'd, and that you were afraid of more; you willed the Bishop of *Rosse* should take all upon him, because he was an Ambassador, and that a Bag of Writings should be fought out and burned.

Here the Letter written in Red-Ocre was read, which the Duke confess'd to be his own.

Attorney. This Letter gave occasion to seek the Bag, and so were the Writings found under Boards fast nailed, and thereby was understood that *Quarante* was the Duke; and so by God's Work broke out the whole Practice of the Treason. This Letter was directed to nobody.

P 2

Duke.

Duke. It was written to *Bayly*, and *Bayly* received it. I can answer this Letter well enough. Here I am charged with two Matters, for matter of my Confessions, and for burning the Bags of Letters. As for that which is there said, that I confessed nothing but what I saw confessed by others, the truth is, I received a Letter, wherein I was charged, that I had accused some falsely. I wrote to satisfy, that I had not accused any of any matter of Treason, nor could if I would; and this was the meaning of that Part of my Letter.

Attorney. Where is the Letter whereby you were charged that you had accused falsely?

Duke. I kept it not; think you I would keep Letters? Burned Letters do no hurt. As for burning the Writings in the Bag, it maketh nothing against me in this Case; for they were nothing but private Letters of the *Scotish* Queen's, written before, and when I was last in Trouble, long before this Matter. At *Bannister's* coming up at *Easter* last, he brought them to me, and I willed *Barker* to lay them up: What needeth such searching for elder Matters? I bad them be made away, for they were but private Matters between the *Scotish* Queen and me.

Attorney. There was the Letter that disclosed you to be *Quarante*, whereby the Treason was known: now here is also another Letter of your own, which you secretly sent out of the *Tower*, which sheweth your Guiltiness in the matter of the great Treason with *Rodolph*.

Here the Duke's other Letter was read.

Duke. This was only, as I have declared before, for my Conference with *Rodolph*, for the matter of Money, both touching mine own Recognizance, and procuring of Money for the *Scotish* Queen, for her Necessity.

Attorney. by the whole Course of the Matter that goeth before, it is for the Treason, and not for the Money.

Here is also another Letter of your own, which carrieth manifest Presumptions of the Treason, where, among other things, you will *Barker* to confess no further, if he love his Life: besides other most manifest suspicious Matters.

Duke. I wrote it not in respect of any fear that *Barker* could hurt me, when I willed that *Barker* should confess no more, as he loved his Life: For indeed he might touch himself in Treason, (as he hath done) but not me, for I never consented to it.

Attorney. Now shall you see how the Matter proceeded further: After the dispatch of *Rodolph*, in *Lent* last, as he had made shew before, that he intended to go over Sea, and was all this while practising about this Treason; at length being frightened with these Messages, he came to sue to the Queen's Majesty for a Pass-port, which was granted him, and he carried over two Geldings with him, which is evident Proof that he went over. Now shall you see what effect it took, and by the Answer you shall discern the Message and Practice: Being beyond the Sea, and having done his Message, he sent advertisement to the Duke how he sped, and likewise from the Pope; which plainly discloseth the whole Purpose and Plot of the Treason, as shall be declared unto your Lordships.

Here began Mr. Solicitor.

Solicitor. For that the time is spent, and your Lordships, I think, are weary, I will not now make any Collection what hath been gathered of

the attempt of Marriage with the *Scotish* Queen, only I will deal with the Matter of *Rodolph's* Message, and the effect thereof: And the Duke's adhering to the Queen's Enemies and Rebels, shall be another part. In this Matter of *Rodolph*, hath been laid before you a plain Plot for a Rebellion, and for Invasion of the Realm, set forth in the *Scotish* Queen's Letter, which was deciphered by *Hickford*, by the Duke's Commandment, as hath been said unto you; the effect whereof was as hath been declared.

And here he repeated the Effect of that Letter, containing the Device of putting Men into the Field, and to seize the *Scotish* Queen. Now if the Device were follow'd, and if the Duke were a Doer in it, if he were a Consenter unto it, if *Rodolph* were practised with for the Journey, if he received his Message to that end, if he went and pursued it, if he sent Answer accordingly; then it must needs be that here is matter of High-Treason, and the Duke of *Norfolk* guilty of it. It hath been shewed by the Declaration of *Barker*, and of the Bishop of *Rosse*, how *Rodolph* was the Pope's Factor, was commended by the *Scotish* Queen for a fit Messenger in this Matter, was conferred with about it, Articles were devised, they were shewed the Duke, and the Duke himself hath confessed that he spake with *Rodolph*, and that he saw the Instructions. Now is the question, How far the Instructions extended, whether to matter of High-Treason, as hath been alledged, or no? The Duke saith for his excuse, That the Instructions were but for a private cause of Money, and that when *Rodolph* required him to write his Letters, the Duke refused and cast him off. See how this accordeth: If it were but a private Cause, whereto served that refusal to write? As well he might by Letters, as by Instructions, pursued in a private Cause. What needeth that secret coming in the Night-time about a private Cause? The Duke himself confesseth, that the Instructions were shewed him before *Rodolph* came to him; he confesseth also that *Rodolph* was commended by the *Scotish* Queen; the Instructions have here been shewed, containing the Matter of his Journey, and extending to the Treason: He came to confer with the Duke. Now let your Lordships judge why, and about what Matters they conferred.

The Bishop of *Rosse* and *Barker* do, of their own knowledge, declare, how, for Furniture of this Message, there were Letters of Credit devised in the name of the *Scotish* Queen and the Duke of *Norfolk*, to the Pope, the *Spanish* King, and the Duke of *Alva*; the Duke refused to subscribe them, for fear, if he should deal too openly, the Treason might perhaps to some appear: therefore a Device was found out how to save the matter, That he should, by his Servant, affirm the Letters to the *Spanish* Ambassador, and so they should, by the *Spanish* Ambassador's commendation, pass with as good credit as if they had been subscribed. This Device was performed, his Assent was witnessed, and the Letters of credit confirm'd accordingly. *Rodolph* went over to the Duke of *Alva*, and from thence to the Pope; he return'd answer of his Message, and gave advertisement to the Duke. Did not he send his answer concerning the very Instructions that have been alledged, and the matter of Treason, and not of a private Cause? And to whom? Sent he not answer to the Duke, by the name of *Quarante*? Would *Rodolph* make an-

swer

swer to, and advertise him that never sent him, and of a Matter that he never sent him about? By this you may see the intent of the Message. Now shall you see what Answer was return'd.

The Bishop of *Rosse*, after this, sent over a Servant of his, one *Charles Bayly*, to fetch certain Books that were printed in those Parts; Books containing very seditious Matter, whereof I have seen some, by permission, tending to these ends. First, therein is conveyed to the *Scottish* Queen a Title to the Crown of *England*, a Descent above the Conquest, and so labouring to impair the Interest of all our Kings that have reigned since the Conquest. Then the Judgment of the Right of the Crown of this Realm is reduc'd to an universal Law, which they call *Jus Gentium*, and the discerning thereof exempted from the Laws of this Realm. And of that universal Law they establish one universal Judge, whom they insinuate to be the Pope, whose Bulls you see have pass'd in prejudice of the Queen's Majesty's undoubted Right. This *Charles Bayly* being in those parts for this occasion of the Books, met with *Rodolph* at *Brussels*, after that *Rodolph* had had his dispatch from the Duke of *Alva*, and was hastening to the Pope; and therefore having haste of his Journey, and much to write, and small leisure, he desired *Charles Bayly* to write for him two Letters for two Noblemen of this Realm, both in Cipher: but to whom the Letters were directed, *Charles* himself could not tell; for *Rodolph* subscrib'd the Letters himself, one to *Quarante*, the other to *Trente*. *Charles Bayly* bringing their Books and Letters, was taken at *Dover*, the Books were brought to the Council, the Pacquet of Letters were convey'd away to the Bishop of *Rosse*: And daily more and more grew the Suspicion, by reason of the repair of the Bishop of *Rosse*'s Servants to the *Marshallsea*, where *Charles* was. At length there were Letters taken between the Bishop of *Rosse* and *Charles*, mentioning the recovery of *Rodolph*'s Pacquet. In this Pacquet was the Advertisement of the Success of the Voyage, from *Rodolph* to the Duke, by the name of 40. This Letter of *Rodolph*'s was sent to the Duke from the Bishop of *Rosse* by *Barker*; *Barker* deliver'd it to the Duke, from whence it was sent back again to the Bishop of *Rosse* by *Gutbert*, and by *Gutbert* it was deciphered, and carried again to the Duke by *Barker*: Upon this occasion *Gutbert* was sought for, the Duke convey'd him away, and this conveying away of *Gutbert*, the Duke hath confessed. If this be thus, then must it needs be that *Rodolph* was sent by him, and to such end as the Letter bringeth answer of. In the Letter, this was contain'd, That *Rodolph* had spoken with the Duke of *Alva*; That he had very good and loving Audience; That the Duke of *Alva* lovingly promis'd all the help that he could; and that he would commend the Cause to the King of *Spain* his Master: And he advis'd *Rodolph* to go forward to the Pope, and that he said he could not do further without more Warrant, which he would seek to procure. Also certain questions were ask'd by the Duke of *Alva*; as what Fort was between the Haven where they should land and *London*? How near *London* it was? So the nearness of *London* was respected, how incommodious soever your Lordship saith the Place was for Horsemen. These Questions belike depended upon the Matter propounded, which touch the Plot of the Treason, and not a private Cause, as your Lordship pretendeth. The Duke of *Norfolk* confesseth the receipt

of these Letters, and the deciphering of them. So *Charles Bayly*, by *Rodolph*'s Request, wrote the two Letters in Ciphers; *Rodolph* himself directed them to 40 and 30. *Charles* being taken, and confessing the writing, and bringing of these Letters, and the Matter contain'd in them in *April* last, yet knew not who was 40 nor 30. This was strangely convey'd, Treason known in Matter, and yet the Person not known to himself that wrote it.

Here was read *Charles Bayly*'s Letter.

These Letters of *Rodolph* were convey'd to the Bishop of *Rosse* to deliver to 30 and 40, referring the rest to his Dispatch at *Rome*. And this falleth out also very likely for the Time; for *Rodolph* departed home about *Easter* before.

Here was read *Charles Bayly*'s Confession, ad 3.

Sollic. Now you see to what End the Effect of the Message tended; you see what it was, and how it was done; you see how it was receiv'd, and the Duke of *Alva*'s Questions upon it: now you shall see the Contents of the Answer, by the Examinations of the Bishop of *Rosse*, and *Barker*; the receipt of the Letters of Answer the Duke himself hath confessed.

Duke. Where they say this Message was sent by my Privy, by reason that I was meant by 40, I deny it; I never wrote by *Rodolph*, I refus'd to do it, I knew not his Letters were to me, but as *Barker* said: And it was not likely they should be to me; for it was a Matter which I was not privy of, and in a Cipher which I had not; *Rodolph* left no Cypher with me. As for the taking of the Pacquet, I knew nothing of it; the Letter I never saw in Cipher; *Barker* brought me a Decipher, telling me, That 40 was for me, and 30 for the Queen of *Scots*. When he told me first he had the Cipher, I ask'd what I should do with it, and how I should read it, having no Cipher? *Barker* answered, that it was left with *Gutbert*; for *Rodolph*, at his departure, had told him, That he would write answer of the Money for the *Scottish* Queen, and that he would leave the Cipher with *Gutbert*; and that he had so done, and in the Letters deciphered did appear, that the Duke of *Alva* had promised aid of Money for the *Scottish* Queen for her Necessities; but he could not yet do it for want of Commission, but as soon as he had Commission he would. When I heard of this I mislik'd this dealing with the Duke of *Alva*, having before refus'd to write to him in the Matter at *Rodolph*'s Request; and I threatned *Barker* if he so dealt any more with me. The Letters might be to me, as *Barker* said; but I knew not so much.

Sollic. This your Answer is in all no more than a bare denying, and so be all your Speeches, all upon your own Credit only.

Here was read *Barker*'s Confession, ad 2, & 3, concerning *Rodolph*'s Letters in Ciphers, and the Deciphering by *Gutbert*, and the Port where the *Walloon*s should have landed, &c.

Then was read the Bishop of *Rosse*'s to the 12 and 13, to the same effect.

Then Mr. Solicitor recited again the Effect of the Letters, and the said Confessions of *Rosse* and *Barker*, and proceeded further thus:

You see all these agree in one concerning the Contents of the Letter; now the Letter being deciphered by *Gutbert*, and *Gutbert* being able to discover the whole, this *Gutbert*, when he was sent for

for by the Council, was convey'd away by the Duke's means, as the Duke himself hath confessed.

Duke. It may be *Barker* received this Letter as you spake of, and that *Gutbert* deciphered it, and that it contain'd the Matters that you alledge; it may be that they kept that Letter still to themselves, and might bring me another Letter, containing only such Matter as I was contented with, containing the private Cause.

Sollic. An unlikely matter; but thus you see the Duke confesseth the Receipt of the Letter, he only denieth that it was to this effect. It was confessed, that a Letter to this effect was written to 40; he also confesseth, that 40 was for the Duke himself.

The Duke of *Alva's* Questions prov'd the form of the matter; the Duke read that Letter.

Duke. I read not that Letter, but of another Matter, and you bring but one Witness to prove it.

Sollic. There be two Witnesses, *Barker* and the Bishop of *Rosse*, severally examined, who agreed directly, expressing it. And *Bayly* also wrote the Letter himself containing the Treason, and not knowing to whom the Letter was directed, accordeth with them.

Duke. *Barker* and *Gutbert* might make the Letter themselves, and put in and out what they list.

Sollic. Why did *Rodolph* write you a Letter at all?

Duke. I know not. *Barker* presented me the Letters out of Cipher, and I had not the Cipher, nor saw any such Letter as you alledge.

Sollic. It appeareth further, how after this dispatch with the Duke of *Alva*, *Rodolph* went forward on his Message to the Pope; and having also good Success there, he so advertis'd again. The Pope sent Letters to the Duke and the *Scottish* Queen, to this effect, That he liked well of their Enterprizes, &c.

Would *Rodolph* have gone to the Pope and procur'd Letters, if he had not had Instructions accordingly? The Duke himself hath confessed such a Letter, conceived there came Letters, both of one Tenour; the one by the way of *France*, the other by the way of *Flanders*: the effect you have heard, and the Receipt is confessed.

Duke. *Barker* indeed brought me about six or seven Lines, written in a Roman Hand in *Latin*, beginning thus, *Dilecte fili salutem*. I asked what it was? and *Barker* told me, it was a Letter from the Pope to me: Wherewith I was offended, and said, A Letter to me from the Pope! What have I to do with him, that is Enemy to my Religion and Country? How cometh this to pass? So I received it, and not otherwise: and *Barker* excus'd it, and said, That *Rodolph* had procur'd it for his own Credit.

Here was read *Barker*, ad 29.

Sollic. Thus you see the Effect of this Letter, and how this was directed to the Duke from *Rodolph*, also by the name of 40, deciphered by *Gutbert*, and delivered to the Duke by *Barker*. The Duke received it and read it, and said, *Rodolph* hath been at *Rome*, I perceive there will nothing be done this year. By this it appeareth, that he reproved not *Barker* at all for bringing it unto him, for *Barker* brought it him twice: Would he have brought it him the second time, if the Duke had been angry with him for it at the first?

Duke. I knew not at the first time what it was, for it was in Cipher.

Then was read *Barker's* Confession to the 8th.

Duke. *Barker* is not of Credit, he accuseth me falsely.

Sollic. He was your Servant and of near Place and Credit about you; why should he accuse you wrongfully?

Duke. He was not of Credit about me; for I used him not this fourteen Years.

Sollic. That is not so, as hath well appeared. Besides this, the conveying away of *Gutbert*, which was done by your means, and who deciphered this Letter, and could have disclosed the Matter, proveth a great Guiltiness in you.

Duke. He was convey'd away at his own Request made, and not for my Safety.

Sollic. You caused him to be convey'd away, and were privy to his conveying.

Duke. *Barker* removed him: indeed I was not privy.

Sollic. You moved *Bowes* to join with *Barker* to do it.

Then Mr. Solicitor said further to the Peers, I have also, my Lords, one thing more to say to you from the Queen's Majesty's own Mouth: The Lords that be here of the Privy-Council do know it very well, not meet here in open Prefence to be uttered, because it toucheth others that are not here now to be named; but by her Highness's Order, we pray that their Lordships will impart it unto you more particularly. In *Flanders*, by the Embassador of a foreign Prince, there the whole Plot of this Treason was discovered, and by a Servant of his brought to her Majesty's Intelligence; the Minister not meaning to conceal so foul and dishonourable a Practice, gave Intelligence hither by Letters, and hath therein disclosed the whole Treason in such Form as hath here been proved unto you: Wherefore I refer the more particular Declaration thereof to the Peers of the Privy-Council.

Then began Mr. *Wilbrabam*, Attorney of the Wards, and said to this effect.

Wilbrabam. There is yet something unspoken, it consisteth in two Points, I will be short in both. The Matters are plain, and easy to understand. Let my Lord answer, and your Lordships shall easily judge of them. Here have been set forth before you the imagining and practising of the Deprivation and Death of the Queen's Majesty, with bringing in of Strangers into the Realm to invade, and levy War, with the Appurtenances both miserable and many. This Request I am now to make, that for proof of these Treasons, that I will intreat you to have in memory what hath before been said; for tho' the Proofs of these Treasons we divide to several Parts, for Ease and Shortness, as the seeking of the Marriage, *Rodolph's* Voyage, the Success thereof, and the Residence that remaineth, ought all to be compared together; any one appearing plainly true, giveth Credit to the rest. The Queen's Majesty's Proceeding in this Trial is very honourable, mild and gracious; the Confessions have been made by the Parties freely, without Torture or Constraint. You shall see each of them, and each part so prove the other, as the whole shall be clearly out of doubt; Where the Earl of *Northumberland* and his Wife, the Earl of *Westmoreland*, *Richard Norton*, and others in the North Parts raised Rebellions, and levy'd open War against the Queen's Majesty within her Realm; and being overthrown by the Queen's Power, fled into *Scotland*, and there were received by the Duke of *Chastelleroi*, the Lord *Harris*, the Lord *Hume*, the Lord *Buccleugh*, and others, and by them were comforted and detained

tained against the Queen's Majesty, requiring to have them delivered. Her Majesty being denied to have them restored, publish'd and proclaim'd open War against those Detainers of her Rebels, and appointed the Earl of *Suffex* her Lieutenant-General, with an Army to invade *Scotland*, and there to pursue those her Enemies, sparing the rest. He entered into the Land, made open War upon them, blew up their Houses with Powder, wasted their Countries, and drove the Rebels out of *Scotland*. The one Matter now that I am to disclose, is, That the Duke of *Norfolk* knowing all this, yet did adhere unto, comforted and relieved the said Rebels; he procured Money to be distributed to the Earl of *Westmoreland*, the Countess of *Northumberland*, and other of them: and this is manifest Treason. The other Matter is, That the Duke of *Norfolk* knowing all this to be true, adhered unto, comforted and relieved the said Lords of *Scotland*, the Queen's Enemies, Receivers and Detainers of her Rebels; and this is also Treason. And first for the aiding of the Rebels: After this Rebellion, and their Overthrow by the Queen's Power, they fled into *Scotland*, (a very bare Country) where they were driven to hard Shifts, so were they enforced to sue to the Pope for help; they wrote to him, the *Scotish* Queen wrote in their favour to the Pope's Nuncio, the Matter was pursued for them by one *D. Morton*: this *Morton* was he that was the Procurer of the Bull that was sent over against the Queen's Majesty; this *Morton* was he that reconciled the Earl of *Northumberland* to the *Romish* Church, by a Bull of Absolution: he went to the Pope on their Message; the Pope granted them Relief, and wrote Letters in the mean time to comfort them, which were directed thus; *Thomæ & Carolo Northumbriæ & Westmorlandiæ Comitibus, reliquisque Nobilibus Catholicis partibus Borealiū Regni Angliæ: To Thomas and Charles, Earls of Northumberland and Westmoreland and other of the Catholick Noblemen of the North Parts of the Realm of England*. Belike, so calling them noble in the fulfilling of *D. Story's* Promise, that by their rebellious Enterprize they were now of Worshipful become Honourable.

Here was read the Effect of the Pope's Letters to the Rebels.

The Letters hereof came to the Bishop of *Rosse*; the Money was assigned in *Flanders*; the Bishop of *Rosse* sent to the Duke of *Norfolk* for his Advice, and for his Help to convey the Money to them. The Bishop thought it best to have the Money sent by the West-Borderers, where the Lord *Harris* was, and with him *Leonard Davis*: the Duke, for their special Displeasures to *Leonard Davis*, was not willing that *Leonard Davis* should have part of it; but had more mind to have his Brother of *Westmoreland* relieved, and to that end he devised with *Bannister* for the sending of the Money. In the mean time, behold how that course was interrupted: The Queen's Majesty had a Treaty with the Queen of *Scots*, wherein one special Article was, That the Rebels should be delivered. This the *Scotish* Queen was loth and liked not to do; she asked the Duke of *Norfolk's* Counsel in it, he advised that in no wise they should be delivered, for that were too much against her Honour: nevertheless, for that he feared that the Article concerning the delivery of the Rebels might be some stay to such conclusion, as otherwise they might have liked of; he gave

advice that the Rebels should depart out of *Scotland*. *Rosse* wrote to them to that end, and therewith sent them the Pope's Letters, and so they all departed out of *Scotland* into *Flanders*, except only *Leonard Davis*, who remained with the Lord *Harris* and the Earl of *Northumberland*, who would also fain have been gone if he might; and so by this occasion, and by *Bannister's* means, was this sending of the Money into *Scotland* disappointed. Then was there another Device taken, to distribute it in *Flanders*; and because it should not all be suddenly wasted, it was agreed by the Bishop of *Rosse*, that it should be distributed monthly.

This Order was opened to the Duke by *Barker*, the Duke liked well of it, and willed it to be done accordingly. A Man was sent over for this purpose, and the Money distributed. The Countess of *Northumberland* wrote over to the Bishop of *Rosse* a Letter of Thanks. Hereupon report was made to the Duke, that it was done as he had appointed. Now the Duke will ask us, What proof we have hereof? we say, The Confessions of *Rosse* and *Barker*. Against this he taketh exception; his only answer is his bare denial, and his defacing of their Credit. He saith they are Traitors, and have confessed Treason against themselves, and not to be received for sufficient Witnesses against him. This hath been well answered already by my Lords the Justices, that by the Law they are sufficient Witnesses. You may not stand upon your Honour and difference of Degree, and thereby limit how far they are to be credited. But now let us examine their Credit, and their likelihood to tell Truth, and how meet in this Case they are to be believed. First, For the Bishop of *Rosse*, he is a wise Man, he is learned, he is a Bishop, he is an Ambassador, a great Friend to the Duke of *Norfolk*; so far in Credit with the *Scotish* Queen, that he hath been the principal Doer of all her Affairs; so the fittest Man for this Treason, the meetest Man to be used in it, since the *Scotish* Queen's Title is the ground of the Treason. Who then but such a Man was fit to be used? Who meeter to be heard in such a matter than he? A *Scot*, a wise Man, well acquainted with the matters, well able to deal in them, ever at hand, and every way the meetest Man. He was a *Scot*, say you; the more to blame the Duke of *Norfolk* to deal so with him, against the express Commandment of his Sovereign upon his Allegiance, and against his own Faith, Submission and Promise, and so himself unworthier Man to be believed than the *Scotish* Witness. Why should the Bishop of *Rosse* accuse him falsely? What should move him to it? He accuseth you, he also proveth it against you; he is the aptest Man to know it, the aptest of all other to repeat it. And why will you say he is so oft produc'd for every matter against you? Surely great Cause, great Difference between him and all other; he knew all; he dealt in all, and where the rest had every one but his Part to play, the Bishop of *Rosse* continually kept the Stage; he had a long Part, he answered all Men; when every Man brought forth their Tallies, he kept the Stocks of all; he speaketh of that he understandeth, he speaketh credibly, he carrieth Proof and Consent of other. Speaketh he of Malice against the Duke? That cannot be, the Duke never offended him; the Duke was ever his greatest Friend, and he the greatest Friend to the Duke, and the chief Advancer of the Marriage that the Duke so earnestly sought, as most beneficial; he hath in his Con-

Confession touched his own Mistress upon whom he depended, to whom he ought no Malice; he hath disclosed the Treacheries of the Pope, him he hath offended, he gets no more Benefices at his hand; he hath offended the King of *Spain* and the Duke of *Alva*, he is fallen out with all his Friends, he is fallen from all his commodious Hopes by his Confession. Besides that, How hath he told it? Not at the first as of Malice, and desirous to do the Duke a shrewd turn; but with leisure, after other former Confessions. He held off, and disclosed nothing, till his Face (tho' it were a Face of Brags) could no longer withstand apparent Truth disclosed by others; except he had been mad and a stark Fool, as he is very wise, he would not have thrust himself into all those Hardinesses, to tell an untruth to his own so great Loss and Hindrance. Would he, being wise, for Malice to the Duke of *Norfolk*, undo his own Mistress the *Scottish* Queen; and bring upon himself the hatred of the Duke of *Alva*, the *Spanish* King, and the Pope; and so lose all his Friends, and make them his Foes, and indanger himself, and undo himself, with confessing Treason against himself, for only Malice of the Duke of *Norfolk*? It cannot be true; I must needs believe him, because it is Treason that he speaketh of the Man's own Faculty: He is a credible Traitor. If he had told us a matter of Virtue, good Life, and true Religion, it had been a Vanity to hear the Bishop of *Rosse* speak; but speaking of Treason, he is the skilfullest Man, and meetest to be heard. As for *Hickford* and *Bannister*, they be both still in Credit, the Duke excepteth not against them, and yet they accuse him deeply. For comparison of their Values and Credit, the Duke is noble, and these are said not able to spend five Marks. What then? Indeed their Honour is less, but their Understanding is great, and their Credit sufficient. *Barker* is disliked, and counted by the Duke not worthy to be believed. It is disliked that he is still brought forth, he is as the base Instrument still play'd on. There is good cause why the Duke so continually used him: You must understand that things must be done by Means and Instruments: The Heads need the Service of inferior Members; the Heads do devise, the Hands and the Feet do put in execution. If the Duke of *Norfolk* should, for every Message and Matter to be treated with the Bishop of *Rosse*, *Rodolph*, and the *Spanish* Embassador, or other, have himself trotted thro' dirty *Smithfield*, and the Streets of *London*, unto *Thames-street*, and other Places, it must needs have been wondered at, and would not have been without notable Suspicion. But *Barker*, a sly Fellow, sufficient for Skill, exercised in the Matters, acquainted with the Practices, might well go dreaming to all Places without Suspicion. Sometimes upon a Robbery or a shrewd Turn done, the length of a Foot in the Snow, or in the Mire, hath betrayed the Doer; so the Foot may sometimes accuse the Head. *Barker* was one of the Duke's Secretaries, privy to his greatest Affairs, the Writer of his Ciphers, the common Carrier of ciphered and deciphered Letters, the common Conveyer and Sender of his Messages and Letters between him and the Queen of *Scots*: The Duke himself agreeth with them in confessing of sundry Circumstances of the Matters, which he calleth his Errors and inferior Faults; with these Men he dealt in them himself, gave them Credit, therefore it is no reason himself should take from them the Credit of their Confessions.

But he saith there are but two of them; the Fault is in the Duke of *Norfolk* there are no more, for there are more if they were here, and by the Duke's means they are absent: *Liggons*, *Gutbert*, and *Rodolph* could tell it also. The one of them, *Liggons*, he hath sent away, and findeth him in *France*. *Gutbert*, as the Duke himself hath confessed, the Duke hath caused to be carried away. *Rodolph* is, by the Duke himself, sent out of the Realm on his Message, and not return'd (it is no reason that their absence excuse him) for it is not reason that he should take advantage of his own Wrong, that hath made them be absent; so their absence must stand for great Testimony against him, and be judged to concur with them that are present, and have confessed.

Rodolph, the greatest Testimony of all, is in Person withdrawn; but his Letters speak lively. He hath testified by his Letters against the Duke, and of a matter that himself well knew, not constrained, not examined, but with the Terror and Course of the Proceeding of the Treason, advertising the Duke of the answer of his Message. You say he dealt for you in other private Matters, not in the Treason: If that were so, then the Pope had not given him charge to deal with the *Scottish* Queen and you; the *Scottish* Queen had not commended him to you; the Instructions had not been so penned; the Answer had not been so return'd. But saith the Duke, It is true, *Rodolph* talked with me indeed, he required my Letters to the Duke of *Alva*, for the *Scottish* Queen; he moved me about these matters; but I was angry with him, I would not write by him, I departed from him in anger, and thus in anger away he went. And whither went he? Even strait to the Duke of *Alva*, and from thence to the Pope, even to the same Places and Persons to whom he should have gone for the Duke, if the Duke had been without anger, best pleased and contented with his Journey. To what Intent, and of what Message went he thither? Even the same that the Duke said he was angry to be moved of, and refused to write in. What effect hath it? Gentle Audience, great Promises and Agreement to the Requests, as if he had travailed not for a Man angry with the matter, but most desirous. What Answer return'd he? Even the same that accordeth with the Instructions concerning the Treason, the very Plat and Ground of his Message. He reporteth Questions asked by the Duke of *Alva*, agreeing only with the matter of the Treason, and no private Case. Would he have written answer to him that sent him not? Would he have written as to please him with good News of a good Audience that sent him not? From whence departed he in anger? He writeth of the Course to be kept in Execution of the Treason, which he would not have done to him that was angry to hear of it. He braggeth of his 10000 *Walloons*, old beaten Soldiers. If the Duke of *Norfolk* had been a true Man, and angry with the matter, as he now saith, and done his Duty; tho' they had come, his *Walloons*, his old beaten Soldiers, might have been so new beaten of the old *English* Fashion, as they were never so swinged in their Lives.

This Point Mr. Attorney spake with such a Grace, such Chearfulness of Heart and Voice, as if he had been ready to be one at the doing of it; like a hearty true *Englishman*, a good Christian, a good Subject, a Man enough for his Religion, Prince and Country.

If the Duke says it was the *Scotish* Queen's Message only, and not his (for advancement of her wrongful Claim by force) he knowing this, Why fought he to marry her against the Queen's Majesty's Will, and to pursue it by force? If he say it was *Barker's* single Device, to send these Messages, to procure these Treasons, and work all these Mischiefs of his own head; to what end I pray you should *Barker* do it, but to advance the Marriage of the Duke his Master, and the *Scotish* Queen? And was this without the Duke's privity? Could *Barker* compel the Duke to take a Wife at his pleasure? Examine now all these Witnesses, and weigh their Credits together; consider them severally, their Credits are great; join them all together, they be much greater; but severally examin'd, and all according in one, they be greatest of all, and not possible to be false. Add to that the Duke's own Confessions of Circumstances concerning himself, and their uttering of matters of Treason against themselves; consider the difference of dangers in telling truly or falsely: for if they utter'd it, and it were true, then stood they but in danger of their bodily Life; if they should falsely accuse, yet that Accusation suffering against themselves for Treasons, they lost both Body and Soul, in falsely accusing others. The Duke was their Master, they his Servants, and his true Servants, and such as were to gain by his Prosperity; would they untruly accuse him, the stay of their Preferment? For tho' they be Traitors, and howsoever they be otherwise without Credit, yet against the Duke of *Norfolk* they are well to be believ'd.

Now on the other side, consider the Duke's own Credit, which he hath by his own doings impaired and made inferior to these of lower degree: You have heard of his Oath especially taken for the Commission at *York*, to deal truly and sincerely; he kept it not, he so dealt as if an Oath were of no great weight with him. His Oath of a Counsellor he hath broken, both in disclosing of Secrets, and in giving advice to a foreign Prince, and a Competitor of the Queen's Crown, against the Queen's Majesty his Sovereign Lady. Now may it not be that these Men of mean degree and value, against whom it is not alledg'd that they have been at any time perjured, may be produced and credited against him that hath so little esteem'd his Oath? I have heard also, that there was an Oath wilfully taken upon a Bible, in denying of things laid to his charge, and yet the matter found true, and by himself within a short space confessed: so that his Oath, his Hand, and his Word, bear no sway with him.

He submitted himself, he subscribed his Submission, and seal'd it; he added solemn Promises upon his Faith and Allegiance, not to proceed in the Marriage between the *Scotish* Queen and himself: but he kept not touch, he broke Promise also, and yet he saith his Hand, Mouth and Heart go together. If they go together in the right way, it is well; but when they go together in Untruth, it is evil and dangerous: therefore it is not for my Lord of *Norfolk* to stand so much upon the discrediting of the Witnesses, and advancing of his own Credit, which himself hath so much decayed. Now I will go to the Proof.

Duke. I shall hardly come, after so smooth a Tale as Mr. Attorney of the Wards can tell; yet one good Proof I have to my Comfort, that they be as please your Lordships to weigh them. If you

would not have dealt thus untruly with me, I would not have taken exception against them, tho' I chiefly challenge none but *Barker*, in whom you may see what Fear may do; besides that they have confessed themselves Traitors, and so Men of no Conscience or Credit. It is well known that *Barker's* Stomach is nothing; he hath been known well enough, Fear hath done much in him. The Bishop of *Rosse* is also a fearful Man. As touching *Barker* and the Bishop of *Rosse*, *Braeton* hath a Saying, That Witnesses must be Freemen and not Traitors, neither outlawed nor attainted.

Catlin. None of them be outlaw'd, attainted, or indicted.

Duke. I mean not that they were indicted, but they be in as ill Case, for they have confessed themselves Traitors. He saith also, they must be *Legales*, lawful Men, and so cannot Strangers be, as the Bishop of *Rosse* and *Rodolph*; it is these Strangers that charge me only, the other having dealt so disloyally, and confessed it against themselves, are not to be believ'd. As for *Barker*, I have not used him for my Secretary these thirteen years: he entered with the Bishop of *Rosse*, and dealt with him in these Matters against my Knowledge.

Catlin. *Braeton* indeed is an old Writer of our Law, and by *Braeton* he may be a Witness; a Stranger, a Bondman may be a Witness: Ask you all the Judges here. And the Judges affirmed that he may.

Duke. If a Stranger be to give Evidence whereby Lands should be recovered, you shall not recover upon that Evidence given by a Stranger.

Wilbram. This were a strange Device, that *Scots* might not be Witnesses; for so, if a Man would commit Treason, and make none privy but *Scots*, the Treason were unpunishable; and so were a kind of Men found out, with whom a Man might freely conspire Treason.

Duke. You say my Indictment is only upon the Statute of 25 *Edward* III. that Statute standeth upon three points, compassing the Death of the Prince's Person, levying of War against the Prince, and aiding of the Prince's Enemies; and all these must be prov'd Overt-fact. If by any way, by any Overt-fact, you can prove that I have directly touch'd the Prince's Person, or done any of the said things that the Statute extendeth to, I will yield myself guilty. If any thing be doubtful, the Statute referreth it to the Judgment of the Parliament.

Catlin. Usage is the best Expounder of the Law, that is, the common Use how the Statute hath been taken and expounded; and the same Statute is but the Declaration of the common Law.

Duke. The Preamble of the Statute is to bring the Laws of Treason to a certainty, that Men may certainly know what is Treason.

Attorney-Gen. You complained of your close keeping, that you had no Books to provide for your Answer; it seemeth you have had Books and Counsel, you alledge Books, Statutes, and *Braeton*; I am sure the study of such Books is not your Profession.

Duke. I have been in Trouble these two Years, think you that in all this time I have not had cause to look for my self?

Attorney-Gen. But if you stand still upon proof, whether you have done any thing to the Destruction of the Prince's Person, if the Lords, upon the Evidence already produced, do think the Matters true in Fact that are already alledged against you, surely the same must needs be construed a compassing of the Queen's Death; for the Law

of Treason hath ever been largely construed for the Prince's Safety. Think you that practising to levy War within the Realm is not Treason? Yes indeed is it; and a compassing of the Prince's Death. Sir *William Stanley's* Case was this: He did but send *Clifford* over Sea, to hearken and send him word what *Perkin Warbeck* was; that if he thought *Perkin* was such a Man as he was said to be, he would take his part. This was *Stanley's* Case, and this was judged Treason, and a compassing of the King's Death.

Here was read *Barker's* Confession the 6th of November.

Duke. I never dealt with that Money, nor heard of it; I dealt not at that time with *Barker*, nor heard any thing of the Rebels, since they went into *Flanders*.

Then was read the Bishop of *Rosse's* Confession of the same Matter, 6 November, ad 5.

And again *Rosse*, 6 November, Fo.

Also *Rosse* 29, of 1700 Crowns sent by *Moreton's* means, and what *Moreton* was.

Wilbrabam. You hear how the Money was procured; how it was distributed by the Duke's Order, and Thanks written by the Countess of *Northumburland* for the receipt of it, which was also declared to the Duke. You shall hear, that after the Practice of the Marriage, it was a general Rule between the *Scotish* Queen and the Duke, That the Bishop of *Rosse* should never propone to the Queen's Majesty's Council, nor deal in any great Matter, but by the advice and directions of the Duke of *Norfolk*.

Here was read, for the proof thereof, the Bishop of *Rosse*.

Wilbrabam. This is a plain Course.

Duke. What doth this make against me?

Wilbrabam. That he follow'd his Commission, that he kept his manner of Conference continually, and that according to that use, the Money was distributed by your Directions.

Duke. He dealt not with me in a great time, and I can tell when he broke off and dealt no more with me; I was never privy to the distribution of the Money, nor I never spake with *Barker* about it; I was in the Tower at that time.

Wilbrabam. That was when you were not in the Tower; they lurked in *Flanders* a while in great necessity, without Apparel, and suddenly, with this Money, they were waxed gay; and these Men have confessed that it is distributed by your Order and Direction.

Duke. None accuse me but three, one absent, a Stranger, and a Traitor.

Wilbrabam. And if every one that is privy to Treason must be refused for Witnesses, then should no Treason be proved; for none can tell it but they that be privy, and all such are guilty.

Now to the second point, That you adhered to, and aided the *Scotish* Lords, the Queen's Majesty's Enemies, and Maintainers of her Rebels. The Rebels, after their flying into *Scotland*, were there received by the Duke of *Chastelleroy*, the Lord *Harris*, the Lord *Hume*, the Lord of *Bucclough* and others; and being there, they entered again of new into the Realm, and made new Roads, and burned and wasted *England* with Fire and Sword. These *Scots* that thus assisted the Rebels, the Nobles of *Scotland* that remain'd in Amity with

the Queen's Majesty, went about to suppress. The Queen's Majesty proclaim'd open War against them; she appointed my Lord of *Suffex* her Lieutenant, with a strong Army to invade them, and to pursue both the Rebels and the said *Scots* that were her Enemies. This my Lord of *Suffex* pursued, made open War upon them, burned their Towns, Houses, Corn and Goods, blew up their Castles with Powder, and kept good Peace with the rest: So were they publish'd the Queen's Enemies, both by Proclamation, which is here ready to be shewed, and by open War itself, the best Proclamation of all. The Queen's Power there tarried a great while, some came home, some remain'd still in *Hume-Castle*, and other Places. These thus known the Queen's Enemies, and so publish'd, the *Scots* that were the Queen's Friends did still pursue so far, that the said *Scotish* Queen hearing thereof, complain'd to the Duke of *Norfolk*, viz. How she had no Aid from *France*, and if none came at all, her Friends in *Scotland* must of force be constrained to yield: She prayed the Duke of *Norfolk's* Advice. The Duke made answer, and *Hickford* wrote it to the *Scotish* Queen, That she should procure the *French* Ambassador's Letters to them in *Scotland*, to put them in some good hope, that they might hold out a while till Aid come. The *Scotish* Queen accordingly wrote to the *French* Ambassador Monsieur de la Mot; he by and by wrote six Letters to the Lord *Harris* and other Lords of *Scotland*, with fair and comfortable Promises. The Pacquet of these Letters were sent to the Duke, he had it, he caused it to be sent with a Letter to *Bannister*, to convey it to *Lowther* upon the West Borders of *Scotland*, and that *Lowther* should convey it over to the Lord *Harris*. *Hickford*, the Duke's Secretary, delivered this *French* Pacquet, and the other Letter to *Henry* the Duke's Footman, who carry'd it to *Bannister*, and *Bannister* sent it to *Lowther*, by *Colborn* his Servant: and to dissemble the Cause of his Servant's going, and to know some certainty, whether it came to *Lowther's* hand or no, *Hill* feigned a privy Token between him and *Lowther*, about the gathering of the Rent of the Lord *Dacre's* Lands. *Lowther* sent over the Pacquet, and returned answer to *Bannister*, that he had sent it to the Lord *Harris*, and willed *Colborn* to tell him, which was their privy Token, that tho' it were troublesome, yet he would gather up the Rents for him.

Here was read *Barker's* Confession, 14 September, That in *July* last he receiv'd the Pacquet, &c.

All *Hickford's* Confession the same day, with a great Protestation why he confessed not at the first, but tarried till *Barker* had disclosed; because he would not be counted a Betrayer of his Master.

Wilbrabam. You hear how *Barker* bewrayeth it; you hear also how *Hickford* himself confesseth it: And in what manner, I pray you, do they disclose it? They make no haste to accuse the Duke, but all by leisure; and *Hickford* maketh it a matter of great Conscience, to utter it against his Master: And here is a Lesson meet to be learned of all Servants. Many supposed it a Treason and foul Offence to utter their Master's Treasons; they must otherwise think it is a dangerous Opinion.

Duke. I challenge not this Man.

Then was read *Hickford's* Examination, 11 October.

Also *Bannister*, 17 September 1.

The same *Bannister*, 29 November pa.

Also *Bannister*, 28 and 29 Sept. ante 5, and 6.

Wilbrabam. Thus it appeareth, that those the *Scotish* Queen's Friends in *Scotland*, for whom she forrowed and feared their yielding, were the Queen's Majesty's Enemies; and how to those the Duke adhered, those he comforted, for those he procured the comfortable Letters to be sent, as you have heard.

Duke. I confesse it, that I caused the Letters to be sent, but that I procured the Letters to be written, I remember not; but therein I trust *Bannister's* Memory.

Wilbrabam. Now for sending Money to relieve the Queen's Majesty's Enemies, and touching the 6000*l.* the *French* Embassador had 14 hundred Crowns ready to relieve them, which he sent to the *Scotish* Queen, to know how it should be bestowed. She would have had the Duke to make it up three thousand Crowns; she sent one thousand more her self, and referred the Direction of all to the Duke himself. The Duke having the chief Charge of all, willed two thousand Crowns to be conveyed to the Queen's Majesty's Enemies in *Scotland*. The Bishop of *Rosse* had devised, that it should be sent sewed in *Panton's* Doublet. The Duke was made privy to it on the *Sunday* after *Bartholomew-Day*: because *Panton* was a *Scot*, and like to be searched, this Device was misliked, so was the Money delivered to *Brown* of *Shrewsbury*; and so he rehearsed the manner of the delivery to *Brown*, and the Letters in Cipher, as it was afore rehearsed by Mr. Attorney-General.

Duke. I received the Money at *Thambour's* hands; I was not by at the writing of the Letter in Cipher.

Wilbrabam. I said not so.

Then was read the Letter to *Bannister*: You shall receive a Bag by this Bearer, &c.

Duke. I do not deny the conveying of the Money; but it never came to the Queen's Enemies hands.

Wilbrabam. It was out of our Possession; *Panton* was sent before to receive the Money.

Duke. Not of my knowledge. And as for *Grange* and *Ledington*, I have not heard they were the Queen's Enemies.

Wilbrabam. That is no matter; for the Indictment is generally of the Queen's Enemies, and you know the Money went to the Lord *Harris*.

Duke. Lord *Harris* was not appointed to have any part of it.

Wilbrabam. This is no matter, it was a comfort to him, being the Queen's Enemy, to be the Factor, and to have the Countenance and Distribution of it at his pleasure: Beside that, you may be sure he would not let all pass without some share to himself.

Duke. May a Subject be the Queen's Majesty's Enemy, while the Prince is her Friend, and in Amity with her?

Callin. In some cases it may be so: As in *France*, if the Dukedom of *Britany* should rebel against the *French* King, and should (during the Amity between the *French* and Queen's Majesty) invade *England*, those *Britons* were the *French* King's Subjects, and the Queen's Enemies, though the *French* King remaineth in Amity; and so in your Case.

Duke. Where was the Proclamation made?

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Wilbrabam. The Proclamation was made in *England*, and here it is to be shewed; but the War itself is sufficient Proclamation. The Queen's Army was sent against him, and the Queen is not otherwise bound to proclaim.

Duke. I trust my Lords the Peers will have Consideration of me, who they be that accuse me, the Bishop of *Rosse* and Strangers; and the rest over-reach'd in Treason themselves.

The Lord Steward ask'd if they had aught else to say.

The Duke said, I trust to God and my Truth.

Then the Prisoner was withdrawn.

Then the Serjeant made an *O Yes*, saying, *My Lord Grace the Queen's Commissioner, High-Steward of England, chargeth all Men to keep silence upon peril of Imprisonment.*

Then the Lord Steward spake to the Lords, and willed them to go together.

Note, That the Money was taken up by the way.

Then the Lords withdrew themselves into a Place prepar'd in the *Chancery-Court* for Consultation, and the Prisoner was withdrawn.

The Lords continued in Consultation an hour and a quarter; the Lord Steward still remain'd in his Seat.

After an hour and a quarter, which was immediately after eight of the Clock at night, the Lords came again upon the Scaffold, and took their Places, as they were afore; and then the Lord Steward demanded of every of them severally, sitting in their Places, beginning at the youngest Baron, in this manner:

My Lord *De la Ware*, What say you, Is the Prisoner guilty of these Treasons or not? And they all severally answer'd in Order and Form following:

<i>L. La Ware,</i>	<i>Burleigh,</i>	} Guilty.
<i>Buckhurst,</i>	<i>Howard,</i>	
<i>St. John of Bletshoe</i>	<i>Hereford,</i>	
<i>North,</i>	<i>Leicester,</i>	
<i>Rich,</i>	<i>Heriford,</i>	
<i>St. John,</i>	<i>Pembroke,</i>	
<i>Mordant,</i>	<i>Bedford,</i>	
<i>Burgbe,</i>	<i>Warwick,</i>	
<i>Wentworth,</i>	<i>Huntington,</i>	
<i>Sandes,</i>	<i>Suffex,</i>	
<i>Mountjoy,</i>	<i>Worcester,</i>	
<i>Grey of Wilton,</i>	<i>Kent.</i>	

Then the Lieutenant was, by the Serjeant, commanded to bring again the Prisoner to the Bar, which he did.

Then the Lord Steward said thus: *Thomas Duke of Norfolk*, thou hast been heretofore indicted of High-Treason, and hast been arraign'd upon the same, and hast pleaded Not Guilty, and hast put thy self upon thy Peers; the Lords, thy Peers, have found thee Guilty: what hast thou to say, why I may not proceed to Judgment? The Duke answer'd, the Lord's Will be done, God be Judge between me and my false Accusers. Then the Axe was turn'd the Edge towards him.

Then stood up Mr. Serjeant *Barham*, and said, It appeareth that *Thomas Duke of Norfolk* hath heretofore been indicted of High-Treason, and now hath been arraign'd upon the same, and hath pleaded Not Guilty, and hath put himself upon his Peers; now the Lords his Peers, upon Consideration of the Evidence shew'd forth to prove

the Indictment, have found him guilty. I am most humbly to pray of your Grace Judgment against him for the Queen's Majesty, according to the Verdict.

Then said the Lord Steward; *Thomas Duke of Norfolk*, whereas thou hast heretofore been indicted of High-Treason, and hast been arraign'd upon the same, and hast pleaded not Guilty, and hast put thy self upon thy Peers, and the Lords thy Peers have found thee Guilty: Wherefore thou shalt be had from hence to the *Tower of London*, from thence thou shalt be drawn thro' the midst of the Streets of *London* to *Tyburn*, the Place of Execution; there thou shalt be hang'd, and being alive thou shalt be cut down quick, thy Bowels shall be taken forth of thy Body, and burnt before thy Face, thy Head shall be smitten off, thy Body shall be divided into four Parts or Quarters; thy Head and thy Quarters to be set up where it shall please the Queen's Majesty to appoint; and the Lord have mercy upon thee.

Then the Duke said, This is the Judgment of a Traitor, and I shall die as true a Man to the Queen, as any liveth: knocking himself hard upon the Breast, he said, I will not desire any of you all to make any petition for my Life; I will not desire to live, I am at a point. And, my Lords, seeing you have put me out of your Company, I trust shortly to be in better Company: Only I beseech you, my Lords, to behumble Suitors to the Queen's Majesty for my poor Orphan Children, that it will please her Majesty to be good to my poor Orphan Children, and to take Order for the Payment of my Debts, and some Consideration of my poor Servants; for I am at a point. God doth know how true a Heart I bear to her Majesty, and how true a Heart to my Country, whatsoever this Day hath been falsely objected against me. Farewell, my Lords.

Then the Lieutenant was commanded to avoid his Prisoner; which thing was done.

Then the Serjeant made an *O Yes*, and proclaimed thus: *My Lord's Grace, the Queen's Commissioner, High Steward of England, chargeth all Persons to depart in God's Peace and the Queen's, and hath dissolv'd his Commission.*

And therewith the Lord Steward standing up afore his Chair, broke his Rod in the midst, and the People cry'd,

God save the Queen. Amen.

ON the 2d of *June* 1572, about eight in the Morning, the Duke was brought to a Scaffold erected on *Tower-hill*, attended by *Alexander Nowel*, Dean of *St. Paul's*, who having desir'd the People to keep silence, the Duke said:

It is not rare, good People, to see a Man come to die; although, Thanks be to God, since the beginning of the Queen's Majesty's Reign in this Place hath not been any; such hath been, and is the Mercifulness of her Majesty, whom God long preserve. But since it is my Fortune to be the first, I pray God I may be the last. You know I have been long looked for in this present Case of mine, divers times in this Place; but by her Majesty's Clemency prolonged hitherto. It is not common to see a Man of my Vocation to be a Speaker; nevertheless I will be brief, and gladly shew you the Estate of those Offences which my Conscience doth burden me for. I have been by my Peers

found worthy of Death, whereof I do acquit them; for I come not hither to justify myself, neither yet to charge my Peers with Injustice, but rather submit myself to this which God hath prepared for me. And thus considering the Weakness of my Flesh and Blood, that at such a time a Man's Senses will partly fail, I do mind to divide my Speeches into three Parts, desiring you to take it full and whole, and not to tear it in pieces.

And first, in dealing in Matters temporal towards the Queen of *Scots*, I dealt not as a good Subject, for that I made not the Queen's Majesty privy thereunto, which indeed I confess I ought to have done; for this Offence I was committed to this House [pointing to the *Tower*] and, upon my humble Submission, deliver'd; then making Promise to the Queen's Majesty (whom I pray God long to prosper) never to deal in those Matters again: But contrary to my Submission and Promise made to the Queen's Majesty, abusing her Clemency towards me; which hath and doth grieve me more than any one thing hath done; I dealt in this Matter again, perfectly for saving my Life, and other Causes which I could alledge.

[*Here Mr. Sheriff Branch, standing by the Duke, desir'd him very courteously to make an End as short as might be, for the time did spend.*]

Then the Duke beginning again, said, it hath been bruited, that I took my Oath, and receiv'd the Sacrament, that I should never deal in those Matters again; which is untrue; and yet the Oath too much.

[*Now Mr. Christopher, one of the Officers, bearing these Words, desir'd the Duke to be short; We are come hither, said he, to see you put to Execution, and we must not delay while these Speeches pass from you, for in this we hazard our Lives.*]

Then the Duke said, I do not excuse myself, but I come to discharge my Conscience, and to acquit my Peers, and not to complain of any Injustice, for I have deserv'd this, and more a great deal, in that I have abused the Queen's Majesty's Mercy towards me; whom once again, with Hands lifted up, I pray God long to preserve and reign over you, and that my Death may be an End of all Troubles. And to augment my Fault, it is said I had Familiarity with evil Dealers: Indeed I will confess and tell you, that I never saw, nor never had Conference, but once with one *Rodolph*, and yet never against the Queen's Majesty, God is my Judge; altho' many leud Offers and Motions were made to me: for it is well known I had to do with him, by reason I was bound to him by Recognizance for a great Sum of Money. And as for the two Letters that came from the Pope, I confess I did see them, the one cipher'd, the other decipher'd; I never consented to them, neither was I consenting to the late Rebellion in the North, notwithstanding I come not hither as unguilty.

To the second Part, I know I have not only been thought to be a Papist, but a Favourer of Papists, and a Maintainer of them. God is my Judge, before whom I stand (lifting up his Eyes) I thank God I was never a Papist since I knew what Religion meant; but I did always detest Papistry, and all the vain Toys thereof, embracing ever, from the Bottom of my Heart, the true Religion of Jesus Christ, trusting, by the Assurance of Faith in his Blood, that he is my only Redeemer and Saviour: Indeed I must confess that I had Servants and

and Friends that were Papists; but if thereby I have offended God's Church, or any Protestant, I desire God and them to forgive me.

Well now to the third Point, wherein I am to shew how much I am bound to the Queen's Majesty for her Mercifulness towards me, in that her Majesty hath promised to be good and gracious to my poor Children. I remember good Father *Latimer* making a Sermon in a more honourable Place than this is, out of the Pulpit (neither do I compare myself to him) he said, *That God did oftentimes take away a good and gracious Prince, for the Sins and Disobedience of his Subjects*; which God grant not to be in these Days, but that it will please God to continue and increase her Majesty's Years; yea, until the World's End, if it be his blessed Will and Pleasure. You have a most gracious Queen, as I must needs confess, and also Godly Religion; therefore look that your Livings and Conversations be answerable to the Religion of Christ that proves you; that God may prosper the Prince, overthrow the Pope, and maintain your Wealth and Quietness. Let not my Person, good People, make my Speech worse; they that have Factions (I speak not particularly, but generally) let them beware they be given over betimes; seek not to brieve God's Doings, lest God prevent yours.

And then the Sheriff hastening him, he turned to the People, and embracing Sir *Henry Lee*, said, I have, and always have had as true a Heart to my Prince as ever any Subject hath had. And so Sir *Henry Lee* staying him by the left Arm, he kneel'd down and ask'd the Queen's Majesty Forgiveness; and rising again, he embrac'd Mr. Dean of *Paul's* with a chearful Countenance; and afterwards for the most part shaking those that were on the Scaffold by the Hands, and desiring them to pray for him; amongst the rest, the Executioner

did on his Knees desire Forgiveness of his Death, who did very courteously forgive him, and put into the Hand of the Executioner four Sovereigns of Gold, and eighteen Shillings and six Pence of Silver. This done, the Duke kneeling down, and the Dean of *Paul's* with him, he made his Prayers to God, and read the 51st *Psalms*, saying on to the last Verse save one, viz. *Build up the Walls of Jerusalem*; he paused and said, *The Walls of England, good Lord*. That *Psalms* finish'd, he began to read another; and at the seventh Verse of the *Psalms*, he paused and said, I had almost forgotten, but not too late; I ask all the World Forgiveness, and I forgive all the World. The *Psalms* finished, and other Prayers; he said, *In manus tuas Domine commendo Spiritum meum*, Lord into thy Hands I commend my Spirit. Then he rose up and pulled off his Velvet Gown, his black Sattin Doublet, and his Velvet Night-cap, and gave them to the Executioner; and being in a white Fustian Waistcoat, he said to Mr. Dean of *Paul's*, this is the *white Sattin Doublet* I made to die in, which the Preacher did speak of; and so kneeling at the Block, he laid down himself, and rose again, and laid the Straw and other things in such sort, as he might in a more convenient manner yield himself for the speedier Execution. This done, his Eyes and Hands lifted up, Mr. Dean desired the Peoples silence, and said, Now all together, with one Voice, pray for him, saying, *Lord Jesus receive thy Soul*. The Duke yielding himself to the Block, refusing to have any Handkerchief before his Eyes, his Head was at one Chop cut off, and shewed to all the People; and afterwards his Corps was put into a Coffin appertaining to *Barkin Church*, with the Head also, and the Burial-Cloth laid over him, and so was carried by four of the Lieutenant's Men, and was buried in the Chapel of the Tower by the Dean of *St. Paul's*.



VIII. *The Trial of Mr. ROBERT HICKFORD, at the Queen's-Bench, for High-Treason, 9 February, 1571. Hil. 14 Eliz.*

AFTER the reading of the Indictment, being ask'd by the Clerk of the Crown, If he were Guilty or Not Guilty? He answer'd to this effect; being admonish'd to speak higher, whereunto he excused himself by the Lowness of his Voice.

Hickford. I am here indicted of divers Points of High-Treason, part whereof I deny, for that I was never privy to the same: My Fact, such as it is, I am ready to confess, and declare as I have already confess'd it. I am not learned in the Law, I know not in what Form to answer unto it. This only I require to be heard to declare the Truth, so far as the Matter toucheth me: I here protest before your Honours, and in the Presence of God, that I bring a Conscience untouch'd with any intent of hurt, ever conceiv'd by me against the Queen's Majesty's Person or my Country; I never meant any such thing in my Heart:

I know the Law hath not Intent to the Conscience, or Intent of Men; but is to judge only of the Mind, according to the appearing of outward Facts; so the Law cannot accept my Intent for my Purgation. Therefore I shall declare the Truth of my Doing, and upon that further open unto you at large my Dealing in the Matters contain'd in the Indictment. First, For the Matter of moving of Sedition, I did never know that any such thing was meant by my Lord, or any other; and whatsoever was by him, or any other intended, I was not privy unto it. I do confess indeed, that the Articles mention'd in the Indictment were sent to my Lord, my late Master, which by his Commandment I decipher'd, for they were brought in cipher. Then my Lord read them, and folded them up, and put them in the Pocket of his Hose, and said, The Bishop of *Rosse* will never be quiet, and then he went to Supper; and from

from that time I never saw that Writing till it was shew'd me in the *Tower*. What Answer my Lord made to them, or whether he answer'd them or no, I know not.

C. J. *Catlin*. *Hickford*, you seem to be a Man of Knowledge and Learning, you have been indicted, and are now arraign'd according to Order of Law; you must follow Order, you must answer to the Indictment, confess or deny it, you shall be heard after to say your Mind. You must plead unto it Guilty or not Guilty.

Hickford. I do confess the Law hath not respect to Man's Intent, but judgeth according to his Fact. I confess I saw these Articles and decipher'd them, I shew'd them to my Lord; I revok'd them not, as in Duty I ought to have done, and therefore I think my self Guilty.

Catlin. The Indictment containeth divers Clauses of Treason, therefore answer, if you be guilty, to any special Matters contain'd in the Indictment, or that you will confess yourself Guilty of the whole.

Hickford. I may not confess of my self that whereof my Conscience doth not accuse me, some Parts I am not privy to; the first Point, concerning stirring of Sedition, I do not know that ever any such thing was meant by my Lord. What Intention he had, God and his own Conscience knoweth it. As touching the Matter of *Rodolph's* going over to the King of *Spain*, to the Pope, and the Duke of *Alva*, and the Instructions of that Voyage contain'd in the thing, that by my Lord's Commandment I decipher'd: I answer, as I have before said, that I never knew of any Proceeding, nor dealt therein afterwards; and my Lord, when he read it decipher'd, he answer'd as I said before, The Bishop of *Rosse* will never be quiet. I thought he had burnt that Paper, as a thing that he lik'd not; but what he did with it, or in the Matter afterward, I cannot tell.

Catlin. You must answer more roundly and directly to the Matter; for these Circumstances and Points, you shall be heard afterward. In the mean time answer plainly, if you be Guilty or not Guilty.

Southcote. Mr. *Southcote* spake to the same effect, and told him, That if he pleaded Not Guilty, these his Declarations should be heard at large upon the Evidence.

Hickford. To part of the Indictment I confess my self Guilty, which concerneth the deciphering of the Letters by my Lord's Procurement and Commandment; after which time I never dealt in it.

Southcote. You were best to plead Not Guilty to the whole Indictment; and for such Matters and Parts of the Indictment as you can clear your self, the Jury may find you Not Guilty, and find you Guilty for the rest.

The Lord Chief Justice and Mr. Attorney advised to the same effect.

Hickford. I am Guilty. I know under how merciful a Queen I live; I submit myself wholly to her Majesty's Mercy. I will not stand long upon that, whereof mine own Conscience condemneth me.

Catlin. Confess you Guilty to the whole Indictment?

Hickford, Yea.

* Mr. Gilbert Gerard.

* Attorney. Are you Guilty of adhering to and comforting the Queen's Enemies, and the conveying of the

French Packet and Money that was sent to relieve them?

Hickford. I confess my self Guilty.

Serj. Then, after some pause, Mr. Serjeant *Barham* spake to this effect: Forasmuch as *Robert Hickford* hath been indicted of High-Treason, and, among other things, that he hath adher'd to and comforted the Queen's Enemies, and the same Indictment hath been read unto him, and he hath confess'd the Treasons; I am to pray your Lordships on the Queen's Majesty's behalf, that his Confession may be entered, and Judgment given for the Queen against him, according to the Law.

Hickford. May I now declare to what Points I am not Guilty?

Attorney. There are two Points in the Indictment that concern your self; the Dealing in the Matter about *Rodolph's* Voyage, and the Instruction for the same; and the adhering to and comforting of the Queen's Enemies: Are you not Guilty of these?

Hickford. I am Guilty.

Catlin. If you will yet wave and forsake your Confession, we are content to admit you to do so, and you may yet plead Not Guilty, and you shall have your Trial.

Hickford. No, I will submit me wholly to her Majesty's Mercy: I know under how merciful a Prince I live, tho' my Deserts be far unworthy, by my Master's Means and Procurement. I know I bring, as I said, a Conscience untouch'd with any Intent or Meaning of Hurt to her Majesty's Person, or to my Country. And this I say before God, and in the Presence and Witness of you all; howbeit the Law accepteth not, nor judgeth by secret Intents, for so might every Man clear himself.

Catlin. *Hickford*, thou hast heard the Indictment read, where by the Oaths of a Jury thou art found and presented guilty of divers High-Treasons: Thou hast been arraign'd thereof, and confess'd thy self guilty, and submitted thy self to her Majesty's Mercy. The Queen's Majesty's Serjeant hath, on her behalf, requir'd Confession to be entered, and Judgment to be given against thee, according to the Order of the Laws; so nothing resteth now but Judgment to be given against thee, and that thou hear thy Judgment. A few words for good Admonition shall serve: Thou art a Gentleman, wife, and well-learned, I would to God there had been in thee as much Loyalty and Truth, as there is Learning, and other good Qualities and Gifts of God, then hadst thou not fallen into this great Fault and Misery. But there have been evil Enticers, evil School-masters, evil Seedsmen, as one call'd them here last day; they have brought thee from Truth and good Estate, to Untruth, Treason, and Wretchedness; where before thou and others were of good Name and Fame, they have brought you to Infamy; of loyal, good, and true Subjects, they brought you to the Name and State of disloyal Traitors: A great Blot to be a Traitor, and the greatest Infamy that can be. It is the chiefest Point of the Duty of every natural and reasonable Man, which by the Gift of Reason differeth from a Beast, to know his Prince and Head, to be true to his Head and Prince. All the Members are bound to obey the Head; every Man is bound to repair Life, to lay out and expend Goods, Lands, and Possessions, to forsake Father Mother, Kindred, Wife, and Children, in respect of preserving the Prince; for in defending the Prince,

Prince, they preserve Father, Mother, Kindred, Wife, Children, and all. It was well and wisely spoken here the last day, by one that stood at the Bar, that was learned and as wise as you are, upon his confessing of himself guilty of Treason against his Prince; I would he had had as much Truth and Loyalty, as he had of Learning and Understanding: in few words, he comprehended a great heap of Matter concerning the Duty of the Subject to the Prince. All the Duties, said he, to Father, Mother, Friends, Kindred, Children, yea to a Man's Wife that is his own Flesh, are all inferior to the Duty that a Subject oweth to his Prince; for this Duty comprehendeth them all. In respect of Duty to the Prince, and preserving the Prince, neither Wife, Parent, nor other are to be regarded, they must all stand behind. If in any Case, any respect shall allure a Man from Loyalty and Truth to his Prince, they must be forsaken, they must come behind; it must be said, *Vade post me Satana*. We must first look unto God the high Prince of all Princes, and then to the Queen's Majesty the second Prince, and God's Deputy, and our Sovereign Prince on Earth. In these few words he comprehended much Matter, he satisfy'd the Hearers for their Duty to the Queen's Majesty. You are wise and learned as he was, and for knowledge of Duty and Understanding as much bound to God as he; but the evil Seedsmen, the evil Inciters and Seducers have wrought evil Effect in you both: the great good Seedman hath sow'd in you good Gifts, Learning, Knowledge, and good Quality, to serve him, your Prince and your Country withal, as it is said in the Gospel, *Bonus Seminator seminavit semen bonum*; but *supervenit Inimicus & seminavit zizania*: The good Seedman sow'd good Seed; but there came the Enemy, the evil Seedman, and he sow'd Darnel, Cockle, and noisome Weeds. Such wicked Seedsmen have been in *England*; if they had sown the right Seed for their own use, the Seed of Hemp, and felt of it, they had receiv'd according to their Deserving. God hath sown in you good Gifts and Qualities, meet to have serv'd any Prince in *Christendom*; but *supervenit Inimicus*, the Devil and his Ministers, wicked Seedsmen, sow'd in you Darnel and Cockle, Treason and Disloyalty; they have made you forget your Duty to your natural Prince and Country. If these had been handled as they have deserv'd, they should long ago have had of their own due Seed, Hemp bestow'd upon them, meet Seed for such Seedsmen; such mischievous Seedsmen they be, that corrupt Men, otherwise well indued, that sow Treason so abundantly in this Realm. O strange matter! that such Treasons should be, and so ripe in this Realm; a common Slander to this Realm of *England*, the Treasons of *England* are every where talk'd of among strange Nations: For proof of it they refer us to our Histories of *H. 2. E. 2. Ric. 2. E. 5.* and so prove the oft Practices in this Realm to murder and depose our Princes, to the great Infamy and Slander of our Country. The very regard of our Country's Fame, that this great Slander of Treason should not by your Fault have been renew'd and increas'd against us, if nothing else would, it should have staid you from so foul dealing in Treason. But is this sowing of Treason lawful for any? May Embassadors be such Seedsmen? Be these the Parts of Embassadors? They have their Articles in Law, by which they are bound, let them do as Law will let them.

If they will transgress these, and fall to Treason, and procure the Danger of Princes, let them feel as Law will. I can shew you a Precedent and History for it within memory, about thirty-seven or thirty-eight Years ago, about the 25th year of King *Henry VIII.* it was done by the Duke of *Milan*. The *French* King, that then was *Francis*, Grandfather to the *French* King that now is, sent one Monsieur *de Merveilles* to the Duke of *Milan* as his Embassador: This Monsieur *de Merveilles*, the *French* King's Embassador, conspir'd Treason against the State and the Duke of *Milan*; the Duke understood it, he caus'd him to be arraign'd after the Order of their Law, and being found guilty, he beheaded him: and this *Jure Gentium* was lawfully done. May Messengers conspire Treason against Princes to whom they be sent? Treason to Princes is not their Message, it is no lawful Cause of their sending; if of their own heads they presume it, they must by Law be touch'd and taught to keep them within their Duties. As for them that seek Fame by Treason, and by procuring the Destruction of Princes, where shall sound that Fame? Shall the golden Trump of Fame and good Report, that *Chaucer* speaketh of? No; but the black Trump of Shame shall blow out their Infamy for ever. Again, these that follow such heinous Treasons, that bring forth the Fruit of such Seeds as such wicked Seedsmen have sown, are in foul fault, and justly to be condemn'd, and worthy extremely to feel it. For that you are in Misery, Men may have Pity and Compassion of your Misery, and so forbear to grieve you with due Rehearal; else Men might aggravate your Offence, with setting out the Particulars of it at length, and as they should have fallen out, if you had stood in Trial: But you have confess'd it, and yielded yourself guilty, and submitted yourself to the Queen's Majesty's Mercy. Therefore I will leave to aggravate your Faults, and will proceed, as the Order of Law requireth, to Judgment. I pray God to give you Grace to make a good end. I need not give you long Exhortation, I am no Doctor of Divinity; you are learned your self, your Knowledge is great, I would your Loyalty and Truth had been as great. But because we are to do with Law, we must follow the Order of Law; one must speak for all, and so I, for all the rest, shall proceed to Judgment.

Then my Lord Chief Justice pronounced the Judgment usual in Treason, concluding it in these words; *God be merciful unto you, and give you Grace to make a good End.*

Then *Hickford* answer'd to this effect: I humbly thank your Lordship for your good Admonition; I know and confess, that I ought unto the Queen's Majesty a much greater and higher Duty than to my Master. And as it is said of your Lordships to have been wisely spoken, so was it truly said, that the Duty of all Subjects to the Prince, is a much greater Duty than a Man oweth to his Master, or to any other; yea, or to those that bear him into the World. I confess I have neglected that Duty to my Prince, howbeit I did it by my Lord, my late Master's Procurement and Commandment, and for good Intent, as my Master bare me in hand and persuaded me, whereof I pray your Lordships I may declare the Truth. When first my Lord made choice of me to wait on him in the *Tower*, as I would to God he had rather made choice of any other, within
short

short time he receiv'd a Letter from the *Scotish* Queen in Cipher. He made me privy to it, and will'd me to acquaint my self with that Cipher, for the deciphering of the like hereafter. At that first time I said little unto it: Within three Weeks after there came another Letter to him from the *Scotish* Queen, and then I began to mislike the Matter. Then my Lord walking on the Leads, (having so much liberty granted him) Sir *Henry Nevil* and Mr. *Lieutenant* being present upon the Leads, and departing a little aside, my Lord call'd me to him, and after other Matters, entered into Talk of the *Scotish* Queen. I said unto him, I would ask a Question of you, if I might without offending you. He ask'd me what? I said I would shew him, so that he would not be offended, for otherwise I durst not. After he had assur'd me he would not be offended, I said unto him, My Lord, I marvel much at your Doings; you are here, as you know, committed upon high Displeasure of the Queen's Majesty, for dealing with the *Scotish* Queen without the Queen's Majesty's Consent. Now in proceeding further by Letters between you, the Contrivance of this Dealing must much aggravate her Highness's Displeasure against you. He answer'd me, Tush Fool, thou art a Fool, thou understandest not the Matter. I answer'd, I presum'd to say this unto you, upon your Assurance that you would not be offended, and that maketh me ask, why you continue this Dealing with the *Scotish* Queen? He answer'd me again, thou art a Fool, thou seest not my Case; I hold a Wolf by the Ears, I can neither let go without danger, nor hold without peril. Unhappy Man I was when I was first committed; for if I could then have come to the Speech of the Prince, I would have laid it all at her Feet, and I trust I should have found Grace to have obtain'd Favour: But now, on the one side, I am entered into my Prince's high Displeasure; on the other side *, if I should pull the *Scotish* Queen, and all her Friends upon me, and make them mine Enemies, then were I in worse Case than ever I was. If I could once recover my Prince's Favour, then would I soon shake off all Dealing with the *Scotish* Queen. In the mean time, till her Majesty's Favour

* Behold an evident Entry into a Resolution to leave the Queen, and seek to the Scot and Friends.

may be recover'd, I am driven to this Hardness that you see. I answer'd him again, You are your self much wiser than I am; but, in my poor Opinion, the sooner you rid your self of this Dealing the better. Then because I was persuaded that he trusted to recover the Queen's Majesty's Favour, I was in the mean time contented to decipher the Letters from time to time, as they pass'd between them. Shortly after he had so much Favour and Liberty, that his Men had recourse unto him freely into the *Tower*; whereupon we conceive hope of his short Delivery, but it fell contrary, and so continued till Midsummer. Then was he advis'd to make submission to the Queen's Majesty, and promised, that if he would submit himself, and renounce all Dealing with the *Scotish* Queen, there was hope that the Queen's Majesty would receive him to Grace. Whereupon he wrote a Submission, he sent it, it was deliver'd, and, as

we heard, it was very well liked of. Within a fortnight after, he had the liberty of the *Tower*, and comfortable Letters came. I looked and had hope that he should have been deliver'd presently; it came not so to pass, the cause God knoweth.

Here the Lord Chief Justice offer'd to interrupt and end this course of Speech as impertinent, when he yet proceeded further, and said:

Hickford. I beseech you, my Lord, let me use a few words, to declare the Course of my Doing. My Lord was not then deliver'd: Shortly after it happen'd, that by occasion of a Sicknes, and being sick of the Plague in the *Tower*, my Lord was remov'd to his own House at the *Charter-House*; then we had great hope that we should shortly be received into her Majesty's Favour, and come to the Court again, and so continued till the Cipher came from the Bishop of *Rosse*, before which time and since I was never privy to that Matter. The Cause why I was never afterward made privy, was this; My Lord being at home at his House at *Charter-House*, I told him, I liked not his doing, it would not have good end.

Attorney. Why did you then still follow? Why left you him not?

Hickford. He answer'd me, thou art a Fool, thou understandest not.

Catlin. He told you Truth, that you were a Fool, for you play'd the fool indeed.

Hickford. I would then have gone from him, and I sought to depart; he would never give me leave, as Mr. *Bannister* well knoweth.

Catlin. Why? he was not your Prince, you were not so bound that he could compel you to tarry with him.

Hickford. Otherwise I dealt not with the Bishop of *Rosse*.

Catlin. In following him, the Hurt was yours; if you had been a good Subject, and had regard of your Duty, you might and should have taken other Course; but you had higher Hope, to have seen your Master in higher State to advance you; you had more Respect to your Master than to your Mistress.

But this is nothing to the matter.

So his purpos'd longer Speech was cut off, and then he said shortly thus:

Hickford. I humbly thank your Lordship again for your good Admonition; and as your Lordship hath rehears'd the History of the *French* Ambassador to the Duke of *Milan*, so I would and pray God, that he that hath brought my Lord to this, may have the like Success. I humbly submit my self to the Queen's Majesty's Mercy. I know I have liv'd under a most gracious and merciful Queen. I wish God long to preserve her Majesty, and this little time that I have left I will spend in Prayer for her Preservation; and I beseech God have Mercy upon me.

Whereunto the Court, and all that were present, said, *Amen*; and some said secretly, he had then shew'd himself a wiser Man than his Master.

And so the Lieutenant was commanded to avoid the Prisoner.

God save Queen Elizabeth.

IX. *The Trial of Dr. WILLIAM PARRY* * *at Westminster, for High-Treason, the 25th of February 1584. 26 Eliz.*

The COMMISSIONERS were,

Henry *Ld* Hunſdon, *Governor of Berwick*;
Sir Francis Knolles *Knight, Treasurer of the Queen's Majesty's Household*;
Sir James Croft *Knight, Comptroller of the same Household*;
Sir Christopher Hatton *Knight, Vice-Chamberlain to her Majesty*;
Sir Christopher Wray *Knight, Chief Justice of England*;

Sir Gilbert Gerrard *Knight, Master of the Rolls*;
Sir Edmund Anderson, *Knight, Chief Justice of the Common-Pleas*;
Sir Roger Manwood *Knight, Chief Baron of the Exchequer*; and
Sir Thomas Hennage *Knight, Treasurer of the Chamber.*

The Court being ſat,

FIRST, three Proclamations for Silence were made, according to the usual Course in ſuch Caſes. Then the Lieutenant was commanded to return his Precept; which he did, and brought the Priſoner to the Bar: to whom *Miles Sandes* Eſq; Clerk of the Crown ſaid, *William Parry*, hold up thy Hand; and he did ſo. Then ſaid the Clerk of the Crown, Thou art here indicted by the Oaths of twelve good and lawful Men of the County of *Middleſex*, before Sir *Chriſtopher Wray*, Knight, and others who took the Indictment by the Name of *William Parry*, late of *London* Gentleman, otherwiſe called *William Parry*, late of *London* Doctor of the Law; for that thou, as a falſe Traitor againſt the moſt Noble and Chriſtian Prince Queen *Elizabeth*, thy moſt gracious Sovereign and Liege Lady, not having the Fear of God before thine Eyes, nor regarding thy due Allegiance, but being ſeduc'd by the Inſtigations of the Devil, and intending to withdraw and extinguish the hearty Love and due Obedience which true and faithful Subjects ſhould bear unto the ſame our Sovereign Lady, didſt at *Westminster*, in the County of *Middleſex*, on the firſt Day of *February*, in the 26th Year of her Highneſs's Reign, and at divers other Times and Places in the ſame County, maliciously and traitorouſly conſpire and compaſs, not only to deprive and depoſe the ſame our Sovereign Lady of her Royal Eſtate, Title and Dignity, but alſo to bring her Highneſs to Death and final Deſtruction, and Sedition in the Realm to make, and the Government thereof to ſubvert, and the ſincere Religion of God eſta- bliſh'd in her Highneſs's Dominions to alter and ſubvert. And that whereas thou *William Parry*, by the Letters ſent unto *Gregory* Biſhop of *Rome*, didſt ſignify unto the ſame Biſhop thy Purpoſes and Intentions aforeſaid, and thereby didſt pray

and require the ſame Biſhop to give thee Abſolution; that thou afterwards, that is to ſay, the laſt Day of *March*, in the 26th Year aforeſaid, didſt traitorouſly receive Letters from one called Cardinal *de Como*, directed unto thee *William Parry*, whereby the ſame Cardinal did ſignify unto thee, that the Biſhop of *Rome* had peruſed thy Letters, and allow'd of thine Intent; and that to that end he had abſolv'd thee of all thy Sins, and by the ſame Letter did animate and ſtir thee to proceed with thine Enterprize; and that thereupon thou, the laſt day of *August*, in the 26th year aforeſaid, at *St. Giles in the Fields*, in the ſame County of *Middleſex*, didſt traitorouſly confer with one *Edmund Nevill* Eſq; uttering to him all thy wicked and traitorous Devices, and then and there didſt move him to aſſiſt thee therein, and to join with thee in thoſe wicked Treasons aforeſaid, againſt the Peace of our ſaid Sovereign Lady the Queen, her Crown and Dignity. What ſayſt thou, *William Parry*, Art thou guilty of theſe Treasons whereof thou ſtandeſt here indicted, or Not guilty?

Then *Parry* ſaid, Before I plead Not Guilty, or confeſs my ſelf Guilty, I pray you give me leave to ſpeak a few words; and with humbling himſelf, began in this manner: God ſave Queen *Elizabeth*, and God ſend me Grace to diſcharge my Duty to her, and to ſend you home in Charity. But touching the Matters that I am indicted of, ſome were in one Place, and ſome in another, and done ſo ſecretly as none can ſee into them, except that they had Eyes like unto God; wherefore I will not lay my Blood upon the Jury, but do mind to confeſs the Indictment. Containeth it but the Parts that have been openly read, I pray you tell me? Whereunto it was answer'd, that the Indictment contain'd the Parts he had heard read, and no other. Whereupon the Clerk of the Crown ſaid unto *Parry*; *Parry*, thou muſt answer directly to the Indictment, whether thou be Guilty or not.

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* This *William Parry* was but of low Fortune, and very extravagant, and having committed a great Outrage againſt Mr. *Hugh Hare* of the Inner-Temple, with an intent to have murdered him in his Chambers, he was tried for the ſame and convicted; which prompted him to go beyond Sea, where becoming acquainted with Jeſuits, they engaged him in a deſign to kill the Queen.

Then said *Parry*, I do confesse that I am Guilty of all that is therein contain'd; and further too, I desire not Life, but desire to die. Unto which the Clerk of the Crown said, If you confesse it, you must confesse it in manner and form as it is compriz'd in the Indictment. Whereunto he said, I do confesse it in manner and form as the same is set down, and all the Circumstances thereof. Then the Confession being recorded, the Queen's learned Council being ready to pray Judgment upon the same Confession, Mr. Vice-Chamberlain said, These Matters contain'd in this Indictment, and confesse'd by this Man, are of great Importance; they touch the Person of the Queen's most excellent Majesty in the highest degree, the very State and Well-being of the whole Common-wealth, and the Truth of God's Word established in these her Majesty's Dominions, and the open Demonstration of that capital Envy of the Man of *Rome*, that hath set himself against God and Godliness, all good Princes and good Government, and against good Men. Wherefore, I pray you, for the Satisfaction of this great Multitude, let the whole Matter appear, that every one may see that the Matter of itself is as bad as the Indictment purporteth, and as he hath confessed. Whereto in respect that the Justice of the Realm hath been of late very impudently slander'd, all yielded as a thing necessary to satisfy the World in particular, of that which was but summarily comprised in the Indictment, tho' in the Law his Confession serv'd sufficiently to have proceeded thereupon unto Judgment. Whereupon the Lords and others the Commissioners, her Majesty's learned Counsel, and *Parry* himself agreed, that *Parry's* Confession, (taken the 11th and 13th of *February* 1584. before the Lord of *Hunsdon*, Master Vice-Chamberlain, and Master Secretary) and Cardinal *de Como's* Letters, and *Parry's* Letters to the Lord Treasurer and Lord Steward, should be openly read.

And *Parry*, for the better satisfying of the People and Standers-by, offered to read them himself; but being told that the Order was, the Clerk of the Crown should read them, it was so resolved of all parts. And then Master Vice-Chamberlain caused to be shewed to *Parry* his said Confession, the Cardinal's Letter, and his own Letter aforesaid; which after he had particularly viewed every Leaf thereof, he confessed, and said openly they were the same.

Then said Master Vice-Chamberlain; Before we proceed to shew what he hath confessed, what say you, said he to *Parry*, is that which you have confessed here true? and did you confesse it freely and willingly of yourself, or was there any extort means used to draw it from you?

Surely, said *Parry*, I made that Confession freely without any Constraint, and that is all true, and more too; for there is no Treason that hath been since the first Year of the Queen, any way touching Religion, saving receipt of *Agnus Dei's*, and persuading of others, wherein I have not much dealt, but I have offended in it. And I have also deliver'd mine Opinion in Writing, who ought to be Successor to the Crown, which is said to be Treason also.

Then his Confession of the eleventh and thirteenth of *February*, all of his own Hand-writing, and hereafter particularly set down was openly and distinctly read by the Clerk of the Crown.

The voluntary Confession of William Parry, Doctor of the Laws (now Prisoner in the Tower) and accused of Treason by Edmund Nevil Esq; promised by him (with all Faith and Humility) to the Queen's Majesty, in Discharge of his Conscience, and Duty towards God and her: Before the Lord Hunsdon, Lord Governor of Berwick; Sir Christopher Hatton Knight, Vice-Chamberlain; Sir Francis Walsingham Knight, principal Secretary; the 13th of February 1584.

I N the Year 1570, I was sworn her Majesty's Servant, from which time until the Year 1580, I served, honoured, and loved her with as great Readiness, Devotion and Assurance, as any poor Subject in *England*. In the end of that Year, and until Midsummer 1582, I had some Trouble for the hurting of a Gentleman of the *Temple*. In which Action I was so disgraced and oppressed by two great Men (to whom I have of late been beholden) that I never had contented Thought since. There began my Misfortune, and here followeth my woful Fall.

In *July* after, I laboured for Licence to travel for three Years, which (upon some Consideration) was easily obtain'd. And so in *August*, I went over with doubtful mind of return; for that being suspected in Religion, and not having received the Communion in twenty-two Years, I began to mistrust my advancement in *England*. In *September* I came to *Paris*, where I was reconciled to the Church, and advised to live without Scandal; the rather, for that it was mistrusted by the *English* Catholicks, that I had Intelligence with the greatest Counsellor of *England*. I staid not long there, but removed to *Lyons* (a place of great Traffick) where, because it was the ordinary Passage of our Nation to and fro, between *Paris* and *Rome*, I was also suspected.

To put all Men out of doubt of me, and for some other cause, I went to *Milan*, from whence, as a place of some danger (tho' I found favour there) after I had clear'd my Conscience, and justified my self in Religion before the Inquisitor, I went to *Venice*. There I came acquainted with Father *Benedicto Palmio*, a grave and learned Jesuit. By Conference with him of the hard state of the Catholicks in *England*, and by reading of the Book *De Persecutione Anglicana*, and other Discourses of like Argument;

I conceived a possible mean to relieve the afflicted state of our Catholicks, if the same might be well warranted in Religion and Conscience by the Pope, or some learned Divines. I asked his Opinion; he made it clear, commended my Devotion, comforted me in it, and after a while made me known to the Nuncio *Campeggio*, Resident there for his Holiness. By his means I wrote to the Pope, presented my Service, and sued for a Passport to go to *Rome*, and to return safely into *France*. Answer came from Cardinal *Como*, that I might come, and should be welcome. I misliked the Warrant, sued for a better, which I was promised: but it came not before my departure to *Lyons*, where I promised to stay some time for it. And being indeed desirous to go to *Rome*, and loth to go without Countenance; I desired *Christoforo de Salazar*, Secretary to the Catholick King in *Venice*, who had some understanding by Conference

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rence of my Devotion to the afflicted Catholicks at home and abroad, to commend me to the Duke *di Nova Terra*, Governor of *Milan*, and to the Count of *Olivaris Embi*, then Resident for the King his Master in *Rome*: which he promised to do effectually for the one, and did for the other. And so I took my Journey towards *Lyons*, whither came for me an ample Passport (but somewhat too late) that I might come and go, *in verbo Pontificis per omnes Jurisdictiones Ecclesiasticas, absque impedimento*. I acquainted some good Fathers there, of my necessity to depart towards *Paris* by Promise, and prayed their advices upon divers Points; wherein I was well satisfied. And so assuring them that his Holiness should hear from me shortly, it was undertaken that I should be excused for that time.

In *October* I came to *Paris*, where (upon better Opinion conceived of me amongst my Catholick Countrymen) I found my Credit well settled, and such as mistrusted me before, ready to trust and embrace me. And being one day at the Chamber of *Thomas Morgan* a Catholick Gentleman (greatly beloved and trusted on that side) amongst other Gentlemen, talking (but in very good sort) of *England*, I was desired by *Morgan* to go up with him to another Chamber; where he brake with me, and told me that it was hoped and looked for, that I should do some Service for God and his Church. I answered him, I would do it, if it were to kill the greatest Subject in *England*; whom I named, and in truth then hated. No, no, said he, let him live to his greater Fall and Ruin of his House.

2. It is the Queen I mean. I had him as I wished, and told him it were soon done, if it might be lawfully done, and warranted in the Opinion of some learned Divines. And so the Doubt once resolved, (tho' as you have heard I was before reasonably well satisfied) I vowed to undertake the Enterprize, for the Restitution of *England* to the antient Obedience of the See Apostolick. Divers Divines were named: Dr. *Allein* I desired, *Parsons* I refused; and by chance came Master *Wattes* a learned Priest, with whom I conferred, and was over-ruled.

3. For he plainly pronounced (the Case only altered in name) that it was utterly unlawful; with whom many *English* Priests did agree, as I have heard, if it be not altered since the Book made in answer to the Execution of the *English* Justice was published, which I must confess hath taken hard hold in me, and (I fear me) will do in others, if it be not prevented by more gracious handling of the quiet and obedient Catholick Subjects, whereof there is good and greater store in *England*, than this Age will extinguish. Well, notwithstanding all these doubts, I was gone so far by Letters and Conference in *Italy*, that I could not go back, but promised faithfully to perform the Enterprize, if his Holiness upon my Offer and Letters would allow it, and grant me full Remission of my Sins.

4. I wrote my Letters the first of *January* 1584, by their Computation; took Advice upon them in Confession of Father *Anibal à Codreto*, a learned Jesuit in *Paris*; was lovingly embraced, commended, confessed, and communicated at the Jesuit's at one Altar with the Cardinals of *Vandosmi* and *Narbone*, whereof I prayed Certificate, and enclosed the same in my Letter to his Holiness, to lead him the rather to absolve me; which I required by my Let-

ters, in Consideration of so great an Enterprize undertaken without Promise or Reward.

5. I went with *Morgan* to the Nuncio *Ragazzoni*, to whom I read the Letter and Certificate enclosed, sealed it, and left it with him to send to *Rome*; he promised great Care of it, and to procure Answer: And so lovingly imbraced me, wished me good speed, and promised that I should be remembered at the Altar.

6. After this I desired *Morgan*, that some special Man might be made privy to this matter, lest he dying, and I miscarrying in the Execution, and my Intent never truly discovered, it might stick for an everlasting spot in my Race. Divers were named, but none agreed upon, for fear of betraying.

7. This being done, *Morgan* assured me, that shortly after my departure, the Lord *Ferneburft* (then in *Paris*) should go into *Scotland*, and be ready upon the first News of the Queen's Fall to enter into *England* with 20 or 30000 Men to defend the Queen of *Scotland*, (whom, and the King her Son, I do in my Conscience acquit of any privacy, liking, or consent to this, or any other bad Action, for any thing that I ever did know.) I shortly departed for *England*, and arrived at *Rye* in *January*, 1583, from whence I wrote to the Court, advertised some, that I had a special Service to discover to the Queen's Majesty.

8. Which I did more to prepare Access and Credit, than for any Care I had of her Person, tho' I were fully resolved never to touch her (notwithstanding any Warrant) if by any Device, Persuasion, or Policy she might be wrought to deal more graciously with the Catholicks than she doth, or by our manner of proceeding in Parliament meaneth to do, or any thing yet seen. I came to the Court (then at *Whitehall*) prayed Audience, had it at large, and very privately discover'd to her Majesty this Conspiracy, much to this effect, tho' covered with all the Skill I had. She took it doubtfully, I departed with Fear. And amongst other things, I cannot forget her Majesty's gracious Speech then uttered touching the Catholicks, which of late, after a sort I avowed in Parliament: She said to me, that never a Catholick should be troubled for Religion or Supremacy, so long as they lived like good Subjects. Whereby I mistrusted that her Majesty is borne in hand, that none is troubled for the one or the other. It may be truly said, that it is better than it hath been, tho' it be not yet as it should be.

In *March* last, while I was at *Greenwich* (as I remember) suing for St. *Katharine's*, came Letters to me from Cardinal *Como*, dated at *Rome*, the last of *January* before; whereby I found the Enterprize commended and allowed, and my self absolved (in his Holiness's name) of all my Sins, and willed to go forward in the name of God. That Letter I shewed to some in Court, who imparted it to the Queen; what it wrought, or may work in her Majesty, God knoweth; only this I know,

9. That it confirmed my Resolution to kill her, and made it clear in my Conscience, that it was Lawful and Meritorious. And yet was I determined never to do it, if either Policy, Practice, Persuasion, or Motion in Parliament could prevail. I feared to be tempted, and therefore always when I came near her, I left my Dagger at home.

10. When I looked upon her Majesty, and remembered her many Excellencies, I was greatly troubled;

troubled: and yet I saw no Remedy, for my Vows were in Heaven, my Letters and Promises in Earth; and the Case of the Catholick Recusants, and others, little bettered. Sometimes I said to my self, Why should I care for her? What hath she done for me? Have I not spent 10000 Marks since I knew her Service, and never had Penny by her? It may be said, she gave me my Life. But I say (as my Case stood) it had been Tyranny to take it: and I fear me it is little less yet. If it please her graciously to look into my Discontentments, I would to Jesus Christ she had it, for I am weary of it. And now to come to an end of this Tragical Discourse: In July I left the Court, utterly dejected, discontented, and as her Majesty might perceive by my passionate Letters, careless of my self. I came to London; Dr. Allein's Book was sent me out of France.

11. It redoubled my former Conceits; every word in it was a Warrant to a prepared Mind: It taught that Kings may be excommunicated, deprived, and violently handled: It proveth that all Wars Civil or Foreign undertaken for Religion, are honourable. Her Majesty may do well to read it, and to be out of doubt (if things be not amended) that it is a Warning, and a Doctrine full dangerous. This is the Book I shewed, in some Places read, and lent it to my Cousin Nevil (the Accuser) who came often to mine House, put his Finger in my Dish, his Hand in my Purse; and the Night wherein he accused me, was wrapped in my Gown, six Months at least after we had entered into this Conspiracy: In which space her Majesty, and ten Princes in several Provinces, might have been killed. God bless her Majesty from him; for before Almighty God, I joy and am glad in my Soul, that it was his hap to discover me in time, tho' there were no danger near.

And now to the Manner of our Meetings. He came to me in the beginning of August, and spake to me in this or like sort. Cousin, let us do somewhat, sithens we can have nothing. I offer'd to join with him, and gladly heard him, hoping because I knew him to be a Catholick, that he would hit upon that I had in my Head; but it fell not out so. He thought the delivery of the Queen of Scotland easy, presuming upon his Credit and Kindred in the North: I thought it dangerous to her, and impossible to Men of our Fortunes: He fell from that to the taking of Berwick. I spake of *Quinborough* and the Navy, rather to entertain him with Discourse, than that I cared for those Motions, my Head being full of a greater matter.

12. I told him that I had another manner of Enterprize, more honourable and profitable to us, and the Catholicks Commonwealth, than all these, if he would join in it with me, as he presently vowed to do: He pressed to know it; I willed him to sleep upon the Motion: He did so, and (belike overtaken) came to me the next Morning to my Lodging in London, offered to join with me, and took his Oath upon a Bible, to conceal and constantly to pursue the Enterprize for the advancement of Religion; which I also did, and meant to perform: the killing of the Queen was the Matter.

The Manner and Place, to be on horseback, with eight or ten Horses, when she should ride abroad about *St. James's*, or some other like place. It was once thought fit in a Garden, and that the escape would be easiest by Water into

Sheppey, or some other part; but we resolved upon the first.

This continued as agreed upon many Months, until he heard of the Death of *Westmoreland*, whose Land and Dignity (whereof he assured himself) bred belike this Conscience in him to discover a Treason in February, contrived and agreed upon in August. If it cost him not an ambitious Head at last, let him never trust me. He brought a tall Gentleman (whom he commended for an excellent Pistolier) to me to *Chanon-Row*, to make one in the Match: but I refused to deal with him, being loth to lay my Head upon so many Hands.

Master Nevil hath (I think) forgotten, that he did swear to me at divers times, that all the advancement she could give, should serve but for her Scourge, if ever time and occasion should serve; and that tho' he would not lay hand upon her in a Corner, his Heart serv'd him to strike off her Head in the Field. Now leaving him to himself, this much (to make an end) I must confess of my self, I did mean to try what might be done in Parliament, to do my best to hinder all hard Courses, to have prayed hearing of the Queen's Majesty to move her (if I could) to take Compassion upon her Catholick Subjects; and when all had failed, to do as I intended. If her Majesty by this Course would have eased them, tho' she had never preferred me, I had with all Comfort and Patience borne it.

13. But if she had preferred me without Ease or Care of them, the Enterprize had held.

Parry.

God preserve the Queen, and incline her merciful Heart to forgive me this desperate Purpose; and to take my Head (with all my Heart) for her better Satisfaction.

After which, for the better manifesting of his Treasons, on the 14th of February last, there was a Letter written by him to her Majesty, very voluntarily, all of his own Hand, without any Motion made to him: the Tenour whereof, for that which concerneth these his traitorous Dealings, is as followeth.

A Letter written by Parry to her Majesty.

YOUR Majesty may see by my voluntary Confession, the dangerous Fruits of a discontented Mind; and how constantly I pursued my first conceived Purpose in *Venice*, for the relief of the afflicted Catholicks; continued it in *Lions*, and resolved in *Paris* to put it in adventure for the Restitution of *England* to the antient Obedience of the See Apostolick. You may see withal, how it is commended, allowed, and warranted in Conscience, Divinity, and Policy, by the Pope and some great Divines: Tho' it be true or likely, that most of our *English* Divines (less practised in matters of this weight) do utterly mislike and condemn it.

The Enterprize is prevented, and Conspiracy discovered by an honourable Gentleman, my Kinsman and late familiar Friend, Master Edmund Nevil, privy and by solemn Oath (taken upon the Bible) Party to the matter, whereof I am heartily glad, but now sorry (in my very Soul) that ever I conceived or intended it, how commendable or meritorious soever I thought it.

God

God thank him, and forgive me, who would not now (before God) attempt it (if I had liberty and opportunity to do it) to gain your Kingdom. I beseech Christ, that my Death and Example may as well satisfy your Majesty and the World, as it shall glad and content me.

The Queen of Scotland is your Prisoner; let her be honourably entreated, but yet surely guarded.

The French King is French, you know it well enough, you will find him occupied when he should do you good; he will not lose a Pilgrimage to save you a Crown. I have no more to say at this time, but that with my Heart and Soul I do now honour and love you; am inwardly sorry for mine Offence, and ready to make you amends by my Death and Patience. Discharge me à culpâ, but not à pânâ, good Lady. And so farewell, most gracious, and the best-natured and qualified Queen that ever lived in England. From the Tower, the 14th of February, 1584.

W. Parry.

This done, the Cardinal di Como his Letter in Italian was delivered unto Parry's hand, by the direction of Mr. Vice-Chamberlain; which Parry there perused, and openly affirmed to be wholly of the Cardinal's own Hand-writing, and the Seal to be his own also, and to be with a Cardinal's Hat on it: And himself did openly read it in Italian.

A mon Signore, mon Signore Guglielmo Parry.

MO N Signore, la Santità di N. S. ha veduto le Lettere di V. S. del primo con la fede inclusa, & non può se non laudare la buona disposizione & risoluzione che scrive di tenere verso il servizio & beneficio publico, nel che la Santità sua lesortia di perseverare, con farne riuscire li effetti che V. S. promette: Et acciòche tanto maggiormente V. S. sia ajutata da quel buon Spirito che l'ha mosso, le concede sua Beneditione, plenaria Indulgenza & Remissione di tutti li peccati, secondo che V. S. ha chiesto, assicurandos si che oltre il merito, che n'ha vera in cielo, vuole anco sua Santità costituirsi debitore a riconoscere li meriti di V. S. in ogni miglior modo che potrà, & ciò tanto piu, quanto che V. S. usa maggior modestia in non pretendere niente. Metta dunque ad effetto li suoi santi & honorati pensieri, & attenda a star sano. Che per fine io me le offero di core, & le desidero ogni buono & felice successo. Di Roma a 30 di Gennaro, M.D.LXXXIV.

Al piacer di V. S.

N. Cardinale di Como.

Al Sig. Guglielmo Parry.

The Words bearing Sense as it were written to a Bishop, or to a Man of such a degree, it was demanded of him by Mr. Vice-Chamberlain, Whether he had not taken the Degree of a Bishop? He said, No: But said at first, those Terms were proper to the Degree he had taken. And after said, That the Cardinal did vouchsafe, as of a favour, to write so to him. Then the Copy of that Letter in English was in like manner openly read by the Clerk of the Crown; which Parry then acknowledged to be truly translated.

Cardinal de Como's Letter to Will. Parry, January 30, 1584. by account of Rome.

M Onsignor, the Holiness of our Lord hath seen the Letter of your Signory of the first, with the Assurance included, and cannot but commend the good Disposition and Resolution, which you write to hold towards the Service and Benefit publick: Wherein his Holiness doth exhort you to persevere, with causing to bring forth the effects which your Signory promifeth. And to the end you may be so much the more holpen by that good Spirit which hath moved you thereunto, his Blessedness do grant to you plenary Indulgence and Remission of all your Sins, according to your request; assuring you, that besides the Merit that you shall receive therefore in Heaven, his Holiness will further make himself Debtor, to re-acknowledge the Deservings of your Signory in the best manner that he can: And that so much the more, in that your Signory useth the greater Modesty, in not pretending any thing. Put therefore to effect your holy and honourable Thoughts, and attend your Health. And to conclude, I offer my self unto you heartily, and do desire all good and happy Successes.

From Rome the
30th of January, 1584.

At the pleasure of your Signory,
N. Card. of Como.

And thereupon was shewed unto Parry his Letter of the 18th of February, written to the Lord Treasurer, and the Lord Steward: which he confessed to be all of his own Hand-writing, and which was read accordingly.

William Parry's Letter to the Lord Treasurer, and the Earl of Leicester.

M Y Lords, now that the Conspiracy is discovered, the Fault confessed, my Conscience cleared, and Mind prepared patiently to suffer the Pains due for so heinous a Crime; I hope it shall not offend you, if crying *Miserere* with the poor Publican, I leave to despair with cursed Cain. My Case is rare and strange, and, for any thing I can remember, singular: A natural Subject solemnly to vow the Death of his natural Queen (so born, so known, and so taken by all Men) for the Relief of the afflicted Catholics, and Restitution of Religion. The Matter first conceived in Venice, the Service (in general words) presented to the Pope, continued and undertaken in Paris; and lastly, commended and warranted by his Holiness, digested and resolved in England, if it had not been prevented by Accusation, or by her Majesty's greater Lenity, and more gracious Usage of her Catholick Subjects. This is my first and last Offence conceived against my Prince or Country, and doth (I cannot deny) contain all other Faults whatsoever. It is now to be punished by Death, or most graciously (beyond all common Expectation) to be pardoned. Death I do confess to have deserved; Life I do (with all Humility) crave, if it may stand with the Queen's Honour, and Policy of the Time. To leave so great a Treason unpunished, were strange: To draw it by my Death in example, were dangerous. A sworn Servant to take upon him such an Enterprize, upon such a Ground, and by such a Warrant,

Warrant, hath not been seen in *England*: To indict him, arraign him, bring him to the Scaffold, and to publish his Offence, can do no good: To hope that he hath more to discover than is confessed, or that at his Execution he will unsay any thing he hath written, is in vain: To conclude, that it is impossible for him in time to make some part of amends, were very hard, and against former Experiences. The Question then is, Whether it is better to kill him, or (lest the matter be mistaken) upon hope of his Amendment to pardon him. For mine own Opinion (though partial) I will deliver you my Conscience. The Case is good Queen *Elizabeth's*, the Offence is committed against her Sacred Person, and she may (of her Mercy) pardon it without prejudice to any. Then this I say, in few words, as a Man more desirous to discharge his troubled Conscience, than to live. Pardon poor *Parry*, and relieve him; for Life without living is not fit for him. If this may not be, or be thought dangerous, or dishonourable to the Queen's Majesty (as by your favours, I think it full of Honour and Mercy) then I beseech your Lordships (and no other) once to hear me before I be indicted, and afterwards (if I must die) humbly to intreat the Queen's Majesty to hasten my Trial and Execution, which I pray God (with all my heart) may prove as honourable to her, as I hope it shall be happy to me; who will while I live (as I have done always) pray to Jesus Christ for her Majesty's long and prosperous Reign. From the *Tower*, the 18th of *February*, 1584.

W. Parry.

These Matters being read openly, for manifestation of the matter, *Parry* prayed leave to speak: Whereunto Mr. Vice-Chamberlain said, If you will say any thing for the better opening to the World of those your foul and horrible Facts, speak on; but if you mean to make any excuse of that which you have confessed, which else would have been and do stand proved against you, for my part, I will not sit to hear you.

Then her Majesty's Attorney-General *Popham* stood up and said, It appeareth before you, my Lords, that this Man hath been indicted and arraigned of several most heinous and horrible Treasons, and hath confessed them, which is before you of Record; wherefore there resteth no more to be done, but for the Court to give Judgment accordingly, which here I require in the behalf of the Queen's Majesty.

Then said *Parry*, I pray you hear me for discharging of my Conscience. I will not go about to excuse my self, nor to seek to save my Life, I care not for it; you have my Confession of Record, that is enough for my Life: And I mean to utter more, for which I were worthy to die. And said, I pray you hear me, in that I am to speak to discharge my Conscience.

Then said Mr. Vice-Chamberlain, *Parry*, then do thy Duty according to Conscience, and utter all that thou canst say concerning those thy most wicked Facts.

Then said *Parry*, My Cause is rare, singular, and unnatural; conceived at *Venice*, presented in general words to the Pope, undertaken at *Paris*, commended and allowed of by his Holiness, and was to have been executed in *England*, if it had not been prevented. Yea, I have committed many

Treasons, for I have committed Treason in being reconcil'd, and Treason in taking Absolution.

There hath been no Treason sithens the first year of the Queen's Reign touching Religion, but that I am guilty of, (except for receiving of *Agnus Dei's*, and persuading, as I have said, and yet never intending, to kill Queen *Elizabeth*) I appeal to her own knowledge, and to my Lord Treasurer's, and Master Secretary's.

Then said my Lord *Hunsdon*, Hast thou acknowledged it so often, and so plainly in Writing under thy Hand, and here of Record; and now, when thou shouldest have thy Judgment according to that which thou hast confessed thy self guilty of, dost thou go back again, and deny the Effect of all? How can we believe that thou now saist?

Then said Master Vice-Chamberlain, This is absurd; thou hast not only confess'd generally, that thou wert Guilty, according to the Indictment, which summarily, and yet in express words, doth contain, that thou hadst traitorously compassed and intended the Death and Destruction of her Majesty; but thou also saidst particularly, that thou wert guilty of every of the Treasons contained therein, whereof the same was one, in plain and express Letter set down, and read unto thee. Yea, thou saidst that thou wert Guilty of more Treasons too besides these. And didst thou not, upon thy Examination, voluntarily confess, how thou wast mov'd first thereunto by Mislike of thy State after thy Departure out of the Realm, and that thou didst mislike her Majesty, for that she had done nothing for thee; how by wicked Papists and Popish Books thou wert persuaded that it was lawful to kill her Majesty; how thou wert by Reconciliation become one of that wicked sort, that held her Majesty for neither lawful Queen nor Christian, and that it was meritorious to kill her? And didst thou not signify that thy Purpose to the Pope by Letters, and receivedst Letters from the Cardinal, how he allow'd of thine Intent, and excited thee to perform it, and thereupon didst receive Absolution? And didst thou not conceive it, promise it, vow it, swear it, and receive the Sacrament that thou wouldst do it? And didst not thou thereupon affirm, that thy Vows were in Heaven, and thy Letters and Promises on Earth to bind thee to do it? And that whatsoever her Majesty would have done for thee, could not have removed thee from that Intention or Purpose, unless she would have desisted from dealing, as she hath done, with the Catholics, as thou callest them? All this thou hast plainly confess'd; and I protest before this Great Assembly, thou hast confess'd it more plainly and in better sort than my Memory will serve me to utter: and saist thou now, that thou never meant'st it?

Ah, said *Parry*, your Honours know how my Confession, upon mine Examination, was extorted.

Then both the Lord *Hunsdon* and Master Vice-Chamberlain affirm'd that there was no Torture or threatening Words offer'd him.

But *Parry* then said, that they told him, that if he would not confess willingly, he should have Torture: Whereunto their Honours answered, That they used not any Speech or Word of Torture to him.

You said, said *Parry*, that you would proceed with Rigour against me, if I would not confess it of my self.

But their Honours expressly affirm'd, that they used no such words. But I will tell thee, said Master Vice-Chamberlain, what we said. I spake these words:

words: If you will willingly utter the Truth of your self, it may do you good, I wish you to do so; if you will not, we must then proceed in ordinary Course to take your Examination. Whereunto you answer'd, that you would tell the Truth of your self. Was not this true? Which then he yielded unto.

And hereunto her Majesty's * Attorney-General put *Parry* in remembrance what Speeches he used to the Lieutenant of the *Tower*, the Queen's Majesty's Serjeant at Law, Master *Gawdie*, and the same Attorney, on Saturday the 20th of *February* last, at the *Tower*, upon what he was by them then examined by Order from the Lords; which was, that he acknowledged he was most mildly and favourably dealt with in all his Examinations: which he also at the Bar then acknowledged to be true.

Then Mr. Vice-Chamberlain said, That it was a wonder to see the Magnanimity of her Majesty, which after that thou hadst opened those traitorous Practices in sort as thou hast laid it down in thy Confession, was nevertheless such, and so far from all fear, as that she would not so much as acquaint any one of her Highness's Privy-Council with it, to his knowledge, no not until after this thine Enterprize discovered and made manifest. And besides that which thou hast set down under thine own hand, thou didst confesse, that thou hadst prepared two *Scotish* Daggers, fit for such a purpose; and those being disposed away by thee, thou didst say, that another would serve thy turn. And withal, *Parry*, didst thou not also confesse before us, how wonderfully thou wert appalled and perplexed upon a sudden, at the Presence of her Majesty at *Hempton-Court* this last Summer, saying, that thou didst think, thou then sawest in her the very Likeness and Image of King *Henry VIII*? And that therewith, and upon some Speeches used by her Majesty, thou didst turn about and weep bitterly to thy self? And yet didst still call to mind that thy Vows were in Heaven, thy Letters and Promises on Earth; and that therefore thou didst say with thy self, that there was no remedy but to do it? Didst thou not confesse this? The which he acknowledged.

Then said the Lord *Hunsdon*, Sayest thou now, that thou didst never mean to kill the Queen? Didst thou not confesse, that when thou didst utter this practice of Treachery to her Majesty, that thou didst cover it with all the Skill thou hadst, and that it was done by thee, rather to get Credit and Access thereby, than for any regard thou hadst of her Person? But in truth thou didst it, that thereby thou mightest have better Opportunity to perform thy wicked Enterprize. And wouldst thou have run into such fear as thou didst confesse that thou wert in, when thou didst utter it, if thou hadst never meant it? What reason canst thou shew for thy self?

With that he cried out in a furious manner, I never meant to kill her: I will lay my Blood upon Queen *Elizabeth* and you, before God and the World. And thereupon fell into a Rage and evil Words with the Queen's Majesty's Attorney-General.

Then said the Lord *Hunsdon*, This is but thy Popish Pride and Ostentation, which thou wouldst have to be told to thy Fellows of that Faction, to make them believe that thou diest for Popery, when thou diest for most horrible and dangerous Treasons against her Majesty, and thy whole Country.

For thy laying of thy Blood, it must lie on thine own head, as a just Reward of thy Wickedness. The Laws of the Realm most justly condemn thee to die, out of thine own Mouth, for the conspiring the Destruction both of her Majesty, and of us all: Therefore thy Blood be upon thee; neither her Majesty nor we at any time sought it, thy self hast spilt it.

Then he was asked, What he could say, why Judgment of Death ought not to be awarded against him?

Whereunto he said, he did see that he must die, because he was not settled.

What meanest thou by that? said Mr. Vice-Chamberlain. Said he, Look into your Study, and into your new Books, and you shall find what I mean.

I protest (said his Honour) I know not what thou meanest: thou dost not well to use such dark Speeches, unless thou wouldst plainly utter what thou meanest thereby. But he said, he cared not for Death, and that he would lay his Blood amongst them.

Then spake the Lord Chief Justice of *England*, being required to give the Judgment, and said, *Parry*, you have been much heard, and what you mean by being settled, I know not; but I see you are so settled in Popery, that you cannot settle your self to be a good Subject. But touching that you should say, to stay Judgment from being given against you, your Speeches must be of one of these kinds; either to prove the Indictment, (which you have confesse'd to be true) to be insufficient in Law; or else to plead somewhat touching her Majesty's Mercy, why Justice should not be done of you. All other Speeches, wherein you have used great liberty, is more than by Law you can ask. These be the Matters you must look to, what say you to them? Whereto he said nothing.

Then said the Lord Chief Justice: *Parry*, thou hast been before this time indicted of divers most horrible and hateful Treasons, committed against thy most gracious Sovereign and native Country: The Matter most detestable, the Manner most subtle and dangerous, and the Occasions and Means that led thee thereunto most ungodly and villainous. That thou didst intend it, it is most evident by thy self. The Matter was the Destruction of a most sacred and an anointed Queen, thy Sovereign and Mistress, who hath shew'd thee such Favour, as some thy Betters have not obtained; yea, the Overthrow of thy Country wherein thou wert born, and of a most happy Commonwealth whereof thou art a Member, and of such a Queen, as hath bestow'd on thee the Benefit of all Benefits in this World, that is, thy Life, heretofore granted thee by her Mercy; when thou hadst lost it by Justice and Desert. Yet thou her Servant, sworn to defend her, meant'st with thy bloody hand to have taken away her Life, that mercifully gave thee thine when it was yielded in to her hands: This is the Matter wherein thou hast offended. The Manner was most subtle and dangerous, beyond all that before thee have committed any Wickedness against her Majesty: For thou making shew as if thou would'st simply have uttered for her Safety the Evil that others had contrived, didst but seek thereby Credit and Access, that thou mightest take the apter Opportunity for her Destruction. And for the Occasions and Means that drew thee on, they were most ungodly and villainous, as the Persuasions of the Pope,

of

of Papists, and Popish Books. The Pope pretendeth that he is a Pastor, when as in truth he is far from feeding of the Flock of Christ, but rather as a Wolf, seeketh but to feed on, and to suck out the Blood of true Christians, and as it were thirsteth after the Blood of our most gracious and Christian Queen. And these Papists and Popish Books, while they pretend to set forth Divinity, they do indeed most ungodly teach and persuade that which is quite contrary both to God and his Word: for the Word teaches Obedience of Subjects towards Princes, and forbiddeth any private Man to kill; but they teach Subjects to disobey Princes, and that a private wicked Person may kill; yea, and whom? A most godly Queen, and their own natural and most gracious Sovereign. Let all Men therefore take heed how they receive any thing from him, hear or read any of their Books, and how they confer with any Papists. God grant her Majesty, that she may know by thee, how ever she trust such like to come so near her Person. But see the end, and why thou didst it, and it will appear to be a most miserable, fearful, and foolish thing; for thou didst imagine that it was to relieve those that thou callest Catholics, who were most likely amongst all others to have felt the worst of it, if thy devilish Practice had taken effect. But sith thou hast been indicted of the Treasons comprised in the Indictment, and thereupon arraigned, and hast confessed thy self guilty of them, the Court doth award, that thou shalt be had from hence to the

Place whence thou didst come, and so drawn thro' the open City of *London*, upon an Hurdle, to the Place of Execution, and there to be hanged and let down alive, and thy Privy Parts cut off, and thy Entrails taken out and burnt in thy sight; then thy Head to be cut off, and thy Body to be divided in four Parts, and to be disposed of at her Majesty's Pleasure: And God have Mercy on thy Soul.

Parry (persisting still in his Rage and Passion) said, I here summon *Queen Elizabeth* to answer for my Blood before God.

Whereupon the Lieutenant of the *Tower* was commanded to take him from the Bar, and so he did; and as he was going away the People cried out, *Away with the Traitor, away with him*: whereupon he was conveyed in a Barge to the *Tower* again by Water. Upon the 2d of *March* ensuing he was delivered by the Lieutenant of the *Tower*, early in the morning, to the Sheriffs of *London* and *Middlesex*, who received him at *Tower-Hill*; and according to the Judgment caused him to be forthwith set on an Hurdle, on the which he was drawn thro' the midst of the City of *London* unto the place for his Execution in *Palace-Yard Westminster*, where having long time of stay permitted him before his Execution, he impudently denied that he was ever guilty of any intention to kill *Queen Elizabeth*; and so (without any request to the People to pray for him, or using any outward Prayer himself) he was turn'd off, and executed according to the Sentence.



X. *Proceedings against Anthony Babington, Chidiok Titchburne, Thomas Salisbury, Robert Barnewell, John Savage, Henry Donn, and John Ballard, at Westminster for High-Treason, the 13th and 14th of September, 1586. 28 Eliz.*

THE Commission of Oyer and Determiner of all manner of Treasons, Rebellions, Felonies, Offences, Routs, Riots, &c. was directed to *William Lord Cobham*, Lord-Warden of the Cinque-Ports; *Thomas Lord Buckhurst*; *Sir Francis Knowles*; *Sir James a Croft*; *Sir Christopher Hatton*; *Sir Francis Walsingham*; *Sir Christopher Wray*, Lord Chief Justice of *England*; *Sir Edmund Anderson*, Lord Chief Justice of the Common-Pleas; *Sir Roger Manwood*, Lord Chief Baron of the Exchequer; *Mr. Doctor Dale*; *Mr. Rugby*, Master of the Requests; *Serjeant Fleetwood*, Recorder of *London*; *Mr. Brograve* Attorney of the Dutchy; *Mr. Randall*; *Mr. Cooke*; *Mr. Wrathe*. By force whereof was a Precept directed to the Lieutenant of the *Tower*, commanding him to have the Bodies of *Anthony Babington Esq*; *Chidiok Titchburne Esq*; *Thomas Salisbury Esq*; *Robert Barnewell Gent*. *John Savage Gent*. *Henry Donn Gent*. and *John Ballard Clerk*, before the said Commissioners, the Day and Year aforesaid. At which Day, before the Commissioners abovesaid, (excepting *Sir Francis Knowles*, *Sir Francis Walsingham*, and *Sir Christopher Wray*) *Sir Owen Hopton*, Lieutenant of the *Tower*,

return'd his Precept in effect, That the said Prisoners were committed to his Custody by Commandment of the Privy-Council, there to be safely kept. Whereupon *Mr. Vice-Chamberlain* demanded of the Queen's learned Counsel, what Order they would take in arraigning the Prisoners; and Answer was by them given, that they would proceed to the Arraignment of *Savage* first, forasmuch as he meddled first in these Matters.

Savage's Arraignment, Indictment and Confession.

Then *Savage* being brought to the Bar, and the other Prisoners removed, the Clerk of the Crown said;

Sands, Clerk of the Crown. John Savage Gent. hold up thy Hand: Thou hast been before this time indicted by virtue of Commission, directed to *Sir Edmund Anderson Knight, &c.* (and so read his Indictment) which in effect was, That *William Gifford*, Doctor of Divinity, maliciously moved him at *Rhemes* in the Country of *Champaigne*, traitorously and wickedly to kill and murder the Queen's most excellent Majesty, his liege Sovereign and natural Prince; affirming to the said *Savage*,

Savage, that the killing of her Majesty was an Action lawful, honourable and meritorious: and that thereupon the said *John Savage* did traitorously agree, conspire and swear to murder the Queen's most excellent Majesty, his own natural Prince. And afterwards, that is to say, the first day of April 1586, at *St. Giles's in the Fields*, in the County of *Middlesex*, did falsely conspire to murder her said Majesty, to disinheret her of her Kingdom, to stir up Sedition in the Realm, and to subvert the true Christian Religion: and that to perform this malicious Practice, devised with *John Ballard* how to bring the same to pass; and afterwards, the last day of May, did receive Letters from *Morgan*, *William Gifford*, and *Gilbert Gifford*, whereby they did persuade and provoke the said *Savage* to execute and fulfil his said Purpose and Determination. How sayest thou, *Savage*, art thou Guilty, or Not Guilty?

Savage. For conspiring at *St. Giles's*, I am Guilty; that I received Letters, whereby they did provoke me to kill her Majesty, I am Guilty; that I did assent to kill her Majesty, I am not Guilty.

C. J. Anderson. Whether thou didst conspire at *St. Giles's*, or not, is not the substance of the Indictment; but, whether thou didst conspire or no, is the Matter, and the rest is but Circumstance: Moreover thou must say either, that thou art Guilty or not Guilty, for so hath the Law ordained every one to answer; and if thou answer not so, thou refusest to be tried by the Law, and so shalt be Causor of thy own Death.

C. B. Manwood. Whosoever refuseth to answer directly, the Law pronounceth grievous Punishment to such, and they are Murderers of themselves, which is abominable before God.

Hatton. To say, that thou art Guilty to that, and not to this, is no Plea; for thou must either confess it generally, or deny it generally: Wherefore delay not the time, but say either Guilty, or not; and if thou say Guilty, then shalt thou hear further; if not Guilty, her Majesty's learned Counsel is ready to give Evidence against thee.

Savage. Then, Sir, I am Guilty.

Then her Majesty's Counsel said, Albeit there were nothing now further to be done, but to proceed to Judgment upon his own Confession; yet forasmuch as they desired that the Hearers should be satisfied, and all the World know, how justly he was to be condemned, they crave licence to give such Evidence as would sufficiently and fully prove the Indictment. Which being granted, the Clerk of the Crown did read *Savage's* own Confession, taken before the Lord Chancellor, Lord Treasurer, Mr. Vice-Chamberlain, and Mr. Secretary; which particularly in substance was,

That the said *John Savage* served in the Camp of the Prince of *Parma*, and from thence he departed towards *Rhemes*, where falling acquainted with one *Hodgson*, and talking with him about Exploits of Services, it chanced Doctor *Gifford* over-heard them, and coming to them, said, But a better Service could I tell you than all this (moving the Murder of the Queen of *England*;) But *Savage* seemed to object how dangerous and difficult it was. So they went to Supper, and after Supper ended, *Gifford* declaring unto them, how necessary, how just and meritorious, the committing of the Murder should be, said, That peradventure he sticke to do the Fact, forasmuch as he, percase, was not resolved whether the killing of

a Prince were lawful or not. Whereupon he desired him to advise himself, and to ask Opinions of others: And *Savage* having heard others affirm, that the Murder was lawful, forasmuch as in their pretence she was an Heretick, an Enemy to true Religion, and a Schismatick Person; at last, after three weeks, wherein he had not seen *Gifford*, he answered, That he was contented to do any thing for his Country's Good. Then said *Gifford*, assure yourself you cannot do a greater Good unto your Country, nor whereby the Country should be more beholden, especially all the *Throckmortons* and *Giffords*. At last *Savage*, overcome with their Persuasions, gave his Assent and Oath, that he would put the same in practice. When he had given his Oath to murder her, *Gifford* declared unto him how, and in what Place her Majesty might be slain: And therefore *Gifford* charged him to forbear no Time nor Place, but to murder her; and therefore, as her Majesty should go into her Chapel to hear divine Service, *Savage* might lurk in the Gallery, and stab her with his Dagger: or if her Majesty should walk into her Garden, he might then shoot her through with his Dagg; or if her Majesty did walk abroad to take the Air, as she would often do, rather (as *Gifford* said) accompanied with Women than Men, and those few Men but slenderly weapon'd, *Savage* might then assault her with his arming Sword, and so make sure Work; albeit in all these Cases *Savage* should be in extreme Hazard of his own Life, forasmuch as the Thing itself was so lawful, honourable and meritorious, and he sure to gain Heaven thereby. Thereupon came *Savage* over into *England* with this Intent and Purpose, for to kill the Queen: But not doing the same so soon as was looked for, he received Letters from *Morgan* and *Gifford* from beyond the Seas, persuading him to execute the same. But then he fell acquainted with the most notorious Conspiracy of *Babington*, whereby was another Plot devised, That there should be Six which should kill the Queen: *Savage* would not assent thereto, forasmuch as he thought, except he did it himself, his Conscience could not be satisfied, because he had promised and vowed to do that himself. But *Babington* told him, he should be one. In the mean season was *Ballard* the Priest apprehended, the 4th of August last. Then came *Babington* to *Savage*, saying, *Ballard* is taken, all will be bewrayed, what Remedy now? Then said *Savage*, no Remedy now, but to kill her presently. Very well, said *Babington*; then go you unto the Court to-morrow, and there execute the Fact. Nay, said *Savage*, I cannot go to-morrow, for my Apparel is not ready, and in this Apparel shall I never come near the Queen. Go to, quoth *Babington*, here is my Ring, and all the Money I have, get thee Apparel and dispatch it. But the same Night, *Babington* fearing lest *Savage* alone should fail to do it, continued his other Plot, that Six should ride to the Court and do it: but the next day, *Babington* suspecting somewhat, fled, and all was discovered. Also it appeared by *Savage's* own Confession, how, between *Midsummer* and *Alhallontide*, 1585, he was solicited by *Gifford* to kill the Queen and the Earl of *Leicester*. Furthermore, divers other Proofs were shewed forth by Confession of others, all agreeing to *Savage's* Confession.

* *Attorney*. Now I hope, is *Savage's* Indictment sufficiently and fully proved.

* Sir John Popham.

S

Hatton

Hatton. Savage, I must ask thee one Question: Was not all this willingly and voluntarily confessed by thy self, without Menacing, without Torture, or without Offer of any Torture?

Savage. Yes.

Then spake her Majesty's learned Counsel, desiring to adjourn the Court until the morrow.

Hatton. Forasmuch as if we should now proceed with the other Prisoners which be here put, it would ask time till three of the Clock in the Morning, and the Day is already far spent; also her Majesty's Council having prayed that *Savage's* Judgment be deferred till to-morrow by seven of the Clock: Therefore it is necessary that the Court should be adjourned. Whereupon the Cryer made an O yes, that all should keep their Day to-morrow Morning by seven of the Clock, and so the Court arose.

Wednesday 14 Septembris, 1586.

The next Day being *Wednesday*, the same Prisoners were brought unto the Bar, and the Commissioners being set, the Cryer commanded every Man to hold his peace, and keep silence; and then spake *Sandes* the Clerk of the Crown, in fort ensuing.

Clerk of the Crown.

John Ballard, *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiack Titchbourne*, *Thomas Salisbury*, and *Henry Donn*, hold up your Hands; which being done, he said, Before this time you were indicted before Sir *Edmund Anderson* Knight and others, &c. by virtue of her Majesty's Commission, &c. That where *Bernardino de Mendoza* a Spaniard, and *Charles Pagget*, the 26th Day of *April*, 1586. at *Paris* in *France*, did maliciously and wickedly devise, by what ways and means this Realm of *England* might be invaded, and by what ways and means *Mary Queen of Scots* might be delivered: it was concluded then, that thou the said *John Ballard* should go into this Realm of *England*, to understand and know what Ports and Landings might be procured and provided for the Enemies Invasion, and for to learn by what means and ways the said *Mary Queen of Scots* might be delivered from the Custody wherein she was. And that thou the said *John Ballard*, coming into this Realm of *England*; you the said *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiack Titchbourn*, *Thomas Salisbury*, and *Henry Donn*, as false Traitors against the Crown, and the Queen's most excellent Majesty, your true and natural Sovereign; intending to put away the Love of her Majesty's most loving Subjects, the 5th Day of *June*, in the 28th Year of the Reign of our Sovereign Lady Queen *Elizabeth*, by the Grace of God, &c. at *St. Giles's in the Fields*, within the County of *Middlesex*, did falsely, horribly, traitorously and devilishly, conspire, conclude and agree, the Queen's most excellent Majesty not only from her Royal Crown and Dignity to depose, but also her to kill and slay; and Sedition, Insurrection and Rebellion to stir up and procure, and the Government of this Realm, and the true and Christian Religion therein planted to subvert, and the whole State thereof for to destroy; and for to raise and levy War within the Realm. And thou the said *John Ballard*, the 17th Day of *June*, in the 28th Year afore said, at *St. Giles's* afore said in the County of *Middlesex* afore said, didst go to have Speech, and confer with thee the said *Anthony Babington*, by what means and ways your

false traitorous imagined Practices might be brought to pass. And that thou the said *John Ballard* didst oftentimes declare of an Army of the Pope, and the King of *Spain*, for to invade this Realm; and didst also declare that *Pagget* and *Mendoza* required them the said *Babington*, *Savage*, &c. to procure means how this Realm of *England* might be invaded. And that there thou the said *Anthony Babington* didst say the same could not be brought to pass, without the Murder of the Queen's most excellent Majesty; and afterwards, that is to say, the 7th Day of *June*, at *St. Giles's* afore said, in the County of *Middlesex* afore said, thou the said *Anthony Babington* didst falsely, horribly, traitorously, and devilishly conspire to kill the Queen's most excellent Majesty, and for to deliver the said *Mary Queen of Scots* out of the Custody wherein she was, and how to bring foreign Enemies for to invade this Realm. And that thou *Thomas Salisbury* went to *St. Giles's* afore said, in the County of *Middlesex* afore said, traitorously to confer by what means and ways thy traitorous imagined Practices might be brought to pass; and that thou didst there conclude falsely and traitorously to go into thy Country, in the County of *Denbigh*, there to move and stir up Sedition and Rebellion; and for to persuade the Subjects to conjoin with thee, for the delivery of the said *Mary Queen of Scots* from the Custody wherein she was, and for to aid and assist the foreign Enemies which should invade this Realm. And afterwards the 9th Day of *June*, that you the said *Anthony Babington*, and *John Savage*, went to *St. Giles's* afore said, in the County of *Middlesex* afore said, traitorously to confer how, and by what means your traitorous imagined Practices might be brought to pass; and afterwards, the 10th of *June*, you the said *Anthony Babington*, and *John Savage*, maliciously between your selves, did appoint and conclude that thou the said *John Savage* traitorously the Queen's most excellent Majesty shouldst kill and slay, and her to final Destruction for to bring. And that thou the said *Babington* and *Savage* should join and assist the foreign Enemies which should invade this Realm. And that thou the said *Anthony Babington*, *Chidiack Titchburne*, and *Robert Barnewell*, afterwards, that is to say, the 11th day of *June*, in the Year afore said, went to *St. Giles's* afore said, in the County of *Middlesex* afore said, to confer by what ways and means your Treasons might be fulfilled and brought to pass. And thereupon the 12th Day of *June*, you the said *Babington*, *Titchburne* and *Barnewell*, with divers other false Traitors, most horribly, devilishly, wickedly and traitorously did conclude and agree, that you the said *Robert Barnewell*, *Chidiack Titchburne*, with divers other horrible Traitors, the Queen's most excellent Majesty would kill and slay, and the foreign Invaders would aid and assist. And furthermore, that thou the said *Thomas Salisbury*, together with *Edward Jones* Esq; and other false Traitors, to bring to pass your traitorous imagined Practices the 13th Day of *June*, in the Year afore said, did go to *St. Giles's-Fields* afore said, in the County of *Middlesex* afore said, to confer how your Treasons might be brought to pass: And the same 13th Day did confer, and had Speech by what means your traitorous compassed Imaginations might be performed. And afterwards, that is to say, the 15th Day of *June*, at *St. Giles's-Field* afore said, in the County of *Middlesex* afore said, thou the said *Thomas Salisbury*, and the said *Edward Jones*, did

conclude and agree, that the said *Edward Jones* should conjoin with thee for the delivery of the said *Mary Queen of Scots*, and for to aid and assist the foreign Enemies which should invade this Realm. And furthermore, that *John Travers* Gent. another false Traitor in this Conspiracy, went to *Clerkenwell* in the County of *Middlesex* aforesaid, traitorously to confer with thee the said *Thomas Salisbury*, how your traitorous compassed Imagination might be brought to pass. And the same 15th Day of *June*, at *Clerkenwell* aforesaid, in the County of *Middlesex* aforesaid, the said *John Travers* did traitorously conspire, and agree, for the delivery of *Mary Queen of Scots*, and to assist the foreign Invaders of this Realm. And furthermore, that thou the said *Henry Donn*, for the compassing of thy traitorous Practices, the 22d of *June*, in the Year aforesaid, traitorously didst repair, and go to have Speech, and confer with the said *Anthony Babington*, and *John Ballard*, how your traitorous compassed Imaginations might be brought to pass. And the same 22d of *June*, as well in *St. Giles's* aforesaid, as in other places, didst confer, and had Speech how your Treasons might be brought to pass. And that thou the said *Henry Donn*, the 24th Day of *June*, at *St. Giles's-Fields* aforesaid, didst conclude, and agree with the said *Ballard* and *Babington*, to perform the best they could for the compassing of your Treasons. And furthermore, that thou the said *Anthony Babington*, the 8th Day of *July*, in the Year aforesaid, received Letters dated the 25th of *June*, from *Mary Queen of Scots*, by which the signified unto thee, that she would not be unmindful of thy Affection towards her; and required thee to send her Letters from Friends in *France* and *Scotland*. And the same Day, thou the said *Anthony Babington* didst write unto the said *Mary Queen of Scots* declaring the Plot of thy Treasons, and requiring from her, as from thy Sovereign and Prince, Authority and Commission to proceed in thy Practices; and the 25th of *July* received Letters of answer, by which the said *Mary Queen of Scots* willingly allowed of these Treasons; and also by her said Letters, did animate, comfort and provoke thee to fulfill the same effectually. And furthermore, that Sir *Thomas Gerrard*, another false Traitor, and thou the said *John Ballard* as false Traitors, not having the Fear of God before your Eyes, the 27th of *July*, in the 28th Year aforesaid, at *St. Giles's* aforesaid, in the County aforesaid, did conspire traitorously to deprive and depose the Queen's most excellent Majesty from her Royal Crown and Dignity, and her to final Death and Destruction for to bring; and Sedition and Rebellion to stir up and procure, and to alter the Government of the Realm, and the true Religion to subvert. And that thou the said *Anthony Babington*, and the said Sir *Thomas Gerrard*, the 29th of *July*, in the Year aforesaid, went to *St. Giles's* aforesaid, in the County aforesaid, traitorously to conspire how and by what means your traitorous compassed Imaginations might be brought to pass. And thereupon the last Day of *July*, at *St. Giles's* aforesaid, in the County aforesaid, you the said *Anthony Babington*, and the said Sir *Thomas Gerrard* did agree, that thou the said Sir *Thomas Gerrard* should join with thee the said *Anthony Babington*, for the delivery of the said *Mary Queen of Scots* from the Custody wherein she was, and for the aiding and assisting of the foreign Enemies which should in-

vade this Realm. And furthermore, that thou the said *John Ballard* didst traitorously go to *Southampton-House* in *Holborne*, within the County of *Middlesex*, traitorously to confer with *John Charnock* Gent. and other false Traitors in this Conspiracy, how your traitorous compassed Imaginations might be brought to pass; and there didst confer and had Speech by what means your Treasons might be performed: and afterwards the 2d Day of *August* at *Southampton-House* aforesaid, the said *John Charnock* did traitorously assent to perform the best he could in fulfilling of your Treasons, contrary to your Allegiances you owe to the Queen's most excellent Majesty, her Crown and Dignity, and contrary to divers Statutes in such Case provided.

Sandes. How sayst thou *John Ballard*, art thou Guilty of these Treasons whereof thou standest indicted, or not?

Ballard. That I practised the delivery of the Queen of *Scots*, I am Guilty; and that I went about to alter the Religion, I am Guilty; but that I intended to slay her Majesty, I am not Guilty.

Sandes. Answer directly, art thou Guilty according to the Purport of the Indictment?

Ballard. I answer as my Case is.

C. J. Anderson. Either deny the Indictment generally, or confess it generally.

Hatton. *Ballard*, under thine own Hand are all things confessed; therefore now it is much vanity to stand vain-gloriously in denying it.

Ballard. Then Sir, I confess I am Guilty.

Sandes. How sayst thou, *Anthony Babington*, art thou Guilty of the Treasons contained in the Indictment?

Babington. Then began *Babington* with a mild Countenance, a sober Gesture, and a wonderful good Grace, to declare the Beginnings and Proceedings of his Treasons, which was according as he was indicted, and according to *Savage's* Confession, and *Ballard's* Indictment. In the end he laid all the blame upon *Ballard*, for bringing him to his Destruction.

Hatton. A very fit Author for so bad a Fact!

Babington. Very true, Sir, for from so bad a Ground never proceeds any better Fruits; he was he that persuaded me to kill the Queen, and to commit the other Treasons, whereof now I confess my self Guilty.

Sandes. How sayst thou, *John Savage*, art thou Guilty of the Treasons contained in the Indictment?

Savage. I am Guilty.

Sandes. How sayst thou *Robert Barnewell*, art thou Guilty? &c.

Barnewell. I never intended harm to her Majesty's Person, but I confess I knew thereof, and I held it not lawful to kill the Queen: Howbeit, for my other Actions, forasmuch as I know I am within the danger of the Law, I plead Guilty.

Sandes. How sayst thou, *Chidiack Titchborne*, art thou Guilty of the Treasons contained in the Indictment?

Titchborne. That I knew of these Treasons and concealed them, I must confess that I am Guilty; but unto the rest, I am not Guilty.

Sandes. You must either answer Guilty, or not Guilty.

Titchborne. What I am Guilty of, I plead Guilty, and I will confess no more.

Hatton. Then you may plead not Guilty.

Titchburne. Then Sir, I say, that I am not Guilty.

Hatton. Very well, stay then till we have asked as much of *Salisbury* and *Donn*, and then you shall be tried.

Sandes. How sayst thou, *Henry Donn*, art thou Guilty of the Treasons, &c?

Donn. When I was moved, and made privy to these Treasons, I always said that I prayed unto God, that that might be done, which was to his Honour and Glory.

Hatton. Then it was thus, that they said the Queen should be killed, and thou saidst, God's Will be done.

Donn. Yea, Sir.

Hatton. O Wretch, Wretch! thy Conscience and own Confession shew that thou art Guilty.

Donn. Well Sir, then I confess I am Guilty.

Sandes. How sayst thou, *Thomas Salisbury*, art thou Guilty? &c.

Salisbury. For killing of the Queen's Majesty, I protest I always said I would not do it for a Kingdom.

Sandes. You are indicted, that you practised the Delivery of the Queen of *Scots*, the Invasion of this Land with foreign Forces, and of stirring up Rebellion and Sedition in this Realm; are you Guilty of that?

Salisbury. Then I am Guilty of that I stand indicted of.

Sandes. *Chidiack Titchburne*, thou hast pleaded not Guilty, how wilt thou be tried?

Titchburne. I beseech you, my Lords, give me leave to speak.

Hatton. Say what you will.

Titchburne. I thank your Honours: My good Lords, in the beginning of this Broil I had sent for my Horses to ride into the Country; and the occasion of my longer abode in *London*, was for that I had a lame Leg. Then what probability may it be, that I went to kill the Queen here hard by *London*; when, had it not been for my lame Leg, I had been in *Hampshire*?

C. J. Anderson. Well then, if you plead not Guilty, we will proceed to your Trial.

Sandes. How sayst thou, art thou Guilty, or not Guilty?

Titchburne. I will confess a Truth, and then I must confess that I am Guilty.

Then albeit nothing were to be done but Judgment to be given; yet for satisfying all the People, her Majesty's learned Counsel gave in such Evidence, as would sufficiently prove the Indictment: First, *Savage's* own Confession according to his former Arraignment, how that *Gifford* hearing them talk of Services at *Rhemes*, said I know not what service you mean. But what say you to such a Service, meaning the cutting of the Throat of the Queen of *England*, and of the Earl of *Leicester*? saying, he should never do more good than kill an excommunicate Person, and that to do the same were a far better Service than to study Divinity. And *Gifford* said moreover, that if *Savage* failed to do it, others should do it. And how that *Ballard* going over into *France* at *Lent* last, did meet with one *Grateley*, who brought him to *Charles Paggett*, who told him that the Pope would reform the State here in *England*; and how that *Barnardino de Mendoza* said the King of *Spain* his Master would invade this Realm. And that thereupon *Ballard* should

be sent into *England*, to know what Friends they could make, and thereupon *Ballard* took an Oath to perform the same; and how that he had in mind to move *Babington* in that behalf before he came, and that he came over about *Whitsontide* last. And breaking the same with *Babington*, who thereupon said that the Invasion would never come to effect during her Majesty's Life; whereupon *Ballard* said that would easily be removed, and then made him privy to *Savage's* practice: and that thereupon *Ballard* sent to *Savage* to speak with him on *Lambeth* side, and there told *Savage* of *Babington's* Practice, and brought him to *Babington*, who was not friends with *Savage* before. Then *Ballard* went into the North to sollicite the People, and at his coming up, said he had made 500 sure more than he knew of before. Furthermore, it was declared that during *Ballard's* abode in the North, *Babington* did write Letters to the Queen of *Scots*, a true Copy of which Letters written with *Babington's* own Hand were read in the Court: wherein he began, 'Most high and mighty Prince, his true and Sovereign Liege, to whom alone he oweth Fidelity; declaring how he was her Servant, and that he studied to devise her one good day's Service; and how himself with ten Gentlemen, and an hundred Horse, would work her delivery from the Custody wherein she was, being in the Guard of a Puritan Knight, a mere *Leicestrian*. And how that he had appointed six noble Gentlemen for dispatch of the wicked Competitor, declaring also at large the remainder of his Treasons, and what means he had invented to compass the same.' And then *Ballard* returned from the North; and before it was determined that *Savage* should have gone to the North, but he could not go, because he had sworn to kill the Queen. And therefore when *Babington* had devised that six should kill the Queen, *Savage* would not agree, except himself were one: And how in the mean season, *Ballard* on Thursday the 4th of *August*, about 11 of the Clock, was apprehended. Then *Babington* went to *Titchburne's* Lodging, where not finding him, he went to a Barber's without *Bishopsgate*, where were his own, *Titchburne's* and *Savage's* Pictures; and on *Babington's* Picture was written,

Hi mihi sunt Comites, quos ipsa pericula jungunt.

But then misliking that, was written;

Quorsum hæc alio properantibus.

Then *Babington* went to *Smithfield*, and there walked with *Titchburne*, and there said unto him, I had rather than 500 l. thy Leg were whole, for then this matter should be dispatched. Also *Salisbury* confessed how *Babington*, *Titchburne*, and he had communication as concerning the sacking of the City of *London*. Also it was proved by their Confession, how that to provide themselves of Money for this Practice, they had devised to rob all the richest Men in *England*, and to set fire on the Ships (altho' *Babington* misliked to fire the Ships) and to cloy all the great Ordinance. And all the Indictment was sufficiently and most plainly proved by their Confessions, accordingly as they were intended.

Sandes. *Joby Ballard*, thou hast been indicted of High-Treason, and thereupon arraigned, and hast

hast pleaded Guilty; what hast thou to say for thy self, wherefore Judgment and Execution of Death should not be given against thee?

Ballard. *Ballard* spake something, but not to any effect.

Sandes. Then *Sandes* demanded of *Babington* in like manner.

Babington. Who said he was Guilty of the Treasons, according to his Confession, for killing of the Queen, and the rest by *Ballard's* Persuasion.

Hatton. O *Ballard, Ballard*, what hast thou done? A sort of brave Youths otherwise endued with good Gifts, by thy inducement hast thou brought to their utter Destruction and Confusion.

Babington. Yea, I protest before I met with this *Ballard*, I never meant nor intended for to kill the Queen; but by his Persuasions I was induced to believe that she was excommunicate, and therefore lawful to murder her.

Ballard. Yea, Mr. *Babington*, lay all the blame upon me, but I wish the shedding of my Blood might be the saving of your Life: Howbeit, say what you will, I will say no more.

Hatton. Nay, *Ballard*, you must say more, and shall say more, for you must not commit High-Treasons and then huddle them up: but is this thy *Religio Catholica*? Nay rather, it is *Diabolica*.

Sandes. *John Savage*, thou hast been indicted of High-Treason, &c. (*ut supra*, to *Ballard*.)

Savage and *Titchburne.* *Savage* answered nothing, neither did *Titchburne*, being demanded in like sort also.

Sandes. So *Sandes* demanded of *Robert Barnewell* in like manner.

Barnewell. Forasmuch as I have offended against the Law, I am contented to suffer Punishment according to the Law; howbeit, I here protest what I have done, was only for my Conscience-sake, neither did I ever intend Violence to her Majesty's Person.

Hatton. O *Barnewell, Barnewell*, didst not thou come to *Richmond*, and when her Majesty walked abroad, didst not thou there view her and all her Company, what Weapons they had, how she walked alone? and didst traverse the Ground, and thereupon coming back to *London*, didst make relation to *Babington*, how it was a most easy matter to kill her Majesty, and what thou hadst seen and done at the Court; yes, I know thou didst so: How canst thou then say, that thou never didst intend to lay violent hands on her Majesty? Nay, I can assure thee moreover, and it is most true which I say, that her Majesty did know that thou didst come to that end, and she did see and mark thee how thou didst view her and her Company; but had it been known to some there, as well as unto her, thou hadst never brought news to *Babington*. Such is the Magnanimity of our Sovereign, which God grant be not overmuch, in not fearing such Traitors as thou art.

Barnewell. What I did was only for my Conscience sake, and not for any Malice or Hatred to her Majesty's Person.

Hatton. Then wouldst thou have killed the Queen for Conscience. Fie on such a devilish Conscience!

Sandes. *Henry Donn*, thou hast been indicted of High-Treason, &c. *ut supra* to *Ballard*; What canst thou say for thy self wherefore Judg-

ment and Execution of Death should not be pronounced against thee?

Donn. What I have done herein, was for my Religion and Conscience sake; and since it is counted Treason, I must abide the Punishment, and therefore *Fiat voluntas Dei*.

Sandes. *Salisbury*, What canst thou say wherefore Judgment, &c. (*ut supra* to *Ballard*.)


Salisbury. I beseech her Majesty's most merciful Pardon for my Offence.

Then Mr. Attorney began to declare at large the Sum of their Treasons: How they had conspired her Majesty's Death, and to make the Queen of *Scots* Queen of *England*; and if peradventure she miscarried in these Hurliburies as to be slain, then would they set up the King of *Scots*, if he were a Catholick; if he were not a Catholick, then would they enforce the King of *Spain* to take the Crown and set it on his Head, and derive him a Title from the House of *Clarence*. But because that Title would be but slender, the Pope should dispense, and so make it clear without question. Furthermore he declared, how Priests continually had been the beginning of all the Treasons committed against her Majesty; he began at the Rebellion in the North, and so proceeded till the Treasons of *Throckmorton* and *Parry*, and so ended.

Then began Sir *Christopher Hatton*, and made an excellent good Speech, in opening and setting forth their Treasons, and how they all proceeded from the wicked Priests the Ministers of the Pope. And first he shewed; How these wicked and devilish Youths had conspired to murder the Queen's most excellent Majesty; Secondly, To bring in foreign Invasion; Thirdly, To deliver the Queen of *Scots*, and make her Queen; Fourthly, To sack the City of *London*; Fifthly, To rob and destroy all the wealthy Subjects of this Realm; Sixthly, To kill divers of the Privy-Council, as the Earl of *Leicester*, the Lord Treasurer, Mr. Secretary, Sir *Ralph Sadler*, Sir *Amias Paulet*; Seventhly, To set fire on all the Queen's Ships; Eighthly, To cloy all the great Ordnance; Ninthly and lastly, To subvert Religion, and the whole State of Government. The Inventers and Beginners whereof, were these devilish Priests and Seminaries, against whom he doubted the Parliament had not yet sufficiently provided, who, now-a-days, do not go about to seduce the antient and discreet Men, for they (as the Priests say) be too cold; but they assail, with their Persuasions, the younger Sort, and of those, the most ripe Wits, whose high Hearts and ambitious Minds do carry them headlong to all Wickedness. In the end, he concluded with Remorse for the Youth of some of these unhappy Men, and with Detestation of the Facts of *Ballard*; and also shewed forth a notable Proof of the Falshood of these lying Papists, which was a Book printed at *Rome*, and made by the Papists, wherein they affirm, That the *English* Catholicks which suffer for Religion, be lapped in Bear-Skins, and baited to death with Dogs; a most monstrous Lye, and manifest Falshood.

Then spake my Lord *Anderson* to the like effect, almost in every Point, in abhorring the Abomination of the Jesuits and Seminaries; and in the end concluded with an Exhortation for the Health of their Souls; and last of all pronounced the terrible Sentence of their Condemnation.

XI. *The Trial of Edward Abington, Charles Tilney, Edward Jones, John Travers, John Charnock, Jerome Bellamy, and Robert Gage, at Westminster for High-Treason, 15th of September, 1568. 28 Eliz.*

N Thursday the 15th of September, the Commissioners came, and the Cryer commanded Silence, and the Lieutenant of the Tower was commanded to bring forth the Prisoners, which were *Edward Abington, Charles Tilney, and Edward Jones, Esquires; John Travers, John Charnock, Jerome Bellamy and Robert Gage, Gentlemen; and Elizabeth Bellamy Widow.* All which the Lieutenant of the Tower had ready at the Bar, and there informed the Court, the Woman's name was *Katherine*, and not *Elizabeth*: whereupon the Lieutenant was commanded to take her from the Bar, and bring her to some other place.

Whereupon *Sandes*, Clerk of the Crown, began in sort ensuing; *Edward Abington, Charles Tilney, Edward Jones, John Travers, John Charnock, Jerome Bellamy and Robert Gage*, hold up your Hands: which being done, he proceeded,

Clerk of the Crown. Before this time ye were indicted, that where *Bernardyne de Mendoza* a Spaniard, *Charles Paget* and *John Ballard*, the 2d day of April, in the 28th year of the Reign of our Sovereign Lady the Queen's Majesty, that now is, at *Paris* in *France*, did confer in what Place this Realm of *England* most aptly might be invaded, and what Aid and Assistance might be procured for the same, and how and by what Ways and Means *Mary Queen of Scots* might be deliver'd from the Custody wherein she was. And that thereupon it was resolved by the Counsel of *Morgan*, a most notorious Traitor, that the said *Ballard* should pass into this Realm of *England* to understand what Help might be procured, and to prepare Ports to land the Enemies, for to invade the Realm, and to prepare Ways and Means how *Mary Queen of Scots* might be delivered; and thereupon the said *John Ballard*, coming into *England*, you the said *Edward Abington, Charles Tilney, Edward Jones and John Travers*, together with *Anthony Babington, John Ballard, John Savage, Henry Donn, Thomas Salisbury, Chidiack Titchburne and Robert Barnewell*, as false Traitors, the 8th day of June, in the 28th year of the Reign of our Sovereign Lady the Queen's Majesty that now is, at *St. Giles's in the Fields*, in the County of *Middlesex*, did conspire the Queen's most Excellent Majesty, not only from her Crown and Dignity to depose, but also her to kill and slay, and to stir up Sedition and Rebellion in the Realm, and Slaughter among the Subjects for to make, and the Government and Religion to subvert, and the whole Estate for to destroy, and divers Strangers, her Majesty's Enemies, to invade the Realm, did procure and stir up. And afterwards, the twelfth day of June, in the year

aforesaid, thou the said *Charles Tilney* and *Anthony Babington, Robert Barnewell, and Chidiack Titchburne*, went to *St. Giles's* aforesaid, to confer by what Ways and Means, your traitorous compassed Imaginations might be brought to pass; and there, the same day, had Speech, and did confer how your Treasons might be performed: And on the said 12th day of June, in the year aforesaid, at *St. Giles's* aforesaid, did conclude, that thou the said *Charles Tilney, and Robert Barnewell, and Chidiack Titchburne*, would kill the Queen, and aid the foreign Enemies that should invade the Realm; and that thou *Edward Jones*, with *Thomas Salisbury*, to perform your traitorous Imaginations, the 13th day of June, in the 28th year aforesaid, went to *St. Giles's* aforesaid, to confer how your traitorous compassed Imaginations might be brought to pass. And thereupon thou the said *Edward Jones*, with the said *Thomas Salisbury*, the 15th day of June, in the year aforesaid, at *St. Giles's* aforesaid, did conclude and agree traitorously to join with the said *Thomas Salisbury*, for the Delivery of the said *Mary Queen of Scots*, and for to aid and assist the foreign Enemies which should invade this Realm: And that thou the said *John Travers*, to fulfill thy traitorous compassed Imaginations, the 15th day of June, in the 28th year aforesaid, traitorously diddest go to *Clerkenwell*, within the County of *Middlesex*, to confer by what Means your Treasons might be brought to pass: And the same 15th day of June, at *Clerkenwell* aforesaid, in the County aforesaid, had Speech, and did confer how your traitorous compassed Imaginations might be brought to pass. And the 16th of June, at *Clerkenwell* aforesaid, in the County aforesaid, didst appoint and conclude, with the said *Thomas Salisbury*, to join with him for the delivery of *Mary Queen of Scots*, and in aiding and assisting the foreign Enemies which should invade this Realm. And further, that thou *John Charnock*, with *Thomas Gerrard Knight, John Ballard and Anthony Babington*, the 27th of July, at *St. Giles's* aforesaid, in the County aforesaid, didst conspire the Queen's most excellent Majesty, not only from her Crown and Dignity to depose, but also her to murder and slay, and to make Sedition and Rebellion, and Slaughter of her Majesty's Subjects, and the True and Christian Religion to subvert, and the whole Estate and Government to alter. And that thou *John Charnock* traitorously didst go to *Southampton-House* in *Holbourn*, within the said County of *Middlesex*, the last day of July; and the same last day didst confer there with *John Ballard*, how your traitorous compassed Imaginations might be brought to pass; and thereupon, the 2d day of August, at *Southampton-House*

House in *Holbourn* aforesaid, didst conclude and agree to do the best thou couldst for Performance of the Treasons aforesaid. And that thou *Jerome Bellamy* and *Robert Gage*, knowing that the said *Anthony Babington*, *Robert Barnewell* and *Henry Donn*, had committed High-Treason at *Harrow on the Hill*, in the County of *Middlesex*, did receive and aid them, contrary to your Allegiance you owe to our Sovereign Lady the Queen, her Crown and Dignity, and contrary to divers Statutes in such Case provided. How sayest thou *Edward Abington*, art thou Guilty of the Treasons whereof thou standest indicted, or Not Guilty?

Abington. Not Guilty.

Sandes. How wilt thou be tried?

Abington. By God and my good Country.

Sandes. Thou must say, by God and my Country.

Abington. Yea Sir, by God and my Country.

Sandes. How sayst thou, *Charles Tilney*, art thou Guilty of these Treasons whereof thou standest indicted, or Not Guilty?

Tilney. In no sort Guilty, no more guilty than you are.

Sandes. Answer me directly, art thou Guilty or not Guilty?

Tilney. No Sir, I am not Guilty; and that I am ready to answer and prove.

Sandes. How wilt thou be tried?

Tilney. By God and honest Men.

Hatton. What Answers are these? *Abington* says, By God and my good Country; and thou sayst, By God and honest Men. Thou must say, By God and my Country.

Tilney. Yea Sir, so I say.

In like manner, *Jones*, *Travers*, *Charnock*, *Bellamy*, and *Gage* pleaded Not Guilty.

Thereupon was an Inquest of *Middlesex* called, who appeared at the Bar, and their Names were, *Richard Martin*, *William Fleetwood*, *Jasper Cholmeley*, *William Kempton*, *Robert Losbe* and *John Barnes*, Esquires; *John Hill*, *Robert Wood*, *Thomas Hargrave*, *Thomas Clark*, *John Chawkellett* and *John Draper*, Gentlemen.

Then said *Sandes* to the Prisoners, Have you any Challenge?

Tilney. No not I; for I know them not.

Anderson. Lieutenant of the *Tower*, take away *Gage* and *Bellamy* to some other place out of the hearing of the Court.

So the Lieutenant did.

Abington's Trial.

Then said *Abington*, I beseech your Honours I may have a pair of Writing-Tables to set down what is alledged against me, that I may yield a sufficient Answer thereunto.

Sandes. It was never the Course here.

Hatton. When you hear any thing you are desirous to answer, you shall speak an Answer at full, which is better than a pair of Tables.

Serj. *Puckering*. Well Sir, then will we give Evidence. And first, because it falls out that *Abington* and *Tilney* were acquainted with *Savage's* Conspiracy, we will shew a little that which yesterday was opened at full; and therefore, by *Ballard's* Confession, this Summer was Twelvemonth, *Ballard* went into *Scotland* to understand of the Willingness of the People, and *Tilney* offered to go with him.

Tilney. Yea Sir, so I did: What can you prove by that?

Puckering. Soft, I will tell you when I come to give Evidence against you. After *Christmas*, *Ballard* went into the *North*, and afterwards had Speech with *Tilney* to go over beyond the Seas, and *Tilney* agreed and was contented. *Ballard* went over and sent Letters to *Tilney*, desiring to stay till *Ballard* came over back, and he would tell him more. When *Ballard* came over, *Tilney* was acquainted with *Savage's* Purpose, and *Abington* too: But then *Ballard* fell acquainted with *Babington*, and so came a greater Conspiracy. And *Abington* put forth a Proposition to surprize the Queen; and *Tilney* was privy: And it is under *Babington's* hand, that *Tilney*, *Titchburne*, *Barnewell* and *Savage* undertook to kill the Queen. *Jones*, at *London*, talked with *Salisbury*, and stay'd for him, and was privy to a Writing that was sent for *Salisbury's* Apprehension. And *Jones* repaired unto *Salisbury* at Midnight, being in *Jones's* House, and told him, That he had undone them all, and lent him his own Horse, and his Man's Cloak. *Charnock*, the same day that *Ballard* was taken, was moved by *Babington* to be one of the six to kill the Queen; and he assented, and afterwards lent *Babington* Apparel to fly in. Whereupon was *Ballard's* Confession read, which was, that he confessed, That he conferred with *Pagett* about the State of our Country; and that *Ballard* said, It is now more easy to invade the Realm than before, because the Earl of *Leicester*, with the best of our Captains, were in *Flanders*: and that they two talked with *Mendoza*; who asked them, what armed Men they could make, and what Ports they could yield to the Invaders for to land in; and *Mendoza* told them, his Master had a greater Preparation than ever he had by Sea, but he knew not for what Matter; but he said, He cared not whether they have any Help of them or no: but said, If you will not assist us herein, we will be as Conquerors when we come, and use him also like Enemies. For when it came to the brunt, they always shrunk, only he had a great care for the Delivery of the Queen of *Scots*, and so sent *Ballard* into *England*; and said, His Master, the King of *Spain*, had vowed to lose his Crown, and the Pope his Life, but they would convert *England*, and deliver the Queen of *Scots*. After *Ballard* arrived, he talked with *Babington*, and he seemed willing: Also he confesseth the killing of the Queen.

* *Attorney*. *Edward Abington*, upon his Examination, denieth he knew *Ballard*; which we will prove to be false: Therefore read first his Denial, which was, That he denied the surprizing of her Majesty; he denieth the knowledge of *Ballard*, *Fortescue*, or *Browne*; he denieth the Delivery of the Queen of *Scots*; and being told, that the *Frenchmen* would invade this Land, he said, He would spend his Life in her Majesty's Defence: He confesseth, that on Sunday was sevensnight, he and his Brother lay on a Hay-mow.

† *Solicitor*. Whoso is guiltless will speak truly and directly, but the Counterfeit must speak Untruths. Thereupon was another Examination of his read which was, That *Ballard* being brought to his face, said, That *Ballard* was not with him since *Whitsuntide*; but he confesseth, he knew him some Years ago at *Chertsey*. *Abington's* Brother confesseth, that *Ballard* was twice at *Edward Abington's* Lodging at *Charing-Cross*; and at one of the times his Brother *Ballard* talked secretly in

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one end of the Chamber: And *Ballard* was first acquainted with *Thomas Abington* at *Rhemes*; and *Ballard* saith, That he made *Edward Abington* acquainted with these Treasons, and he gave his Consent. And *Babington* saith, that *Abington* moved first the Surprize of the Queen. Then was read the Confession of *Babington*, which was, that *Edward Abington* moved first the Surprize of the Queen to some strong Place, and there to move her for Reformation or Toleration of Religion. *Tilney* confesseth, That at the *Three-Tuns* in *Newgate-Market*, *Babington* moved a Proposition for removing of the Lord-Treasurer and Mr. Secretary; and that *Abington* spake broad Speeches concerning that Matter; and that *Tilney* did reprove him for the same.

Tilney, I deny it, I never said so.

Puckering. Here is your own Hand, and read it.

Tilney. It is mine own Hand, but what did I mean? When I said concerning that Matter, I must interpret mine own Meaning, I meant to speak broad Words concerning Religion.

Attorney. Then belike you reprov'd *Abington* for Religion.

Tilney. Yea, I reprov'd him for speaking broad Words concerning Religion.

Attorney. What Matter did you talk of then but Treason? It is well the Jury doth hear your Answers.

C. B. Manwood, *Tilney*, you are too hot, this Evidence is against *Abington*, you shall answer your self when it comes to you.

Solicitor. *Tilney* confesseth that there was speech between him and *Abington* concerning a Surprize of the Queen; and that *Abington* said, he would ride to *Thomas Salisbury* into the Country.

Then said the Queen's Attorney unto the Jury, You perceive how that *Abington* is found false for his Acquaintance with *Ballard*.

Then was read *Babington's* Confession, that *Abington* and *Tilney* were disposed to kill the Queen.

Attorney. *Salisbury* confesseth, that *Abington* desired him to make haste to his Country; and said, He understood by *Babington* of certain Matters, and that he would come to *Salisbury's* Country for Things to be done shortly.

Solicitor. He confesseth himself, that he was privy unto it, and concealed it.

Then was read *Babington's* Confession before the Lords, which was, That when certain Seminaries in *Rome* came to take leave of the Pope, and to kiss his Foot, the Pope asked what they were; and it was told him, that they were *Englishmen*, which went to spend their Lives for Reformation of Religion in their Country. The Pope said, it was a good flow Way; but said, that he would make a Bridge over that Ditch into *England* ere it were long. Also he confesseth, That he and *Babington* heard *Edward Abington* use speech to the same effect.

So you hear how *Babington* sets down *Abington* to be one of the six to kill the Queen.

Also here is *Ballard's* own Hand, that *Babington* appointed six to kill the Queen, *Abington*, *Titchburne*, *Tilney*, and others.

Abington. It is very well, if I be at *Babington's* Commandment; I protest I never knew thereof.

Solicitor. Here is *Babington's* Letter to the Queen of *Scots*, which proveth you to be one.

The Letter was read; among other, this Sentence was in: There be six noble Gentlemen

which have undertaken the Tragical Execution, meaning the murdering of the Queen of *England*, only it resteth, that their Attempt be honourably rewarded.

Abington. I protest before Heaven and Earth, as I am a true Christian, I never knew thereof.

The Letter went further, and contained this; All the Actors have vowed, either to die, or else to perform their Purpose.

Abington. This is *Babington's* Brag, to get Credit with the Queen of *Scots*.

Attorney. We will prove, *Abington*, that thou didst provide Armour of proof too for your Brother and your self, and one for another Person.

Then was *Foster's* Examination, an Armourer in *Holbourn*, read, which proved so much directly.

Attorney, to *Hatton*. Mr. Vice-Chamberlain, you desired *Abington* to set down the Truth of these Things, thereupon he set down a great deal in Writing, and yesterday he tore it in a hundred pieces; and here Mr. Lieutenant of the Tower hath given me the pieces, and here they be.

Hatton. *Abington*, you be very obstinate, and seem indurate in these Treasons.

Abington. I will answer what is laid against me: My first acquaintance was with *Savage*, by reason that my Brother and he were both of *Bernard's-Inn*, and by him came I acquainted with *Savage*, who talking with me, he told me of a Book written at *Rhemes*, which inveighed against the Earl of *Northumberland*, *Throckmorton* and *Parry*, for that they intended Violence against her Majesty's Person, which Book I liked; yea but, said *Savage*, it may be but for a Colour. Then he told me, that it was written but for to blind the Counsellors in *England*, and make them secure and careless, when in very deed they at *Rhemes* desire nothing more than the Murder of the Queen of *England*. Then I answered, He that allows of *Parry's* Actions, favours not of Divinity. And this I protest is true. For *Ballard's* Acquaintance, true it is, he came unto my Chamber, and I knew him not; and then he told me, he had seen me four Years ago at *Chertsey*. So then I asked, What News? And he told me of an Invasion intended against this Country. Whereunto I gave such cold Answers, and such cold Entertainment, as I never saw him since. For my Doings with *Babington*, his Lodging was right in my way to go from *Charing-Cross*, thro' the Fields to *London*; and true it is, he made me privy to his Treasons, and that I concealed them: And when he told me Strangers would invade this Realm to reform Religion, I protested to *Babington*, I had rather be drawn to *Tyburn* by the Heels for my Religion than to have it reform'd by Strangers. And for *Babington's* Accusation, what force can it be of? for he having committed and confessed Treason in the most high Degree, there was no hope for him but to accuse.

Hatton. For *Babington's* Hope thereof, I am persuaded he hath no Hope at all; and my Lords here can assure there is no Hope at all of his Life: but he confessed what he knew for discharge of his Conscience; and what he did, he did it willingly and voluntarily: for had not *Babington* voluntarily named *Abington*, who could have named *Abington*? And had he not also willingly accused *Tilney*, who could have accused *Tilney*?

Abington. Well then, Sir, to you my Lords the Judges, I do now speak: There is a Statute in the 11th and 13th of this Queen made, That who shall conspire, &c. it shall be Treason, &c. provided,

that he shall have two lawful Witnesses, face to face, to avow it, &c. Now may it please your Honours to have two lawful Witnesses, to testify against me. As for *Babington*, what Witness can he be, a condemned Man, *Savage* a condemned Man also, and *Ballard* a condemned Man likewise? So then there is no Witness against me; but I stand not upon this point, I stand upon mine own not Guiltiness. Furthermore, it is not proved that *Babington* and I would be one to kill the Queen: but that he had appointed me to be one, and it is not proved that I knew thereof; and that I said to *Salisbury*, I would come into the Country to understand of Things to be done, I protest I remember not; for what needed any coming into the Country to understand, when as *Salisbury* and *Babington* did ride to *St. Albans* in *Babington's* Coach?

Manwood. You answer by Arguments, and not by Answers.

Abington. If it be true, that they rode together, as it is most true, what needed those Speeches?

Manwood. That only answereth that *Babington* might confer; but it doth not answer, that you needed not to go into the Country to understand of things to be done, for you rode not in the Coach with them.

Abington. I protest before God, I remember not that ever I said so.

Manwood. Let the Jury consider of this Answer.

Anderson. For Answer to you, *Abington*, for the point of the Statute, true it is, had you been indicted on the Statute of the 1st and 13th of this Queen, two Witnesses ought to have been produced; but you stand indicted by the Common Law, and the Statute of 25 *Edw.* 3. which is, who shall intend the Death of the King, &c. and in that Statute is not contained any such Proof.

Tilney. The Statute of 25 *Edw.* 3. is, who shall compass or imagine, &c.

Anderson. Very well, and not contained to prove by Witnesses, as you would have it.

Solicitor. See how they would acquit themselves for want of Witnesses; and if it should be as they would have it, then could never any Treason be sufficiently proved. The Statute of *primo Eliz.* is so, the Overt-Act must be proved by two Witnesses; but the Statute of 25 *Edw.* 3. is, who shall imagine: how then can that be proved by honest Men, being a secret Cogitation which lieth in the Minds of Traitors? And such Traitors will never reveal their Cogitations unto honest Men, but unto such as themselves, and they I hope be no honest Men; so then they would have their Treasons never revealed.

Abington. For answer that I lay in a Hay-mow, it is most true I was in *Herefordshire*, when my House in *Worcestershire* was in searching, and there I heard how my House was search'd; and coming to *Worcestershire*, the Country hearing of the horribleness of the Things therewith I was charged, I knew none would receive me nor entertain me; and so I was constrained to lie in a Hay-mow. And for preparing mine Armour, I protest I had the same in *Shoe-Lane*, and would have had it ready against the going over of the Earl of *Leicester*; and hearing him in *Holbourn* to be commended for the most singular Man in *England* in his Trade, I sent to him to have it finished.

Then said the Attorney to the Jury, You have heard how *Babington* confesseth *Abington* would be one to kill the Queen, and you have heard his Answer thereunto.

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Abington. If *Babington* ever moved it to me, let me die for it.

Attorney. It is *Babington's* own Confession, that Six, whereof *Abington* was one, were disposed to kill the Queen.

Abington. If ever I imagined, or any part thought of the Indictment which you have alledged, I beseech God I sink as I stand in this Place.

Anderson. You had a Seminary Priest in your House.

Abington. He was only with me, but not in mine House.

Hatton. Before *Babington* was taken, *Ballard* did voluntarily declare, that you two, *Abington* and *Tilney*, were disposed to kill the Queen.

Anderson. The Jury hath heard the Indictment and your Answers, let them consider thereof in their Consciences.

Tilney's Trial.

First was read his Confession, wherein he deny'd *Ballard's* Acquaintance, and he denied that ever he heard *Ballard* say, we should have a new World shortly. Then was read *Ballard's* Confession, which was, That before *Christmas* last, *Ballard* did confess *Gage* and *Tilney* at a House in *Holbourn*.

Tilney. I denied *Ballard's* Acquaintance, because, by the last Statute, he is a Traitor, and not for my Guilt or Crime. And for that I was confessed by him, it was no otherwise than all the Subjects of the Realm of *England* were confessed in the days of King *Henry VII.*

Solicitor. But now is the estate of this Realm quite other than it was in the days of *Henry VII.* For now the Pope is the greatest Enemy her Majesty hath, but it was not so then.

Tilney. How know I the Pope is her greatest Enemy?

Hatton. Know not you how he invaded the Realm of *Ireland*?

Attorney. Know not you how he induced *Mary*?

Tilney. No, Sir, in my Conscience wherein I shall die, I never conspired any Treason.

Manwood. Were not you sworn when you were made a Pensioner? How far different is it to these Actions, to be confessed, and to conceal Traitors?

Tilney. Yea Sir, but I was not then a Catholic, but now I am; for which I thank God most heartily.

Puckering. Did not you say, if her Majesty would forgive you this, you would never deal more with any Seminary Priest; but if there were any old Priest in *England*, you would have him, if he were to be gotten for Money?

Tilney. But what is this? This only concerneth my Religion, which I was promised I should not be charged withal.

Attorney. No more you are for Lands nor Goods, this is only an Introduction to the Treason.

Then was read *Tilney's* own Confession, wherein he confessed (which also was given in evidence against *Abington*) that *Abington* said, Why might not her Majesty be as well surprized as the Queen of *Scots*? Which Words he spake at the *Three-Tuns* in *Newgate-Market*. He confessed, *Ballard* came to his Chambers in *Westminster*, in his Withdrawing-Chamber (as it was termed) where *Ballard* told him, He had provided a Pension for *Windsor* in *France*, and would do so for him; and told him

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of

of an Invasion intended against this Realm: He confesseth, he would have gone to *Scotland* to have liv'd there among the Catholics, when *Ballard* went thither; and said, that *Windfor* made him acquainted with *Ballard*.

Tilney. These things I confess, but yet, 'tis no Treason to hear Treason talked of by others; as for my self, what Presumptions may there be if I should be Guilty, being her Majesty's sworn Servant, (whose Highness God grant long to reign) a young Man of small Ability, neither in Lands nor Goods, able to make any Power at all: for Religion, I confess I am a Catholic, which I thank God for it, but that I am not now to be charged withal. As for *Ballard's* coming to me, I do confess it, but it was in such publick manner, as no Man in the World could judge his coming for any such intent as Treason: For he came openly in the Day-time, not in the Night, and never came disguised.

Solicitor. *Tilney*, you say true, he came not disguised, but I will tell you how he came; being a Popish Priest, he came in a grey Cloke laid on with Gold Lace, in Velvet Hose, a cut Sattin Doublet, a fair Hat of the newest Fashion, the Band being set with Silver Buttons; a Man and a Boy after him, and his Name Captain *Fortescue*.

Tilney. All this concerneth my Religion only.

Solicitor. You confess that you were privy to these Treasons; then we will prove directly that you did assent thereunto.

Then was read *Ballard's* Confession, wherein *Ballard* thinketh that *Tilney* did assent to kill the Queen, for he saw him not dissent when he told him these Treasons: likewise *Tilney* requested him for some Pension in *France* when he came over.

Tilney. I stand upon the Assent.

Solicitor. *Ballard* affirmeth it; *Babington* said that you *Tilney* were one of the six.

Tilney. *Babington* told him so, that proves that *Babington* forsooth will be a Statesman, when God knows he is a Man of no Gravity.

Solicitor. *Babington's* Confession is, that *Tilney* and *Abington* were disposed to kill the Queen.

Puckering. *Babington* said yesterday at the Bar, that *Tilney* would have had her Majesty set upon in her Coach.

Tilney. No, I said not so, only at the *Three Tuns* in *Newgate-Market*, I said it might be her Majesty might be set upon in her Coach, and I said no more. But that proves not I did consent.

Attorney. You have said enough, if we had no other Evidence against you.

Tilney. How so?

Attorney. Because you have confessed High-Treason.

Tilney. I tell you no, there is no such matter intended in my words.

Manwood. Your Censure was your Assent, and your Censure was to kill the Queen in her Coach.

Hatton. Your words prove that you were concluded upon the Matter, and were devising on the Manner.

Attorney. *Babington* and *Ballard* reckoned *Tilney* for one of the six to kill the Queen, as by their Confession appeareth.

Tilney. The first time that I knew *Babington*, was, that he came to my Chamber in *Westminster*, to crave mine Acquaintance; I used him courteously, as appertained to a Gentleman. The second time was at the *Three Tuns* in *Newgate-Market*. And the third time was in the Fields, and

I never saw him else: that I should trust him in so high a matter for three times Acquaintance, is altogether improbable. As for *Babington* himself, albeit he be very wise, yet is he altogether vain.

Hatton. *Babington* declared all this voluntarily, for who could accuse *Tilney* before *Babington* named *Tilney*?

Tilney. I will tell you how I meant my words in *Newgate-Market*. If a Servant which is faithful, knowing where his Master's Money is, do say, if I would be a Thief, I could rob my Master, for in such a place his Money is; this proves not that he would rob his Master, albeit he used such words. And so, altho' I said she might be set upon in her Coach, it proveth not that I assented to the same; for I protest before God, I never intended any Treason in my Life.

Anderson. But if a Servant knowing where his Master's Money is, among Thieves which are devising to take away the Master's Money, do say, This way my Master's Money may be taken, and be in view when it is taken; I say that he is accessory. And you *Tilney* being amongst Traitors, that were devising how to kill her Majesty, to shew by what means her Majesty might be slain, it manifestly proveth your Assent. Therefore let the Jury consider of their Evidence.

Tilney. Then said *Tilney* unto the Jury, My very good Friends and Countrymen of the Jury, forasmuch as I am charged highly to have offended against the Law, I am now to be tried according to the Law by you. And therefore if you shall find this Evidence sufficient to prove my Guilt, you ought to find me Guilty; but if you see in your Consciences that I have answered fully each Objection laid unto my Charge, I charge you to find me not Guilty, as you will answer me at the dreadful Day of Judgment.

The Trial of Jones.

First was read his Confession, That he said to *John Travers* at *Jones's* House in *Denbighshire*, *Salisbury* hath brought us all to Destruction; what remedy, said *Travers*, it is then time for us to be packing. But *Jones* lent *Salisbury* his Horse to ride away with. *Salisbury* confessed he acquainted *Jones* with the foreign Invasion, and Delivery of the Queen of *Scots*, desiring his aid, which he promised him in *Lincoln's-Inn-Fields*: And how that *Salisbury* fled upon *Jones's* relation of *Babington's* Apprehension. Also *Salisbury* confessed that he caused *Jones* to protest he would not discover him. *Jones* saith in his Examination, that *Salisbury* never asked his Assent, because he always thought himself assured of him. Also *Jones* said to *Salisbury*, what have you done? you have undone us all. This was the Effect of the Evidence which was given against him.

Jones. For concealing of the Treason, I put me to her Majesty's Mercy; I confess I hastened *Salisbury* away.

Manwood. Then you deny not but that you horsed him away.

Jones. Then said *Jones* to the Jury, I confess this, and put me to her Majesty's Mercy; my Case was hard and lamentable, either to betray my dearest Friend, whom I loved as my own self; and to discover *Thomas Salisbury*, the best Man in my Country, of whom I only made choice; or else to break my Allegiance to my Sovereign, and so undo myself and my Posterity for ever. And this was my Case.

Travers's

Travers's Arraignment.

Salisbury confessed he acquainted *John Travers* with his Treasons, and that he consented unto him. And *Travers* said unto him, he would go beyond the Seas with him. *Salisbury* confesseth he exacted no Oath of *Jones* and *Travers* when he acquainted them, but that they protested they would not discover him. Also it was proved that when *Jones* intended to have gone to *Ireland*, now lately when it was to have been inhabited by the *Englishmen*, *Travers* asked him what he meant to go now, when his presence was necessary; and said, if *Mr. Salisbury* came home, he would surely stay him.

Then was read *Culey's* Confession, that *Travers* and *Salisbury* fled, and *Travers* called his own Name *Lacon*, and *Salisbury* called his Name *Johnson*, and that *Culey* would not change his Name, because he had changed it before.

Travers. I fled and changed my Name, because I was a Catholick, and doubted to be troubled for my Religion and Conscience.

Solicitor. Nay *Travers*, thou didst fly for Treason, for when *Jones* told you *Salisbury* had undone you all, thou saidst what remedy, and that it was time to be packing; and you had your Chaplain with you, *Culey* I mean.

Travers. If he be a Priest, I honour him for his Priesthood. And he said little else, as one that seemed not to care what Evidence came against him, but was resolute to be hanged.

He confessed nothing in his Examination, he denied he had any Speech with *Babington*, saving Salutations. He confessed he served in the *Spanish* Camp, and there was acquainted with *Savage*; and it was proved against him, that he said *Savage's* sudden Bravery would bewray all their matters.

Charnock's Trial.

Charnock. I confess that *Ballard* did make me acquainted with the Invasion of the Realm, and the other Treasons, and thereupon I founded *Savage*, who answered he was not his own Man, but said there was one in the Court who should have done that long since, and that he was a *Morganist*.

Then was read *Babington's* Confession, that *Charnock* promised him to be at his Commandment, and *Babington* told him the Queen of *Scots* liked of their Actions.

And *Ballard's* Confession was read, that he told *Charnock* at large, and *Charnock* liked very well, and said he would do the best he could herein.

And *Savage's* Confession was read, which was, that *Babington* moved *Charnock* to be one of the six, and *Charnock* told *Savage* that *Babington* moved him also.

Charnock. That I said to *Babington* I would be at his Commandment, it is very true; for *Babington* was my good Friend in divers respects, and therefore I thought it pertained to Courtesy, to say I remained at his Commandment.

Solicitor. Nay, thou didst offer to be at *Babington's* Commandment in this Action of Treason.

Then was *Babington's* Confession read, which was, that he talking in *Paul's* with *Charnock* of the Queen's Death, *Charnock* promised to be disposed by him in this Action, and that he offered to spend his Life, wherein *Babington* should direct him.

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Then was read *Charnock's* own Confession, wherein he confessed he lent Apparel to *Savage* to fly in, and that he fled into the Woods himself.

Charnock. *Savage* and I were acquainted when he was of *Barnards-Inn*, and I of *Furnivals-Inn*; and we both served in the *Spanish* Camp together, and *Savage* brought me acquainted with *Ballard*. As for *Savage*, because I knew he was an excellent Soldier, a Man skilful in Languages, and learned besides; when I met him here in *England*, I was glad to renew old Acquaintance with him. That I should consent to *Ballard* the 2d Day of *August*, see (if you please) what probability there is to the contrary: For on the 4th of *August* *Ballard* was apprehended, and before his Apprehension *Ballard* sent a Letter to Mr. Secretary, offering to discover all; my self was the Bearer of the Letter, and delivered it to one of Mr. Secretary's Men: what likelihood is it then, that I knowing of this Letter after that *Ballard* was taken, would consent to *Babington* to kill the Queen, or that I consented to *Ballard* the 2d of *August*; *Ballard* being apprehended the 4th of *August*, and before that time had written to Mr. Secretary, and myself was the Messenger?

Hatton. *Savage* confronted thee to thy face, and avouched these things to thy face.

Charnock. For flying away with my Friend, I fulfilled the part of a Friend therein.

Hatton. To perform thy Friendship, thou didst break thy Allegiance to thy Sovereign.

Charnock. Therein have I offended.

Anderson. You of the Jury, you have now heard their several Answers at large; go together and consider thereof in your Consciences.

Then the Jury, upon this Evidence and their Answers, went up to a House to agree upon their Verdict; and these five Prisoners were sent away from the Bar.

Then *Bellamy* and *Gage* were called to the Bar, and a new Inquest were called and appeared at the Bar, and Evidence was given against the two Prisoners in fort ensuing.

The Trial of Gage.

First, was given in Evidence that *Gage* knew *Ballard* to be a Priest, and was reconciled, and gave Lodging unto *Ballard*, and attended *Ballard* as his Man when he went into the North to provoke the People to Rebellion: Also when all the matter was discovered, he lent *Savage* a Horse to fly to *Croydon*, and directed him to one of *Savage's* Father's Men, who should help him away: Also that he lent *Babington* his Apparel to fly in. Then was shewed forth his own Confession, which was, that *Ballard* told him we should have a new World shortly, and that he lodged *Ballard* for his Safety: Also he confessed, that during his flight he lodged in a Barn: Also he confessed that he was reconciled by *Ballard*.

Also *Charnock's* Confession was read, that *Gage* borrowed Apparel of him to fly in.

Then *Gage* was asked by the Lord Chief Baron *Manwood*, wherefore he fled into the Woods.

Gage stoutly and fiercely answered, for Company.

Bellamy's Trial.

He confessed that the noise of the Country was, that they (that is to say, *Babington*, *Barnwell* and

T 2

Donn)

Down) had conspired the Queen's Death, and how that after that he brought them Meat into the Woods, and lodged them in his House. Also Evidence was given, that one coming to *Bellamy's* House to seek for the Traitors, telling him they conspired the Queen's Death, he denied he knew whom they were; whereas at the same time he had them in his House. *Bellamy* spake very little for himself, only he seemed to be a very clownish, blunt, wilful and obstinate Papist.

Then this other Jury went up to a House to agree upon their Verdict, and by that time was the first Jury agreed, which came to the Bar; and Alderman *Martin* being their Foreman, spake for them, and said that they found all the five Prisoners Guilty; and further, that they knew not what Lands, Tenements, Goods or Chattels the Prisoners had, &c. So the Clerk of the Crown set down the Verdict, and discharged the Inquest of that Service.

Forthwith was the other Inquest agreed of their Verdict, and found *Gage* and *Bellamy* also Guilty of the Treasons they were indicted of.

Puckering. Then *Puckering*, the Queen's Sergeant, craved Judgment of Death against the Prisoners.

Sandes. Then said *Sandes*, the Clerk of the Crown; *Edward Abington*, thou hast been indicted of High-Treason, and thereupon arraigned, and hast pleaded not Guilty, thy Country hath found thee Guilty; what hast thou to say for thyself, wherefore Judgment and Execution of Death should not be given against thee?

Abington. My good Lords, sithence I have been tried by the Law, and am found Guilty of Offence against the Law, I am contented to abide the Punishment due unto my Guilt. The Inquest I cannot accuse, forasmuch as they thought in their Consciences the Evidence sufficient to condemn me; howbeit, that brainless Youth *Babington*, whose proud Stomach, and ambitious Mind incensing him to commit most abominable Treasons, hath been the cause to shed the blood of others guiltless in his Actions. But I cry not Vengeance against him, for I am contented to die, being condemned to die. Only this one Petition to you, my good Lords, I make: I have one Sister, whose Preferment also hath miscarried; wherefore if it might please her Majesty, with the Revenues of my Lands in some sort to provide for her; if I live, I will endeavour to be thankful; and if I die, I will pray for her.

Then the Clerk of the Crown demanded the like of *Tilney*; who said,

Tilney. And I, my good Lords, am able to say nothing in deferring of my Judgment. This humble suit must I make to your Honours; I owe in *London* about two or three hundred Pounds, and I beseech your Honours to procure my Friends to pay it for discharge of my Conscience.

Then the Clerk of the Crown demanded the like of *Jones*; who said,

Jones. I beseech your Honours to be a means to her Majesty for Mercy, for I desiring to be counted a faithful Friend, am now condemned for a false Traitor. The Love of *Thomas Salisbury* hath made me hate myself, but God knows how far I was from intending any Treason. But if Mercy be not to be had, I beseech your Honours this; I owe some Sums of Money, but not very much, and I have more owing me; I beseech that my Debts may be paid with that which is owing me.

Moreover, my good Lords, the Lands I have, which I had by descent from my Father, at the Marriage of a Gentlewoman which is now my Wife, were intailed unto me, and the Heirs Male of my Body; I beseech you some Consideration may be had of my Posterity.

Hatton. *Jones*, did not you tell me that your Lands were Fee-simple, for an Argument of your Innocency?

Jones. Yea, Sir, so my Lands are, but at the time of my Marriage they were intailed as I tell you.

Sandes. Then the Clerk of the Crown demanded the like of *Travers*; who said,

Travers. I never committed any Treason, but for my Religion, I will die in it; only I owe 4 *l.* or such a matter, I beseech you it may be paid out of the Profits of my Lands.

Then the Clerk of the Crown demanded the like of *Charnock*; who said,

Charnock. I beseech your Honour, Mr. Vice-Chamberlain, to get her Majesty to pardon me.

Hatton. *Charnock*, thy Offence is too high for me to be an Obtainer of thy Pardon, but I am sorry for thee; if thou hadst applied thyself the best way, thou mightest have done thy Country good Service.

Charnock. I beseech you then, that six Angels, which such a one hath of mine, may be delivered unto my Brother to pay my Debts.

Hatton. How much is thy Debts?

Charnock. The same six Angels would discharge it.

Hatton. Then I promise thee it shall be paid.

Then the Clerk of the Crown demanded the like of the rest, who answered little: whereupon they all received Judgment of Death, according to their demerits.

ON the 20th of the same Month, *John Ballard*, *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiack Titchburne*, *Charles Tilney* and *Edward Abington*, were drawn on Hurdles from the Tower to their Execution to *St. Giles's-Fields*, being the place where they used to meet; where was erected a Scaffold, and thereupon a Gallows.

John Ballard the Priest, the principal Conspirator, confessed that he was guilty of those things for which he was *Condemn'd*, but protested they were never enterprised by him upon any Hope of Preferment, but only, as he said, for the Advancement of *true Religion*. He craved Pardon and Forgiveness of all Persons, to whom his Doings had been any *Scandal*, and so made an end; making his Prayers to himself in *Latin*, not asking her Majesty Forgiveness, otherwise than *if he had offended*.

Anthony Babington also confessed, That he was come to die, as he had deserved; howbeit he (as *Ballard* before) protested that he was not led into those Actions upon Hope of Preferment, or for any temporal Respect; nor had ever attempted them, but that he was persuaded by Reasons alleged to this effect, That it was a *Deed lawful and meritorious*. He craved Forgiveness of all whom he had any way offended; he would gladly also have been resolved whether his Lands should have been confiscate to her Majesty, or whether they should descend to his Brother; but howsoever, his Request was to the Lords, and others the Commissioners there present, that Consideration might be had of one whose Money he had received

received for Lands, which he had passed no *Fine* for, for which the Conveyance was void in Law. He requested also, that Consideration might be had of a certain Servant of his, whom he had sent for certain Merchandize into the East Countries, who by his means was greatly impoverished. For his Wife, he said, she had good Friends, to whose Consideration he would leave her: And thus he finished, asking her Majesty Forgiveness, and making his Prayers in *Latin*.

John Savage confessed his Guilt, and said (as the other two before) that he did attempt it, for that in Conscience he thought it a *Deed meritorious*, and a common Good to the Weal publick, and for no private Preferment.

Robert Barnewell confessed that he was made acquainted with their Drifts, but denied that ever he consented, or could be in Conscience persuaded that it was a *Deed lawful*. And being urged that he came to the Court to spy Opportunities for the achieving of their Purposes, and that being there, her Majesty observing his *prying Looks*, acquainted before with their Intents, she prayed God that all were well: To this he answered, That it was not unknown to divers of the Council, that he had Matters which he solicited, which was the Cause of his being there at that time; but I confess (said he) at my Return, *Babington* asked me what News; to whom I told, that her Majesty had been abroad that Day, with all the Circumstances that I saw there; and if I have offended her Majesty, I crave Forgiveness; and assuredly, if the Sacrifice of my Body might establish her Majesty in the true Religion, I would most willingly offer it up. Then he prayed to himself in *Latin*.

Chidiack Titchburne began to speak as followeth, viz. Countrymen and my dear Friends, you expect I should speak something; I am a bad Orator, and my Text is worse: It were in vain to enter into the Discourse of the whole Matter for which I am brought hither, for that it hath been revealed heretofore, and is well known to the most of this Company: Let me be a Warning to all young Gentlemen, especially *Generosis adolescentulis*. I had a Friend, and a dear Friend, of whom I made no small Account, whose Friendship hath brought me to this: he told me the whole Matter, I cannot deny, as they had laid it down to be done; but I always thought it *impious*, and denied to be a Dealer in it; but the Regard of my Friend caused me to be a Man in whom the old Proverb was verified, I was *silent, and so consented*. Before this thing chanced, we lived together in most flourishing Estate: Of whom went Report in the *Strand*, *Fleet-street*, and elsewhere about *London*, but of *Babington* and *Titchburne*? No Threshold was of force to brave our Entry. Thus we lived, and wanted nothing we could wish for: and God knows, what less in my Head than Matters of State? Now give me leave to declare the Miseries I sustained after I was acquainted with the Action, wherein I may justly compare my Estate to that of *Adam's*, who could not abstain one thing forbidden, to enjoy all other things the World could afford; the Terror of Conscience awaited me. After I consider'd the Dangers whereinto I was fallen, I went to Sir *John Peters* in *Essex*, and appointed my Horses should meet me at *London*, intending to go down into the Country. I came to *London*, and there heard that all was *bewrayed*; whereupon, like *Adam*, we fled into the *Woods* to hide our selves, and there were

apprehended. My dear Countrymen, my Sorrows may be your Joy, yet mix your *Smiles* with *Tears*, and pity my Case; I am descended from an House, from two hundred Years before the Conquest, never stained till this my Misfortune? I have a Wife and one Child; my Wife *Agnes*, my dear Wife, and there's my Grief, and six Sisters left on my hand: my poor Servants, I know, their Master being taken, were dispersed, for all which I do most heartily grieve. I expected some Favour, tho' I deserved nothing less, that the Remainder of my Years might in some sort have recompensed my former Guilt; which seeing I have missed, let me now meditate upon the Joys I hope to enjoy. This done, he prayed first in *Latin*, and then in *English*, asking her Majesty, and all the World heartily, Forgiveness, and that he hoped stedfastly, now at this his last Hour, his Faith would not fail.

Charles Tilney said, I am a Catholick and believe in Jesus Christ, and by his Passion I hope to be saved; and I confess I can do nothing without him, which Opinion all Catholicks firmly hold: and whereas they are thought to hold the contrary, they are in that, as in all other things, greatly abused. To Dr. *White*, seeming to school him in Points of Religion, differing from those which he held; he spoke in anger, I came hither to die, Doctor, and not to argue. He prayed in *Latin* for himself, and after he prayed for Queen *Elizabeth*, that she might live long; and warned all young Gentlemen, of what Degree or Calling soever, to take warning by him.

Edward Abington said, I come hither to die, holding all Points firmly that the Catholick Church doth; and for the Matters whereof I am condemned, I confess all, saving the Death of her Majesty, to the which I never consented. He feared, as he said, great Bloodshed in *England* before it were long. Sheriff *Ratcliffe* said, *Abington*, Seest thou all these People, whose Blood shall be demanded at thy Hands, if thou, dying, conceal that which may turn to their Peril; therefore tell why, or which way such Blood should be shed? He said, All that I know, you have of Record; and at last, said he, this Country is hated of all Countries for her Iniquity, and God loves it not. And being urged by Dr. *White*, to be of a lively Faith; he answered, he believed stedfastly in the Catholick Faith. The Doctor asked him, how he meant, for I fear me, said he, thou deceivest thyself: he answered, That Faith and Religion which is holden almost in all Christendom, except here in *England*. Thus done, he willed them not to trouble him any longer with any more Questions, but made his Prayers to himself in *Latin*.

Ballard was first executed. He was cut down and bowelled with great Cruelty while he was alive. *Babington* beheld *Ballard's* Execution without being in the least daunted: whilst the rest turned away their Faces, and fell to Prayers upon their Knees. *Babington* being taken down from the Gallows alive too, and ready to be cut up, he cried aloud several times in *Latin*, *Parce mihi Domine Jesu*, spare me O Lord Jesus! *Savage* broke the Rope, and fell down from the Gallows, and was presently seized on by the Executioner, his Privities cut off, and his Bowels taken out while he was alive. *Barnewell*, *Titchburne*, *Tilney* and *Abington* were executed with equal Cruelty.

On the next Day *Thomas Salisbury*, *Henry Donn*, *Edward Jones*, *John Charnock*, *John Travers*, *Robert*

Robert Gage, Jerome Bellamy, were drawn to the place of Execution.

Thomas Salisbury said, Sithence it hath pleased God to appoint this Place for my End, I thank his infinite Goodness for the same; I confess that I have deserved Death, and that I have offended her Majesty, whom to forgive me I heartily beseech, with all others whom I have any way offended, I desire all true Catholicks to pray for me; and I desire them, as I beseech God they may, to endure with Patience whatsoever shall be laid upon them, and never to enter into any Action of Violence for Remedy. Then he said his Prayers, looking earnestly with his Eyes to Heaven, and prayed in *Latin* a long while: When he had thus done, he cried in *English* and *Latin*, Father forgive me.

Henry Donn said, Do the People expect I should say any thing? I was acquainted, I confess, with their Practices, but I never did intend to be a Dealer in them: *Babington* oftentimes requested me to be one, and said, for that he loved me well, he would bestow me in one of the best Actions; which should have been the Delivery of the Queen of *Scots*, to which I could not for a long time agree; at length, by many urgent Persuasions he won me, so as I told him I would do my best. And being asked, as he was ascending the Ladder, whether he thought it lawful to kill her Majesty? He answered, No, no; for I take her to be my lawful and natural Prince. And (as *Salisbury*) he desired all Catholicks to endure with Patience, and never to attempt any thing against her Majesty, under whose Government he had lived quietly, until within these ten Weeks, that those things were first imparted unto him: and whereas he was indebted to divers, and divers in like manner to him, he forgave all that was owing to him, and craved Forgiveness of what he owed. He desired God to forgive *Babington*, the only Cause of his Fall and Death; and was right sorry for a Gentlewoman, one *Mrs. Bellamy*, at whose House he, with the rest, were relieved after they fled; he prayed God, whom he had chiefly offended, next her Majesty, and last of all the People, Forgiveness; saying, No Soul was more sorrowful than his, nor none more sinful; and prayed for her Majesty, wishing she might live in all Happiness, and after this Life, be eternized in everlasting Bliss; and so he pray'd in *Latin* and *English*.

Edward Jones said, I come hither to die, but how rightfully God knows; for thus stands my Case: At *Trinity Term* last, *Mr. Salisbury* made me acquainted with their Purposes; and for that he knew me to be well horsed, he thought me as fit as any to attempt the Delivery of the Queen of *Scots*, and requested me to be one; which I utterly denied, altogether misliking their Practices, and persuading him, by what Means I might, from it; and told him, this was the haughty and ambitious Mind of *Anthony Babington*, which would be the Destruction of himself and Friends, whose Company I wished him to refrain; and for that I would have him out of his Company, I have divers times lent him Money, and pawned my Chain and Jewels to buy him Necessaries to go into the Country. And whereas I had made Conveyance of my Lands to divers Uses, with some Annuities, and placed my Wife with my

Friends, and given over Housekeeping, and by reason of my Conscience, thought to live at ease; I called my Servants together again, and began to keep House more freshly than ever I did, only because I was weary to see *Salisbury's* straggling, and for that I was willing to keep him about home; and never consented to any of his Treasons, but always advised him to beware; for tho' I was, and am a *Catholick*, yet I took it to be a most wicked Act to offer Violence to my natural Prince. I did intend to go into *Ireland* with *Mr. Edward Fitton*, and there to have served; until at length, very shortly after this, my determinate Mind being not settled, I received a Note of their Names, amongst whom was the Name of my dear Friend: Then I began to fear what hath happened; I heard that Night he would be at my House; and indeed he came thither about twelve a-clock, and the Door being opened him, as he was very familiar with me, he came running up to my Bed-side with a Candle in his Hand, which he took from one of my Men, saluting me with these Words, *Ned Jones* how doist thou? Ah! *Tom* said I, Art thou one of them that should have killed the Queen? Yea, said he, what meanest thou by that? See, and read this, said I, giving him the Note wherein his Name was; he seeing, turned about and said, there be many Catholicks in *England* as far in this Act as we are: The more the worse, quoth I. Here is the Sum of my Fault, in which I know I have offended her Majesty; first, because I did conceal it at *London*, and lastly, because I did not apprehend my dear Friend *Tom*, being in my House; for which Fault I am heartily sorry, and do ask her Majesty Forgiveness. There is one thing wherein I am to move you, concerning my Debts; I have set them down so near as I could what they are: Good Sir *Francis Knowles*, I shall intreat you to be a mean to her Majesty, that there may be some Care had of my Creditors and Debtors.

The Debts which I owe do amount, in the whole, to 980*l.*

The Debts which are owing me are 1600*l.*

But who shall look into my Compting-house shall find many of 100*l.* 200*l.* or 300*l.* whereof all is discharged, except of some 50*l.* and some 40*l.* and such like, without any Defeasance, and lie only in my Credit; so that unless some Man of Conscience enter into the Action of my Compting-house, it is like to be the utter undoing of a Number; but God knows my Mind, and I hope it shall not be laid to my Charge: and so concluded with his Prayers, first in *Latin*, and then in *English*, that the People might better understand what he prayed.

John Charnock and *John Travers* having their Minds wholly fixt on Prayer, recommended themselves to God and the Saints. *Gage* extolled the Queen's great Grace and Bounty to his Father, and detested his own perfidious Ingratitude towards his Princess. And *Jerome Bellamy*, with Confusion and deep Silence, suffer'd last.

The Queen being inform'd of the Severity used in the Executions the Day before, and detesting such Cruelty, gave expresse Orders that these should be used more favourably; and accordingly they were permitted to hang till they were quite dead, before they were cut down and bowelled.

XII. *PROCEEDINGS* against MARY Queen of Scots, at Fotheringay-Castle, the 12th of October, 1586. for being concerned in a Conspiracy against Queen Elizabeth; with some things previous thereto, and necessary to introduce and explain those Proceedings.

TH E Subjects of *England* finding the Kingdom in danger of an Invasion from abroad, and the Life of the Queen attempted by various Plots at home, carried on by the Papiſts, in prospect of a Popiſh Succeſſor; voluntarily entered into an Association for the Queen's Safety, ſolemnly engaging and obliging themſelves to each other, to revenge her Death on thoſe who ſhou'd be the occaſion of it: which Association was as follows.

FORASMUCH as Almighty God hath ordain'd Kings, Queens, and Princes to have Dominion and Rule over all their Subjects, and to preſerve them in the Poſſeſſion and Obſervation of the true Chriſtian Religion, according to his holy Word and Commandment; and in like ſort, that all Subjects ſhould love, fear, and obey their Sovereign Princes, being Kings or Queens, to the utmoſt of their power; at all times to withſtand, purſue, and ſuppreſs all manner of Perſons, that ſhall by any means intend and attempt any thing dangerous or hurtful to the Honour, State, or Perſons of their Sovereigns.

Therefore we whoſe Names are or ſhall be ſubſcrib'd to this Writing, being natural-born Subjects of this Realm of *England*; and having ſo gracious a Lady, our Sovereign *Elizabeth*, by the Ordinance of God, our moſt rightful Queen, reigning over us theſe many Years with great Felicity, to our ineſtimable Comfort: And finding lately by divers Depoſitions, Confeſſions, and ſundry Advertiſements out of foreign Parts, from credible Perſons well known to her Maſteſty's Council, and to divers others, that for the Furtherance and Advancement of ſome pretended Title to the Crown, it hath been manifeſted, that the Life of our gracious Sovereign Queen *Elizabeth* hath been moſt dangerously deſigned againſt, to the Peril of her Perſon, if Almighty God, her perpetual Defender, of his Mercy had not revealed and withſtood the ſame; by whoſe Life, we, and all other her Maſteſty's true and loyal Subjects, do enjoy all ineſtimable benefit of Peace in this Land: Do for theſe Reaſons and Cauſes before alledged, not only acknowledge our ſelves moſt juſtly bound with our Lives and Goods for her defence, and in her ſafety to proſecute, ſuppreſs and withſtand all ſuch Intenders, and all other her Enemies, of what Nation, Condition or Degree ſoever they ſhall be, or by what Counſel or Title they ſhall pretend to be her Enemies, or to attempt any harm

upon her Perſon; but do further think it our bounden Duties, for the great benefit of Peace, Wealth, and godly Government, we have more plentifully received theſe many Years under her Maſteſty's Government, than any of our Forefathers have done in any longer time of any of her Progenitors, Kings of this Realm; to declare, and by this Writing make manifeſt our bounden Duties to our Sovereign Lady for her Safety.

And to that end, we and every of us, firſt calling to witneſs the Name of Almighty God, do voluntarily and moſt willingly bind our ſelves, every one of us to the other, jointly and ſeverally in the Band of one firm and loyal Society; and do hereby vow and promiſe by the Maſteſty of Almighty God, that with our whole Powers, Bodies, Lives and Goods, and with our Children and Servants, we and every of us, will faithfully ſerve, and humbly obey our ſaid Sovereign Lady Queen *Elizabeth*, againſt all States, Dignities and earthly Powers whatſoever; and will as well with our joint and particular Forces during our Lives withſtand, purſue and offend, as well by force of Arms, as by all other means of Revenge, all manner of Perſons, of whatſoever ſtate they ſhall be, and their Abettors, that ſhall attempt any Act, or Counſel, or conſent to any thing that ſhall tend to the harm of her Maſteſty's Royal Perſon; and will never deſiſt from all manner of forcible purſuit againſt ſuch Perſons, to the utter extermination of them, their Counſellors, Aiders and Abettors.

And if any ſuch wicked Attempt againſt her moſt Royal Perſon ſhall be taken in hand, or procured, whereby any that have, may or ſhall pretend Title to come to this Crown by the untimely Death of her Maſteſty ſo wickedly procured (which God of his Mercy forbid) that the ſame may be avenged, we do not only bind our ſelves both jointly and ſeverally never to allow, accept or favour any ſuch pretended Succeſſor, by whom, or for whom any ſuch deteſtable Act ſhall be attempted or committed, as unworthy of all Government in any Chriſtian Realm or Civil State:

But do alſo further vow and proteſt, as we are moſt bound, and that in the preſence of the eternal and everlaſting God, to proſecute ſuch Perſon or Perſons to death, with our joint and particular Forces, and to act the utmoſt Revenge upon them, that by any means we or any of us can deviſe and do, or cauſe to be deviſed and done for their utter Overthrow and Extirpation.

And

And to the better Corroboration of this our Loyal Band and Association, we do also testify by this Writing, that we do confirm the Contents hereof by our Oaths corporally taken upon the Holy Evangelists, with this expresse Condition, That no one of us shall for any Respect of Person or Causes, or for Fear or Reward, separate our selves from this Association, or fail in the Prosecution thereof during our Lives, upon pain of being by the rest of us prosecuted and suppress'd as perjur'd Persons, and as publick Enemies to God, our Queen, and to our Native Country; to which Punishment and Pains we do voluntarily submit ourselves, and every of us, without benefit of any Colour and Pretence.

In witness of all which Premises to be inviolably kept, we do to this Writing put our Hands and Seals; and shall be most ready to accept and admit any others hereafter to this Society and Association.

This Association, although entred into voluntarily by Persons in their private Capacities, was confirm'd and establish'd by a Statute made 27 Elizabeth 1585, entitled, *An Act for the Security of the Queen's Royal Person, and the Continuance of the Realm in Peace*; and is as follows:

FOrasmuch as the good Felicity and Comfort of the whole Estate of this Realm consisteth only (next under God) in the Surety and Preservation of the Queen's most Excellent Majesty; and for that it hath manifestly appeared, that sundry wicked Plots and Means have of late been devised and laid, as well in foreign Parts beyond the Seas, as also within this Realm, to the great endangering of her Highness's most Royal Person, and to the utter Ruin of the whole Commonweal, if by God's merciful Providence the same had not been revealed: Therefore for the preventing of such great Perils as might hereafter otherwise grow by the like detestable and devilish Practices, at the humble Suit and earnest Petition of the Lords Spiritual and Temporal, and the Commons in this Parliament assembled, and by the Authority of the same Parliament; Be it enacted and ordained, If at any time after the end of this present Session of Parliament, any open Invasion or Rebellion shall be had or made, into or within any of her Majesty's Realms or Dominions, or any Act attempted, tending to the hurt of her Majesty's most Royal Person, by or for any Person that shall or may pretend Title to the Crown of this Realm after her Majesty's decease; or if any thing be compassed or imagined, tending to the hurt of her Majesty's Royal Person, by any Person, or with the privity of any Person that shall or may pretend Title to the Crown of this Realm: That then by her Majesty's Commission under her Great Seal, the Lords and other of her Highness's Privy-Council, and such other Lords of Parliament to be named by her Majesty, as with the said Privy-Council shall come up to the number of four and twenty at the least, having with them for their assistance in that behalf such of the Judges of the Courts of Record at *Westminster*, as her Highness shall for that purpose assign and appoint, or the more part of the same Council, Lords and Judges, shall by virtue of this Act, have Authority to examine all

and every the Offences aforesaid, and all Circumstances thereof, and thereupon to give Sentence or Judgment, as upon good Proof the matter shall appear unto them. And that after such Sentence or Judgment given, and Declaration thereof made and publish'd by her Majesty's Proclamation under the Great Seal of *England*, all Persons against whom such Sentence or Judgment shall be so given and published, shall be excluded and disabled for ever to have or claim, or to pretend to have or claim the Crown of this Realm, or of any her Majesty's Dominions; any former Law, or Statute whatsoever to the contrary in any wise notwithstanding. And that thereupon all her Highness's Subjects shall and may lawfully by virtue of this Act, and her Majesty's Direction in that behalf, by all forcible and possible means pursue to death every such wicked Person, by whom or by whose means, assent, or privity, any such Invasion or Rebellion shall be in form aforesaid denounced to have been made, or such wicked Act attempted, or other thing compassed or imagined against her Majesty's Person, and all their Aiders, Comforters and Abettors.

And if any such detestable Act shall be executed against her Highness's most Royal Person, whereby her Majesty's Life shall be taken away (which God of his great Mercy forbid) that then every such Person, by or for whom any such Act shall be executed, and their Issues being any wise assenting or privy to the same, shall by virtue of this Act be excluded and disabled for ever to have or claim, or pretend to have or claim the said Crown of this Realm, or any other her Highness's Dominions, any former Law or Statute to the contrary in any wise notwithstanding. And that all the Subjects of this Realm, and all other her Majesty's Dominions, shall and may lawfully by virtue of this Act, by all forcible and possible means pursue to the Death every such wicked Person, by whom or by whose means any such detestable Fact shall be in form hereafter expressed, denounced to have been committed, and also their Issues being any wise assenting or privy to the same, and all their Aiders, Comforters and Abettors in that behalf.

And to the end that the Intention of this Law may be effectually executed, if her Majesty's Life be taken away by any violent or unnatural means, (which God defend): Be it further enacted by the Authority aforesaid, That the Lords and others, which shall be of her Majesty's Privy-Council at the time of such her Decease, or the more part of the same Council, joining unto them for their assistance five other Earls, and seven other Lords of Parliament at the least (foreseeing, that none of the said Earls, Lords or Council be known to be Persons that may make any Title to the Crown) those Persons which were Chief Justices of either Bench, Master of the Rolls, and Chief Baron of the Exchequer at the time of her Majesty's Death, or in default of the said Justices, Master of the Rolls, and Chief Baron, some other of those which were Justices of some of the Courts of Records at *Westminster* at the time of her Highness's decease, to supply their Places; or any four and twenty, or more of them, whereof eight to be Lords of the Parliament, not being of the Privy-Council, shall to the uttermost of their power and skill examine the cause and manner of

of such her Majesty's Death, and what Persons shall be any way guilty thereof, and all Circumstances concerning the same, according to the true meaning of this Act; and thereupon shall by open Proclamation publish the same, and without any delay by all forcible and possible means, prosecute to Death all their Aiders and Abettors; and for the doing thereof, and the withstanding and suppressing all such Power and Force, as shall be any way levied or stirred in disturbance of the due Execution of this Law, they shall by virtue of this Act, have Power and Authority, not only to raise and use such Forces, as shall in that behalf be needful and convenient, but also to use all other means and things possible and necessary for the maintenance of the same Forces, and Prosecution of the said Offenders. And if any such Power and Force shall be levied and stirred in disturbance of the due Execution of this Law, by any Person that shall, or may pretend any Title to the Crown of this Realm, whereby this Law may not in all things be fully executed, according to the effect and true meaning of the same; that then every such Person shall by virtue of this Act be therefore excluded and disabled for ever to have, or claim, or pretend to have or claim the Crown of this Realm, or of any other her Highness's Dominions, any former Law or Statute whatsoever to the contrary notwithstanding.

And be it further enacted by the Authority aforesaid, That all and every the Subjects of all her Majesty's Realms and Dominions, shall to the uttermost of their power aid and assist the said Council, and all other the Lords and other Persons, to be adjoined to them for assistance, as is aforesaid, in all things to be done and executed according to the effect and intention of this Law; and that no Subject of this Realm shall in any wise be impeached in Body, Land or Goods, at any time hereafter, for any thing to be done or executed according to the Tenor hereof, any Law or Statute heretofore made to the contrary in any wise notwithstanding.

And whereas of late many of her Majesty's good and faithful Subjects have in the Name of God, and with the Testimonies of good Consciences, by one uniform manner of writing under their Hands and Seals, and by their several Oaths voluntarily taken, joined themselves together in one Bond and Association, to withstand and revenge to the uttermost all such malicious Actions and Attempts against her Majesty's most Royal Person: Now for the full explaining of all such Ambiguities and Questions, as otherwise might happen to grow by reason of any sinister or wrong Construction or Interpretation to be made or inferred of, or upon the words or meaning thereof; Be it declared and enacted by the Authority of this present Parliament, that the same Association, and every Article and Sentence therein contained, as well concerning the disallowing, excluding, or disabling any Person that may, or shall pretend any Title to come to the Crown of this Realm, as also for the pursuing, and taking revenge of any such wicked Act or Attempt as is mentioned in the same Association, shall, and ought to be in all things expounded and adjudged according to the true intent and meaning of this Act, and not otherwise, or against any other Person or Persons.

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The following Year, 1586, *Babington* and others being convicted of a Conspiracy to assassinate Queen *Elizabeth*; and the Queen of *Scots* being charg'd with countenancing and encouraging that Conspiracy, a Commission was issued out, founded upon the abovesaid Statute for the Examination and Trial of the said Queen of *Scots*, to the effect following.

ELIZABETH by the Grace of God, of *England, France, and Ireland* Queen, Defender of the Faith, &c. To the most Reverend Father in Christ, *John* Archbishop of *Canterbury*, Primate and Metropolitan of all *England*, and one of our Privy-Council; and to our trusty and well-beloved *Sir Thomas Bromley* Kt. Chancellor of *England*, and one of our Privy Council; and also to our trusty and well-beloved *William* Lord *Burghley*, Lord Treasurer of *England*, another of our Privy-Council; and also to our most dear Cousin *William* Lord Marquis of *Winchester*, one of the Lords of the Parliament; to our most dear Cousin *Edward* Earl of *Oxford*, great Chamberlain of *England*, another of the Lords of the Parliament; and also to our most dear Cousin *George* Earl of *Shrewsbury*, Earl Marshal of *England*, another of our Privy-Council; and to our most dear Cousin *Henry* Earl of *Kent*, another of the Lords of the Parliament; and also to our most dear Cousin *Henry* Earl of *Derby*, another of our Privy-Council; and to our most dear Cousin *William* Earl of *Worcester*, another of the Lords of the Parliament; and also to our most dear Cousin *Edward* Earl of *Rutland*, another of the Lords of the Parliament; and to our most dear Cousin *Ambrose* Earl of *Warwick*, Master of our Ordnance, another of our Privy-Council; and to our most dear Cousin *Henry* Earl of *Pembroke*, another of the Lords of the Parliament; and also to our most dear Cousin *Robert* Earl of *Leicester*, Master of our Horse, another of our Privy-Council; and to our most dear Cousin *Henry* Earl of *Lincoln*, another of the Lords of the Parliament; and also to our most dear Cousin *Anthony* Viscount *Montague*, another of the Lords of the Parliament; and to our trusty and well-beloved *Charles* Lord *Howard*, our great Admiral of *England*, another of our Privy-Council; and to our trusty and well-beloved *Henry* Lord of *Hunsdon*, our Lord Chamberlain, another of our Privy-Council; and also to our trusty and well-beloved *Henry* Lord *Abergavenny*, another of the Lords of the Parliament; and to our trusty and well-beloved *Edward* Lord *Zouch*, another of the Lords of the Parliament; and also to our trusty and well-beloved *Edward* Lord *Morley*, another of the Lords of the Parliament; and to our trusty and well-beloved *William* Lord *Cobham*, Lord Warden of our Cinque-Ports, another of our Privy-Council; and also to our trusty and well-beloved *Edward* Lord *Stafford*, another of the Lords of the Parliament; and also to our trusty and well-beloved *Arthur* Lord *Grey* of *Wilton*, another of the Lords of the Parliament; and also to our trusty and well-beloved *John* Lord *Lumley*, another of the Lords of the Parliament; and also to our trusty and well-beloved *John* Lord *Sturton*, another of the Lords of the Parliament; and to our trusty and well-beloved *William* Lord *Sandes*, another of the Lords of the Parliament; and also to our trusty and well-beloved *Henry* Lord *Wentworth*, another of the Lords of the Parliament; to our trusty and well-beloved *Lewis* Lord *Mordant*, another of the

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Lords of the Parliament; and to our trusty and well-beloved *John Lord St. John of Bletso*, another of the Lords of the Parliament; and also to our trusty and well-beloved *Thomas Lord Burkburs*, another of our Privy-Council; and to our trusty and well-beloved *Henry Lord Compton*, another of the Lords of the Parliament; and also to our trusty and well-beloved *Henry Lord Cbeiney*, another of the Lords of the Parliament; to our trusty and beloved *Sir Francis Knolles* Kt. Treasurer of our Household, another of our Privy-Council; and also to our trusty and well-beloved *Sir James Crofts* Kt. Comptroller of our said Household, another of our Privy-Council; and to our trusty and beloved *Sir Christopher Hatton* Kt. our Vice-Chamberlain, another of our Privy-Council; and also to our trusty and beloved *Sir Francis Walsingham* Kt. one of our principal Secretaries, another of our Privy-Council; and also to our trusty and beloved *William Davison* Esq; another of our principal Secretaries, and of our Privy-Council; and to our trusty and beloved *Sir Ralph Sadler* Kt. Chancellor of our Dutchy of *Lancaster*, another of our Privy-Council; and also to our trusty and beloved *Sir Walter Mildmay* Kt. Chancellor of our Exchequer, another of our Privy-Council; and to our trusty and beloved *Sir Amias Powlet* Kt. Captain of our Isle of *Jersey*, another of our Privy-Council; and to our trusty and beloved *John Wolley* Esq; our Secretary for the *Latin* Tongue, another of our Privy-Council; and also to our trusty and beloved *Sir Christopher Wray* Kt. Chief Justicer assigned for the Pleas to be holden before us; and to our trusty and beloved *Sir Edmund Anderson* Kt. our Chief Justicer of the Bench; *Sir Roger Manwood* Kt. our Chief Baron of our Exchequer; *Sir Thomas Gawdy* Kt. one of our Justicers assigned for the Pleas to be holden before us; and *William Periam* one of our Justicers of the Bench, Greeting, &c.

Whereas since the end of the Session of Parliament, namely, since the first Day of *June*, in the 27th Year of our Reign, divers matters have been compassed and imagined, tending to the hurt of our Royal Person, as well by *Mary* Daughter and Heir of *James V. King of Scots*, and commonly called *Queen of Scots*, and Dowager of *France*, pretending Title to the Crown of this Realm of *England*; as by divers other Persons, *cum scientia*, in *English*, with the privy of the same *Mary*, as we are given to understand. And whereas we do intend and determine, that the Act aforesaid be in all and every part thereof, duly and effectually executed, according to the Tenor of the same, and that all Offences aforesaid, in the Act aforesaid mentioned, as aforesaid, and the Circumstances of the same, be examined, and Sentence or Judgment thereupon given, according to the Tenor and Effect of the said Act: To you, and the greater part of you we do give full and absolute Power, Faculty and Authority, according to the Tenor of the said Act, to examine all and singular matters compassed and imagined, tending to the hurt of our Royal Person, as well by the aforesaid *Mary*, as by any other Person or Persons whatsoever, *cum scientia*, in *English*, with the privy of the same *Mary*, and all Circumstances of the same, and all other Offences aforesaid in the Act aforesaid (as aforesaid) mentioned whatsoever, and all Circumstances of the same and of every of them. And thereupon, according to the tenor of the Act aforesaid, to

give Sentence or Judgment, as upon good proof Matter shall appear unto you. And therefore we do command you, that you do at certain Days and Places, which you, or the greater part of you, shall thereunto fore-appoint, diligently proceed upon the Premises in form aforesaid, &c.

The most part of these Commissioners came the 11th of *October* to *Fotheringay-Castle* in the County of *Northampton*, seated upon the Bank of the River *Nen*, where the *Queen of Scots* was then kept. The next day the Commissioners sent to her *Sir Walter Mildmay*, *Powlet*, and *Edward Barker*, a Publick Notary; who delivered into her hands *Queen Elizabeth's* Letter: which when she had read, she, with a Countenance composed to Royal Dignity, and with a Mind untroubled, said, It grieveth me that the *Queen*, my most dear Sister, is misinformed of me; and that I, having been so many years straitly kept in Prison, and grown lame of my Limbs, have lien neglected, after I have offered so many reasonable Conditions for my Liberty. Though I have throughly forewarned her of many Dangers, yet hath no credit been given unto me, but I have been always contemned, though most nearly allied unto her in Blood. When the Association was entered into, and the Act of Parliament thereupon made, I foresaw that whatsoever Danger should happen, either from foreign Princes abroad, or from ill-disposed People at home, or for Religion's sake, I must bear the whole blame, having many mortal Enemies in the Court. Certainly I might take it hardly, and not without cause, that a Confederacy hath been made with my Son without my knowledge: but such Matters I omit. As for this Letter, it seemeth strange to me, that the *Queen* should command me as a Subject, to appear personally in Judgment. I am an absolute *Queen*, and will do nothing which may prejudice either mine own Royal Majesty, or other Princes of my Place and Rank, or my Son. My Mind is not yet dejected, neither will I sink under my Calamity. I refer my self to those things, which I have protested before *Bromley*, now Chancellor, and the Lord *La-Ware*. The Laws and Statutes of *England* are to me most unknown; I am destitute of Counsellors, and who shall be my Peers I am utterly ignorant. My Papers and Notes are taken from me, and no Man dareth step forth to be my Advocate. I am clear from all Crime against the *Queen*, I have excited no Man against her, and I am not to be charged but by mine own Word or Writing, which cannot be produced against me. Yet can I not deny but I have commended my self and my Cause to foreign Princes.

The next day there returned unto her in the name of the Commissioners, *Powlet* and *Barker*, who shewed unto her this Answer drawn in Writing, and asked her, whether she would persist in the same. When she had heard it distinctly read, she commended it as rightly and truly conceived, and said, she would persist therein. But this, said she, I have forgotten, which I would have to be added thereunto: Whereas the *Queen* hath written, that I am subject to the Laws of *England*, and to be judged by them, because I have lived under the Protection of them; I answer, that I came into *England* to crave Aid, and ever since have been detained in Prison, and could not enjoy the Protection or Benefit of the Laws of *England*; nay,

I could never yet understand from any Man, what manner of Laws those were.

In the afternoon came unto her certain selected Persons from amongst the Commissioners, with Men learned in the Civil and Canon-Law. But the Lord Chancellor and the Lord Treasurer declared their Authority by Patent, and shewed that neither her Imprisonment, nor her Prerogative of Royal Majesty could exempt her from answering in this Kingdom; with fair Words advising her to hear what Matters were to be objected against her: Otherwise they threatened, that by Authority of Law, they both could and would proceed against her, though she were absent. She answered, That she was no Subject, and rather would she die a thousand deaths, than acknowledge her self a Subject, considering, that by such an Acknowledgment, she should both prejudice the Height of Regal Majesty, and withal confess her self to be bound by all the Laws of *England*, even in matter of Religion: Nevertheless she was ready to answer to all things in a free and full Parliament, for that she knew not whether this Meeting and Assembly were appointed against her, being already condemned by Fore-judgings, to give some shew and colour of a just and legal Proceeding. She warned them therefore to look to their Consciences, and to remember, that the Theatre of the whole World is much wider than the Kingdom of *England*. She began then to complain of Injuries done unto her: And the Lord Treasurer interrupting her, began to reckon up Queen *Elizabeth's* Kindnesses towards her, namely, that she had punished some, which impugned the Claim she laid to *England*, and had been a means to keep her from being condemned by the Estates of the Realm, for the Marriage sought with the Duke of *Norfolk*, for the Rebellion in the North, and for other matters. All which when she seem'd little to esteem, they returned back.

Within few hours after, they delivered unto her, by the hands of *Powlet* and the Solicitor, the chief Points of their Commission, and the Names of the Commissioners, that she might see, that they were to proceed according to Equity and Right, and not by any cunning point of Law, and extraordinary Course. She took no Exceptions against the Commissioners, but most sharply excepted against the late Law, upon which the Authority of their Commission wholly depended; as that it was unjust, devised of purpose against her, that it was without Example, and such whereunto she would never subject her self. She asked, by what Law they would proceed: If by the Civil or Canon-Law, then said she, Interpreters are to be fetched from *Pavia*, or *Poitiers*, and other foreign Universities; for in *England* none are to be found that are meet. She added also, That it was manifest, by plain Words in the Queen's Letters, That she was already fore-judged to be guilty of the Crime, tho' unheard; and therefore there was no reason why she should appear before them: And she required to be satisfied touching some Scruples in the said Letters, which she had for her self noted confusedly, and by Snatches, severally by themselves, but would not deliver them written out; for it stood not, said she, with her Royal Dignity, to play the Scrivener.

Touching this matter, the said selected Commissioners went unto her again, to whom she signified, that she did not well understand what those Words meant, *seeing she is under the Queen's*

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Protection. The Lord Chancellor answered, That this was plain to every one of understanding, yet was it not for Subjects to interpret what the Queen's Meaning was, neither were they made Commissioners for that end. Then she required to have her Protestation shewed and allowed, which she had formerly made. It was answered, that it never had been, nor now was to be allowed, for that it was prejudicial to the Crown of *England*. She asked, By what Authority they would proceed? It was answered, By Authority of their Commission, and by the common Law of *England*.

But, said she, ye make Laws at your pleasure, whereunto I have no reason to submit my self, considering that the *English* in times past refused to submit themselves to the Law Salique of *France*: And if they would proceed by the common Law of *England*, they should produce Precedents and Cases, forasmuch as that Law consisteth much of Cases and Custom: And if by the Canon Law, none else ought to interpret the same, but the Makers thereof. It was answered, That they would proceed neither by the Civil nor Canon Law, but by the Common Law of *England*: That it might nevertheless be proved by the Civil and Canon Law, that she ought to appear before them, if she would not refuse to hear it. And indeed she refused not to hear it, but, as she said, by way of *Interlocution*, not *Judicially*.

From hence she fell into other Speeches, That she had intended nothing to the Destruction of the Queen; that she had been incensed with Injuries and Indignities; that she should be a Stone of Offence to others, if she were so unworthily handled: that by *Naw* she had offered her best means for revoking the Bishop of *Rome's* Bull; that she would have defended her Innocency by Letters, but it was not allowed her; and finally, that all the Offices of Kindness, which she had tender'd these twenty years, were rejected. Thus while she wandered far in these Digressions, they called her back again, and prayed her to speak plainly, whether she would answer before the Commissioners. She replied, That the Authority of their Delegation was founded upon a late Law made to intrap her; that she could not away with the Queen's Laws, which she had good reason to suspect; that she was still full of good Courage, and would not offend against her Progenitors, the Kings of *Scots*, by acknowledging her self a Subject to the Crown of *England*: For this were nothing else but to profess them openly to have been Rebels and Traitors. Yet she refused not to answer, so as she might not be reduced to the rank of a Subject: But she had rather perish utterly, than to answer as a criminal Person.

Whereunto *Hatton*, Vice-Chamberlain to Queen *Elizabeth*, answered: You are accused (but not condemned) to have conspired the Destruction of our Lady and Queen anointed. You say you are a Queen: Be it so. But in such a Crime the Royal Dignity is not exempted from answering, neither by the Civil nor Canon Law, nor by the Law of Nations, nor of Nature. For if such kind of Offences might be committed without Punishment, all Justice would stagger, yea, fall to the ground. If you be innocent, you wrong your Reputation in avoiding a Trial. You protest your self to be innocent, but Queen *Elizabeth* thinketh otherwise, and that neither without Grief and Sorrow for the same. To examine therefore your Innocency, she hath appointed for Commissioners most

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honourable

honourable, prudent and upright Men, who are ready to hear you according to Equity with favour, and will rejoice with all their hearts, if you shall clear your self of this Crime. Believe me, the Queen herself will be much affected with joy, who affirmed unto me at my coming from her, that never any thing befel her more grievous, than that you were charged with such a Crime. Wherefore lay aside the bootless Privilege of Royal Dignity, which now can be of no use unto you, appear in Judgment, and shew your Innocency, left by avoiding Trial, you draw upon your self Suspicion, and lay upon your Reputation an eternal Blot and Aspersion.

I refuse not (said she) to answer in a full Parliament before the Estates of the Realm lawfully assembled, so as I may be declared the next to the Succession; yea, before the Queen and Council, so as my Protestation may be admitted, and I may be acknowledged the next of kin to the Queen. To the Judgment of mine Adversaries, amongst whom I know all defence of mine Innocency will be barred, flatly I will not submit my self.

The Lord Chancellor asked her, whether she would answer, if her Protestation were admitted? I will never (said she) submit my self to the late Law mentioned in the Commission.

Hereupon the Lord Treasurer answered; We, notwithstanding, will proceed to-morrow in the Cause, tho' you be absent and continue contumax.

Search (said she) your Consciences, look to your Honour, God reward you and yours for your Judgment against me.

On the morrow, which was the 14th of the month, she sent for certain of the Commissioners, and pray'd them, that her Protestation might be admitted and allowed. The Lord Treasurer asked her, Whether she would appear to her Trial, if her Protestation were only received and put in writing, without allowance. She yielded at length, yet with much ado, and with an ill-will, lest she should seem (as she said) to derogate from her Predecessors or Successors; but was very desirous to purge her self of the Crime objected against her, being persuaded by *Hatton's* Reasons, which she had weighed with Advise ment.

Soon after, the Commissioners which were present, assembled themselves in the Presence-Chamber. At the upper end of the Chamber was placed a Chair of Estate for the Queen of *England*, under a Cloth of Estate. Over-against it, below and more remote, near the tranom or beam that ran cross the Room, stood a Chair for the Queen of *Scots*. At the Walls on both sides, were placed Benches, upon which sate, on the one side, the Lord Chancellor of *England*, Lord Treasurer of *England*, the Earls of *Oxford*, *Kent*, *Derby*, *Worcester*, *Rutland*, *Cumberland*, *Warwick*, *Pembroke*, *Lincoln*, and the Lord Viscount *Montacute*; on the other side, the Barons of *Abergavenny*, *Zouch*, *Morley*, *Stafford*, *Grey*, *Lumley*, *Sturton*, *Sandes*, *Wentworth*, *Mordant*, *St. John of Bletsho*, *Compton*, and *Cheiney*. Nigh unto these sate the Knights of the Privy-Council, Sir *James a Croftes*, Sir *Christopher Hatton*, Sir *Francis Walsingham*, Sir *Ralph Sadleir*, Sir *Walter Mildmay*, and Sir *Amias Powlet*. Forward, before the Earls, sate the two Chief Justices, and the Chief Baron of the Exchequer; and on the other side two Barons, the other Justices, *Dale* and *Ford*, Doctors of the Civil Law; and at a little Table in the midst sate *Popham* the Queen's Attorney, *Egerton* the Solicitor, *Gaudy* the Queen's

Serjeant at Law, the Clerk of the Crown, and two Writers.

When she was come, and had settled her self in her seat, after silence proclaimed, *Bromley* Lord Chancellor turning to her, spake briefly to this effect: The most High and Mighty Queen *Elizabeth*, being not without great grief of mind advertised, that you have conspired the Destruction of her and of *England*, and the Subversion of Religion, hath, out of her Office and Duty, lest she might seem to have neglected God, herself and her People, and out of no Malice at all, appointed these Commissioners, to hear the Matters which shall be objected unto you, and how you can clear your self of them, and make known your Innocency.

She rising up, said, That she came into *England* to crave aid, which had been promised her, and yet was she detained ever since in Prison. She protested, that she was no Subject of the Queen's, but had been and was a free and absolute Queen, and not to be constrained to appear before Commissioners, or any other Judge whatsoever, for any Cause whatsoever, save before God alone the highest Judge, lest she should prejudice her own Royal Majesty, the King of *Scots* her Son, her Successors, or other absolute Princes. But, that she now appeared personally, to the end to refute the Crimes objected against her. And hereof she prayed her own Attendants to bear witness.

The Lord Chancellor, not acknowledging that any Aid had been promis'd her, answer'd, That this Protestation was in vain, for that whatsoever (of what Place and Degree soever he were) should offend against the Laws of *England*, in *England*, was subject unto the same Laws, and by the late Act might be examin'd and try'd; the said Protestation therefore made in prejudice of the Laws and Queen of *England*, was not to be admitted. The Commissioners nevertheless commanded, that as well her Protestation, as the Lord Chancellor's Answer, should be recorded.

Then after the Commission was openly read, which was grounded upon the Act already often mentioned, she stoutly opposed her Protestation against the same Act, as enacted directly and purposely against her, and herein she appealed to their Consciences.

When Answer was made by the Lord Treasurer, that every Person in this Kingdom was bound even by the latest Laws, and that she ought not to speak against the Laws; and that the Commissioners would judge, according to that Law, what Protestations or Appellations soever she interposed, she said at length, that she was ready to hear and answer touching any Fact whatsoever against the Queen of *England*.

Gawdy now opened the Law from Point to Point, affirming, that she had offended against the same; and hereupon he made an historical Discourse of *Babington's* Conspiracy, and concluded, That she knew of it, approved it, assented unto it, promised her Assistance, and shewed the Way and Means.

She answered with stout Courage, That she knew not *Babington*, that she never received any Letters from him, nor wrote any to him; that she never plotted the Destruction of the Queen, and that to prove the same, her Subscription under her own hand was to be produced; that for her part she never so much as heard speak thereof; that she knew not *Ballard*, nor ever relieved him; but she understood from some, that the Catholics in *England* took

took many things very hardly, and hereof she herself had advertised the Queen by Letters, and besought her to take pity on them; that many also, which were to her utterly unknown, had offered her their Help and Assistance, yet had she excited no Man to commit any Offence; and being shut up in Prison, she could neither know nor hinder what they attempted.

Hereupon it was urged out of Babington's Confession, that there had been Intercourse by Letters betwixt her and Babington. She confessed that there had passed Conference by Letters betwixt her and many Men, yet could it not thereby be gathered that she was privy to all their wicked Counsels. She required that her own Subscription, under her hand, might be produced; and asked, what hurt it were, if she redemanded the Letters, which had been kept from her almost a whole Year? Then were read the Copies of Letters between her and Babington, wherein the whole Conspiracy was set down.

The Scottish Queen's Letter to Anthony Babington.

MY very good Friend, albeit it be long since you heard from me, not more than I have done from you, it is against my Will; yet would I not you should think I have in the mean while, nor ever will be unmindful of the effectual Affection you have shewed heretofore towards all that concerneth me. I have understood, that upon the renewing of your Intelligence, there were addressed unto you, both from France and Scotland, some Packets for me; I pray you, if any be come to your hands, and be yet in place, to deliver them to the Bearer hereof, who will safely convey them unto me; and I will pray to God for your Preservation.

June the 28th,
Chartley.

Your assured good Friend,

MARY REGINA.

Anthony Babington's Letter to the Scottish Queen.

MOST mighty, most excellent, my dread Sovereign Lady and Queen, unto whom I owe all Fidelity and Obedience; may it please your gracious Majesty to admit Excuse of my long Silence, and Discontinuance from those dutiful Offices, intercepted upon the Remove of your Royal Person from the antient place of your abode, to the custody of a wicked Puritan, and meer Leicestrian, a mortal Enemy both by Faith and Faction to your Majesty and to the Catholick Estate: I held the hope of our Country's Weal depending (next under God) upon the Life of your Majesty, to be desperate, and thereupon resolved to depart the Realm, determining to spend the remnant of my Life in such solitary sort, as the miserable and wretched Estate of my Country doth require; only expecting, according to the just Judgment of God, the present Confusion thereof, which God, for his Mercy sake, prevent. The which my purpose being in execution, and standing upon my departure, there was addressed unto me, from the Parts beyond the Seas, one Ballard, a Man of Virtue and Learning, and of singular Zeal to the Catholick Cause, and your Majesty's Service. The Man informed me of great Preparations by the Christian Princes, your Majesty's Allies, for the Deliverance of our Country from the extreme and miserable Estate wherein for a long time

it hath remained. Which when I understood, my especial Desire was, to advise by what means I might, with the hazard of my Life, and all my Friends in general, do your sacred Majesty one day's good Service. Whereupon, most dread Sovereign, according to the great care, which those Princes have of the Preservation and safe Deliverance of your Majesty's sacred Person, I advised of Means, and considered of Circumstances accordingly, to and with so many of the wisest and most trusty, as with safety I might commend the Secrecy thereof unto: I do find, by the Assistance of the Lord Jesus, assurance of good Effect, and desired Fruit of our Travel. These things are first to be advised in this great and honourable Action; upon issue of which dependeth, not only the Life of your most excellent Majesty, which God long preserve, to our inestimable Comfort, and to the Salvation of English Souls, and the Lives of all us Actors therein; but also the Honour and Weal of our Country, far more dear than our Lives unto us, and the last hope ever to recover the Faith of our Forefathers, and to redeem our selves from the Servitude and Bondage, which hereby heretofore hath been imposed upon us with the loss of many thousand Souls. First, for the assuring of Invasions, sufficient strength on the Invaders parts to arrive is appointed, with a strong Party at every place, to join with them, and warrant their landing, the Deliverance of your Majesty, the Dispatch of the usurping Competitor. For the effecting of all, may it please your Majesty to rely upon my Service, I protest before the Almighty, who hath long miraculously preserved your royal Person, no doubt to some universal Good, that what I have said shall be performed, or all our Lives happily lost in the Execution thereof. Which Vow all the chief Actors have taken solemnly; and are upon Assurance, by your Majesty to me, to receive the blessed Sacrament thereupon, either to prevail in the Church's behalf, and your Majesty's, or fortunately to die for so honourable a Cause. Now, forasmuch as delays are extreme dangerous, it might please your most excellent Majesty, by your Wisdom to direct us, and by your Princely Authority to enable us, and such as may advance the Affairs: Foreseeing, there is not any of the Nobility, at liberty, assured to your Majesty in this desperate Service, except unknown unto us; and seeing that it is very necessary that some there should be to become Heads to lead the Multitude, who are disposed by Nature in this Land to follow Nobility: Considering withal, it doth not only make the Commons and Country to follow without Contradiction or Contention, which is ever found in equality, but also doth add great Courage to the Leaders. For which necessary Regards, I would recommend some to your Majesty as are fittest, in my knowledge, to be your Lieutenants, in the West Parts, in the North Parts, South-Wales, and North-Wales, the Countries of Lancaster, Derby, and Stafford. In all which Countries, Parties being already made, and Fidelity taken in your Majesty's Name, I hold them as most assured, and of undoubted Fidelity. My self, with ten Gentlemen of Quality, and an hundred Followers, will undertake the delivery of your Person from the hands of your Enemies: And for the Dispatch of the Usurper, from Obedience of whom, by the Excommunication of her, we are made free, there be six noble Gentlemen, all my private Friends, who, for the Zeal they bear to the Catholick Cause, and your Majesty's Service, will undertake the Tragical Execution. It resteth, that according to their infinite Deserts, and your Majesty's Bounty, their Heroical

Heroical Attempts may be honourably rewarded in them, if they escape with Life, or in their Posterity; and that so much by your Majesty's Authority I may be able to assure them. Now it remaineth only in your Majesty's Wisdom, that it be reduced into Method, that your happy Deliverance be first, for that thereupon dependeth the only Good, and that the other Circumstances concur; that the untimely end of the one do not overthrow the rest. All which your Majesty's wonderful Experience and Wisdom will dispose in so good manner as, I doubt not, thro' God's good Assistance, shall take deserved effect: for the obtaining of which every one of us shall think his Life most happily spent. Upon the twelfth day of this month I will be at Litchfield, expecting your Majesty's Answers and Letters, to execute what by them shall be commanded.

Your Majesty's

Faithful Subject, and

Sworn Servant,

Anthony Babington.

As for these Letters (said she) it may be that *Babington* wrote them, but let it be prov'd that I receiv'd them: If *Babington* or any others affirm it, I say they lye openly; other Men's Crimes are not to be cast upon me. A Packet of Letters, which had been kept from me almost a whole Year, came to my hands about that time, but by whom it was sent, I know not.

To prove that she had receiv'd *Babington's* Letters, there were read out of *Babington's* Confession the chief Heads of certain Letters, which he had voluntarily confess'd, that she wrote back unto him: wherein when mention was made of the Earl of *Arundel* and his Brethren, and the Earl of *Northumberland*, the Tears burst forth, and she said, Alas! what hath that noble House of the *Howards* endur'd for my sake? And shortly after, having wiped away the Tears she answered, that *Babington* might confess what he list, but it was an open Lye, that she had devis'd such means to escape: That her Adversaries might easily get the Ciphers, which she had used to others, and with the same write many things falsely: That it was not likely she should use *Arundel's* help, whom she knew to be shut up in Prison; or *Northumberland's*, who was very young, and to her unknown.

There were read also certain Points pick'd out of *Savage's* and *Ballard's* Confessions, who had confess'd that *Babington* imparted unto them certain Letters, which he had receiv'd from the Queen of Scots.

She affirmed, That *Babington* receiv'd none from her, yea that she was angry with some which had secretly suggested Counsels unto her for invading of *England*, and had warned them to beware.

Now was there a Letter brought forth, wherein *Babington's* Plot was commended and approved.

The Answer of the Scottish Queen to a Letter written by Anthony Babington, 12 July, 1586.

TRUSTY and Well-beloved, according to the Zeal and intire Affection which I have known in you towards the common Cause

of Religion, and mine, having always made account of you as a principal and right worthy Member to be employed both in the one, and in the other; it hath been no less Consolation unto me to know your Estate, as I have done by your last Letter, and to have further means to renew my Intelligence with you, than I have felt Grievs all this while past, to be without the same. I pray you therefore to write unto me hereafter, so often as you can, of all Concurrants, which you may judge in any sort importunate to the good of mine Affairs, wherein I shall not fail to correspond with all the Care and Diligence that shall be by possibility. For divers great and importunate Considerations, which were here too long to be deducted, I cannot but greatly praise and commend your common desire to prevent, in time, the Designment of our Enemies, for the Extirpation of our Religion out of this Realm, with the Ruin of us all; for I have long ago shewed to the Foreign Catholick Princes, what they have done against the King of *Spain*, and in the time the Catholicks here remaining, exposed to all Persecutions and Cruelty, do daily diminish in Number, Forces, Means and Power, so as if Remedy be not thereunto speedily provided, I fear not a little but that they shall become altogether unable for ever to rise again to receive any Aid at all whensoever it is offered. Then for my own part, I pray you assure our principal Friends, that albeit I had no particular Interest in this Cause, that all that I may pretend unto, being of no Consideration to me in respect of the publick Good of the State, I shall be always ready, and most willing to imploy therein my Life, and all that I have, or may look for in this World. Now to ground substantially this Enterprize, and to bring it to good Success, you must examine duly,

First, What Forces, as well on Foot as on Horse, you may raise among you all; and what Captains you shall appoint for them in every Shire, in case a General cannot be had.

Secondly, Which Towns, Ports and Havens you may assure yourselves, as well on the North, West and South, to receive Succours, as well from the Low-Countries, *Spain* and *France*, as from other Parts.

Thirdly, What place you esteem fittest, and of most advantage to assemble the principal Company of your Forces at the same time, which would be compassed conform to the proportion of your own.

Fourthly, For how long Pay and Munition, and what Ports are fittest for their Landing in this Realm, from the foresaid three foreign Countries.

Fifthly, What Provision of Monies and Armour, in case you should want, you would ask.

Sixthly, By what means do the six Gentlemen deliberate to proceed.

Seventhly, The manner of my getting forth of this Hold.

Which Points having taken amongst you who are the principal Actors, and also as few in number as you can; the best Resolution in my Device is, That you impart the same with all diligence to *Bernardin de Mendoza*, Ambassador Lieger for the King of *Spain* in *France*, who besides the Experience he hath of the Estate on this side, I may assure you, will imploy himself most willing: I shall not fail to write to him of the matter, with all the Recommendations I can, as also I shall do

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in any wise that shall be needful. But you must take choice Men for the managing of the Affairs with the said *Mendoza*, and others out of the Realm, of some Faithful and very Secret, both in Wisdom and Personage, unto whom only you must commit your selves; to the end things may be kept the more secret, which for your own Security I commend to your self. If your Messenger bring you back again sure promise, and sufficient assurance of the Succours which you demand, then thereafter (but not sooner, for that it were in vain) take diligent Order, that all those on your part make, secretly as they can, provision of Armour, fit Horses, and ready Money, wherewith to hold themselves in a readiness to march so soon as it shall be signified unto you by the Chief and Principal of every Shire: And for the better colouring of the matter, reserving to the Principals the knowledge of the Ground of the Enterprize, it shall be enough at the beginning to give it out to the rest, that the said Provisions are made only for the fortifying of your selves in case of need, against the *Puritans* of this Realm, the principal whereof having the chief Forces thereof in the *Low Countries*, as you may let the bruit go disguised, do seek the Ruin and Overthrow at their return home of the Catholics, and to usurp the Crown, not only against me and all other lawful Pretenders thereto, but against their own Queen that now is, if she will not altogether submit herself to their Government. These Pretexes may serve to found and establish among all, Associations or Confederations general, as done only for your Preservation and Defence, as well in Religion as Lands, Lives and Goods, against the Oppression and Attempts of the said *Puritans*; without directly writing, or giving out any thing against the Queen, but rather shewing your selves willing to maintain her and her lawful Heirs after her, not naming me. The Affairs being thus prepared, and Forces in readiness, both without and within the Realm, then shall it be time to set the six Gentlemen on work, taking good order upon the accomplishment of their Discharges, I may be suddenly transported out of this Place, and meet without tarrying for the arrival of the foreign Aid, which then must be hastened with all Diligence. Now for that there can be no certain Day appointed for the accomplishment of the said Gentlemen's Designment, to the end others may be in a readiness to take me from hence, I would that the said Gentlemen had always about them, or at least at Court, divers and sundry Scoutmen, furnished with good and speedy Horses, so soon as the Design shall be executed, to come with all diligence to advertise me thereof, and those that shall be appointed for my transporting; to the end, that immediately after they may be at the place of mine abode, before my Keeper can have advertisement of the execution of the said Designment, or at the least before he can fortify himself within the House, or carry me out of the same. It were necessary to dispatch two or three of the said Advertisers by divers ways, to the end, if one be staid, the other may come thro': At the same instant it were needful also to assay to cut off the Posts ordinary ways. This is the Plot that I think best for this Enterprize, and the order whereby we shall conduct the same for our common Security: for stirring on this side before you be sure

of sufficient foreign Forces, that were for nothing but to put our selves in danger of following the miserable Fortune of such as have heretofore travelled in the like Actions; and if you take me out of this Place, be well assured to set me in the midst of a good Army, or some very good Strength, where I may safely stay till the Assembly of your Forces, and Arrival of the said foreign Succours. It were sufficient cause given to the Queen, in catching me again, to inclose me in some hold, out of the which I should never escape, if she did use me no worse; and to pursue with all extremity those that assisted me, which would grieve me more than all the unhappiness might fall upon my self. Earnestly as you can, look and take heed most carefully and vigilantly to compass and assure all so well, that shall be necessary for the effecting of the said Enterprize, as with the Grace of God you may bring the same to happy End; remitting to the judgment of your principal Friends on this side, with whom you have to deal, therein to ordain and conclude upon these Points, which may serve you for an Overture of such Propositions as you shall amongst you find best: and to your self in particular, I refer the Gentlemen aforementioned, to be assured of all that should be requisite for the intire execution of their Good-wills. I leave their common Resolution to Advice; in case the Design do not take hold, as may happen whether they will or no, do not pursue my Transport, and the Execution of the rest of the Enterprize. But if the mishap should fall out, that you might not come by me, being set in the *Tower of London*, or in any other Strength, with strong Guard; yet notwithstanding, leave not for God's sake to proceed in the Enterprize: for I shall at any time die most contentedly, understanding of your delivery out of the servitude wherein you are holden as Slaves. I shall assay, that at the same time that the work shall be in hand, at that present to make the Catholics of *Scotland* to arise, and put my Son into their hands, to the effect, that from thence our Enemies here may not prevail by any Succour: I would also that some stirring were in *Ireland*, and that it were laboured to begin some time before any thing be done here, and then that the Alarm might begin thereby on the flat contrary side: that the stroke may come from your designs, to have some General, or chief Head, are very pertinent; and therefore were it good to send obscurely for the purpose to the Earl of *Arundel*, or some of his Brethren, and likewise to seek to the young Earl of *Northumberland*, if he be at liberty from over the Sea; the Earl of *Westmoreland* may be had, whose Hand and Name, you know may do much in the *North Parts*; also the Lord *Paget*, of good Ability in some Shires thereabouts: both the one and the other may be had, amongst whom secretly some more principal banished, may return, if the enterprize be once resolute. The said Lord *Paget* is now in *Spain*, and may treat of all that (by his Brother *Charles*, or directly by himself) you will commit unto him touching the Affairs. Beware that none of your Messengers, that you send forth of the Realm, carry any Letters upon themselves; but make their Dispatches, and send them either after or before them by some others. Take heed of Spies and false Brethren that are amongst you, especially of some Priests, already practised upon
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‘ by your Enemies for your discovery ; and in any
 ‘ case keep never a Paper about you, that may in
 ‘ any sort do harm : for from like Errors have
 ‘ come the Condemnation of all such as have
 ‘ suffered heretofore, against whom otherwise no-
 ‘ thing could justly have been proved. Discover
 ‘ as little as you can, your Names and Intentions
 ‘ to the *French* Ambassador, now Lieger at *Lon-*
 ‘ *don* ; for altho’, as I understand, he is a very
 ‘ honest Gentleman, yet I fear his Master enter-
 ‘ taineth a Course far contrary to our designment,
 ‘ which may move him to discover us, if he had
 ‘ any particular knowledge thereof. All this while
 ‘ I have sued to change and remove from this
 ‘ House ; and for answer, the Castle of *Dudley*
 ‘ only hath been named to serve the turn ; so as
 ‘ by appearance about the end of this Summer, I
 ‘ may go thither : therefore advise so soon as I
 ‘ shall be there, what Provision may be had about
 ‘ that part, for my escape from thence. If I stay
 ‘ here, there is but one of these three ways or
 ‘ means to be looked for.

‘ The *First*, That at a certain Day appointed
 ‘ for my going abroad on horseback on the
 ‘ Mores, between this and *Stafford*, where ordi-
 ‘ narily, you know, but few People do pass, let
 ‘ fifty or threescore Horsemen, well mounted and
 ‘ armed, come to take me away, as they may ea-
 ‘ sily ; my Keeper having with him but eighteen
 ‘ or twenty Horses, with only Dogs.

‘ The *Second* means, To come at Midnight, or
 ‘ soon after, and set fire on the Barns and Stables,
 ‘ which you know are near the House ; and whilst
 ‘ my Guardian Servants shall come forth to the
 ‘ Fire, your Company having duly on a Mark,
 ‘ whereby they may be known one from another,
 ‘ some of you may surprize the House, where I
 ‘ hope with the few Servants I have about me,
 ‘ I shall be able to give you correspondent Aid.

‘ And the *Third* is, Some there be that bring
 ‘ Carts hither early in the Morning, three Carts
 ‘ may be so prepared ; that being in the midst
 ‘ of the great Gate, the Carts might fall down,
 ‘ or overthrow ; that thereupon you might come
 ‘ suddenly, and make your selves Masters of the
 ‘ House, and carry me suddenly away : so you
 ‘ might easily do before any number of Soldiers,
 ‘ who lodge in sundry Places forth of this Place,
 ‘ some half a Mile, and some a whole Mile,
 ‘ could come to relieve. Whatsoever Issue the
 ‘ matter taketh, I do, and shall think my self
 ‘ obliged, so long as I live, towards you, for
 ‘ the offers you make to hazard your self as you
 ‘ do for my Deliverance ; and by any means that
 ‘ ever I may have, I shall do my endeavour to re-
 ‘ cognize by Effects your Deserts : therein I have
 ‘ commanded a more ample Alphabet to be made
 ‘ for you, which herewith you shall receive. God
 ‘ Almighty have you in his Protection.’

Your assured Friend for ever,

Mary Regina.

Fail not to burn this privately and quickly.

Of this Letter she required a Copy, and affirmed,
 That it proceeded not from her, but haply from her
 Alphabet of Ciphers in *France* : That she had done
 her best Endeavour for the Recovery of her Liber-
 ty, which Nature it self alloweth, and had solli-
 cited her Friends to deliver her ; yet to some,
 whom she listed not to name, when they offered
 her their Help to deliver her, she answered not a

word. Nevertheless, she much desired to divert
 the Storm of Persecution from the Catholics, and
 for this she had made earnest Suit to the Queen :
 For her part, she would not purchase the Kingdom
 with the Death of the meanest Man of the com-
 mon People, much less of the Queen : That there
 were many which attempted dangerous Designs
 without her knowledge ; and by a very late Letter,
 which she had received, Pardon was asked of her
 by some, if they should enterprize any thing with-
 out her Privy : That it was an easy Matter to
 counterfeit the Ciphers and Characters of others,
 as a young Man did very lately in *France*, which
 had vaunted himself to be her Son’s base Brother :
 That she feared also lest this were done now by
Walsingham to bring her to her Death, who (as
 she heard) had practised against her Life and her
 Son’s. She protested that she not so much as
 thought the Destruction of the Queen ; that she
 had rather most gladly spend her own Life, than
 for her sake the Catholics should be so afflicted
 in Hatred of her, and drawn to cruel Death. And
 withal she shed plenty of Tears.

But (said the Lord Treasurer) no Man which
 hath shewed himself a good Subject, was ever put
 to death for Religion ; but some have been for
 Treason, while they maintained the Pope’s Bull
 and Authority against the Queen.

Yet I (said she) have heard otherwise, and have
 read it also in Books set forth in print.

The Authors (replied he) of such Books, do
 write also that the Queen hath forfeited her Royal
 Dignity.

Walsingham, who had found himself taxed even
 now by her words, took opportunity, and rising up,
 protested that his Mind was free from all Malice :
 I call God (said he) to record, that as a private
 Person I have done nothing unbeseeming an honest
 Man ; nor as I bear the place of a publick Person,
 have I done any thing unworthy my Place. I con-
 fess, that being very careful for the Safety of the
 Queen and Realm, I have curiously searched out
 the Practices against the same. If *Ballard* had of-
 fered me his help, I should not have refused it ;
 yea, I would have recompensed the pains he had
 taken. If I have practised any thing with him,
 why did he not utter it to save his Life?

With this answer, she said she was satisfied :
 She prayed him he would not be angry, that she
 had spoken freely what she had heard reported ;
 and that he would give no more Credit to those
 that slandered her, than she did to such who accu-
 sed him : That Spies were Men of doubtful Cre-
 dit, which dissemble one thing, and speak ano-
 ther ; and that he would in no sort believe that
 she had consented to the Queen’s Destruction.
 And now again, she burst forth into Tears ; I would
 never (said she) make shipwreck of my Soul, by
 conspiring the Destruction of my dearest Sister.

It was answered by the Lawyers, that this
 should soon be disproved by Testimony. Thus far
 in the Forenoon.

In the Afternoon, to disprove this, was pro-
 duced the Copy of a Letter which *Charles Paget*
 had written ; and *Curle*, one of her Secretaries,
 had witnessed that she had received ; touching a
 Conference betwixt *Mendoza* and *Ballard*, about
 the design for invading of *England*, and setting her
 at liberty.

This (answered she) was nothing to the pur-
 pose, and proved not that she had consented to the
 Destruction of the Queen.

The

The Lawyers proceeded further, to prove that she was both privy to the Conspiracy, and conspired also the Destruction of the Queen by *Babington's* Confession, and Letters also that had passed betwixt her and him; wherein he called her, his most dread and Sovereign Lady, and Queen: And by the way, they mentioned that a Plot was laid for conveying the Kingdom of *England* to the *Spaniard*. She confessed, that a Priest came unto her, and said, That if she would not intermeddle, she and her Son both should be excluded from the Inheritance; but the Priest's Name she would not tell. She added, that the *Spaniard* did lay claim to the Kingdom of *England*, and would not give place to any but to her.

Then pressed they her with the Testimonies of her Secretaries *Naw* and *Curle*, out of *Babington's* Confession, and the Letters sent to and fro betwixt her and *Babington*, and the whole Credit of their Proofs rested upon their Testimony; yet were not they produced before her Face to Face. *Curle* she acknowledged an honest Man, but not a meet Witness to be against her. As for *Naw*, he had been sometimes a Secretary (said she) to the Cardinal of *Lorain*, and commended unto her by the *French* King, and might easily be drawn either by Reward, or Hope, or Fear, to bear false Witness, as one that had sundry times rashly bound himself by Oath, and had *Curle* so pliable unto him that at his beck he would write what he bade him. It might be that these two might insert into her Letters, such things as she had not dictated unto them. It might be also that such Letters came to their hands, which notwithstanding she never saw; and so she brake forth into such words as these: The Majesty and Safety of all Princes falleth to the ground, if they depend upon the Writings and Testimony of Secretaries. I deliver'd nothing to them but what Nature delivered to me, that I might at length recover my Liberty. And I am not to be convicted but by mine own Word or Writing. If they have written any thing which may be hurtful to the Queen my Sister, they have written it altogether without my knowledge; and let them bear the Punishment of their inconsiderate Boldness. Sure I am, if they were here present, they would clear me of all blame in this Cause. And I, if my Notes were at hand, could answer particularly to these things.

Amongst these Speeches, the Lord Treasurer objected unto her, that she had purposed to send her Son into *Spain*, and to convey her Title she claimeth in the Kingdom of *England*, to the *Spaniard*.

To whom she answered, That she had no Kingdom which she could convey, yet was it lawful for her to give those things which were hers, at her pleasure, and not to be accountable for the same to any.

When her Alphabets of Ciphers, sent over to *Babington*, the Lord *Lodovic* and *Ferniburst*, were objected unto her out of *Curle's* Testimony; she denied not, but she had written out many; and amongst others, that for the Lord *Lodovic*, when she had commended him and another to the dignity of a Cardinal; and that without Offence, (she trusted) for that it was as lawful for her to have intercourse of Letters, and to negotiate her matters with Men of her Religion, as for the Queen with the Professors of another Religion.

Then pressed they her hard with the consenting Testimonies of *Naw* and *Curle* reiterated: And

she reiterated her Answers, or else refuted their Testimonies by a flat denial; protesting again, that she neither knew *Babington* nor *Ballard*.

Amongst these Speeches, when the Lord Treasurer had mentioned, that she knew *Morgan* well, which had sent *Parry* privily to murder the Queen, and that she had assigned him a yearly Pension; she replied, That she knew not whether *Morgan* had done so, but she knew that *Morgan* had lost all for her sake, and therefore it concerned her in Honour to relieve him; and she was not bound to revenge an Injury done the Queen by a Friend, that had deserved well at her hands; yet had she terrified the Man from such wicked Attempts: But contrarywise (said she) Pensions have been assigned out of *England* to *Patrick Gray*, and to the *Scots* my Adversaries, as also to my Son.

The Lord Treasurer answered, When the Revenues of *Scotland* were by the negligence of the Regents much diminished, the Queen bestowed somewhat in Bounty upon your Son the King, her near Kinsman.

Afterwards were produced the chief Points of certain Letters sent to *England*, and the Lord *Paget*, and to *Bernardine de Mendoza*, about foreign Aid. But when she had answered, That these things made not to the destruction of the Queen; and if Foreigners laboured to set her at liberty, it was not to be laid to her Charge; and that she had sundry times openly signified to the Queen, that she would seek her own Liberty: the matter was prorogued till the next Day following.

The next day she returned her former Protestation, and required to have it recorded, and a Copy thereof delivered unto her, lamenting, that the most reasonable Conditions, which she had many times propounded to the Queen, were always rejected, even when she promised to deliver her Son, and the Duke of *Guise's* Son for Hostages, that the Queen or Kingdom of *England* should receive no detriment by her: so as she saw her self already quite barred from all hope of her Liberty. But now she was most unworthily dealt withal, whose Honour and Reputation was called in question before foreign Lawyers, which by wretched Conclusions drew every Circumstance into a Consequence; whereas Princes anointed and consecrate are not subject to the same Laws that private Men are. Moreover, whereas Authority was granted to the Commissioners, to examine matters tending to the hurt of the Queen's Person; yet was the Cause so handled, and Letters wrested, that the Religion which she professed, the Immunity and Majesty of foreign Princes, and the private Intercourse betwixt Princes were called in question, and she her self made to descend beneath her Royal Dignity, and to appear as a Party guilty before a Tribunal Seat: and all to no other purpose but that she might be quite excluded out of the Queen's Favour, and her own Right to the Succession; whereas she appeared voluntarily to clear her self of the matters objected against her, lest she might seem to have neglected the defence of her own Honour and Innocency. She called also to remembrance, how Queen *Elizabeth* her self had been drawn in question about *Wiat's* Conspiracy, whereas notwithstanding she was most innocent: religiously affirming, that tho' she wished the safety of the Catholics might be provided for; yet would she not that it should be effected with the Death and Blood of any one. For her part, she had rather play

play *Hester* than *Judith*; make Intercession to God for the People, than deprive the meanest of the People of Life. She expostulated, that her Enemies had divulged abroad that she was Irreligious; but the time was (said she) when I would have been instructed in the Protestant Religion, but they would not suffer me to be so, as if they cared not what became of my Soul. And now concluding, When ye have done all ye can (said she) against me, and have excluded me from my Right, ye may chance fail of your Cause and Hope. And withal making her appeal to God, and to the Princes her Kinsmen, and renewing her Protestation, she prayed that there might be another meeting about this matter, and that an Advocate might be granted unto her to plead her Cause; and that seeing she was a Princess, she might be believed in the word of a Princess: For it were extreme folly to stand to their Judgment, whom she saw most plainly to be armed with prejudice against her.

To these things the Lord Treasurer said, Whereas I bear a double Person, one of a Commissioner, another of a Counsellor, receive first a few Words from me as a Commissioner. Your Protestation is recorded, and a Copy thereof shall be delivered unto you. To us our Authority is granted under the Queen's Hand, and the Great Seal of *England*, from which there is no Appeal; neither do we come with Prejudice, but to judge according to the exact Rule of Justice. The Queen's learned Counsel do level at nothing else but that the Truth may come to light, how far you have offended against the Queen's Person. To us full Power is given to hear and examine the matter, even in your absence; yet were we desirous you should be present, lest we might seem to have derogated from your Honour: We purposed not to object any thing unto you, but what you were privy to, or have attempted against the Queen's Person. The Letters have been read to no other purpose, but to discover your Offence against the Queen's Person, and the matters to it belonging, which are so interlaced with other matters, that they cannot be sever'd. The whole Letters therefore, and not Parcels picked out here and there, have been openly read, for that the Circumstances do give assurance, what matters you dealt with *Babington* about.

She interrupting him, said, The Circumstances may be proved, but never the Fact: Her Integrity depended not upon the Credit and Memory of her Secretaries, tho' she knew them to be honest and sincere Men. Yet if they have confessed any thing out of fear of Torments, or hope of Reward and Impunity, it was not to be admitted, for just Causes, which she would alledge elsewhere. Men's minds (said she) are diversly carried about with Affections, and they would never have confessed such matters against her, but for their own Advantage and Hope. Letters may be directed to others, than those to whom they are written, and many things have been often inserted, which she never dictated. If her Papers had not been taken away, and she had her Secretary, she could better confute the things objected against her.

But nothing (said the Lord Treasurer) shall be objected, but since the 19th Day of *June*; neither will your Papers avail you, seeing your Secretaries and *Babington* himself, being never put to the Rack, have affirmed that you sent those Letters to *Babington*; which tho' you deny, yet whe-

ther more Credit is to be given to an Affirmation than to a Negation, let the Commissioners judge. But to return to the Matter; this which followeth, I tell you as a Counsellor: Many things you have propounded time after time concerning your Liberty; that they have failed of Success, it is long of you, or of the *Scots*, and not of the Queen. For the Lords of *Scotland* flatly refused to deliver the King in Hostage. And when the last Treaty was holden concerning your Liberty, *Parry* was sent privily by *Morgan* a Dependant of yours to murder the Queen.

Ah (said she) you are my Adversary. Yea (said he) I am Adversary to *Queen Elizabeth's* Adversaries. But hereof enough, let us now proceed to Proofs. Which when she refused to hear; Yet we (said he) will hear them: And I also (said she) will hear them in another Place, and defend my self.

Now were read again her Letters to *Charles Paget*, wherein she shewed him that there was no other way for the *Spaniard* to reduce the *Netherlands* to Obedience, but by setting up a Prince in *England* that might be of use unto him; and to the Lord *Paget* to hasten his Auxiliary Forces to invade *England*: And Cardinal *Allen's* Letter, wherein he called her his most dread Sovereign Lady, and signified that the matter was commended to the Prince of *Parma's* Care.

As these Letters were in reading, she interposed these Speeches; That *Babington* and her Secretaries had accused her to excuse themselves; that she never heard of the six Executioners, and that the rest made nothing to the purpose. As for *Allen*, she held him for a Reverend Prelate; and she acknowledg'd no other Head of the Church, but the Bishop of *Rome*. In what Rank and Place she was esteemed by him and foreign Princes, she knew not; neither could she hinder it, if in their Letters they called her Queen of *England*. As for her Secretaries, seeing they had done contrary to their Duty and Allegiance sworn unto her, they deserved no Credit. They which have once forsworn themselves tho' they swear again with never so great Oaths and Protestations, are not to be credited. Neither did these Men think themselves bounden by any Oath whatsoever in Court of Conscience, forasmuch as they had sworn their Fidelity and Secrecy to her before, and were no Subjects of *England*. That *Naw* had many times written otherwise than she had dictated unto him, and *Curle* wrote whatsoever *Naw* bade him. But for her part she was willing to bear the burden of their fault in all things, but what might lay a blot upon her Honour. And haply also they confessed these things to save themselves; supposing that they could not hurt her by confessing, who they thought should be more favourably dealt withal as being a Queen. As for *Ballard*, she never heard of any such, but of one *Hallard*, which had offered her his help; which notwithstanding, she had refused, for that she had heard that the same Man had also vowed his Service to *Walsingham*.

Afterwards were read certain brief Notes of her Letters to *Mendoza*, which *Curle* had confessed he had written in privy Cipher.

I Find my self greatly troubled what Course to take a-new, for the Affairs on this side the Sea: *Charles Paget* hath a Charge from me to impart unto you certain Overtures in my behalf; whereupon I pray you deliver him freely, what

‘ what you think may be obtained thereof from the King your Master.

‘ There is another Point depending thereof, which I have reserved to write to your own self, for to be by you sent unto the King your Master on my behalf, no Man else, if it be possible, being privy thereunto; that is, that considering my Son’s great Obstinacy in Heresy, and foreseeing hereupon the imminent danger and harm like to ensue to the Catholick Church, he coming to the Succession of this Realm, I have resolved with my self, in case my said Son do not reduce himself before my Death to the Catholick Religion, (as I must tell you plainly, I have small hope so long as he shall remain in *Scotland*) to give and grant my Right to the said King your Master, in the Succession of this Crown, by my last Will and Testament; praying him in Consideration hereof from this time forward to take me wholly into his Protection, likewise the State and Affairs of this Country: the which for discharge of my Conscience, I cannot think I can put into the hands of a Prince more zealous of our Religion, and able in all respects to re-establish the same on this side, as it imports all the rest of Christendom. Let this be kept secret, forasmuch as if it come to be revealed, it should be in *France* the loss of my Dower, in *Scotland* a clear Breach with my Son, and in this Country my total Ruin and Destruction.

‘ Thank on my behalf the said King your Master, for the Favour and Liberality extended to the Lord *Paget* and his Brother, which I pray him most earnestly to continue, and to gratify for my sake with some Pension poor *Morgan*, who hath so much endured not only for me, but for the common Cause.

‘ I recommend likewise unto you *Fulsambe* (whom you know) to help him to some supply, above the Entertainment that I have allotted him, according to the small means I have.’

Out of these she was pressed as if she had purposed to convey her Right in the Kingdom to the *Spaniards*, and that *Allen* and *Parsons* lay now at *Rome* for that cause. She complaining that her Secretaries had broken their Allegiance bound by Oath, answered, When being Prisoner I languished in Cares without hope of Liberty, and was without all hope to effect those things which very many expected at my hands, declining now thro’ Age and Sicknes; it seemed good to some, that the Succession of the Crown of *England* should be established in the *Spaniard*, or some *English* Catholick. And a Book was sent unto me to avow the *Spaniard*’s Title; which when it was not allowed by me, I incurred displeasure among some: But now all my hope in *England* being desperate, I am fully resolved not to reject foreign Aid.

The Solicitor put the Commissioners in mind what would become of them, their Honours, Estates and Posterities, if the Kingdom were so conveyed. But the Lord Treasurer shewed that the Kingdom of *England* could not be conveyed, but was to descend by Right of Succession according to the Laws; and asked her, if she would any more.

She required that she might be heard in a full Parliament, or that she might in Person speak with the Queen, who would (she hoped) have regard of a Queen, and with the Council. And now rising up with great Confidence of Countenance,

she had some Conference with the Lord Treasurer *Hatton*, *Walsingham*, and the Earl of *Warwick*, by themselves apart.

These things being done, the Assembly was prorogued to the 25th of *October*, at the *Star-Chamber* at *Westminster*. Thus far touching this matter out of the Commentaries of *Edward Barker*, principal Register to the Queen’s Majesty; *Thomas Wheeler* publick Notary, Register of the Audience of *Canterbury*; and other credible Persons which were present.

The said 25th Day of *October*, all the Commissioners met, saving the Earls of *Shrewsbury* and *Warwick*, which were both of them sick at that time: and after *Naw* and *Curle* had by Oath, *viva voce*, voluntarily without Hope of Reward, before them avowedly affirmed and confirmed all and every the Letters, and Copies of Letters, before produced, to be most true; Sentence was pronounced against the Queen of *Scots*, and confirmed with the Seals and Subscriptions of the Commissioners, and recorded in these words: By their joint Assent and Consent, they do pronounce and deliver their Sentence and Judgment, at the Day and Place last recited; and say, That after the end of the aforesaid Session of Parliament, in the Commission aforesaid specified, namely after the aforesaid 1st Day of *June*, in the 27th Year aforesaid, and before the date of the same Commission, divers matters have been compassed and imagined within this Realm of *England*, by *Anthony Babington* and others, *cum scientia*, in *English*, with the Privy of the said *Mary*, pretending Title to the Crown of this Realm of *England*, tending to the hurt, death and destruction of the Royal Person of our said Lady the Queen. And namely, That after the aforesaid 1st Day of *June*, in the 27th Year aforesaid, and before the Date of the Commission aforesaid, the aforesaid *Mary* pretending Title to the Crown of this Realm of *England*, hath compassed and imagined within this Realm of *England*, divers matters tending to the hurt, death and destruction of the Royal Person of our Sovereign Lady the Queen, contrary to the form of the Statute in the Commission aforesaid specified.

Concerning this Sentence, which depended wholly upon the Credit of the Secretaries, and they not brought forth Face to Face, according to the first Act of the 13th Year of Queen *Elizabeth*, much talk there was, and divers Speeches ran abroad; while some thought them credible Persons, and some unworthy to be credited. I have seen *Naw*’s Apology to King *James*, written in the Year 1605; wherein laboriously protesting, he excuseth himself, that he was neither Author, nor Persuader, nor the first Revealer of the Plot that was undertaken, nor failed of his Duty thro’ Negligence, or want of Foresight; yea, that this Day he stoutly impugned the chief points of Accusation against his Lady and Mistress: which notwithstanding appeareth not by Records. But the same day was there a Declaration made by the Commissioners and Judges of the Land, That the said Sentence did derogate nothing from *James* King of *Scots*, in Title or Honour, but that he was in the same place, degree and right, as if the same Sentence had never been pronounced.

Some few days after, a Parliament was holden at *Westminster*, begun by virtue of a certain Power of Vice-gerency, granted by the Queen to the Archbishop of *Canterbury*, the Lord Treasurer, and

the Earl of *Derby*, and that not without Precedent. In which Parliament the Proscription of the Lord *Paget*, *Charles Paget*, Sir *Francis Englefield*, *Francis Throckmorton*, *Anthony Babington*, *Thomas Salisbury*, *Edward Jones*, *Chidiack Titchburne*, *Charles Tilney*, and the rest of the Conspirators, was confirmed, and their Goods and Possessions confiscate. The Estates also of the Realm, which had by their Voices approved and confirmed the Sentence given against the Queen of *Scots*, did with joint Assent put up a Supplication to the Queen by the hands of the Lord Chancellor, as follows:

MAY it please your most excellent Majesty, our most gracious Sovereign, we your humble, loving and faithful Subjects, the Lords and Commons in this present Parliament assembled, having of long time to our intolerable grief seen by how manifold most dangerous and execrable Practices, *Mary* the Daughter and Heir of *James V.* late King of *Scots*, Dowager of *France*, and commonly called Queen of *Scots*, hath compassed the Destruction of your Majesty's Sacred and most Royal Person, in whose Safety (next under God) our chief and only Felicity doth consist; and thereby not only to bereave us of the sincere and true Religion of Almighty God, bringing us and this noble Crown back again into the Thralldom of the Romish Tyranny, but also utterly to ruinate and overthrow the happy State and Commonweal of this most noble Realm; which being from time to time by the great Mercy and Providence of God, and your Highness's singular Wisdom, foreseen and prevented, your Majesty of your exceeding great Clemency and Princely Magnanimity hath either most graciously passed over, or with singular favour tolerated, altho' often and instantly moved by your most loving and faithful Subjects to the contrary, in Times of your Parliaments, and at many other times; and hath also protected and defended the said *Scotish* Queen from those great dangers which her own People, for certain detestable Crimes and Offences to her imputed, had determined against her. All which notwithstanding, the same Queen was nothing moved with these and many other your Majesty's most gracious Favours towards her; but rather obdurate in Malice, and by hope of continual Impunity imboldened to prosecute her cruel and mischievous Determination by some speedy and violent Course: and now lately a very dangerous Plot being conceived and set down by *Anthony Babington* and others, That six desperate and wicked Persons should undertake that wicked and most horrible Enterprize, to take away your Majesty's Life, (whom God of his infinite Mercy long preserve) she did not only give her Advice and Direction upon every point, and all Circumstances concerning the same, make earnest request to have it perform'd with all diligence, but did also promise assurance of large Reward and Recompence to the Doers thereof: which being informed to your Majesty, it pleased your Highness, upon the earnest Suit of such as tendered the Safety of your Royal Person, and the good and quiet state of this Realm, to direct your Commission under the Great Seal of *England*, to the Lords and others of your Highness's Privy-Council, and certain other Lords of Parliament of the greatest and most ancient Degree, with some of your principal Judges, to examine, hear and determine the same Cause, and thereupon to give Sentence or Judgment ac-

ording to a Statute in that behalf, made in the 27th Year of your most gracious Reign: By virtue whereof, the more part of the same Commissioners, being in number thirty six, having at sundry times fully heard what was alledged and proved against the said *Scotish* Queen in her own Presence, touching the said Crimes and Offences, and what she could say for her Defence and Excuse therein, did after long Deliberation give their Sentence and Judgment with one Consent, that the Death and Destruction of your Royal Person was imagined and compassed by the said *Anthony Babington*, with the privity of the same *Scotish* Queen: And that she herself did also compass and imagine the Death and Destruction of your most Royal Person. Now for as much as we your Majesty's most humble, loyal and dutiful Subjects, representing unto your most excellent Majesty the universal State of your whole People of all degrees in this your Realm, do well perceive, and are fully satisfied, that the same Sentence and Judgment is in all things most Honourable, Just and Lawful; and having carefully and effectually, according to our most bounden Duties, weighed and considered upon what Ground and Cause so many traitorous Complots, and dangerous Practices against your most Royal Person and Estate, and for the invading of this Realm, have for the space of many years past grown and proceeded, do certainly find, and are undoubtedly persuaded that all the same have been from time to time attempted and practised, by and from the *Scotish* Queen, and by her Confederates, Ministers and Favourers, who conceive an assured hope to achieve speedily by your Majesty's untimely Death that which they have long expected, and whereof during your Life (which God long preserve to our inestimable Comfort) they despair; to wit, to place her the said *Scotish* Queen in the Imperial and Kingly Seat of this Realm, and by her to banish and destroy the Professors and Professing of the true Religion of Jesus Christ, and the antient Nobility of this Land, and to bring this whole State and Commonweal to foreign Subjection, and utter Ruin and Confusion: which their malicious and traitorous Purpose they will never cease to prosecute by all possible means they can, so long as they may have their Eyes and Imaginations fixed upon that Lady, the only ground of their treasonable Hope and Conceits, and the only Seed-Plot of all dangerous and traitorous Devices and Practices against your sacred Person. And seeing also what insolent Boldness is grown in the Heart of the same Queen, thro' your Majesty's former exceeding Favours and Clemencies towards her; and thereupon weighing with heavy and sorrowful Hearts, in what continual Peril of such like desperate Conspiracies and Practices your Majesty's most Royal and Sacred Person and Life (more dear unto us than our own) is and shall be still, without any possible means to prevent it, so long as the said *Scotish* Queen shall be suffered to continue, and shall not receive that due Punishment, which by Justice, and the Laws of this your Realm, she hath so often and so many ways for her most wicked and detestable Offences deserved: Therefore, and for that we find, that if the said Lady should now escape the due and deserved Punishment of Death for these her most execrable Treasons and Offences, your Highness's Royal Person shall be exposed unto many more, and those more secret and dangerous Conspiracies than before, and such as shall not or cannot be fore-

foreseen or discovered, as these her late Attempts have been; and shall not hereafter be so well able to remove or take away the ground and occasion of the same, as now by Justice may or ought to be done: We do most humbly beseech your most excellent Majesty, that as well in respect of the Continuance of the true Religion now professed amongst us, and of the Safety of your most Royal Person and Estate, as in regard of the Preservation and Defence of us your most loving, dutiful and faithful Subjects, and the whole Commonweal of this Realm; it may please your Highness to take speedy Order, That Declaration of the same Sentence and Judgment be made and published by Proclamation, and that thereupon direction be given for further Proceedings against the said *Scottish* Queen, according to the effect and true meaning of the said Statute: Because upon advised and great Consultation, we cannot find that there is any possible means to provide for your Majesty's Safety, but by the just and speedy Execution of the said Queen, the neglecting whereof may procure the heavy Displeasure and Punishment of Almighty God, as by sundry severe Examples of his great Justice in that behalf left us in the Sacred Scriptures doth appear. And if the same be not put in present Execution, we your most loving and dutiful Subjects shall thereby (so far as Man's Reason can reach) be brought into utter Despair of the Continuance amongst us of the true Religion of Almighty God, and of your Majesty's Life, and the Safety of all your faithful Subjects, and the good Estate of this most flourishing Commonwealth.

The Queen with great Majesty of Countenance and Voice, answered to this purpose: So many and so great are the bottomless Graces, and immeasurable Benefits bestowed upon me by the Almighty, that I must not only most humbly acknowledge them as Benefits, but admire them as Miracles, being in no sort able to express them. And tho' there liveth not any that may more justly acknowledge himself bound to God than I, whose Life he hath miraculously preserved from so many Dangers, yet am I not more deeply bound to give him Thanks for any one Thing, than for this which I will now tell you, and which I account as a Miracle: Namely, that as I came to the Crown with the most hearty Good-will of all my Subjects, so now after 28 Years Reign, I perceive in them the same, if not greater Good-will towards me; which if I once lose, well might I breathe, but never think I lived. And now tho' my Life hath been dangerously shot at, yet I protest there is nothing hath more grieved me, than that one not differing from me in Sex, of like Rank and Degree, of the same Stock, and most nearly allied unto me in Blood, hath fallen into so great a Crime. And so far have I been from bearing her any Ill-will, that upon the discovery of certain treasonable Practices against me, I wrote unto her secretly, that if she would confess them by a private Letter unto my self, they should be wrapped up in Silence. Neither did I write thus in mind to intrap her, for I knew then as much as she could confess. And even yet, tho' the matter be come thus far, if she would truly repent, and no Man would undertake her Cause against me, and if my Life alone depended hereupon, and not the Safety and Welfare of my whole People, I would (I protest unfeignedly) most willingly pardon her. Nay if

England might by my Death attain a more flourishing Estate, and a better Prince, I would most gladly lay down my Life: For, for your sakes it is, and for my People's, that I desire to live. As for me, I see no such great Cause why I should either be fond to live, or fear to die. I have had good Experience of this World, and I know what it is to be a Subject, and what to be a Sovereign. Good Neighbours I have had, and I have met with bad; and in Trust I have found Treason. I have bestowed Benefits upon ill Deservers; and where I have done well, have been ill requited. While I call to mind these things past, behold things present, and expect things to come, I hold them happiest that go hence soonest. Nevertheless against such Mischiefs as these, I put on a better Courage than is common to my Sex, so as whatsoever befall me, Death shall not take me unprepared.

And as touching these Treasons, I will not so prejudicate my self, or the Laws of my Kingdom, as not but to think that she having been the Contriver of the same Treasons, was bound and liable to the antient Laws, tho' the late Act had never been made; which notwithstanding was no ways made to prejudice her. So far was it from being made to intrap her, that it was rather intended to forewarn and terrify her from attempting any thing against it. But seeing it was now in force of a Law, I thought good to proceed against her according to the same. But you Lawyers are so curious in scanning the nice Points of the Law, and following of Precedents and Form, rather than expounding the Laws themselves, that by exact observing of your Form, she must have been indicted in *Staffordshire*, and have holden up her hand at the Bar, and have been tried by a Jury of twelve Men. A proper Course forsooth of Trial against a Princess! To avoid therefore such Absurdities, I thought it better to refer the Examination of so weighty a Cause, to a good number of the noblest Personages of the Land, and the Judges of the Realm; and all little enough. For we Princes are set as it were upon Stages, in the sight and view of all the World. The least Spot is soon spy'd in our Garments, a Blemish quickly noted in our Doings. It behoveth us therefore to be careful that our Proceedings be just and honourable. But I must tell you one thing, that by this last Act of Parliament you have brought me to a narrow streight, that I must give Order for her Death, which is a Princess most nearly allied unto me in Blood, and whose Practices against me have stricken me into so great Grief, that I have been glad to absent my self from this Parliament, lest I should increase my Sorrow by hearing it spoken of, and not out of fear of any danger, as some think. But yet I will now tell you a secret (tho' it is well known that I have the property to keep counsel;) It is not long since these Eyes of mine saw and read an Oath, wherein some bound themselves to kill me within a Month: hereby I see your danger in me, which I will be very careful to avoid.

Your Association for my Safety I have not forgotten, which I never so much as thought of, till a great number of Hands, with many Obligations, were shewed me; which as I do acknowledge as a strong Argument of your true Hearts, and great Zeal to my Safety, so shall my Bond be stronger tied to a greater Care for your Good. But forasmuch as this matter now in hand is very rare, and

and of greatest consequence, I hope you do not look for any present Resolution; for my manner is, in matters of less moment than this, to deliberate long upon that which is once to be resolved. In the mean time I beseech Almighty God to illuminate my Mind, that I may foresee that which may serve for the Good of his Church, the Prosperity of the Commonwealth, and your Safety. And that Delay may not breed Danger, we will signify our Resolution with all Conveniency. And whatever the best Subjects may expect at the hands of the best Princes, that expect from me to be performed to the full.

The twelfth Day after, when she had thorowly weighed the matter in her Mind, being distracted with doubtful Care and Thought, and as it were in some Conflict with her self what to do in so important a Business, she sent the Lord Chancellor to the higher House, and *Puckering* to the rest in the lower House; praying them to enter into a new Consideration upon so weighty a matter, and to devise some better remedy, whereby both the Queen of Scots Life might be spared, and her own Security provided for.

After much and long Deliberation, they judging that both the Welfare and Hurt of the Prince belongeth to all, concurred again with one Voice in the same Opinion, and that for these Causes: For that the Queen's Safety could not be secured as long as the Queen of Scots lived, unless she either seriously repented and acknowledg'd her Offence, or were kept with a more streight Guard, good assurance being given by Bond and Oath for her good Demeanour, or delivered Hostages, or else departed the Realm. As for her Repentance, they were out of all hope of it, considering that she had ill requited the Queen which had saved her Life, and did not yet acknowledge her fault. As for a surer Guard, streighter Custody, Bonds, Oath, and Hostages, they held them all as nothing, for that the Queen's Life being once taken away, these would presently vanish. And if she should depart the Realm, they feared lest she would presently take Arms to invade the same.

These Reasons the Lord Chancellor, and *Puckering* Speaker of the lower House, opened more at large, in the manner following:

' Unless Execution of this just Sentence be done,

' I. Your Majesty's Person cannot any while be safe.

' II. The Religion cannot long continue among us.

' III. The most flourishing present State of this Realm must shortly receive a woful Fall.

' IV. And consequently, in sparing her, your Majesty shall not only give Courage and Hardiness to the Enemies of God, of your Majesty's Self and of your Kingdom; but shall discomfite and daunt with Despair the Hearts of your loving People; and so deservedly provoke the heavy Hand and Wrath of God.

' And that summarily for the Reasons ensuing:

' I. For as much as concerns the Danger of your Majesty;

' Both she and her Favourers think she hath Right, not to succeed, but to enjoy your Crown in Possession; and therefore as she is a most impatient Competitor, (acquainted with Blood) so will she not spare any means that may take you

' from us, being the only Lett, that she enjoyeth not her Desire.

' She is hardened in Malice against your royal Person, notwithstanding that you have done her all Favour, Mercy and Kindness; as well in preserving her Kingdom, as saving her Life and Honour.

' And therefore there is no Place for Mercy, where there is no Hope of Amendment, or that she will desist from most wicked Attempts.

' The rather, for that her Malice appeareth such as that she maketh, as it were, her Testament of the same, to be executed after her Death, and appointeth her Executors to perform the same.

' She affirmeth it lawful to move Invasion: therefore, as of Invasion Victory may ensue, and of Victory the Death of the Vanquished; so doth she not obscurely profess it lawful to destroy you.

' She holds it not only lawful, but honourable also and meritorious, to take your Life, &c. being deprived of your Crown by her Holy Father, and therefore she will (as she hath continually done) seek it by all means whatsoever.

' She is greedy of your Death, and preferreth it before her own Life: For in her late Direction to some of her Complices, she willed, *Whatsoever became of her, the Tragical Execution should be perform'd on you.* There is by so much the more Danger to your Person since the Sentence, than before, by how much it behoveth them, that would preserve her or advance her, to hasten your Death now or never before Execution done upon her; as knowing that you, and none else, can give Direction for her Death, and that by your Death the Sentence would lose the Force of Execution, and otherwise they should come too late if they take not the present Opportunity to help her.

' Her Friends hold Invasion unprofitable while you live, and therefore in their Opinion your Death is first and principally to be sought, as the most compendious way to ruin the Realm by Invasion.

' Some of the eldest and wisest Papists set it down for a special good Drift to occupy you with Conceit, that the Preservation of her Life is the Safety of your own; and therefore you may be assured, that they verily think that her Life will be your Death and Destruction.

' II. For as much as concerns Religion:

' It is most perilous to spare her, who hath continually breathed the Overthrow and Suppression of the same; being poisoned with Popery from her tender Youth, and at her Age joining in that false-term'd *Holy-League*, and ever since and now a profess'd Enemy of the Truth.

' She resteth wholly upon Popish Hopes to be delivered and advanced, and so devoted and doted in that Possession, that she will (as well for Satisfaction of others, as feeding her own Humour) supplant the Gospel, where and whenever she may. Which Evil is so much the greater, and the more to be avoided, as that it slayeth the Soul, and will spread itself not only over *England* and *Scotland*, but also into all Parts beyond the Seas, where the Gospel of God is maintained: The which cannot but be exceedingly weakened, if Defection should be in these two most valiant Kingdoms.

' III. For,

‘ III. For as much as concerns the happy Estate of this Realm :

‘ The *Lydians* say, *Unum Regem agnoscunt Lydii, duos autem tolerare non possunt* : so we say, *Unam Reginam Elizabetham agnoscunt Angli, duas autem tolerare non possunt*. And therefore, since she saith, that she is Queen here, and we neither can nor will acknowledge any other but you to be our Queen : It will follow, if she prevail, she will rather make us Slaves, than take us for her Children ; and therefore the Realm sigheth and groaneth under fear of such a Step-Mother.

‘ She hath already provided us a Foster-father and a Nurse, the Pope and the King of *Spain*, into whose hands if it should mishappen us to fall, what can we else look for, but Ruin, Destruction, and utter Extirpation of Goods, Lands, Lives, Honour and all ?

‘ Whilst she shall live, the Enemies of the State will hope and gape after your Death. By your Death they trust to make Invasion profitable for them ; which cannot be, but the same should be most lamentable for us : And therefore it is meet to cut off the Head of that Hope.

‘ As she hath already, by her poisoned Baits, brought to Destruction more Noblemen and their Houses, and a great multitude of Subjects, during her being here, than she would have done, if she had been in possession of her own Country, and armed in the Field against us ; so will she still be continually cause of the like Spoil to the greater Loss and Peril of this Estate : And therefore this Realm neither can nor may endure her.

‘ Her Secretaries do write and print, that we be at our Wits end, Worlds end, if she overlive your Majesty ; meaning thereby, that the End of our World is the beginning of theirs : And therefore, take her away, and their World will be at an end before it begin.

‘ Since the sparing of her in the 14th Year of your Reign, Popish Traitors and Recusants have multiplied exceedingly ; and if you spare her now again, they will grow both innumerable and invincible also.

‘ IV. And therefore now in the fourth Place :

‘ Mercy in this case would in the end prove Cruelty against all. *Nam est quedam crudelis Misericordia*. And therefore to spare her is to spill us.

‘ She is only a Cousin to you in a remote degree, but we be the Sons and Children of this Land ; whereof you be not only the natural Mother, but also the wedded Spouse. And therefore much more is due from you to us all, than alone to her. It would exceedingly grieve and wound the Hearts of your loving Subjects, if they should see so horrible Vice not condignly punished : If any be wavering, it will win them to the worse Part, and many will seek to make their own Peace. Wherefore as well for the Comfort of the one, as Stay of the other, and retaining of all, it is most needful that Justice be done upon her.

‘ Thousands of your loving Subjects of all Degrees, which have for special Zeal of your Safety made Oath, before God, to pursue to Death by all forcible and possible Means, such as she is, by just Sentence, found to be ; cannot save their Oaths, if you keep her alive : For

‘ then either we must take her Life from her without direction, which will be to our extrem Danger by the offence of your Law ; or else we must suffer her to live against our express Oath, which will be to the uttermost Peril of our own Souls ; wherewith no Act of Parliament, nor Power of Man whatsoever, can in any wise dispense. And therefore, seeing it resteth in you, by a most worthy and just Execution of this Sentence, to keep us upright and free us in both, we most humbly and earnestly beseech you, that speedy Justice be done upon her, whereby your self may be safe, the State of your Realm preserved, and we not only deliver’d from this Trouble of Conscience, but also comforted to venture our selves, and all ours, into whatsoever other Peril, for the Preservation and Safety of you.

‘ Lastly, God’s Vengeance against *Saul* for sparing *Agag*, against *Abab* for sparing the Life of *Benbadad*, is apparent ; for they were both by the just Judgment of God deprived of their Kingdom, for sparing those wicked Princes whom God had deliver’d into their hands of purpose to be put to Death by them, as by the Ministers of his eternal and divine Justice.

‘ How much those Magistrates were commend- ed, that put to death those mischievous and wicked Queens, *Jezebel* and *Ataliab* !

‘ How wisely proceeded *Solomon* to Punishment, in putting to death his own natural and elder Brother *Adonias*, for the only intention of a Marriage, which gave suspicion of Treason ! whereas there is no more desired of your Majesty, than the very Pope, (now your sworn Enemy) some of these late Conspirators, and this wicked Lady herself have thought fitting to fall upon her. He in like case gave Sentence, *Vita Conradini, mors Carolo ; mors Conradini, vita Carolo*. They in their best Minds and Remorse of Conscience setting down the best means of your Safety, said, *He that hath no Arms cannot fight, and he that hath no Legs cannot run away, but he that hath no Head can do no harm. Pisces primum à capite fatent*. She by her voluntary subscribing to the late Association, &c. gave this Sentence against herself.

‘ And after in her Letters of these Treasons to *Babington*, wrote, *That if she were discover’d, it would give sufficient cause to you to keep her in continual close Prison*. By which Words she could mean nothing else but Pains of Death.

‘ Therefore we seeing on the one Side how you have, to the offence of mighty Princes, advanced Religion, with what tender Care, and more than Motherly Piety you have always cherish’d us the Children of this Land, with what Honour and Renown you have restored the antient Rights of the Crown, with what Peace and Justice you have govern’d, and with what Store and Plenty you have reign’d over us :

‘ On the other Side, seeing that this Enemy of our Felicity seeks to undermine our Religion, to supplant us, and plant Strangers in the Place, to transfer the Rights of the Crown to that *Italian* Priest, and the Crown to herself, or to some other, from you ; and therefore lieth in continual wait for to take away your Life.

‘ Therefore we pray you, for the Cause of God, his Church, this Realm, ourselves and your-

yourself; that you will no longer be careless of your Life, or sovereign Safety; nor longer suffer Religion to be threatned, the Realm to stand in Danger, nor us to dwell in Fear: But as Justice hath given rightful Sentence, so you will grant Execution: That as her Life threatneth your Death, so her Death may, by God's Favour prolong your Life; and that this Evil being taken away from the Earth, we may praise God for our Deliverance, and pray him for our Continuance; and with the Psalmist say, *Dominus fecit Judicium*, and, *The ungodly is trapped in the works of her own hand*.

And so pray God to incline your Heart to our just Desires, &c.

They concluded, that as it were Injustice to deny Execution of Law to any one of her Subjects that should demand it, so much more, to her whole People of *England*, with one Voice and Mind making humble and instant Suit for the same. *The Queen then spake in this manner*;

Full grievous is that way, whose going on, and end, yield nothing but Cumber for the hire of a laborious Journey. I have this day been in greater Conflict with my self, than ever in all my Life, whether I should speak, or hold my peace. If I speak, and not complain, I shall dissemble: And if I should be silent, your Labour taken were all in vain. If I should complain, it might seem strange and rare; yet I confess that my most hearty desire was, that some other means might have been devised to work your Security and my Safety, than this which is now propounded. So as I cannot but complain, tho' not of you, yet unto you; that I perceive by your Petitions, that my Safety dependeth wholly upon the Death of another. If there be any, that think I have prolonged the time of purpose to make a counterfeit shew of Clemency, they do me the most undeserved wrong, as he knoweth, which is the Searcher of the most secret Thoughts of the Heart. Or if there be any that be persuaded, that the Commissioners durst not pronounce other Sentence, as fearing thereby to displease me, or to seem to fail of their care for my Safety, they but heap upon me most injurious Conceits. For either those, whom I have put in trust, have failed of their Duties, or else they signified unto the Commissioners in my Name, that my Will and Pleasure was, that every one should deal freely according to his Conscience, and what they would not openly declare, that they should reveal unto me in private. It was of my most favourable Mind towards her, that I desired some other means might be found out to prevent this mischief. But since now it is resolved, that my Surety is most desperate without her Death, I have a most inward feeling of Sorrow, that I, which have in my time pardoned so many Rebels, winked at so many Treasons, or neglected them with silence, must now seem to shew Cruelty upon so great a Princess.

I have, since I came to the Crown of this Realm, seen many defamatory Books and Pamphlets against me, accusing me to be a Tyrant: Well fare the Writers Hearts, I believe their meaning was to tell me News; and News indeed it was to me, to be branded with the note of Tyranny: I would it were as great News to hear of their Impiety. But what is it which they will not write now, when they shall hear that I have given Consent, that the Executioner's hands shall be imbrued in the Blood of my nearest Kinswoman? But so far

am I from Cruelty, that to save mine own Life, I would not offer her Violence; neither have I been so careful how to prolong mine own Life, as how to preserve both: which that it is now impossible, I grieve exceedingly. I am not so void of Judgment, as not to see mine own Perils before mine eyes; nor so mad, to sharpen a Sword to cut mine own Throat; nor so careless, as not to provide for the Safety of mine own Life. But this I consider with my self, that many a Man would put his own Life in danger to save a Princess's Life. I do not say, so will I; yet have I many times thought upon it.

But seeing so many have both written and spoken against me, give me leave, I pray you, to say somewhat in mine own defence, that ye may see what manner of Woman I am, for whose Safety you have passed such careful Thoughts; wherein as I do with most thankful Heart consider your vigilant Care, so am I sure I shall never requite it, had I as many Lives as you all.

When first I took the Scepter, I was not unmindful of God the Giver, and therefore began my Reign with his Service, and the Religion I had been both born in, bred in, and I trust shall die in. And tho' I was not ignorant how many Perils I should be beset withal at home for altering Religion, and how many great Princes abroad, of a contrary Profession, would attempt all Hostility against me; yet was I no whit dismayed, knowing that God, whom only I respected, would defend both me and my Cause. Hence it is, that so many Treacheries and Conspiracies have been attempted against me, that I rather marvel that I am, than muse that I should not be, were it not that God's holy Hand hath protected me beyond all Expectation. Then to the end I might make the better progress in the Art of swaying the Scepter, I enter'd into long and serious Cogitation what things were worthy and fitting for Kings to do: and I found it most necessary that they should be abundantly furnished with those special Virtues, Justice, Temperance, Prudence, and Magnanimity. As for the two latter, I will not boast my self, my Sex doth not permit it: But for the two former, I dare say, (and that without Ostentation) I never made a difference of Persons, where Right was one; I never preferred for Favour, whom I thought not fit for Worth; I never bent my ear to credit a tale that was first told, nor was so rash to corrupt my Judgment with Prejudice, before I heard the Cause. I will not say but many Reports might haply be brought me in too much favour of the one side or the other; for we Princes cannot hear all our selves: Yet this I dare say boldly, My Judgment went ever with the Truth according to my Understanding. And as full well *Alcibiades* wished his Friend, not to give any Answer till he had run over the Letters of the Alphabet; so have I not used rash and sudden Resolutions in any thing.

And therefore as touching your Counsels and Consultations, I acknowledge them to be so careful, provident and profitable for the preservation of my Life, and to proceed from Minds so sincere and to me most devoted, that I shall endeavour my self all I can, to give you cause to think your pains not ill-bestowed, and strive to make my self worthy of such Subjects.

And now for your Petition, I pray you for this present to content your selves with an Answer without Answer. Your Judgment I condemn not, neither

neither do I mistake your Reasons, but pray you to accept my Thankfulness, excuse my Doubtfulness, and take in good part my Answer answerless. If I should say, I would not do what you request, I might say perhaps more than I think: And if I should say I would do it, I might plunge my self into Peril, whom you labour to preserve; which in your Wisdoms and Discretions ye would not that I should. if ye consider the Circumstances of Place, Time, and the Manners and Conditions of Men.

After this, the Assembly of the Estates was prorogued.

About that time were Lord *Buckhurst* and *Beale* sent to the Queen of *Scots*, to signify unto her that Sentence was pronounced against her; that the same was approved and confirmed by Act of Parliament, as most just, and the Execution thereof instantly sued for by the Estates, out of a due regard of Justice, Security and Necessity: and therefore to persuade her to acknowledge her Offences against God and the Queen, and to expiate them before her Death by Repentance: letting her understand, that as long as she lived, the received Religion in *England* could not subsist. Hereat she seemed with a certain unwonted Alacrity to triumph, giving God thanks, and rejoicing in her heart that she was holden to be an Instrument for the re-establishing of Religion in this Island. And earnestly she prayed, that she might have a Catholick Priest to direct her Conscience, and minister the Sacraments unto her. A Bishop and a Dean whom they commended unto her for this use, she utterly rejected, and sharply taxed the *English* Nation, saying often, That the *English* had many times slaughtered their Kings; no marvel therefore, if they now also shew their Cruelty upon me, that am issued from the Blood of their Kings.

The Publication of the Sentence was stayed a while by the Intercession of *L' Aubespine* the French Embassador*; but in the month of *December*, through the earnest Instance of some Courtiers, it was publicly proclaimed all over the City of *London*, the Lord Mayor, the Aldermen, and principal Officers and Citizens being present, and afterward throughout the whole Realm. In the Proclamation the Queen seriously protested, that this Publication was extorted from her not without exceeding Grief of Mind, out of a certain Necessity, and the most vehement Prayers and Obtestations of the Estates of the Realm; tho' there were, which thought this to proceed of Womens Cunning, who tho' they much desire a thing, yet will always seem rather to be constrained unto it. Afterwards on *February* the 1st, a Commission passed the Great Seal for her Execution, which was as follows:

ELIZABETH, by the Grace of God, Queen of *England*, *France* and *Ireland*, &c. To our trusty and well-beloved Cousins, *George* Earl of *Shrewsbury*, Earl Marshal of *England*; *Henry* Earl of *Kent*; *Henry* Earl of *Derby*; *George* Earl of *Cumberland*; and *Henry* Earl of *Pembroke*, Greeting, &c. Whereas sithence the Sentence given by you, and others of our Council, Nobility and Judges, against the Queen of *Scots*, by the name of *Mary*, the Daughter

of *James V.* late King of *Scots*, commonly called the Queen of *Scots*, and Dowager of *France*, as to you is well known; all the States in the last Parliament assembled, did not only deliberately, by great Advice, allow and approve the same Sentence as just and honourable, but also with all humbleness and earnestness possible, at sundry times require, solicit, and press us to direct such further Execution against her Person, as they did adjudge her to have daily deserved; adding thereunto, that the forbearing thereof was, and would be daily certain and undoubted Danger, not only unto our own Life, but also unto themselves, their Posterity, and the publick Estate of this Realm, as well for the Cause of the Gospel, and true Religion of Christ, as for the Peace of the whole Realm: whereupon we did, altho' the same were with some delay of time, publish the same Sentence by our Proclamation, yet hitherto have forbore to give Direction for the further Satisfaction of the afore said most earnest Requests, made by our said States of our Parliament, whereby we do daily understand, by all sorts of our loving Subjects, both of our Nobility and Council, and also of the wisest, greatest, and best devoted of all Subjects of inferior Degrees, how greatly, and deeply from the bottom of their Hearts, they are grieved and afflicted with daily, yea hourly Fears of our Life, and thereby consequently with a dreadful Doubt and Expectation of the Ruin of the present happy and godly Estate of this Realm, if we should forbear the further final Execution, as it is deserved, and neglect their general and continual Requests, Prayers, Counsels and Advices. And thereupon contrary to our natural Disposition in such Case, being overcome with the evident weight of their Counsels, and their daily Intercessions, importing such a necessity, as appeareth directly tending to the Safety not only of our self, but also to the Weal of our whole Realm, We have condescended to suffer Justice to take place; and for the Execution thereof, upon the special trusty Experience and Confidence which we have of your Loyalties, Faithfulness and Love, both toward our Person and the Safety thereof, and also to your native Countries, whereof you are most noble and principal Members; We do will, and by Warrant hereof do authorize you, as soon as you shall have time convenient, to repair to our Castle of *Fotheringay*, where the said Queen of *Scots* is in Custody of our right Trusty and Faithful Servant and Counsellor, Sir *Amias Powlet* Kt. and then taking her into your Charge, to cause by your Commandment Execution to be done upon her Person, in the presence of your selves, and the afore said Sir *Amias Powlet*, and of such other Officers of Justice as you shall command to attend upon you for that purpose; and the same to be done in such manner and form, and at such time and place, and by such Persons, as to five, four or three of you, shall be thought by your Discretions convenient, notwithstanding any Law, Statute or Ordinance to the contrary. And these our Letters Patent sealed with our great Seal of *England*, shall be to you, and every

* See the French Ambassador's (*Bellevre*) Speech to Queen Elizabeth. Thuan. Histor. Lib. 86. p. 157. Genev. Edit.

of you, and to all Persons that shall be present, or that shall be, by you, commanded to do any thing appertaining to the aforesaid Execution, a full sufficient Warrant, and Discharge for ever. And further, we are also pleased and contented, and hereby we do will, command and authorize our Chancellor of *England*, at the Requests of you all, and every of you, that the Duplicate of our Letters Patent, be to all purposes made, dated and sealed with our great Seal of *England*, as these Presents now are: In witness whereof, we have caused these our Letters to be made Patent. Yeoven at our Manor of *Greenwich*, the 1st Day of *February*, in the 29th Year of our Reign.

Queen Elizabeth's Letter directed to Sir Amias Powlet Kt. Keeper of the Queen of Scots, at the Castle of Fotheringay.

AMIAS, my most faithful Servant, God reward thee treble-fold in the double of thy most troublesome Charge so well discharged: if you knew, my *Amias*, how kindly, besides dutifully, my grateful Heart accepts your double Labours, and faithful Actions, your wife Orders, and safe Regards, performed in so dangerous a Charge, it would ease your Travel, and rejoice your Heart, in that I cannot balance, in any weight of my Judgment, the value that I prize you at, and suppose no Treasure to countervail such Faith; and shall condemn my self, in that thought I never committed, if I reward not such deserts; yea, let me lack, when I most need, if I acknowledge not such a Merit with a Reward, not *omnibus datum*: but let your wicked Murderers know, how with hearty sorrow her vile deserts compel these Orders; and bid her from me, ask God forgiveness for her treacherous dealing against my Life many Years, to the intolerable Peril of her own; and yet not content with so many Forgivenesses, but must fall again so horribly, far passing a Woman's Thought, much less a Prince's; instead of excusing whereof, not one can serve it, being so plainly confessed by the Author of my guiltless Death. Let Repentance take place, and let not the Fiend possess her, so that the better part be lost, which I pray, with hands lifted up to him, that can both save and spill, with my most loving Adieu, and Prayer for thy long Life,

*Your assured and loving Sovereign,
as Heart, by good Desert, endureth,*

Elizabeth Regina.

In pursuance of this Commission, she was executed the 8th day of *February* following, in which *Queen Elizabeth* afterwards pretended she was surpriz'd; the manner whereof is thus related by *Camden*.

Queen *Elizabeth*, after some Hesitation, having delivered a Writing to *Davison*, one of her Secretaries, sign'd with her own Hand, command-

ing a Warrant under the great Seal of *England* to be drawn up for the Execution, which was to lie in readiness in case of any dangerous Attempt upon *Queen Elizabeth*, commanded him to acquaint no Man therewith; the next day the Queen changed her Mind, and commanded *Davison* by *Killegrew* that the Warrant should not be drawn. *Davison* came presently to the Queen, and told her that it was drawn and under Seal already; at which she was somewhat mov'd, and * blamed him for making such haste. He notwithstanding acquainted the Council both with the Warrant and the whole Matter, and easily persuaded them, who were apt to believe what they desired, that the Queen had commanded it should be executed. Hereupon, without any Delay *Beale*, who in respect of Religion was the Queen of Scots most bitter Adversary, was sent down with one or two Executioners, and a Warrant, wherein Authority was given to the Earls of *Shrewsbury*, *Kent*, *Derby*, *Cumberland*, and others, to see Execution done according to Law; and this without the Queen's Knowledge. And tho' she at that very time told *Davison*, that she would take another Course, yet did not he for all that call *Beale* back.

As soon as the Earls were come to *Fotheringhay*, they, together with *Sir Amias Powlet*, and *Sir Drue Drury*, to whose Custody the Queen of Scots was committed, came to her and told her the Cause of their coming, reading the Warrant, and in few Words admonish'd her to prepare her self for Death, for she was to die the next Day. She undauntedly, and with a composed Spirit, made this Answer: *I did not think the Queen, my Sister, would have consented to my Death, who am not subject to your Law and Jurisdiction: But seeing her Pleasure is so, Death shall be to me most welcome; neither is that Soul worthy of the high and everlasting Joys above, whose Body cannot endure one Stroke of the Executioner.*

She desired she might have Conference with her Almoner, her Confessor, and *Melvin*, the Master of her Household: For her Confessor it was flatly deny'd that he should come at her; and the Earls recommended to her the Bishop, or the Dean of *Peterborough*, to comfort her; whom she refusing, the Earl of *Kent*, in a hot burning Zeal to Religion, broke forth into these Words among other Speeches: *Your Life will be the Death of our Religion, as contrariwise your Death will be the Life thereof.* Mention being made of *Babington*, she constantly denied his Conspiracy to have been at all known to her, and the Revenge of her Wrong she left to God. Then enquiring what was become of *Naw* and *Curle*; she asked whether it were ever heard of before, that Servants were suborn'd and accepted as Witnesses against their Master's Life?

When the Earls were departed, she commanded Supper to be hasten'd, that she might the better dispose of her Concerns. She supped temperately, as her manner was; and seeing her Servants, both Men and Women, weeping and lamenting as she sat at Supper, she comforted them with great Courage and Magnanimity, bad them leave mourning, and rather rejoice, that she was now to depart out of a World of Miseries. Turning to

Burgoin;

* This seems to have been one of that Queen's Artifices in order to excuse herself to the King of Scots; and tho', to put the better Colour upon it, she afterwards sacrific'd her Secretary, yet the whole Affair was (very probably) transacted with her Knowledge and Approbation, for which, see *Davison's* Apology in *Camden*. See *State-Tr.* Vol. VII. p. 20. for the Proceedings against *Davison*.

Burgoin, her Physician, she asked him whether he did not now find the Force of Truth to be great: *They say* (quoth she) *that I must die, because I have plotted against the Queen's Life, yet the Earl of Kent tells me, there is no other Cause of my Death, but that they are afraid for their Religion because of me; neither hath my Offence against the Queen, but their Fear because of me, drawn this End upon me, while some, under the Colour of Religion, and the publick Good, aim at their own private Respects and Advantages.*

Towards the end of Supper she drank to all her Servants, who pledg'd her in Order upon their Knees, mingling Tears with the Wine, and begging Pardon for their Neglect of their Duty; as she also in like manner did of them.

After Supper she perused her Will, read over the Inventory of her Goods and Jewels, and wrote down the Names of those, to whom she bequeath'd every Particular. To some she distributed Money with her own Hand. To her Confessor she wrote a Letter, that he would make Intercession for her to God in his Prayers. She wrote also Letters of Recommendation for her Servants to the *French King* and the *Duke of Guise*. At her wonted time she went to Bed, slept some Hours; and then waking, spent the rest of the Night in Prayer.

The fatal Day being come, which was the 8th of *February*, she dres'd her self as gorgeously, as she was wont to do upon festival Days, and calling her Servants together, commanded her Will to be read; pray'd them to take their Legacies in good part, for her Ability would not extend to giving them any greater Matters.

Then fixing her Mind wholly upon God in her Oratory or ordinary Place of Prayer, with Sighs and Groans, and Prayers, she begg'd his Divine Grace and Favour, till such time as *Thomas Andrews*, Sheriff of the County, acquainted her, that she must now come forth: And forth she came with State, Countenance and Presence majestically compos'd; a cheerful Look, and a Matron-like and modest Habit; her Head covered with a Linen Veil, and that hanging down to the Ground, her Prayer-Beads hanging at her Girdle, and carrying a Crucifix of Ivory in her Hands.

In the Porch she was received by the Earls and other Noblemen, where *Melvin*, her Servant, falling upon his Knees, and pouring forth Tears, bewailed his hard Hap, that he was to carry into *Scotland* the woful Tidings of the unhappy Fate of his Lady and Mistress: She thus comforted him, *Lament not, but rather rejoice, thou shalt by-and-by see Mary Stuart freed from all her Cares. Tell them, that I die constant in my Religion, and firm in my Fidelity and Affection towards Scotland and France. God forgive them, who have thirsted after my Blood, as Harts do after the Fountain, Thou, O God! who art Truth itself, and perfectly and truly understandest the inward Thoughts of my Heart, knowest how greatly I have desired that the Kingdoms of England and Scotland might be united into one. Commend me to my Son, and assure him, that I have done nothing, which may be prejudicial to the Kingdom of Scotland; admonish him to hold in Amity and Friendship with the Queen of England; and see thou do him faithful Service.*

And now the Tears trickling down, she bad *Melvin* several times farewell, who wept as fast as she. Then turning to the Earls, she prayed them

that her Servants might be civilly dealt withal: That they might enjoy their Legacies, that they might stand by her at her Death, and might be sent back into their own Country with Letters of safe Conduct. The former Request they granted, but that they should stand by her at her Death, the Earl of *Kent*, shewed himself somewhat unwilling, fearing some Superstition. *Fear it not* (said she) *These harmless Souls desire only to take their last Farewel of me: I know my Sister Elizabeth would not have denied me so small a Matter, that my Women should be then present, were it but for the Honour of the female Sex. I am her near Kinswoman, descended from Henry VII. Queen Dowager of France, and anointed Queen of Scots.*

When she had said this, and turned her self aside, it was at last granted, that such of her Servants as she should name should be present. She named *Melvin*, *Burgoin* her Physician, her Apothecary, her Surgeon, two waiting Women, and others, of whom *Melvin* bore up her Train. So the Gentlemen, two Earls and the Sheriff going before her, she came to the Scaffold, which was built at the upper End of the Hall, on which was placed a Chair, a Cushion, and a Block, all covered with black Cloth. As soon as she was set down, and Silence commanded, *Beale* read the Warrant: She heard it attentively, yet as if her Thoughts were taken up with somewhat else. Then *Fletcher*, Dean of *Peterborough*, began a long Speech to her touching the Condition of her Life past, present, and to come. She interrupted him once or twice as he was speaking, pray'd him not to trouble himself, protesting that she was firmly fixed and resolved in the ancient Catholick *Roman Religion*, and for it was ready to shed her last Blood. When he earnestly perswaded her to true Repentance, and to put her whole Trust in Christ by an assured Faith; she answer'd, That in that Religion she was both born and bred, and now ready to die. The Earls said they would pray with her, to whom she said, That she would give them hearty Thanks, if they would pray for her; but to join, said she, in Prayer with you, who are of another Profession, would be in me a heinous Sin. Then they appointed the Dean to pray; with whom while the Multitude that stood round about were praying, she fell down upon her Knees, and holding the Crucifix before her in her Hands, pray'd in *Latin*, with her Servants, out of the Office of the blessed Virgin *Mary*.

After the Dean had made an end of praying, she in *English* recommended the Church, her Son, and Queen *Elizabeth* to God, beseeching him to turn away his Wrath from this Island, and professing, that she repos'd her Hope of Salvation in the Blood of Christ: Lifting up the Crucifix, she called on the Celestial Choir of Saints to make Intercession to him for her: She forgave all her Enemies, and kissing the Crucifix, and signing her self with the Cross, she said, *As thy Arms, O Christ! were spread out upon the Cross, so receive me with the stretched out Arms of thy Mercy, and forgive my Sins.* Then the Executioners asked her forgiveness, which she granted them. And when her Women had taken off her upper Garments (which she was eager and hasty to have done) wailing and lamenting the while, she kiss'd them; and signing them with the Cross, with a cheerful Countenance bid them forbear their womanish Lamentations, for now she should rest from all her Sor-

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rows. Inlike manner turning to her Men-Servants, who also wept, she sign'd them with the Cross, and smiling, bad them farewell. And now having cover'd her Face with a Linen Handkerchief, and laying her self down to the Block, she recited the Psalm, *In thee, O Lord! do I put my Trust, let me never be confounded.* Then stretching forth her Body, and repeating many times, *Into thy Hands, O Lord! I commend my Spirit,* her

Head was taken off at two Strokes: The Dean crying out, *So let Queen Elizabeth's Enemies perish;* the Earl of Kent answering *Amen,* and the Multitude sighing and sorrowing. Her Body was embalmed and order'd with due and usual Rites, and afterwards interr'd with a Royal Funeral in the Cathedral Church of *Peterborough.* A pompous Obsequy was also perform'd for her at *Paris,* by Procurement of the *Guises.*



XIII. *The Trial of PHILIP HOWARD, Earl of Arundel *, before the Lords, for High-Treason, the 18th of April, 1589. 31 Eliz.*

F O M the outward Bar in the *King's-Bench*, there was a Court made of 30 Foot square, within which was a Table of 12 Foot square, covered with green Cloth; and in the same Court were Benches to sit upon, covered with green Say. In the midst of the same Court, at the upper end, was placed a Cloth of State, with a Chair and Cushion for the Lord Steward: from the midst of the same Court, to the midst of the Hall, was built a Gallery for the Prisoner to come upon to the Court, in length 110 Foot, and in breadth 15 Foot, and in height from the ground 6 Foot, railed round about, and going down with seven Steps.

Between eight and nine of the Clock in the morning, the Earl of *Derby*, Lord Steward his Grace, entered the Hall, attended by divers Noblemen and Officers, four Serjeants at Arms, with their Maces, waiting before him; next before his Grace the Earl of *Oxford*, Lord Great Chamberlain of *England.* My Lord of *Derby's* Grace being seated in his Chair of State, every Nobleman was placed in his degree, by Garter King of *Heraults.*

At his Grace's feet did sit Mr. *Winckefield*, one of her Majesty's Gentlemen-Ushers, holding a long white Wand in his Hand, being accompayn'd with Mr. *Norris*, Serjeant of the Garter.

Before them did sit Mr. *Sandes*, the Clerk of the Crown of the *King's-Bench.*

Opposite against my Lord's Grace did sit the Queen's Majesty's Learned Council, viz.

1. Serjeant *Puckering.*
2. Serjeant *Shettleworth.*
3. Mr. *Popham*, the Queen's Attorney-General.
4. Mr. *Egerton*, the Queen's Solicitor.

The Names of the Commissioners on the Right Hand, sitting upon a lower Bench, under the Lords of the Jury.

1. Sir *Francis Knowles* Kt. Treasurer of the Household.
2. Sir *James a Crofts* Kt. Comptroller of the Household.
3. Sir *John Parrat*, one of her Majesty's most Honourable Privy-Council.

4. Mr. *Wolley*, Secretary of the *Latin-Tongue*, of the Privy-Council.
5. *John Fortescue*, Master of the Wardrobe, and of the Privy-Council.
6. Dr. *Dale*, one of the Masters of Request to her Majesty.
7. *William Fleetwood*, Serjeant at Law, and Recorder of *London.*
8. Mr. *Rockby*, Master of Requests, and Master of *St. Katherine's.*

The Names of the Commissioners on the Left Hand.

9. The Lord Chief Justice of *England*, Sir *Christopher Wray.*
10. The Master of the Rolls, Sir *Gilbert Gerrard.*
11. The Lord Chief Justice of the Common-Pleas, *Edmund Anderson.*
12. The Lord Chief Baron of the Exchequer, *Roger Manwood.*
13. Justice of the Common-Pleas, *William Periam.*
14. Justice *Garwy*, of the *King's-Bench.*

The Serjeant at Arms, usually attended on the Lord Chancellor, named *Roger Wood*, was commanded to make an *O Yes* three times.

Then Mr. *Sandes*, Clerk of the Crown, read the Commission.

And Sir *Francis Knowles* Kt. gave up the Verdict of the great Assize.

Then was called *Matthew Spencer*, Serjeant at Arms, to return his Precept; which was returned and read.

After that, the Noblemen and Peers of the Jury, for his Trial, were severally called by their Names, as followeth:

1. *William* Lord *Burleigh*, Lord Treasurer of *England.*
2. *Edward* Earl of *Oxford*, Lord Great Chamberlain of *England.*
3. *William* Lord *Marquis* of *Winchester.*
4. *Henry* Earl of *Kent.*
5. *Henry* Earl of *Suffex.*
6. *Henry* Earl of *Pembroke.*
7. *Edward* Earl of *Hertford.*
8. *Henry* Earl of *Lincoln.*

9. *Henry*

9. Henry Lord *Hunsdon*, Lord Chamberlain of her Majesty's Household.
10. *Peregrine* Lord *Willoughby* of *Eresby*.
11. Lord *Morley*.
12. Lord *Cobham*,
13. *Arthur* Lord *Grey*.
14. Lord *Darcy*, of the North.
15. Lord *Sandes*.
16. Lord *Wentworth*.
17. Lord *Willoughby* of *Parham*.
18. Lord *North*.
19. Lord *Rich*.
20. Lord *St. John* of *Bletso*.
21. Lord *Buckhurst*,
22. Lord *De la Ware*.
23. Lord *Norris*.

Then the Lieutenant of the Tower was called to return his Precept, and to bring forth his Prisoner, *Philip* Earl of *Arundel*. The Earl came into the Hall, being in a wrought Velvet Gown, furred about with Martins, laid about with Gold Lace, and buttoned with Gold Buttons, a black Sattin Doublet, a pair of Velvet Hose, and a long high black Hat on his Head; a very tall Man looking somewhat Swarth-colour'd.

Then was the Earl brought to the Bar, with the Ax carried before him by Mr. *Shelton*, Gent. Porter of the Tower, being accompanied with Sir *Owen Hopton* Kt. Lieutenant of the Tower, Sir *Drew Drury*, Constable of the Tower for the time, Mr. *Henry Bronkard*, and others.

At my Lord of *Arundel*'s coming to the Bar, he made two Obeysances to the State, and to the Nobles, and others there present.

Then did Mr. *Sandes*, Clerk of the Crown, say, he was indicted of several Treasons, and said unto him,

Philip Howard, Earl of *Arundel*, late of *Arundel* in the County of *Suffex*, hold up thy Hand.

He held up his Hand very high, saying, Here, is as true a Man's Heart and Hand, as ever came into this Hall.

Mr. *Sandes* then read the Indictment.

That whereas divers traitorous Persons, in the Parts beyond the Seas, being natural *English*-Men, viz. Dr. *Allen*, *Parsons*, *Champion*, *Mott*, and divers others, have heretofore, divers and sundry times, with sundry Persons, as well *English*-men as of other Countreys, practised to accomplish and bring to pass several dangerous and unnatural Treasons against the Queen's Majesty, her Royal Person, Crown and Dignity, viz. to subvert the State, invade the Realm, to set up Catholick Religion, to raise Insurrections, &c. among which number of unnatural Traitors the Earl of *Arundel* was well acquainted with that notorious Traitor Dr. *Allen*, by means of *Bridges*, *Weston*, *Ithill*, and other Popish Priests, with whom, divers times, sithence the 20th year of her Majesty's Reign, he hath had private and secret Conference, and Communication of several Treasons; insomuch, that the Earl of *Arundel* did presently dispatch his several Letters by *Bridges* aforesaid, to Dr. *Allen*, to wish him at any hand to do something concerning the Cause Catholick; wherein he promised to perform any thing that Dr. *Allen* should think fit for him to do. And whereas, the 24th day of *April*, in the 27th Year of the Queen's Reign, he was flying by Sea to Dr. *Allen*, that Arch-Traitor; and that the Bishop of *Rome*, and the King of *Spain*, were thereupon solicited by *Allen* aforesaid, to raise War a-

gainst this Realm: And whereas also the Earl of *Arundel* had understanding of a Bull, that *Sixtus* the Fifth Pope of that Name, had sent into *England* for the Excommunication of her Majesty, and for the invading of the Realm, &c. And that at the Tower, the 21st of *July*, in the 30th Year of her Majesty's Reign, he did imagine, with other traitorous Persons, that the Queen was an Heretic, and not worthy to govern the Realm; and that he did move and procure one *William Bennet*, a Seminary Priest, to say Mass for the happy Success of the *Spanish* Fleet; whereupon he had Mass, and did help to say Mass himself, to that purpose: And having News of the Conflict at Sea betwixt the *Spanish* Fleet and the *English*, he procured Sir *Thomas Gerrard*, and divers others, then Prisoners in the Tower, to say Mass with him for the fortunate Success of *Spain*: and that he made a Prayer specially for that purpose to be daily used and exercised amongst them.

Hereupon Mr. *Sandes* asked the Earl of *Arundel*, if he were Guilty, or Not Guilty of the several Treasons comprised in the said Indictment?

To this the Earl answered, he would fain know, whether the several Points in the Indictment contained were but one Indictment, yea or no?

The Judges satisfied him, it was but one Indictment, and a matter he need not stand upon.

He desired to know, if they could proceed against him for the Treasons in the Statute of 13 *Eliz.* after the six Months were expir'd; to this he was answer'd, that they did not proceed against him on that Statute, but on the 25th *Ed. 3.* After this, being call'd upon to plead, he pleaded Not Guilty; and said, he was well contented to be tried by his Peers, and liked the Trial well, that he should be tried by such good Noblemen there present, that knew his Life: He said, he had been Prisoner four years, and twenty-five weeks close Prisoner, and that he had been sick and weak, whereby his Memory might fail him; and therefore humbly desired my Lord Steward's Grace, making three several Obeysances on both Knees, that he might be heard to make answer to every particular Point.

My Lord Steward answered, that there was no other Meaning nor Intent, and that he should be heard deliberately.

Then did Mr. Serjeant *Puckering* deliver to the Lords of the Jury, the Effect of the Indictment, and other Evidence at large as followeth:

First, that my Lord had private and secret Conference with *Bridges* aforesaid, and divers other Traitors and Seminary Priests; and that he had written his Letters to Dr. *Allen*, to find which way he might further the Cause Catholick.

That he did fast twenty-four hours, and prayed for the happy Success of the *Spanish* Fleet.

That *Allen* and others, being arrant Traitors, had taken order, that in the 22d Year of her Majesty's Reign, there should be 50 Men in privy Coats, and Pocket-Daggers, to kill the Queen; and that one *Pain*, and one *Elliot*, were put in trust to perform the same.

That my Lord was a Catholick, and favoured their Proceedings.

My Lord answered, he was no Catholick in the 22d Year of the Queen's Reign.

That he secretly was flying out of the Realm to Dr. *Allen*, being an Arch-Traitor; which doth argue my Lord to be no good Subject.

That

That *Throckmorton* practising his Treasons by founding the Ports, he did set down in his Catalogue, that a South-west Wind would serve from *Spain* to *Arundel-Castel* in *Sussex*, and an Easterly Wind from the *Low-Countries*.

That in *Throckmorton's* Catalogue of all the Names of all the Noblemen and Gentlemen of every Shire that affecteth the Catholics; he began in *Sussex*, and set down the Earl of *Arundel's* Name the first.

That further, one *Mott* a Priest informed *Throckmorton*, that he was come over to found the Intents of the Earls of *Arundel* and *Northumberland*, and others.

My Lord answered, when *Mott* was in *Sussex*, he never came there, but always attended at Court.

Mr. *Puckering* said, the Traitors have a good Conceit of my Lord of *Arundel* in knowing him to be affected to the Catholick Cause.

It was defined, that the Catholick Cause was mere Treason.

Petro Paulo Rossetto came over to found Noblemen and Gentlemen in *England*.

Then said my Lord, how prove you me to be a Traitor in these Points?

Because, said Mr. *Popham*, you have confederated with Traitors by desiring Dr. *Allen* in your Letters to employ you any way, that concerned the Cause Catholick: because you have been reconciled to the Pope; and there was a Law made in the 22d Year of this Queen, That whosoever was reconciled to the Pope from the Obedience of the Queen's Majesty, was in case of Treason.

My Lord confessed, that *Bridges* did confess him, but not reconcile him in any such sort, but only for Absolution of his Sins.

Mr. *Popham* charged him, that he did once submit himself, but since fell from his Submission, and therefore practised new Treasons.

He confessed he was acquainted with the Priests, and by two of them had been absolved and confessed.

Since which time, said Mr. *Popham*, he came to the Church, and fell to the Catholick Cause again, which he cannot do by their Order, unless he be reconciled.

My Lord denied, that ever he came to the Church after that time.

There was a Letter sent to the Queen of Scots by *Morgan of France* in Commendation of two Priests, wherein he saith, one of them had reconciled the Earl of *Arundel*.

Edmonds a Priest, upon Examination, said, that Reconciliation was odious.

My Lord said, These be but Allegations and Circumstances, and that they ought to be proved by two Witnesses.

It was justified, he said, once in the Star-Chamber amongst the Lords there assembled concerning a Libel there in question, That whosoever was a Priest or Papist was an arrant Traitor.

Mr. *Popham* said, it was a Discontentment made my Lord a Catholick, and not Religion; and that he did disguise himself in shadow of Religion.

There was a Picture shewed, that was found in my Lord's Trunk, wherein was painted a Hand bitten with a Serpent shaking the Serpent into the Fire, about which was written this Poësie, *Quis contra nos?* On the other side was painted a Lion

Rampant, with his Chops all bloody, with this Poësie, *Tamen Leo*. My Lord said, one *Wilgrave's* Man gave him the same, with a pair of *Hangers* for a New-year's Gift.

One *Jonas Meredith* being examin'd, about his Communication with a Town's-man, who commended my Lord of *Arundel* for his Forwardness, in that he had often observed my Lord at *Paul's Cross*:

This *Jonas* answered, that he knew he had often been at *Paul's Cross* in the Forenoon, and hath heard a Mass with him at the *Charter-house* in the Afternoon.

To this my Lord said nothing, but seemed to deny it.

My Lord being examin'd in the Tower, of his sudden going away to Sea, he answered, To serve the Prince of *Parma*, or whither Dr. *Allen* should direct him for the Cause-Catholick.

My Lord said also, he was going away for fear of some Statute should be made in the 22d of this Queen's Reign against the Catholics in that Parliament; and that Dr. *Allen* advised him that he should not go over, if he could tarry here in any safety, because he might be the better able to make a Party in *England*, when they came.

Before my Lord's going to Sea, he wrote a Letter to be given to the Queen after he was gone, wherein he found fault with her hard dealing in giving countenance to his Adversaries, and in disgracing him; and that he was discontented with the Injustice of the Realm towards his Great Grandfather, his Grandfather and his Father.

My Lord said, *Holinshed* * was faulty, for setting forth his Chronicle, that his Grandfather was attainted by Act of Parliament, but shewed no cause wherefore.

He said, in his Letter, his Grandfather was condemned for such Trifles, that the People standing by were amazed at it: he found fault also with the Proceedings against his Father.

Whereby 'tis apparant, said Mr. *Popham*, 'twas Discontentment moved my Lord, and not Religion: and fearing lest his Friends should think amiss of him, he left a Copy of his Letter with *Bridges* a Traitor to be dispersed, to make the Catholics to think well of him; for, said Mr. *Popham*, being discontented he became a Catholick, and being so great a Man he became a Captain of the Catholics, which is as much as to be a Captain over Traitors.

A counterfeit Letter was made twenty-two days before his going to Sea, directed to one *Baker* at *Lynn*, there being no such Man abiding; wherein was signified, that my Lord was very hardly dealt withal by some of the Council, and that he was gone into *Sussex*, and a farther Voyage, and that he would come home by *Norfolk*.

This was a counterfeit Letter, said Mr. Attorney, appointed by my Lord to be dispersed, to make it known he was discontented.

Also *Allen* sent a Letter to the Queen of Scots in Ciphers, shewing a great Party in *England*.

Allen sent my Lord word, if he did come over, he must take a greater Title than that of Earl upon him, and therefore address my Lord in this Style, To *Philip Duke of Norfolk*, Earl of *Arundel*.

Babington in his Examination said, the Queen of Scots sent him word that the Earl of *Arundel* was a fit Man to be a chief Head for the Catholics.

Allen sent word to *Rome*, that the Bull which

was

* *Folin Chron. Vol. 3. p. 9-6. b.*

was last sent over into *England*, was at the Intercession of a great Man in *England*.

My Lord (said Mr. *Popham*) was one of the principallest, and acquainted thus far with *Allen*; *Ergo*, my Lord of *Arundel*, that great Man.

Dr. *Allen* made a most villainous and slanderous Book, which was very hard to be got, in which was contained, That the Earl of *Arundel* was a Procurer of the last Bull, and the Procurer of the Invasion also. The Bull it self was some part read, and the Book was part read also.

My Lord being charged on his Confession, being examined, why he would be ruled thus by Dr. *Allen*, he excused it by saying, that he said he would be ruled by *Allen* in all things, saving in that did concern her Majesty and the State; and thereupon appealed to my Lord Chancellor, and Sir *Walter Mildmay*, who were not present.

The Book aforesaid intended, that my Lord was a practiser with *Allen* about the Invasion.

Then said my Lord, he would serve the Queen against all Princes, Pope, or Potentates whatsoever.

The Queen's Solicitor stood upon these Points; and because it was proved, that the Earl of *Arundel* would be ruled by *Allen* in any thing that should concern the Catholick Cause:

And for that Dr. *Allen* hath since that time practised divers monstrous Treasons, and continually hath built upon the help of some chief Man in *England*, there is none yet known of his degree, that hath any thing to do with *Allen*; and therefore my Lord must needs be culpable of all the Treasons *Allen* hath practised and procured, in flying to *Allen* to serve the Prince of *Parma*, *ut antea*.

My Lord was charged with relieving of divers Traitors, as Priests; and that he did converse; and was confederate, with divers and sundry Traitors attainted, indicted and suspected, being Prisoners in the Tower, and that he had Mass in the Tower; and that if the *Spaniards* should surprize the Tower, Sir *Owen Hopton* should be put to the Rack-house.

He was also charged, That divers Papists, Seminaries, and such like, being Prisoners in *Newgate*, and other Prisoners, reported, that they hoped to see the Earl of *Arundel* King of *England*, and that Cardinal *Allen* should direct the Crown of *England*.

Before the coming of the *Spaniards* Fleet, when our Commissioners were in the *Low-Countries*, news was brought to the Tower, that we should have Peace betwixt *Spain* and *England*; then would my Lord of *Arundel* be penfive.

When the *Spanish* Fleet was upon our Coast, and news was brought to the Tower, that the *Spaniards* sped well, then the Earl would be merry.

Then when news came, the *English* Fleet sped well, the Earl would be sorry.

When news came, the *Spanish* Fleet was come upon the Coast of *Kent*, my Lord said, It is a great Wood, and a puissant Fleet, we shall have lusty Play shortly, I hope we shall plague them that have plagued us.

My Lord said, He would not fight against any that came to fight for the Catholick Faith.

He said, when the *Spanish* Fleet was at Sea, he would have three Masses a-day for the happy Success of *Spain*.

He said also, He would have continual Prayer without ceasing for a time, for the good Success of *Spain*, *viz.* he would have every twenty-four

hours five Priests to pray two hours a-piece for the defect of Lay-men, and fourteen Lay-men to pray every one an hour a-piece for the happy and fortunate Success of *Spain*.

He made himself a special Prayer for that purpose, and caused Copies in haste thereof to be made.

Mr. *Shelley*, then Prisoner in the Tower, told my Lord, That to exercise that Prayer were dangerous, and wished my Lord to let it alone: Therefore my Lord called for the Copy of the Prayer again, and would not have it copied.

He was charged, That he did conjure Sir *Thomas Gerrard* Kt. to keep Counsel in all these Matters before set down, who promised him, he would.

Bennet also promised to keep his Counsel, and divers others.

Then were Sir *Thomas Gerrard*, Mr. *Shelley*, *Bennet* the Priest, and divers others, removed from the Tower to several other Prisons, and upon Examination, confessed all as aforesaid.

My Lord hearing all these Matters laid hard against him by Mr. *Solicitor*, grew into some Agony, and called for his Accusers face to face; which the learned Counsellor did not yet yield unto.

He was likewise charged, That he came once merrily to *Bennet* the Priest in the Tower, saying, *Come, Mr. Bennet, let us pray, that the Spaniards may beat down London Bridge*; and promised to give him a Damask Gown shortly, and that he hoped to make him Dean of *Paul's* ere it were long: that the time of their Delivery was at hand, and willed him in any wise to be secret, for, if he should reveal these things, he would deny them to his face.

When news came to the Tower, that the *Spanish* Fleet was driven away, my Lord said, *We are all undone*; there is no hope for us this Year, and the King of *Spain* cannot provide such a Power again these five or six Years, some of us may be dead and rotten ere that time.

There were then brought into the Court, *viva voce*, upon their several Oaths, *Anthony Hall*, and *Richard Young*, a Justice of the Peace, who aimed something by hearsay to the Proof of the former Matter.

Also Sir *Thomas Gerrard*, *William Bennet*, *Tucknon*, *Snoden*, and *Itbel*, and divers others, were closely kept in a place over the *King's-Bench*, closed in with Arras, and were thereupon severally called into the Court, *viva voce*, upon their several Oaths, to affirm that, which is specified before; thence Mr. *Solicitor* began to speak, how this *Mark Bennet* the Priest was charged with a Letter written to my Lord, wherein he should be sorry for the opening of these Matters as aforesaid against my Lord.

One *Randal* had writ this Letter in *Bennet's* Name, by advice of my Lord of *Arundel*, to blind his Practices. *Bennet* openly denied the writing of that Letter; whereupon my Lord *Grey* and my Lord *Norris* asked *Bennet*, if he knew of the Letter, yea, or no? For the better Evidence, *Bennet* confessed, he had been moved to such a Matter, but he did it not.

Against Sir *Thomas Gerrard*, my Lord stood very stoutly in denial of what he witnessed, willing him to look him in the Face, and charging him as he would answer before God, in whose Presence he spoke, to tell nothing of him but Truth. In answer whereof, Sir *Thomas* referred himself to his

Depositions

Depositions before read, to which he said he was sworn; yea, twice sworn.

There were called into the Court two Witnesses more, viz. one *Walton*, and one *Church*, who justified Letters were brought from *England* to *Rebnes*, where they both were; which Letters were sent by one *Hill*, one of my Lord's Faction, that the Earl of *Arundel* should be General of the Catholics, when the Tower should be surprized.

To *Walton*, my Lord took exception, affirming, that he was a naughty leud Fellow, who had fold that little Land he had to three several Men: and of the other Witnesses he said, that some were attainted, some indicted, bad Men and Prisoners, and that their Words were worth little Credit.

Then said Mr. *Popham*, they were never tortured, but confessed all this willingly, and they are such, as you have accompanied.

Here ended every Man's Speech, and the Noblemen and Peers of the Jury went together.

My Lord humbly having submitted himself to the Consideration of his Peers, with Protestation of Loyalty; the Lieutenant brought him from the Bar, unto a Seat near unto the Court of *Common-Pleas*, where the Warders attended upon him.

My Lord Steward likewise withdrew himself a little while, as it seemed, to take some Refreshment; having all the day for the time of his Business, forbore to eat any thing; and presently returned to his Seat of State.

Within one hour after the Noblemen of the Jury came every one back, and were again placed by Garter King at Arms.

Then Mr. *Sandes* asked every Man of the Jury, severally, beginning at my Lord *Norris*, the youngest Baron, and proceeding to my Lord Treasurer, the Foreman, whether the Prisoner were Guilty, yea, or no?

Which every one of them, laying their Hands upon their Hearts, did protest in their Consciences, and upon their Honours, that he was Guilty.

Then was the Lieutenant called to bring his Prisoner to the Bar, who was brought accordingly, attended as before.

Then said Mr. *Sandes* unto him, That he had been indicted of several Treasons, and that he had put himself upon the Trial of his Peers, who had found him Guilty; and therefore asked, why Judgment should not be given against him.

Whereupon my Lord making three very low Obeysances upon his knees, did humbly submit himself to my Lord Steward's Grace, and the Favours of the rest of the Nobles and Peers there present, and besought them to be Mediators for him, that he might obtain at her Majesty's hands, to have order taken for his Debts, and to have Conference with his Officers, and to talk with his Wife, and to see his Infant, born after his Imprisonment, whom he had never seen.

Then my Lord's Grace pronounced Judgment, viz. That he should be conveyed to the Place from whence he came, and from thence to the place of Execution, and there to be hanged until he were half dead, his Members to be cut off, his Bowels to be cast into the Fire, his Head to be cut off, his Quarters to be divided into four several parts, and to be bestowed in four several Places: and so (said my Lord Steward) the Lord have Mercy on thy Soul.


To this the Earl of *Arundel* said, as it were softly to himself, *Fiat voluntas Dei*. And so having made a low Obeysance to the State, the Lieutenant took him away; Mr. *Shelton* going before him with the Edge of the Ax towards him.

Then there was an O yes made by the Serjeant at Arms, and the Court, together with my Lord Steward's Commission, dissolved: which done, my Lord of *Derby* took the white Wand out of Mr. *Winkfield's* Hand, and broke the same in pieces; and every Man cried, *God save the Queen*.

Whereupon the Earl of *Arundel* was carried back to the Tower, where after several Reprieves he died a natural Death, *October* 19, 1595, having been Prisoner there ten Years and six Months; four Years whereof passed before he was brought to his Trial.

XIV. *The Trial of Mr. JOHN UDALL, a Puritan Minister, at Croydon Assizes, for Felony, 24 July 1590. 32 Eliz.*

[Wrote by himself.]

N Tuesday the 13th of January, 1589, I appeared at my Lord *Cobham's* House in the *Blackfryers*, before my Lord *Cobham*, my Lord *Buckhurst*, my Lord *Anderson*, the Bishop of *Rocheſter*, Mr. *Fortescue*, Mr. *Egerton* the Queen's Solicitor, Dr. *Aubery*, and Dr. *Lewen*. Then was I called in before them; whereupon my Lord *Anderson* said unto me,

Anderson. How long have you been at *Newcastle*?

Udall. About a Year, if it please your Lordship.

Anderson. Why went you from *Kingſton* upon *Thames*?

Udall. Because I was silenced there, and was called to *Newcastle*.

Rocheſter. What calling had you thither?

Udall. The People made means to my Lord of *Huntingdon*, who sent me thither.

Rocheſter. Had you the allowance of the Bishop of that Dioceſe?

Udall. There was none at that time.

Rocheſter. Then you should have gone to the Archbishop.

Udall. There was no Archbishop of *York* neither.

Anderson. You are called hither to answer concerning certain Books, which are thought to be of your making.

Udall.

Udall. If it be for any of *Martin's* Books (according as my Lord Chamberlain's Letters, that fetched me, import) I have already answered, and am ready so to do again.

Ander. Where have you answered, and in what manner?

Udall. At *Lambeth*, a Year and a half ago, I cleared my self not to be the Author, nor to know who he was.

Ander. Is this true, Mr. *Beadle*?

Beadle. I have heard that there was such a thing, but I was not there at it, if it please your Lordship.

Aubery, Lewen. There was such a thing, as my Lord's Grace told us.

Udall. I am the hardlier dealt withal, to be fetched up so far at this time of the Year. I have had a Journey, I would not wish unto my Enemy.

Rob. You may thank your own dealing in matters that you should not have meddled withal.

Ander. It is more than I heard, that ever you were called to answer; but you are to answer concerning other Books.

Udall. I hope your Lordships will not urge me to any others, seeing I was sent for about those.

Ander. You must answer to others also: What say you to those Books? A *Demonstration* or a *Dialogue*, &c. did not you make them?

Udall. I cannot answer thereunto.

Ander. Why would you clear your self of *Martin*, and not of these, but that you are guilty herein?

Udall. Not so, my Lord, I have reason to answer in the one, and not in the other.

Ander. I pray you let us hear what Reason, for I cannot conceive of it, seeing they are all written concerning one matter.

Udall. This is the matter, my Lord; I hold the matter propos'd in them all to be one, but I would not be thought to handle it in that manner, which the former Books do; and because I think otherwise of the latter, I care not tho' they should be fathered upon me.

Buck. But I pray you tell me, know you not *Penry*?

Udall. Yes my Lord, that I do.

Buck. And do you not know him to be *Martin*?

Udall. No surely, neither do I think him to be *Martin*.

Buck. What is your Reason?

Udall. This, my Lord; when first it came out, he (understanding that some gave out that he was thought to be the Author) wrote a Letter to a Friend in *London*, wherein he did deny it, with such Terms as declare him to be ignorant and clear in it.

Buck. Where is that Letter?

Udall. Indeed I cannot now shew you, for I have forgotten unto whom it was written.

Buck. You will not tell where it is.

Udall. Why, my Lord, it tendeth to the clearing of one, and the accusing of none.

Buck. Can you tell where *Penry* is?

Udall. No surely, my Lord.

Buck. When did you see him?

Udall. About a quarter of a Year ago.

Buck. Where did you see him?

Udall. He called at my Door, and saluted me.

Buck. Nay, he remained belike with you?

Udall. No indeed, he neither came in my House, neither did he so much as drink with me.

Buck. How came you acquainted with him?

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Udall. I think at *Cambridge*, but I have been often in his Company.

Buck. Where?

Udall. At divers places, and namely in mine own House whilst I dwelt at *Kingston*.

Buck. What cause had you to be so often in his Company?

Udall. He being a Scholar and Student in Divinity, and one whom I always thought to be an honest Man, your Lordship may easily conceive the Cause. Here was much to this same effect spoken about Mr. *Penry*, and my being at Mrs. *Crane's* House at *Moulsey*, and with her, &c. which I always answered, as in the like Case concerning Mr. *Horton* of *Richmond* before the Archbishop.

Then Dr. *Lewen* reading my Answers to those Questions, that had been by the Archbishop propounded unto me concerning my Papers in my Study; and namely the Notes of my several Conferences with the Bishops and their Officers; I was asked, as I remember, by Mr. *Fortescue*:

Fortescue. Why did you pen such things and keep them?

Rob. Because he and such like might apishly imitate the Martyrs of former times, and account themselves persecuted by us, as those were by the Popish Bishops.

Udall. The Cause is this, for that in the quickness of Wit, and readiness of Memory in Youth, those things may be spoken, that in Age will be more easily made use of in Writing than otherwise, the Memory of Man not being infinite.

Ander. What say you, did you make these Books, or know you who made them?

Udall. I cannot answer to that Question, my Lord.

Ander. You had as good say you were the Author.

Udall. That will not follow; but if you think so, I cannot do withal.

Cob. Mr. *Udall*, if you be not the Author, say so, and if you be, confess it; you may find Favour.

Udall. My Lord, I think the Author, for any thing I know, did well, and I know that he is enquired after to be punished; and therefore I think it my Duty to hinder the finding of him out, which I cannot do better than thus.

Ander. And why so, I pray you?

Udall. Because if every one that is suspected do deny it, the Author at the length must needs be found out.

Ander. Why dare you not confess it, if you be the Author of it? Dare you not stand to your own doings?

Udall. I professed before that I lik'd of the Books, and the Matter handled in them: but whether I made them or no, I will not answer; neither of any other Book of that Argument, whatsoever goeth without Name, if you should ask me, for the Reason alledged before: besides that if I were the Author, I think that by Law I need not answer.

Ander. That is true, if it concerned the Loss of your Life.

Udall. I pray your Lordship, doth not the Law say generally, No Man shall be put to answer without Presentment before Justices, or things of Record, or by due Process, or Writ Original? &c.

Anno 42. *Edw.* 3. cap. 5.

Ander. That is Law, and it is not Law.

Udall. I understand you not, my Lord; it is a Statute which is in force, if it be not repealed.

Ander. I tell you, by Law you ought to answer in this Case.

Z

Udall.

Udall. Good my Lord, shew me this favour, to tell me in what Book of the Law I shall find it; for I profess to understand the *Latin, French* and *English Tongues*, wherein all the Laws be written.

Fortes. You are very cunning in the Law; I pray you by what Law did you preach at *Newcastle* being forbidden at *Kingston*?

Udall. I know no Law against it, seeing it was the Official *Dr. Hone*, who did silence me; whose Authority reacheth not out of his Archdeaconry.

Fortes. What was the Cause for which you were silenced?

Udall. Surely I cannot tell, nor yet imagine, saving the secret Suggestions of *Mr. Harvie*.

Fortes. To be ignorant of that, is *crassa & supina ignorantia*.

Udall. No Sir, the Action was *crassa & supina injuria*.

Ander. Well, what say you to those Books? who made them, and where were they printed?

Udall. Tho' I could tell your Lordship, yet dare I not, for the Reasons before alledged.

Roch. I pray you let me ask you a Question or two concerning your Book.

Udall. It is not yet proved to be mine; but I will answer to any thing concerning the Matter of the Book, so far as I know.

Roch. You call it a Demonstration, I pray you what is a Demonstration? I believe you know not what it is.

Udall. If you had asked me that question when I was a Boy in *Cambridge* of a Year's standing, it had been a Note of Ignorance in me, to have been unable to answer you.

Roch. Surely it seemeth by the Frame of the Syllogisms and Reasons in it, that you know it not, if you be the Author of that Book: I read none of it late, but in the Parliament-time, sitting in a Morning in the House, I read some of it; and it seemed to me in many things, not to conclude probably, much less demonstratively.

Udall. I will shew you, as I take it, why the Author called it a *Demonstration*; because the Reason which is usually brought to prove the Conclusions, is commonly drawn from a place of Scripture, which hath more force in it to manifest the Conclusion *ἀποδεικνυκος*, than any of *Aristotle's* Proofs drawn, as they say, *ex primis, veris, necessariis, & immediatis causis*.

Roch. Indeed that which is proved by the Scriptures, is proved most demonstratively; but the proofs in that Book are far from any such.

Udall. Let that be the question, and try it in some one.

Ander. My Lord of *Rocheſter*, I pray you let us make short work with him, offer him a Book; will you swear to answer to such things as shall be demanded of you in the behalf of our Sovereign Lady the Queen?

Udall. I will take an Oath of Allegiance to her Majesty, wherein I will acknowledge her Supremacy according to Statute, and promise my Obedience as becometh a Subject; but to swear to accuse my self or others, I think you have no Law for it.

Ander. Mr. Solicitor, I pray you tell him the Law in this point.

Then Mr. Solicitor (who had sitten all the while very soberly) noting what passed (and if a Man's Mind may be known by his Countenance, seeming to dislike the Course holden against me) upon my Lord *Anderson's* Commandment, stood

up, and putting off his Hat unto me, said:

Eger. Mr. *Udall*, I am sorry that you will not answer, nor take an Oath, which by Law you ought to do: I can assure you, your Answers are like the Seminary Priests Answers; for they say, there is no Law to compel them to take an Oath to accuse themselves.

Udall. Sir, if it be a Liberty by Law, there is no reason why they should not challenge it, for (tho' they be very bad ones) they are Subjects, and until they be condemned by Law, may require all the benefits of Subjects; neither is that any Reason, that their answering so, should make the claim of less value for me, seeing that herein we are Subjects alike, tho' otherwise of a most contrary Disposition.

Buck. My Lord, it is no standing with him thus: what sayst thou, wilt thou take the Oath?

Udall. My Lord, I have said as much thereunto as I can.

They then commanded me to go forth, and they consulted a little space, and called me again, at which time almost every one of them used many words to persuade me to confess a Truth; saying the Queen was merciful, and that otherwise it would go hardly with me: to whom I said, My Lords, I know not that I have offended her Majesty; when it is proved that I have, I hope her Mercy will not then be too late: howsoever it be, I dare not take this Oath.

Aubery, Lewen. You have heretofore taken it, and why will you not take it now?

Udall. Indeed you call to remembrance a good Reason to refuse it; I was called to answer to certain Articles upon mine Oath heretofore, which I voluntarily did, and freely confessed that against my self, concerning my Judgment and Preaching of the Points of Discipline, which could never have been proved; and when my Friends laboured to have me restored to my Place, the Archbishop answered, that there was sufficient matter against me, by mine own Confession, why I should not be restored: whereupon I covenanted with mine own Heart, never to be mine own Tormentor in that sort again.

Ander. Whatsoever be the Issue of it, you must do your Duty, and deal plainly with the Magistrate.

Udall. I take my Duty to be in this Case, not to answer, nor the Magistrate's to require it of me; seeing the Apostle saith, *Receive not Accusation against an Elder, under two or three Witnesses*: which *Sernanca*, the *Spanish* Inquisitor, alledgeth to the same purpose.

Buck. What, you are an Elder, are you?

Udall. My Lord, howsoever the word Elder be taken, whether so largely as I and my Brethren that desire the Discipline do take it, or only for a Minister of the Word, as our Adversaries understand it, I am an Elder.

Roch. It is true, my Lord, that an Elder in that place containeth all such as he is, but none else.

Buck. Yea, but they would have other Elders to govern the Church; which Desire of theirs, when it cometh to pass, I will give over my Barony, and become an Elder.

Udall. If your Lordship understood what great Pains, and small worldly Recompence belongeth to that Office, you would never say so.

Roch. The Day is past, and we must make an end: will you take the Oath?

Udall. I dare not take it.

Roch. Then you must go to Prison, and it will go

go hard with you, for you must remain there until you be glad to take it.

Udall. God's Will be done, I had rather go to Prison with a good Conscience, than to be at Liberty with an ill one.

Roch. Your Sentence for this time is, to go to the *Gate-House* close Prisoner, and you are beholden to my Lords here, that they have heard you so long.

Udall. I acknowledge it, and do humbly thank their Honours for it.

And when they were all gone, my Lord *Cobham* stayed me to speak to me; who told me, that it might be he and others wished things to be amended as well as I, but the time served not, and therefore he wished me not to stand in it: and I praying his Lordship's good Favour, he promised to do for me what he could; for which I humbly thanked him, and so was carried to the *Gate-House* by a Messenger, who delivered me with a Warrant to be kept close Prisoner, and not be suffered to have Pen, Ink, or Paper, or any body to speak with me. Thus I remained there half a Year, in all which time my Wife could not get leave to come unto me; saying only that in the hearing of the Keeper she might speak to me, and I to her, of such things as he should think meet, notwithstanding that she made suit to the Commissioners, yea unto the Body of the Council, for some more Liberty: all which time my Chamber-fellows were Seminary Priests, Traitors, and professed Papists. At the end of half a Year, I was removed to the *White-Lion* in *Southwark*, and so carried to the Affizes at *Croydon*, where what was done, I will not mention, seeing there were present such as were both able, and I think willing to set down; unto whose Report I refer those that would know the same.

At the Affizes at Croydon, the 24th July, 1590.

Mr. *Udall* was called, and commanded to hold up his Hand at the Bar; who held up his Hand accordingly. Then was his Indictment read, being thus: *John Udall*, late of *London* Clerk, thou art indicted, &c. The form of which Indictment was as against Murderers: namely, That he not having the Fear of God before his Eyes, but being stirred up by the instigation and motion of the Devil, did maliciously publish a slanderous and infamous Libel against the Queen's Majesty, her Crown and Dignity. And being asked whether he were Guilty, or not Guilty, he answered thus:

Udall. My Lords, may it please you to hear me a word or two.

Judge Clarke. Answer first to the Indictment; and then you shall be heard.

Udall. My Lords, I beseech you hear me first a word or twain.

Judge. Say on.

Udall. My Case is rare, and such as hath not been heard of heretofore, and consisteth upon divers points of Law; I humbly crave of your Lordships to grant me to answer by Council if it may be.

Judge Clarke. You cannot have it, and therefore answer to your Indictment.

Udall. Then I answer (my Lords) that I am not Guilty.

Judge Clarke. How wilt thou be tried?

Udall. I do desire to be tried by an Inquest of learned Men; but seeing I shall not, I am con-

tented to be tried by the ordinary Course, as these Men before me are, that is (as you use to say) by God and the Country.

Then the Clerk of the Affizes said to the Parties arraigned, (after he had read the Names of the Jury before them) These Men whose Names you have heard, are to go upon your Lives and your Deaths; look upon them when they are called to be sworn, and if you know any Cause, take exception against them. Then the rest of the Felons having nothing to say, Mr. *Udall* said, My Lords, I am ignorant of the Law in this Point; I pray you therefore shew me the manner of Challenging the Jury; how many I may challenge, and whether I may render a Reason of the same.

Judge. I think you will know a Cause in your Conscience, before you challenge any of them.

Udall. Then I pray you, my Lord, how many am I by Law permitted to challenge?

Judge. Nay, I am not to tell you that; I sit to judge, and not to give you counsel.

Then Mr. *Udall* keeping silence, Proclamation was made according to the manner; That if any Man could give in Evidence against *John Udall*, Prisoner at the Bar, that they should come into the Court and be heard. Then Mr. *Daulton* stood up: And in the mean while Mr. *Udall* said to the Judges thus; My Lords, I beseech you answer me to one question before Mr. *Daulton* begin to speak.

Judge. Say on.

Udall. Is it permitted me by Law to answer to those things in particular, which are brought to prove this Indictment?

Judge. It is permitted.

Udall. Then I humbly crave of your Lordships to grant me two Petitions, which I think will greatly further both him in speaking, me in answering, and also be a more ready help to the memory of the Jury, that they may be able to bear the matter away.

Judge. What are your Petitions?

Udall. The first is, that when Mr. *Daulton* hath spoken to one Point what he can, I may answer to that before he proceed any further, lest my Memory being overwhelmed with multitude of matter, I should forget to answer to some Points of Importance, and the Jury made less able to discern of the Particulars. The second is, that it might please you to grant me to answer without Interruption.

Judge. You shall have them both granted.

Dault. Then Mr. *Daulton* said, Mr. *Udall*, you have these Petitions granted you, I desire the same of you. And then he desiring leave of the Judges, before he should prove the Indictment, to say something touching this, that this Man, and such as he is, do maintain, &c. after leave given him, he used a very long Speech, to the great disgrace and slander of the Cause, and those Men that professed the same, especially of Mr. *Udall*: and making mention in the same his Speech, of five several Books of Common-Prayer, made by such as desire Reformation; he affirmed, that in one of the said Books there was horrible Blasphemy, in these words of the Consecration of the Lord's Supper, *Take eat, this is my Body; drink, this is my Blood.* Then he cried out saying, *Oh horrible Blasphemy!* And taking occasion upon the variety of these Books, he affirmed that there was no constancy in these Men: And whereas one of the Books doth

allow, that over every Congregation there should be a faithful Pastor; that is, quoth he, a Shepherd, whereby they may take the Government out of her Majesty's hand, and so bring her Majesty to be one of their Sheep; no, quoth he, her Majesty is no Sheep under any Shepherd in the World, except Christ: and for the Government that these Men do seek for, I am assured there is none such to be found in the Word of God.

Udall. Mr. *Daulton* hath used a very large Speech, which doth nothing concern to prove the Indictment, or me in particular; and therefore seeing I am not called hither to dispute (as if I would, I should not be permitted) I will not answer it; only thus much will I say (if it please your Lordships) that seeing Mr. *Daulton* is by Profession a Lawyer, and the Cause is yet in question amongst the learned Divines, methinks it had been more modesty for Mr. *Daulton* to have suspended his Judgment until the Controversy had been determined amongst them, to whose Profession it belongeth: especially seeing Mr. *Daulton* knoweth in his Conscience, that he hath heretofore carried some shew of liking to the Cause, which now he speaketh against.

Judge. Sirrah, Sirrah, answer to the matter that Mr. *Daulton* hath against you; Mr. *Daulton*, proceed to the proof of the points of the Indictment.

Dault. My Masters, you of the Jury, &c. I will prove, First, That he had a malicious Intent in making of this Book: Secondly, that he is the Author of it: And Thirdly, That these matters contained in the Indictment are Felony, by the Statute *Eliz.* 23. cap. 2.

Then was Mr. *Beadle* the Register called, who was sworn, that these Examinations following were as the Parties themselves confessed the same: And to prove the first, the Clerk of the Assizes caused *Stephen Chatfield* to be called into the Court, to give in Evidence against *John Udall*, but he appeared not at all, for which the Judges were offended; and Serjeant *Puckering* said, there was a Warrant sent for him: whereupon some standing by affirmed, that the Warrant came after his departure from home. Then Mr. *Daulton* said, that he went out of the way of purpose; and Judge *Clarke* said, Mr. *Udall*, you are glad of that. Mr. *Udall* answered;

Udall. My Lords, I wish heartily he had been here; for as I am sure he never could say any thing against me to prove this point, so I have heard and am able to prove it to be true, that he is very sorry that ever he made any complaint against me, confessing he did it in his Anger, when *Martin* came first out; and by their Suggestions, whom he hath proved since by Experience to be very bad Men.

Dault. It is no great matter whether he be here or no, for we have his Articles against you, and your own Confession, to prove this point sufficiently.

Then were Mr. *Chatfield's* Articles (that he brought to the Archbishop against Mr. *Udall*) read by the Clerk, containing a Report of certain written Papers; tending, as he supposed, to the making of such a Book as this is: and thereupon asked Mr. *Udall* whose writing they were; who answered, they are a Friend's of mine: whereunto *Chatfield* replied, wishing him to take heed of them, and to rid his hands of them, and to return them to his Friend from whom he had them, for he doubted they concerned the State. These Papers

he saw in Mr. *Udall's* Study at *Kingston*. Also he further saith, that at another time, he having conferred with Mr. *Udall* in a certain Field by *Kingston*, called *Little-field*, about this putting to silence; he saith, that the said Mr. *Udall* uttered these words, That if they put him to silence, he would give the Bishops such a Blow, as they never had.

Udall. May it please your Lordships that I may answer to these things in particular.

Judge. Say on, let us hear your answer.

Udall. I was accused this time two Years upon the words of *Chatfield*, that these Papers that he did see in my Study, should be the matter of *Martin-Mar-Prelate*; and because I cleared myself of that, it is now brought to prove another matter: but it proveth nothing, unless it were set down in particular what they were.

Dault. It proveth this, that you had a purpose to write this Book; and those things were Collections from your Friends, and Preparations thereunto.

Udall. Let the Jury consider how that Point is prov'd by it. Besides it may be prov'd, that this Book was extant in Men's hands before the Conference between *Chatfield* and me; therefore how can it be prov'd that this is the Book that should give them such a Blow?

Dault. But you cannot deny the second Point, that you had a pretended Malice, for it is extant in your own Confession: Read his Answer to those Articles of Mr. *Chatfield*. Then the Clerk read his Answer to this effect, That if the Bishops put him to silence, they would give him Occasion and Leisure to be employed in writing against them. Then said Mr. *Daulton*, is not this most evident, what can be plainer than it is?

Udall. I pray your Lordships give me leave to explain these things.

Judge. Say on, and be brief.

Udall. Mr. *Chatfield* told me, that he was commanded to come to *Kingston* and be resident there, of purpose that I might be put to silence, and that there might not appear any want of a Preacher, I being put down; whereupon I said, in effect, as is above rehearsed: But I pray you hear in what sense these words were uttered.

Judge. The Matter is clear, and we see what you can say to it well enough; proceed, Mr. *Daulton*, to the Proof of the second Point.

Dault. And that you be the Author of this slanderous and infamous Libel, it shall be proved clearly to the Jury before your face. Then said he to the Clerk, read the Answer of *Nicholas Thompkins*, which was made upon his Oath before her Majesty's High-Commissioners. Then was read to this effect, that *Thompkins* knew that Mr. *Udall* was the Author of that Book call'd *The Demonstration*, for he said that Mr. *Udall* himself told him so. Also that he saw either in Mr. *Udall's* House, or in some other Place in *Kingston*, a Catalogue of all the Books that Mr. *Udall* had made, amongst which the *Demonstration* was one.

Judge. You see here that this is clear, and a sufficient Testimony.

Udall. It carried some shew, but it is nothing.

Judge. Do you call the Testimony of one being an honest Man, and upon his Oath, before the High-Commissioners, to be nothing? Can you answer it?

Udall. My Lords, I answer it thus, denying it to be his Testimony; for if it be, why is he not present

present to verify it face to face, according to the Law?

Judge Puck. It is verified to be his true Answer, under the hands of Dr. *Auberie* and Dr. *Lewen*, the latter whereof confirmed it before me upon his corporal Oath.

Dault. You can take no Exceptions against that, and will you say he is not an honest Man?

Udall. I am persuaded he was amazed, and answered he knew not what: for he hath reported it so diversly, that it seemeth he remembreth not what he said.

Judge. But the Oath of *Thompkins* is to be preferred before his bare Report.

Udall. My Lords, I answer; I protest unto you, (and will verify it upon my Oath, if it please you) that he told me the day before I was committed, at his Master's House, that he could not say, neither would he for a thousand Pounds affirm any more than this, that he heard me say I would not doubt but set my Name to that Book if I might have indifferent Judges. And further (if it please you my Lords) here are some Witnesses that upon their Oaths will testify, how diversly he hath reported of his Confession to this thing, if it please your Lordships to accept them. And the Witnesses offering themselves to be heard, were answered, that because their Witness was against the Queen's Majesty, they could not be heard. And after other Speeches passing, Mr. *Udall* said;

Udall. My Lords, the Speech of the Catalogue is most vain, and hath no Sense in it; for can I have made so many Books, as that I need make a Catalogue of them? It may be, my Lords, he saw a Catalogue of the Books in my Study, wherein if that were one, it is rather an Argument that I made it not; for Men use not to put their own Works in the Catalogue of those that they have in their Study.

Dault. You of the Jury consider this, that *Thompkins* was Mrs. *Crane's* Man, and one that was privy to all the Printing that was at her House; and Mr. *Udall* used to go often thither.

Udall. All that is nothing to me: what if I used to go thither, she is of my Acquaintance, I know her to be an honest Gentlewoman, what can you gather by any of these things? Why is not *Thompkins* here to declare his Testimony, and to say what he can?

Dault. He is beyond the Seas about Merchandizes, sent away by Mr. *Gore*, who married Mrs. *Crane's* Daughter.

Udall. How doth that appear? he is no Merchant, but a Serving-Man; and if he were, what is that to me? But it cannot be proved that Mr. *Gore* did send him, so that here is nothing but bare Papers to shew for Evidence against me.

Then there was much said, to prove that the Testimony of a Man absent was sufficient, if it were proved to be his upon the Oaths of others. And then the Judge said,

Judge. What say you? Did you make the Book, *Udall*, yea or no? What say you to it, will you be sworn? Will you take your Oath that you made it not? We will offer you that Favour which never any indicted of Felony had before; take your Oath, and swear you did it not, and it shall suffice.

Udall. My Lords, I pray you hear me to this: If I would have done so before the Lords of her Majesty's Privy-Council that committed me, I had not come hither; but I neither then might, nor may do so now, whereof I pray you let me shew

a Reason to the Jury. I and many more do think the Book to be good, for any thing we can find in it, and to be written in defence of a Cause which we take to be most true. Now the Author is fought for, that he may be punish'd for some Speeches that may be wrested in the Book; therefore lest he should be found (if one after another that are suspected do deny it) it is thought best every one neither to confess nor to deny, yea tho' we suffer some Punishment, rather than the Author, being found out, should suffer Extremity.

Judge. Nay, this is but a shift, I will go further with you; Will you but say upon your Honesty that you made it not, and you shall see what shall be said unto you?

Udall. My Lords, it is all one, I make a Conscience of my Word as of my Oath, for I must give Account for both. This is no direct Course in this Place.

Judge. You of the Jury consider this. This argueth, that if he were not guilty, he would clear himself, and consider well of it. And then speaking to Mr. *Udall*, he said, do not stand in it, but confess it; and submit your self to the Queen's Mercy, before the Jury find you guilty.

Udall. My Lord, I answer, that according to my Indictment I am not guilty, every Point whereof must be proved, or else the whole is false. And I beseech your Lordships give me leave, and I will be very brief: My Conscience doth not accuse me that I have so much as offended her Majesty, her Council, or the meanest of her People in any thing I have done concerning this Cause; for if I should, of all other I deserved the least Favour, being one that professed to teach others Loyalty to her Majesty, and Love to one another: and would you have me to confess a Fault where there is none? No, I cannot do it, neither will I: wherefore proceed in your Course begun.

Dault. We have yet more Proof than this, tho' yet this were sufficient of itself; wherefore read the other Examinations. Then was read the Confession of *Henry Sharpe* of *Northampton*, who upon his Oath, before my Lord Chancellor, had said, that he heard Mr. *Penry* say, that Mr. *Udall* was the Author of the *Demonstration*.

Udall. *Sharpe* and I were never above once in Company together (to my remembrance) neither knew he ever any of my Dealings. This is nothing to prove me the Author of the Book: Reports be uncertain; and if Reports be true, the Archbishop himself told me, that Mr. *Penry* made it; which is more forcible for me than any of *Sharpe's* Reports can be against me.

Dault. You mistake the Matter, the force of the Point resteth in Mr. *Penry's* Report, who was one of your great Acquaintance and Familiars; and you, and *Waldgrave*, and he, were at Mrs. *Crane's* House.

Udall. Here is one Man's saying that another said so, let the Jury consider of what force this Proof is; if you have any more, let it appear.

Judge Clarke. You of the Jury have not to enquire whether he be guilty of the Felony, but whether he be the Author of the Book; for it is already set down by the Judgment of all the Judges in the Land, that whosoever was Author of that Book, was guilty by the Statute of Felony, and this is declared above half a year ago.

Udall. Tho' it be so determined already, yet I pray your Lordships give me leave to shew that

which I have to say, and I will be very brief; and it is to prove, that tho' I were found to be the Author, yet it cannot be within the Compass of that Statute, *Anno 23 Eliz. cap. 2.* whereupon the Indictment is framed.

Judge. You shall be heard to say for your self what you can, therefore say on.

Udall. Tho' I be not by Profession a Lawyer, yet I think I can shew it clearly by these Reasons following: (1.) The Intent of the Law-makers (which always is to be regarded in these Cases) is to be considered, which appeareth in the Preface of the Statute in these words, *To frustrate the Malice of those that be evil-affected to her Highness.* Now I pray you consider this how can it be? or how is it possible that a Preacher, of the same Religion which her Majesty professeth and maintaineth, who is known continually to pray unto God for her Highness's Prosperity and Happiness, both of Soul and Body; how is it possible, I say, that such a one should be maliciously affected towards her? Therefore it is evident that the Statute was made against the Papists, who use to slander her Highness with the Terms of Heretick, &c. and no way against us; for I dare boldly say of my self, and in the name of all my Brethren, Cursed is he of God, and he deserveth doubtless to be hated of Men, that doth imagine the least hurt against her Highness. (2.) The Matter that maketh a Man a Felon by that Statute, must proceed from a malicious Intent against her Highness, which I or any such as I am can no way justly be charged with; partly for that which is said before, and partly for that my Course of teaching and living in this Country these nine years (saving this last Year, wherein I have been absent) is known to have tended to no other end, than the provoking and persuading of the People to like of and yield Obedience unto her Majesty, and the Religion received in her Dominions: for the Proof whereof, I refer my self to the Consciences of all Men in the Country that have known me. And further, is it likely, that I who have been trained up in the Universities under her Majesty's Protection, and have always bended my Studies to the Advancement of the Sincerity of the Gospel; so that those small Crumbs of Learning which I have gathered, I do acknowledge to have received by her Majesty's means: These things considered, how can it be that I should be evil-affected towards her Highness, whom I protest I unfeignedly reverence? And therefore the worst that the Author can be charged withal, is his Over-heat and too much Vehemency, by reason of his Zeal against the Abuses, and not any Malice against her Majesty, or the meanest of her Subjects. Again, the Matter, to bring it within the Compass of the Statute, must be false: But this Book is written in the behalf of a most true Cause. Lastly, The End of it must be either to the Defamation of the Queen's Majesty, or stirring up of Insurrection, Sedition, or Rebellion: For the former, I trust that the whole Course of our Behaviour, both in our Ministry and Conversation, declareth it self to be so far from seeking to defame her Highness, as it tendeth to the uttermost of our Powers, to the Advancement of her Honour. For I am persuaded that there is none of us that would refuse to undergo any Pain, whereby her Majesty might any way be the better honoured; yea, we would not refuse, if need so required, to lay down our Lives for redeeming of the least

aking of her Majesty's little Finger, wherewith she might be grieved. Now for the second End, which is the moving or stirring up of Rebellion, &c. I pray your Lordships, and you of the Jury to consider this: There have been, since the first day of her Majesty's Reign, learned Men, that have desired the Advancement of this Cause, and many of the People that affected it, and yet hath it never appeared, that by Occasion hereof, there hath, in all this time, been any in any Place that have raised any Insurrection or Sedition: yea this Book, which is now in question, hath been extant these two years; yet I trust neither your Lordships, nor any here present, can shew that any People in any Corner of the Land, nay it cannot be justly proved that any one Person hath taken any occasion hereby to enterprize any such matter: and therefore the making of this Book cannot be Felony. Besides all this, if there had been any such thing meant by the Author, or received by the People, as the Indictment chargeth me withal, (which is the Defamation of her Highness's Government) yet, as I take it, it should not be Felony by that Statute; for the whole Course of it declareth, that it is only meant of them that defame her Highness's Person, and not her Government, as it is manifest by the last proviso; wherein it is shewed, that the whole Statute doth determine and end with her Majesty's Life. And we may not think their Wisdoms that made the Law to be so unadvised, as to make a Law for the Preservation of the Prince's Government, which is continual, to last no longer than the Life of one Prince, which is temporary: therefore it seemeth that the Statute hath no further regard than this, that her Highness's Person might be preserved in that Honour and Dignity, which becometh her Royal Dignity and Estate. And I do beseech your Lordships to answer me, for I appeal to your Consciences, as you will answer to God for my Life, and I pray you tell the Jury, whether you do think the Intent of the Statute were in any sort meant against us, and not rather against the Papists.

Judge Puck. Judge Puckering said, You do not well to charge us so with our Consciences, which God only is to know. I answer you, the Intent of the Statute is against all, for so the words are.

Udall. The words, my Lord, I confess are so; but is the principal Intent so?

Judge. Yea, it is so.

Judge Clarke. We have heard you speak for your self to this Point at large, which is nothing to excuse you; for you cannot excuse your self to have done it with a malicious Intent against the Bishops, and that exercising their Government which the Queen hath appointed them, and so it is by consequence against the Queen.

Udall. My Lords, I am persuaded that the Author did it not of any Malice against them; and for my self, I protest I wish them as much good as I do to my own Soul, and will pray to God to give them Repentance. But the Cause why the Author did so earnestly inveigh against them was this, as it seemeth, because he perceived them not only to execute an Authority which he taketh to be unlawful by the Word of God, but also for that they do not the tenth part of that good (even in those corrupt Callings) which by Law they might do; and I am persuaded that your Lordships know in your own Consciences, that they do not the tenth part of that they are bound to do.

Judge

Judge Clarke. That is true, they do not the good that they might do; but yet that doth not excuse you: for it is plain in your Book, that you writ not against them only, but you writ against the State; for is it not against the State, when you say, that it is easier to live in *England* a Papist, an Anabaptist, of the Family of Love, and what not? yea, you say, I could live so in a Bishop's House, it may be these twenty years, and never be much molested for it. What is this but a plain flandering of the State? and mark the words, for you say, you could live so in *England*: And doth her Majesty's Laws allow of Papists? This maketh evidently against you, and it is so plain, that you cannot deny it.

Udall. My Lords, if it might please you to hear me a word or two, I will shew the meaning of the Author of the Book; I beseech you to hear me, and I will be very brief: I know the Laws of *England* do not allow of any such as are mentioned in the Book, for there are godly Laws made for the punishing of them, if they were put in execution. But this I take to be the Author's Meaning, that it is not spoken in respect of her Majesty's Government and Laws, but in respect of the Bishops, whom your Lordships know to be wholly employed in finding us out, and punishing of us, not regarding (in a manner) the punishing any Sin else.

Judge. What, Sirrah, will you not confess any Fault to be in the Book? you seek to excuse all.

Udall. My Lords, I do acknowledge that there was never any Work of Man so perfect, but there have been Imperfections in the same; and therefore there may be some fault in the Manner, but surely none in the Matter: for the Bishops themselves will confess that they may fail in their Actions, and be partial (as they are Men) in the manner of handling any thing. So also the Author of this Book, being assured that the Matter is without reproof, may err in the Manner, in being over-zealous in the handling of it; and this fault I will easily confess to be in the Book, my Lord: but I am sure the Author never had any malicious Intent against her Highness, or any of her Subjects.

Judge Clarke. This Book hath made you to come within the Compass of the Statute, tho' your Intent were not so: for I am sure there was Mr. Stubbs, well known to divers here, to be a good Subject and an honest Man; yet taking upon him to write a Book against her Majesty touching *Mounseir*, he thereby came within the Compass of Law, which he intended not in making of the Book; and I am persuaded, that he did it of a good Affection towards her Majesty; and yet if this Law had been made then, which was made since, he had died for it: So you, tho' you intended not to come within the compass of the Statute, yet the Law reacheth to your Fact, as that did to his.

Udall. My Lords, his Case and mine is not alike, for his Book concerned her Highness's Person; but the Author of this Book toucheth only the Corruptions of the Bishops, and therefore not the Person of her Majesty.

Judge. But I will prove this Book to be against her Majesty's Person; for her Majesty being the supreme Governor of all Persons and Causes in these her Dominions, hath established this kind of Government in the hands of the Bishops, which thou and thy Fellows so strive against; and they

being set in Authority for the exercising of this Government by her Majesty, thou dost not strive against them, but her Majesty's Person, seeing they cannot alter the Government which the Queen hath laid upon them.

Udall. My Lords, we are not ignorant of this, that her Majesty hath a care that all things might be well; and in that respect hath given them often in charge, (upon the Considerations of these Controversies) to see to it that nothing be amiss; and because she had a good Opinion of them for their Gravity and Learning, she believeth them when they say all is well and in good case: whereas, if they had the Grace to look into these things, and to make them known as they be, indeed her Majesty and the State, I doubt not, would quickly redress them; and therefore was it that the Author did so charge them.

Then the Judge proceeding farther in the Book to prove him to have offended, he took occasion by the same to speak against railing against Magistrates; and speaking to Mr. *Udall*, he said in effect thus:

Judge Clarke. Sirrah, you that should have been a Teacher of her Majesty's People, you should have taught your self not to have railed upon the Rulers of the People: for do you not know what is written in the 23d of *Exodus*, *Thou shalt not rail upon the Ruler of the People, for whosoever doth so shall die the death.* And do you not know what is written in the 23d of *Acts*, where the Apostle *Paul* being before the High-Priest, called him a *painted Wall*; and being smitten by one of the High-Priest's Servants, it was said unto him, *Revilest thou the Lord's High-Priest?* To which *Paul* answered, *I knew not, Brethren, that he was the High-Priest.* Lo! thus did he acknowledge his Fault: Do you know these things, Sirrah?

Udall. My Lord, you know that we hold it not lawful for a Minister to be a Civil Magistrate, and there are at least 500 in this Land, amongst whom I am the most unworthy, that are of the same Judgment in this Point.

Judge. But how if the Queen doth give it them?

Udall. They ought not to take it. And my Lord (if it please you) I will answer to your Proofs, tho' I came not hither to dispute. But in my answering, my purpose is not to give any liberty to any Man to rail upon any that are in Authority. Now to your Proofs, I say my Lords, that the place out of *Exod.* 23. doth rather concern your Lordships, and such as are under her Majesty for Judges, than any way to concern the Bishops: And touching the second place out of *Acts* 23. where the Apostle saith, *Brethren, I wist not that it was the High-Priest*; the meaning of that place is, as if he should say, I thought there had not been any High-Priest now, seeing Christ being come, the High Priesthood was to cease: so that the Apostle doth not acknowledge any Fault in that his Speech, for there was no lawful High-Priest of that time; neither did he acknowledge any, seeing they did end in Christ. And thus do the best Divines expound the place.

Then, after some farther Speeches of this Exposition, the Judge returned to the matter of the Book again, saying, That the Book did concern the State, and said:

Judge. But, Sirrah, thou canst not so excuse thy self, as though it touched not the Queen and the State; for is it not written in thy Book, that this Saying will not serve their turns, The Queen and Council

Council will have it so? whereby it is plain, that thou didst speak against the Queen and the State.

Udall. My Lord, the Author only meaneth this, That when we are called before the Bishops, they were often driven to use this Argument (when they had nothing else to say for themselves) that they could be content many things were amended; but it must be so, for the Queen and Council will have it so: And surely herein methinks they slander her Highness; and we tell them, that however they bear it out here before Men, yet before God that Excuse will not serve their turn.

Judge. Thou canst not carry it away so: Dost not thou plainly say, That they are not safe, tho' they have human Authority on their side; but he that is on our side is mightier than they? Whereby thou both abasest her Majesty, and also dost threaten them with some Force and Violence.

Udall. It is true, that whosoever doth unjustly is not safe in it, tho' all the Princes in the world should defend him in it; and that is the Meaning of the Author: But to say, that Force and Violence is threatned them, is farthest doubtless from this Meaning; for it is known to all the World, that we desire, by all good means, to commend this holy Cause of Reformation to her Majesty and the State, and do not look for neither, that ever it should by any force prevail, but that it would please God to honour her Highness with the advancement of the same.

Judge. No, no, these are but Excuses, these malicious Speeches proceeded from thee, and were the Ground-work of all these Libels that have been dispersed since, and thou art known to be the Ring-leader of this Faction.

Udall. There is no reason to charge me with other Men's doings, every Man must answer for himself; but as for me (alas) I am no body: there are five hundred Ministers in this Land of my judgment in these things, the meanest of which I acknowledge to be far better learned than I am. But by the way, my Lords, I pray your Lordships give me leave to say one thing, which I being about to speak of before, was interrupted; and therefore seeing now it cometh into my Memory, I pray you to hear me, tho' it be out of time, concerning the Felony whereof I am accused; it maketh greatly for me.

Judge. What is it? Let us hear what you can say.

Udall. When I was before the Lords of her Majesty's Council at the time of my Commitment, amongst other things that I alledged against the taking of an Oath to accuse my self, I said, that the thing was accounted criminal, and therefore by Law I was not to answer: My Lord *Anderson* said, that I said true, if the case had concerned either the loss of Life or Limb; whereby it is manifest, that then my Case was not esteemed Felony.

Judge. Tho' the Judges had not then concluded it, yet it was Law before, or else it could not so be determined after; the violent course of others since, hath caused your Case to be more narrowly sifted.

Then the Judge (having spoken to the like effect also) said to the Jury, That they should not need to trouble themselves to find him Guilty of the Felony, but only it was sufficient if they found him Guilty to be the Author of the Book: for, quoth he, it is already determined by all the Judges of the Land, that the Author of that Book was in

the compass of the Statute of Felony; and this, quoth he, was concluded before we came hither: Therefore you being ignorant of the Law, and we being sworn, as well as you are, you are to hear us, and to take our Exposition of the Law. And after many other Speeches, the Judges said, Go thy way, we will hear thee no longer, get thee hence; and shaking his Hand, he called for the other Felons to hear their Causes.

Then the Jury said, What can we find?

Judge. Find him Author of the Book, and leave the Felony to us.

And after some other Speeches, Mr. *Fuller* said to the Jury, You are to find him Author of the Book, and also Guilty of a malicious Intent in making it.

Whereat Mr. *Daulton* said, What have you to do with the matter, Mr. *Fuller*, to speak to the Jury?

Then there being some Noise at the Bar, Mr. *Udall* could not any more be heard: Yet as he was ready to depart, he said to the Jury, You of the Jury consider this, that you have not to consult about the Life of a Seminary and Popish Priest, but of a Minister of the Gospel.

Then Judge *Clarke* shewed the Reasons to the Jury, why they must find him Guilty; saying, The Evidences are manifest for the first Point, that he is the Author of the Book; and the second is a Point in Law agreed upon by all the Judges, as I have said.

So the Jury, after they had heard the Evidences of the other Felons at the Bar, departed to consult about them; in which time of their Consultation, there came two several Messages, exhorting him to submit himself, and to yield unto the Judges before the Jury had given up their Verdict.

Unto whom Mr. *Udall* replied, willing them not to trouble him with any such matter; for he was clear in his Conscience, and therefore he was not to accuse himself. In which time also the Jury, divers times sent and received Messages from the Judges; and at last, the Foreman of the Jury went himself unto them. Thus having debated of the Evidences of the rest of the Felons with Mr. *Udall*, after the Judges had dined, the Jury brought in their Verdict that he was guilty of Felony.

After that Baron *Clarke* had finished all other matters of Law, and that the Juries had given their Verdicts on the Felons, finding some Guilty, and some Not Guilty, the Judge commanded all the Prisoners to stand forth and to answer to their Names: who did so. And first, Mr. *Udall* was called, who stood forth at the Bar; but the Judge commanded him for that time to stand aside, saying, That he would deal with him anon. Then some of the Prisoners which were saved by their Books, were burnt in their Hands; and for that Night there was nothing more done. Then the Judge commanding the Jailor to bring the Prisoners betimes in the Morning, commanded them to depart: And so for that time every Man departed to his place.

The next morning, being the 25th of July, about four of the Clock, the Prisoners were brought to the Bar, who stayed till the coming of the Judges: who came thither by six of the Clock, or threabouts, and called the Prisoners by their Names to receive Sentence of Death: And first, they began with Mr. *Udall*; who, after he was called, was commanded to stand aside till anon.

anon. And then were seven Felons that received Sentence of Death; who being taken aside, Mr. *Udall* was called the second time; and the Clerk of the Assizes said, *John Udall*, hold up thy Hand, what canst thou alledge for thy self, why thou should'st not receive Judgment to die?

Udall. My Lords, notwithstanding my earnest pleading and protesting of mine Innocency yesterday, which I could and would have done more clearly, but that I was so much interrupted; yet it hath pleased the Jury, upon their Consciences, to find me Guilty of that, which, I thank God, never entered into my heart: Now therefore must I plead another Plea, and therefore I crave of your Lordships to grant me the Benefit of the Pardon granted the last Parliament.

Judge. I think you can have no Benefit by it, for I am deceived if it be not excepted. Then said he to the Clerk, or some other, Reach me the Statute-Book: And whilst he looked in the same,

Mr. *Udall* said, I pray your Lordships consider the Ground of my Plea, albeit indeed it seems to be excepted: Your Lordships confessed yesterday, and I shewed it by my Lord *Anderson's* Speeches to me, that it was not thought Felony till of late; and therefore the things that be excepted, be such as be inquirable and punishable in the Ecclesiastical Courts.

Judge. That is nothing; for if the lesser be excepted, much rather is the greater.

Udall. My Lords, I refer it to your Consciences and favourable Considerations: The Words are these in the Pardon, which he repeated: And they finding it to be as he had said, the Judge said, Here is no help for you. And after other Speeches between them of the Meaning of the Words of the Pardon, the Judge said, Mr. *Udall*, your Counsel hath deceived you.

Udall. My Lords, I have not received any Counsel herein, for I have been close Prisoner this half year, and therefore could not attain to have any Counsel; but thus much have I gathered, which is my Judgment, out of the Book.

Judge. What can you alledge more for your self? for this helpeth you not.

Udall. Nothing but mine own Innocency, but that your Lordships may proceed.

Judge. What say you? are you contented to submit your self to the Queen?

Udall. Yea, or else I were not worthy to live in her Highness's Dominions.

Judge. But will you acknowledge your self to have offended her Majesty in making this Book? She is gracious and full of Mercy; it may be, that we, reporting your Submission unto her Majesty, may procure her Pardon for you.

Udall. May it please your Lordships to hear me; The Cause for which I am called in question, I cannot forsake in any sort, for I hold it to be the undoubted Truth of God; but, &c. And then he was interrupted by Judge *Puckering*, who said:

Judge. Nay, stay there, you cannot go away with that Speech unanswered, to buz into the Peoples ears such a Conceit, that it is an undoubted Truth that you hold; for I hold it to be an undoubted Falshood. And then he proceeded further in a large set Speech, the effect whereof was, That this Land having been governed by sundry Nations; hath yet kept her antient Laws, which (he affirmed) would be overthrown, if this Government that these Men seek for, should be esta-

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blished: And then he further shewed, What Inconveniencies (as he thought) would come by the same, viz. That we having Laws and Judges appointed to decide all Controversies, this Presbytery which these Men seek for, would overthrow all, and bring to their Censure and Government all Mens Causes, or else they would excommunicate them from their Churches; yea, and they are so hot for this Government, that they will not stay for the Magistrate; and if the Magistrate will not, they will reform themselves: and one of them writing in a Letter to a Friend of his, saith, Let us number our hot Brethren, that we may know who will stand to it, for it is high time. So that it is plain, that if they cannot have it with her Majesty's Consent, they will have it, tho' it make our Hearts to ache, as you say in your Book. And whereas her Majesty hath Revenue belonging to her Crown out of the Church-Livings, and Cathedral Churches, these Men would have her Majesty give unto them those Revenues, for the Maintenance of their Presbytery, and they would allow her a Stipend at their Discretions; so that they would bring the Queen and the Crown under their Girdles.

And some of these Men have gone so far, that they say plainly we have no Church, no Sacrament, no Ministers, nor any Worship of God amongst us. If these things be not look'd unto in time, what Confusion shall we have in this Land shortly? Many other things he spake against the Cause of Reformation, which I cannot particularly lay down: but this is in effect the Substance of it, concluding, he said, Thus much, Mr. *Udall*, have your Speeches enforced me to speak, lest the People here present (being deceived) should be carried away by it. To which Mr. *Udall* answered briefly:

Udall. My Lords, it is bootless for me to enter Disputation with you in this place touching this matter; only this I could wish you, to leave it to be first decided by the learned Divines, to whose Calling it belongeth. And altho' some weak Men wanting judgment have been headily carried in seeking the Furtherance of this Cause, and so for want of this Government have run into some Errors: yet it is no reason to charge us with them, for your Lordships know, that we have been the Men that have taken the greatest pains to reclaim them to the joining of themselves with the Church, from which they have separated themselves.

Judge Clarke. You are deceived, it is not a matter of Divinity only, but it is a matter of State, and within the compass of our Profession; and it is not so greatly in controversy, as you would have us to believe it is.

Udall. It is diversly debated (my Lords) and the greatest number of learned Men in Christendom do maintain the same.

Judge. How do you know that? have you been beyond the Seas to know the greatest number of learned Men to be of this Judgment?

Udall. Your Lordships know, that all the Churches of France, the Low-Countries, and of Scotland, do maintain the same, besides many hundred of learned Men in this Land.

Judge. Have you been in all these Churches, that you can tell so much?

Udall. I know it to be true (my Lords) for their Practice doth shew them to be of this Judgment.

A a

Judge.

Judge. Well, if you can alledge no more, neither will submit your self to the Queen's Mercy, then hear your Judgment.

Udall. My Lords, I was beginning to speak, but you interrupted me; I pray you hear me what I will say, and then do as God shall move you.

Judge. Let us hear what you will say.

Udall. As I said before, so I say now, I believe the Cause to be the undoubted Truth of God; and therefore in the Matter, I cannot by any means yield: yet seeing, by your order of Law, I am found to be guilty, neither can I (for the Reverence I bear to her Majesty's Laws) take any Exceptions against you nor the Jury; but that which you have done, I acknowledge to be done in all Equity and Right. Seeing, I say, you have found me to be guilty, whereby I cannot live without her Majesty's gracious and special Favour, I acknowledge, that whatsoever I have done to the advancement of the Cause, I may offend in the Manner; in which respect (if I have offended) seeing it hath pleased your Lordships and the Jury to find me guilty, I do willingly submit my self, and heartily crave her Majesty's Pardon.

Judge. But are you sorry that you have offended the Queen's Majesty?

Udall. I am sorry, that the Course of the Law hath found me to have offended.

Judge. So is every Thief that is condemned forry, that his Offence is found out, but not for the Fact. This is a plain Fallacy.

Judge. My Lord, indeed if it were so as your Lordship doth understand it, it were a plain Fallacy; but I say farther, if in the Manner of handling so good a Cause, there be found in me any Offence against her Majesty's Laws, I acknowledge, that in the Manner of handling it, her Majesty may be justly offended, for which I am sorry. And I protest that I have never gone about to advance it by any other means, than by manifesting it to all Men, and tendering it to them in Authority; and that by such means as might not be contrary to the Laws of this Land, that so it might be received by her Majesty and the State: and this is the Care of us all, howsoever we be charged with Factions.

Judge. You say, if there be found any Offence; whereby you call in question the Equity of dealing in this Court against you.

Udall. My Lords, I do not, neither will I; let it be looked into by you and the rest whom it concerneth, I hope you would not deal otherwise than lawfully against me.

Judge Puck. You say, you seek no unlawful Means: What can be meant but unlawful Means in the words of your Book? *If it come in by that Means that will make all your Hearts to ake, blame your selves.* What good Means can be meant by these Words?

Udall. My Lords, yesterday I shewed you what I took to be the meaning of the Author in some places of the Book alledged against me in the Indictment; and then I would have spoken unto all, but you cut me off: I pray you therefore let me shew you the Meaning of the Author in those Words now.

Judge. Let us hear you how you expound it.

Udall. My Lords, your Lordships must understand, that the Author taketh it for granted, that the Cause is God's and must prevail: and therefore, seeing God hath used all the means of his Mercy to bring it in, in giving us a gracious

Prince, long Peace, and Abundance, and of stirring up some to exhibit Supplications to the Parliament; these things not prevailing in his Mercy, he will bring it in by some Judgment, as Plague or Famine, or some such-like Punishment: and this is always the manner of God's dealing.

Judge. You cannot expound it so; for the Words import another thing.

Udall. My Lord, the Author himself expoundeth it so in the Words following; where he saith, *That it must prevail, for such a Judgment will overtake this Land, as shall make the ears of all that bear thereof to tingle:* So that he meaneth nothing but this, That God will bring it in by his own Hand, by Judgment, if by Mercy he cannot prevail.

Judge. No, no, your Meaning was, That it should be brought in by Force and Violence.

Udall. God forbid! far be it from us to conceive any such Imagination. The Author of that Book doth plainly shew, that he meant no such thing; and the Words following, in the end of the Epistle, do declare the same; for there he sheweth by whom it is to be brought in, namely, by her Majesty and her honourable Counsellors, that they may see it, and establish the same.

Judge. Nay, the meaning is, That if the Queen will not, yet you say, it shall come in; for so the Words are, *That it must prevail, maugre the Heads of all that stand against it.*

Udall. Nay my Lords, the Words are, *Maugre the Malice of all that stand against it.* For there are many Heads that are not maliciously bent against it: There is great difference between Malice and Heads; for some are against the Cause, through Ignorance.

Judge. It is all one in effect.

Udall. Nay, my Lords, there is great difference.

Judge Puck. Well, Mr. Udall, you were best to submit yourself to the Queen's Mercy, and leave these Courses; for I tell you, that your Book is most seditious and slanderous against her Majesty and the State; and yet I assure you, that your Book had been passed over, if there had not come forth presently after it such a number of slanderous Libels, as *Martin Mar-Prelate*, *Martin's Epitome*, *Martin Jun.* or *Theses Martinianae*, *Martin Sen.* and others such-like; of which your Book was judged to be the Ring-leader.

Udall. My Lords, those that are learned, and do maintain this Cause, do judge this Book to be written very indifferently, howsoever it be hardly construed. But for *Martin*, and the rest of those Books that you have named, they were never approved by the Godly Learned: And I am fully persuaded, that those Books were not done by any Minister; and I think there is never a Minister in this Land, that doth know who *Martin* is. And I for my part, have been inquisitive, but I could never learn who he is.

Judge Clarke. You will not acknowledge your self faulty in any thing, and therefore it is in vain to stand any longer with you.

Udall. I will easily confess, that in Manner the Author hath offended: for no Man can handle a Cause so well, but there will fault appear in it, as appeareth by *Job*, who having a good Cause, handled it weakly: It is easier to handle an ill Cause cunningly, than a good one well.

Judge. Nay, but you have maliciously offended in publishing this Book, which tendeth to the overthrowing of the State, and the moving of Rebellion.

Udall.

Udall. My Lords, that be far from me, for we teach that in reforming things amiss, if the Prince will not consent, the Weapons that Subjects are to fight withal, are Repentance and Prayers, Patience and Tears.

Judge. Yea, you had done well if you had used these Weapons, rather than to have made this Book.

Udall. God forbid but that we should give unto her Majesty that Honour which justly is due unto her, for we have not taught the People to reform the State without the Prince, and our Practice hath proved the same; for we never taught any of her Subjects to go before her, but to leave that Honour as belongeth to her Majesty.

Judge. Well, will you submit your self or not? for else I must proceed to Judgment, and I have no Authority to favour you, neither will I stay Sentence of Death according to my Office: what my Brother hath I know not, and therefore shortly submit your self, or else I am to pronounce Sentence of Death.

Udall. And I am ready to receive it: For I protest before God (not knowing that I am to live an Hour) that the Cause is good, and I am contented to receive Sentence, so that I may leave it to Posterity how I have suffered for the Cause. But my Lords, the Cause excepted, I will submit my self in any thing.

Judge. Let the Cause alone, and tell us no more of it, but acknowledge your self to have offended the Queen's Majesty.

Udall. I may not in any case yield in the Cause; I have almost ever since I was a Preacher of the Gospel professed it, and therefore I cannot be at this time changed.

Judge. Let (I say) the Cause alone, and say what you will do.

Udall. I must needs profess it and mention it, lest it should be thought that I have started from it; but for any thing that I have done in the Manner against Law, I am heartily sorry for it: more than this I cannot say, do with me what you will.

Judge. But are you sorry for offending her Majesty and her Laws, and be you contented to amend, and to live in Obedience as becometh a good Subject?

Udall. I am content to seek the advancement of this Cause by no other means, than that which may stand with the Laws of this Land, and the Duty of a good Subject.

Judge. I come not here to intreat you to submit your self, but you shall do it willingly upon your Knees, and crave her Majesty's Mercy.

Udall. Then Mr. *Udall* kneeling down, said, I refuse not any kind of Submission to her Majesty: And I intreat your Lordships to be a means to her Majesty for me. And if I were worthy that my poor Papers might come unto her Majesty, or to her honourable Council, I would write thus much unto them.

Judge. Nay, will you write thus much unto us, that we may first see it and commend it to her Majesty?

Udall. I willingly do it.

Thus they dismissed him.

And this is the Sum of that which I with the help of others could remember, having not any Intent to leave out or enlarge any thing further than the meaning of the Speakers did intend; notwithstanding many more things were said on both sides, especially the set Speeches of both the Judges,

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and of Mr. *Daulton*, to the disgrace of the desired Reformation, which could not well be expressed in particular, and therefore I have left them. Also many other things Mr. *Udall* purposed and begun to say, which they stopped, so that they could not be perceived.

The Affizes being thus ended, Mr. *Udall* was returned to the Prison of the *White-Lion* again, where he continued till the Sessions in *Southwark*, beginning the 18th Day of *February*, 1590; during which time he wrote a Supplication or Submission to the Queen's Majesty as followeth:

To the Queen's most Excellent Majesty.

MOST gracious and dread Sovereign, the present lamentable Estate wherein I stand, being found guilty by Verdict, to be Author of a Book entitled, *A Demonstration of Discipline*, and being, without your gracious Pardon, to die for the same; I humbly prostrate myself at your Majesty's Feet, submitting my self in most humble manner as becometh a dutiful Subject, to such Order as it shall please your Highness to appoint, to whom God hath given so high and sovereign a Power, as is able both to kill and to quicken, to bring to the Gates of Death, and to cause to return to the Comfort of Life again: Before whom standing thus convict, I am not to plead my Innocency; yet I most humbly desire it may not offend your Excellent Majesty, that I protest (of the Truth whereof I call God to witness, who knoweth all Secrets, and will judge both the quick and the dead) that I had never any thought or imagination to publish, write, or do any thing maliciously, or tending to the dishonour or slander of your Majesty's Royal Person or Princely Estate, under whose gracious Government I have attained to so many Benefits and Blessings; amongst which I most highly esteem the true Knowledge and Fear of God; in regard whereof, I have been always ready even to adventure my Life, for the preservation of your most Royal Person and defence of your Princely Estate, and the same have also taught unto others, as a thing specially commanded by God: notwithstanding, fearing the Severity of Justice unto Death, I fly for Life unto your Majesty's most gracious Mercy, most humbly desiring your Highness of your merciful Compassion; for relief of my poor and miserable Estate, to grant me your gracious and comfortable Pardon, whereby I may be discharged, both of the Offence and Punishment, which the Law hath laid upon me. Other hope than this have I none, but the Trust I have in God, (according to his Promises) that your Majesty by a special Gift of God is gracious and merciful, and have vouchsafed to shew Mercy even unto such as were not only by imputation of Law, but indeed malicious and mortal Enemies to your Highness; and therefore I hope that the same Goodness of so Princely a Nature may be moved, and will shew forth itself in like gracious Compassion on my behalf. Which gracious Pardon on my Knees I most humbly crave your excellent Majesty to grant unto me, by which special Favour being raised as it were from the dead, I promise and vow to lead the rest of my Life in all humble and dutiful Obedience unto your Majesty; praying continually for the preservation of your Highness's precious Life and happy Government, to the Honour of Almighty God, and the Comfort of all obedient and dutiful Subjects.

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Further

*Further Proceedings against Mr. Udall, at the Assizes in Southwark,
February 18, 19, 20. 1590. 33 Eliz.*

BEING called the first Day of the Assizes in the Afternoon, Serjeant Puckering said:

Puck. We do not mean now to deal with you, only I must put you in mind that you have made a Petition, wherein you promise to submit your self to such Order as her Majesty shall appoint; consider of it, and look that you do it, for I can tell you, it is looked for at your hands.

Udall. I know not, my Lord, what you mean; I made a Petition to her Majesty, and will willingly perform any thing promised therein.

Puck. Well, advise well with your self, and look that you do it, I tell you aforehand.

Udall. Unless you mean that, I know not your meaning.

Justice Fenner dwelling in Surry, sat on the Bench, and said: Mr. Udall, I must needs say something unto you, I have heard much good of you, and that you are Learned, it were pity you should do otherwise than well, I pray you take heed that those good things which are in you be not marred for want of Humility: I tell you Humility is a special Virtue in a Man of your Calling, the want whereof marreth all in them that want it; I pray you stand not in your own Opinion too much: I have heard that you have done much good, let not Humility be wanting, &c.

Udall. My Lord, I acknowledge that Humility is a Virtue generally required in Men of my Calling, without which all other Gifts are nothing; for *God resisteth the Proud, and giveth Wisdom to the Simple*: and I desire that the same Virtue may be found in me. But I trust your meaning is not thereby to persuade me to deny the Truth, which I trust the Lord will keep me from, whatsoever befall me.

Fen. I speak to you of good-will, I would not have you stiff in your own Conceit.

Puck. Remember what I said unto you.

And so I was carried into a Chamber to be conferred with by some of the Bench, &c. And when that Promise which the Judge so much spake of came to be examined, it was nothing but a Sentence in my Submission to her Highness, the meaning whereof is (as the words going before it, and immediately following it, do declare) that I professed my self willing to live or die, according as that Power which God hath given to her Majesty, shall appoint.

I having been dealt withal to this effect the first Day of the Assizes (by certain of the Bench in private) as also the second Day by some of them to this effect, that I would make such a Submission as would condemn the Book in question, and justify the Hierarchy; and perceiving that I was not to be heard till the last day, I intreated Sir William Moore and Mr. Bowyer to be a mean to the Judges for me; that, forasmuch as my Case was rare, and I had (as I was persuaded) sufficient to

alledge, why (notwithstanding the Verdict against me) Judgment ought to be stayed, I might be heard over Night, that so (according to that good Counsel given by them unto me, to advise with myself, and to consider what I would do) also they might have a Night to think of what I had to say, and the next Day to do with me as God should move them.

Hereupon I was fetch'd forth before the Judges in private, immediately after Dinner; who using many Persuasions to draw me to relent (which being in private, I will not express) told me that they sent for me, for that they understood I desired to be heard over Night, which they were willing then and there to do. I answered, My Lords, my meaning was not to desire private, but publick hearing, seeing I have nothing to say, but such as would prevent my self, and disappoint my publick Speech, if I should utter it in private: yet because they told me their other Affairs would not permit them to have any time with me till the latter end of the Assizes, I was rather willing that I should be prevented, than they should be constrained to determine on a sudden upon so weighty a matter: whereupon I did draw out a Paper for each of them, containing these Reasons following.

I humbly pray your Lordships to consider, whether these Reasons ought not in Conscience to move you to stay the Sentence notwithstanding the Verdict against me, and to be means of my release.

1. It seemeth that my Case is not esteemed Felony by the Judges of the Land, seeing they do usually sit in the High-Commission Court, where the printing and dispersing of the same, and such like Books, are usually enquired after as Transgressions of another nature.

2. No Judgment in Law ought to be given in case of Felony, but upon a Party first found Guilty thereof by a Verdict of twelve Men; but I am not so: for proof whereof, I pray you it may be remembered, that your Lordship gave the Jury in Issue only for the Trial of the Fact, whether I were Author of such a Book, and freed them from enquiring the Intent, without which there is no Felony.

3. I humbly pray you call to mind by what means the Jury was drawn to give that Verdict they did, whether they were left wholly to their own Consciences, or were wrought unto it partly by Promise, assuring it should be no further Danger unto me, but tend to my good; and partly by Fear, as appeareth in that it hath been an occasion of great Grief unto some of them ever since. And then I pray you to consider, whether upon such a Verdict so drawn from twelve simple Men, Christian Judges, in a good Conscience, may proceed to Sentence of Death?

4. In case the Verdict was never so free, yet your Lordships being Men of Wisdom and Knowledge, are to consider, whether the Statute whereupon I am indicted, do agree to my Case in the truth

truth and meaning of it, there being nothing in that Book spoken of her Majesty's Person, but in Duty and Honour; and whether the drawing of it from her Majesty to the Bishops (as being a part of her Body Politick) be not a violent depraving and wresting of the Statute? which if it be, you being Christian Judges, cannot in a good Conscience upon such a ground proceed to Sentence, contrary to your own Knowledge.

5. But if the Statute be to be taken so as it is urged, it ought to be considered that without a malicious Intent against her Majesty's Person, the Statute itself maketh no Act forbidden by it to be felonious; wherein I appeal first to God, and then to all Men that have seen the whole Course of my Life, and to your Lordships own Consciences, wherein I pray you to examine your selves in the sight of God, Whether either by your selves, or the just Report of any other, you can find me guilty of any Act in all my Life, that favoured of any Malice or malicious Intent against her Majesty, or of any other Behaviour than standeth with the Allegiance and Duty of a most Dutiful and Christian Subject. Of which Malice or malicious Intent against her Majesty, if your Consciences clear me before God, the Act wherewith I am charged being not Felony without such an Intent; I hope you will consider that you cannot with a good Conscience proceed to Judgment.

6. Yet if the Statute and Intent were such as it is said, in case of Life the Evidences ought to be pregnant, and full living Witnesses (I am sure by the Word of God, and I trust also by the Laws of this Land) were to have been produced Face to Face to charge me. But I have none such against me, neither any other thing, saving only Papers and Reports of Depositions taken by Ecclesiastical Commissioners and others; which kind of Proof the Judges of the Land cast away in case of Lands, and by no means allow to be sufficient, and therefore are much less to be allowed in a Case of Life: which being so, your Lordships ought to have a Conscience, that upon so weak Evidences, Sentence of Death be not pronounced.

7. But if the same that hath been given in for Evidence in Writing, had been testified by Men living, standing out in the presence of the Court, and of me the Accused; I trust your Lordships will consider that no one of the Evidences do directly prove me to be the Author of the Book in question; which as it was, hath little Force in it, as appeareth by this, that the Author of the chiefest Testimony is so grieved, that he is ashamed to come where he is known. Whereupon, howsoever the Jury have not discerned thereof, yet you being Men of Skill and Understanding, are to have regard of it, and not upon so weak and impertinent Proofs, to proceed to Judgment of Death.

8. If all these things were such as they ought to be, yet your Lordships are to consider (supposing me to be the Author of the Book in question) that the said Book for the Substance of it, containeth nothing but that which it taught and believed to be a part of the Gospel of Christ, by all the best reformed Churches in Europe; wherein nothing being diverse from them, I cannot be condemned, without condemning in me all such Nations and Churches as hold the same Doctrine. In which (if there be no Error in them) the Offence commonly being in Form, Circumstance and Manner of Writing, which some Men may think worthy an

Admonition, some more severe worthy Correction and Amercement, the sharpest cannot judge it to deserve more than some short time of Imprisonment. But Death for an Error of such a kind, in terms and words not altogether dutiful of certain Bishops, cannot be but extreme Cruelty: Which seeing it ought to be far from any Christian Man that hath the Bowels of Christ in him, surely Christian Judges professing the Gospel, for a Service of the Gospel (saving some oversight in words and terms) ought not to proceed against me (who have endeavoured to shew my self a dutiful Subject and faithful Minister of the Gospel) to give Sentence of Death.

9. My Offence not being aggravated, but remaining as it was the last Affizes when my Submission was accepted, and Judgment thereupon staid; I trust your Favour will be the same towards me now also, seeing I am ready to do the like.

If all this prevail not, yet my Redeemer liveth, to whom I commend my self, and say as sometime *Jeremy* said in a Case not much unlike; *Behold I am in your hands, do with me what seemeth good unto you: but know you this, that if you put me to death, you shall bring innocent Blood upon your own Heads, and upon the Land.* As the Blood of *Abel*, so the Blood of *Udall* will cry to God with a loud Voice, and the righteous Judge of the World will require it at the hands of all those that shall be guilty of it.

This is the Sum of that which I deliver'd to the Judges.

The Affizes being almost finished, and the other Prisoners, that were called to the Bar to have Sentence of Death, standing forth to hear the same; I was at the last called, and demanded what I could say for my self why I should not have Judgment to die. Hereupon I humbly craving Audience, began to this effect:

Udall. My Lords, I do acknowledge that I have been hitherto proceeded against by due Course of Law, and that a Verdict was given in against me the last Affizes as Guilty of Felony, &c. But I do not only (as heretofore) protest mine Innocence, but also think that I have sufficient to alledge why (notwithstanding the Verdict) Judgment ought not to be given; wherefore I intreat to be heard.

Judge Puck. I pray you stay, you seem in the beginning to speak Contraries; for first you acknowledge the Course of Law to be due, and afterwards stand upon it that you are innocent. How can a due Course of Law condemn the Innocent?

Udall. These things agree well enough, as I will shew, if it shall please you to give me leave: It is by due Course of Law that I have been indicted, arraigned, have had a Jury impannelled upon me, been accused, heard speak for my self, and Testimony produced against me: But in that the Proof by Witness was insufficient, and the Jury either in Judgment or Affection misled; thereupon it hath come to pass, that (notwithstanding the due Course of Law) Guiltiness is laid upon a guiltless Person. But I pray you let me proceed to the Reasons that I have to alledge for my self.

Then I left the first Reason of purpose, seeing I did rather wish that they only should understand it (which they did by my Papers over-night) than

to blaze it to the World ; so that I did begin to speak according to the second Reason mentioned before : whereupon Serjeant *Puckering* prayed Baron *Clarke* to speak, seeing it did most concern him.

Judge Clarke. I must needs tell you, you do us and the Seat of Justice great wrong : indeed I told the Jury, what was the Law in the Opinion of all the Judges of the Land ; for it was not my private Opinion, as I said also at that time.

Udall. It is not material, my Lord, in this Case, what the Judges think ; for tho' all the Judges in the World thought so, our Laws thought no Man a Felon, or capable of Sentence as a Felon, till he be convicted by the Verdict of twelve Men.

Clarke. You are so convicted, as the Record will testify.

Udall. I acknowledge the Record against me, but I appeal to your Lordship's Conscience, whether you delivered not unto them Speeches to this effect : ' As for the Felony you are not so much to enquire, but only whether he made the Book, leaving the Felony to us.'

Clarke. You do me great wrong, I only told them the Law.

Udall. Well, I leave it to your Lordship's favourable Consideration, you perceive my Reason.

Then I spake to the third Reason, whereupon it was said :

Puck. All that you say tendeth to the disgracing of the Court of Justice holden against you heretofore ; the Jury were left to their own Consciences, and did as they saw meet to do.

Udall. No, my Lords, I speak not any thing to disgrace the Court of Justice ; for I acknowledge both this Course, and all others of the like nature, to be God's holy Ordinance, which I ought to reverence ; neither do I speak to defame the Jury, but only to give your Lordships occasion why you may not proceed to Sentence thereupon : for if the Jury did well, why should it grieve any of them ? If they did ill, your Lordships may not proceed to Sentence thereupon.

Puck. We cannot remember the particular Circumstances that then passed, neither are we to call in question the Verdict, but it is our Office to give Sentence according to it.

Udall. I pray your Lordships tell me one thing, must the Judges always give Sentence according to the Verdict, or may there not be cause to stay it ?

Clarke. Yes, there may be cause to stay the Verdict, such may the Case be.

Udall. And I desire no other, but that my Reasons may be well weighed, whether my Case be such or no.

Then I prayed, for so much as they had the Substance of that in Writing aforehand which I meant to say, it would please them to give me leave to say at once what I could, lest my Memory (being so much weakened and dulled by Imprisonment) should fail me, and so I leave some material thing unspoken. Then I spake according to the fourth and fifth Reasons, whereunto little was replied, saving such things as were mentioned at my Arraignment : Only Baron *Clarke* used a very long Speech, wherein he compared Mr. *Stubbs's* Cause and mine together ; and after the end of his Speech, Judge *Puckering* said,

Puck. Who taught you such Law ? I tell you, you are much deceived and abused in it ; one may

be within the Compass of Felony, tho' he do not directly mean any such thing.

Udall. Your Lordship knoweth I pleaded these Points the last Assizes, when I came from close Imprisonment to the Bar : I understand *Engliss*, which is the Language wherein the Statute was written, and I profess my self a Scholar ; and therefore to have (thro' God's Mercy) some Understanding of the Sense of that I read. It seemeth to me the most direct, and no otherwise to be taken than I understand it.

Then I spake according to the sixth and seventh Reasons, whereunto it was replied thus :

Puck. You are deceived, in that you think the Witnesses against you the less lawful, because the Parties were not present. It is an ordinary thing to have Witnesses examined in the Chancery, and other such like Courts, which do remain there of as sufficient Credit for ever, as they were when the Party's Oath was taken upon the same.

Udall. Then would I have answered that the Case was not alike, seeing the High-Commission is no Court of Record ; but I was not then suffered to speak, for that it was said by the other Judge,

Clarke. Where do you find that there must needs (by the Word of God) be two Witnesses face to face ?

Udall. It is so clear, as the Witnesses were also to have the first hand in executing the Punishment upon the Party offending.

Puck. That was according to *Moses's* Law, which we are not ty'd unto.

Udall. It is the Word of God, which hath a perpetual Equity in it ; for the Life of Man is so precious in the sight of God, as he would not have it taken away without most evident and manifest Proof, such as in his Law is set down.

Clarke. We are not now to call in question the Proofs ; seeing the Jury did think them sufficient : This Speech of yours tendeth to prove the Jury perjured.

Udall. Not so, my Lord ; I think of them, that they did according to their Consciences : but being Men unlearned, and the Case being strange unto them, they may have done their best, and yet you being Men of more Knowledge and Judgment, are to look further into the matter.

Puck. Whereas you say that none of the Witnesses did directly prove you the Author of the Fact, that was not necessary ; for if all laid together, and the Circumstances consider'd, do prove it, it is as good a Proof as if every Witness were direct.

Udall. But the Law of God, from which I trust our Laws disagree not, would that every Proof be direct.

Puck. And do you think indeed, that the Laws of this Land are agreeable to the Word of God ?

Udall. I do not profess to know them ; but surely I have so reverent an Opinion of them, that I trust the Grounds of them are according to the Word of God, however in some Particulars the Proceedings may miss thereof.

Puck. Then the Government by Arch-Bishops, and Lord Bishops, is according to the Word of God, seeing the Laws of the Land do allow them.

Udall. I pray you, my Lord, take me not so general ; for that will not follow upon my Speeches.

Puck. Well, you may not now disgrace the Witnesses, you should have done it at your Arraignment.

Udall. I neither meant then, nor purpose now to disgrace the Witnesses, but to shew the Insufficiency

ficiency of their Testimony in this case, that your Lordships may thereby see some reason to stay the Sentence.

The first Testimony that was alledged, was that of Mr. *Chatfield*, who affirmeth, that it was not given in against me upon his Oath; but only in his anger he set his hand to, but is now sorry for it.

Puck. You should have alledged this before; it is now too late.

Udall. It is alledged too late, to prevent the Verdict: but if there be any Force in it, it ought to be consider'd to stay the Sentence: I could alledge it no sooner, because I knew it not till after the Verdict.

Puck. We may not suffer you to proceed so, to disgrace that which is passed already: if you have any other thing to say, speak on; otherwise we must do our Office.

Udall. It is not my Meaning, howsoever you take it, to disgrace any thing passed heretofore; only I pray you further to consider, that *Tomkins*, whose Testimony only carried some shew, protested before my Commitment, that he would not for all the World affirm me to be the Author of the Book.

Puck. Why did you not plead these things to the Jury?

Udall. I did so, and offer'd to produce sufficient Proof for it; but your Lordships answer'd, that no Witnesses might be heard in my behalf, seeing it was against the Queen: which seemeth strange to me; for methinks it should be for the Queen, to hear all things on both sides, especially when the Life of any of her Subjects is in question.

Puck. The Witnesses were then thought by the Jury sufficient to prove the Matter, which we may not now call in doubt; therefore say on if you have any more.

Udall. Then I spake according to the eighth Reason; whereupon it was said,

Clarke. I tell you, you are not called in question for the Cause (as you call it) nor for the Body of the Book; but only for slanderous things in the Preface, against her Majesty's Government, and therefore you may let the Cause alone.

Udall. But it is for the Hatred borne to the Cause, that I am thus entreated; for had not it been handled in the Book, such matter as is now made of the Preface, had never been objected against me, or any other.

Puck. Well, it is best for you to leave off all other Pleas, and submit your self to the Queen's Majesty's Mercy.

Udall. I will do so with all my heart.

Puck. But will you do it as you did the last Affizes?

Udall. Yea, that I will: And so I spake according to the last Reason; whereupon it was said,

Puck. You confessed that you were justly condemned.

Udall. I am not yet condemned.

Puck. I mean convicted by the Jury. Then you acknowledged that you had offended her Majesty; that you were sorry for it, and promised that you would never do the like again.

Udall. My Lord, it is not for me to oppose my Word and Credit (which is nothing) against yours; I refer it to them that heard it: only, I pray you, give me leave to speak of it, as I take it that it was. First, I did avow (and so I do now, and will do whilst I live) that the Cause handled in that Book, is an undoubted Truth.

Clarke. How often shall we bid you leave the Cause, and tell you, that you are not troubled for it?

Udall. But it is the Cause that is sought to be defac'd in my Person, and therefore I must and will still profess it, and justify it, whatsoever Disgrace I receive by it unto my self. I pray you let me proceed. Secondly, I did protest that I never had any purpose to deface, but ever to seek to honour her Majesty and her Government. Thirdly, I professed that the Course of Law against me was due; whereby what I have meant, you have heard. Fourthly, I said, that I never had any purpose to do any thing to the Advancement of this Cause, but keeping my self (to the uttermost of my power) within the compass of the Law. Lastly, I never confess'd my self to be the Author of the Book. Then my Submission was this, That if I had done any thing to the Advancement of so holy a Cause, which had brought me within compass of the Law, or might justly offend her Majesty, I was heartily sorry for it: If this be not it, let me have any other drawn, wherein the former Points are justify'd, and I will set my hand unto it.

Puck. But all this is nothing to your Book in particular; what say you to it?

Udall. I say this, That tho' I hold the Matter in it to be a most manifest Truth; yet I confess the Manner of handling in some part, to be such as might justly provoke her Majesty's Indignation.

Puck. Because you stand so much upon the Cause, as you call it, you provoke me so, as I must needs say somewhat of it, lest the Audience should think some Matter in it, more than is.

Udall. My Lord, you understand my Judgment therein: I beseech you speak not against it, unless you will give me leave to reply unto you.

Puck. I may not do so, you provoke me to it; your Discipline that you stand upon, whereupon is it grounded? Forsooth upon the Saying of Christ, *Tell the Church*: which never was expounded these fifteen hundred years, as you do within these few years.

Udall. My Lord, he did abuse you that told you so: *Chrysostom* expounded it thus, *Tell the Church*, that is, the Governours of the Church.

Puck. He meant the Governours of the Jewish Synagogue.

Udall. How can that be, when he lived above four hundred years after Christ?

Puck. Was there never any that could find it out before now, if it were a Truth?

Udall. Yes, it hath Testimony sufficient, if it might be receiv'd.

Puck. And lest Men should think that your Matter were as good as you pretend, I will tell you what I know; as it is written in one of your Books, that without an Eldership there is no Salvation.

Udall. I am persuaded that cannot be shew'd.

Puck. Yes, it is in *Theses Martiniane*. One writ that it is time to number our hot Brethren; another (Mr. *Snape* of *Northampton* by name) wrote that the Bishops should be put down all in one day.

These things he did discourse of at large, in an invective Speech, most bitter, tending to persuade the People that we meant to rebel, and set up the Discipline, and pull down the Bishops by strong hand; and went about to impair the Queen's Prerogative and Patrimony. After which, with much ado, I got audience to this effect.

Udall.

Udall. My Lord, I protest in the presence of God, and hearing of all this People, that neither I, nor any of my Brethren, that ever I was acquainted with, to my knowledge, did so much as ever purpose, or speak of any such means as your Lordship mentioneth to bring in the Discipline; but only by Prayer to God, Supplication to her Majesty, and such other peaceable Means: This is my Answer to your large Invective. And whereas, my Lord, you seem to be so hardly carried against the Cause, I would not doubt, but if I might privately confer with you, with the Blessing of God, to persuade you to be a Friend unto it.

And after some other Speeches of other Books, and the aforefaid Speeches in the Books mentioned already, Judge *Puckering* said,

Puck. Nay, I tell you there are as foul things in your own Book: For, do you not say, that the Church is committed to the Mistress of the Stews, and ruled by the Laws of a Brothel-House?

Udall. It is spoken of the Popish Canon-Law; which is as unfit to rule the Church of Christ, as the Laws of a Brothel-House to govern an honest Woman.

Puck. And those Laws are established by her Majesty's Laws.

Udall. It would trouble the learnedest Lawyer in England to prove that.

Then Baron *Clarke* began a Voice, tending again to compare my Case to that of Mr. *Stubbs*, and to persuade me to submit my self, telling me what Good I might do; but because he spake low, and I said I did not well hear him, he gave over, and prayed the other to speak, who told me his Meaning: And then said,

Puck. We shall make short work with you: Will you here acknowledge all the Laws Ecclesiastical and Temporal of this Land, to be agreeable to the Word of God?

Udall. My Lord, I have Disgrace enough upon me already; you may easily perceive what I think of the present Ecclesiastical Government. I pray you press me not with these things, I can yield no further than you have heard.

Puck. Then we must do our Office, and pronounce Sentence on you.

Udall. God's Will be done.

Puck. Yea, God's Will be done on you indeed.

Then he gave Sentence upon me and the rest. After which I did purpose to speak according to the last Sentence, after the Reasons; but the Clamours of the other Prisoners, calling to the Judges to be good unto them, disappointed me thereof. Thus was I returned to Prison; what will be the Issue, I know not. *The Lord turn it to his Glory, the Good of his Church, and Shame of his Foes; and then welcome Life or Death.*

I being reprieved (as the Sheriff said, by her Majesty's own Commandment,) Dr. *Bond*, one of the Queen's Chaplains, came to me as from the Queen her self, and from the Council, with the Submission that was tendered unto me; to confer with me in general, but especially to persuade me to yield thereunto, or to take the Reasons of my Refusal. After two days conference, we agreed upon a Form of Submission, as followeth.

The Form of that Submission which was offered unto me, and I refused.

I *John Udall*, have been hitherto, by due Course of Law, convicted of Felony, for penning and setting forth a certain Book, call'd, *A Demonstration of Discipline*; wherein false, slanderous, and seditious Matters are contain'd, against her Majesty's Prerogative-Royal, her Crown and Dignity, and against the Laws and Government Ecclesiastical and Temporal, established by Law under her Highness, and tending to the erecting of a new Form of Government, contrary to her said Laws: All which Points I do now, by the Grace of God, perceive to be very dangerous to the Peace of this Realm and Church, seditious in the Commonwealth, and justly offensive to the Queen's most excellent Majesty; so as thereby I now seeing the Grievousness of this my Offence, do most humbly on my knees, before God and this Presence, submit my self to the Mercy of her Highness; being most sorry, that so deeply and worthily I have incurred her Majesty's Indignation against me: promising, if it shall please God to move her Royal Heart to have compassion on me, a most sorrowful convicted Person, that I will for ever hereafter forsake all such undutiful and dangerous Courses, and demean my self dutifully and peaceably to all Authorities both Civil and Ecclesiastical, established in this Realm; for I do acknowledge them to be both lawful and godly, and to be obey'd of every faithful Subject.

The Form of that Submission whereunto I did consent, and set my Hand.

With these three Protections I do submit my self in manner as followeth:

I. I hold the Cause of Discipline debated in that Book, to be an undoubted Truth.

II. I never imagined any Evil against her Majesty's Person or Estate; but have sought to honour them both.

III. I never proposed to do or persuade any thing, whereby the Discipline might be advanc'd, but by peaceable means; endeavouring to keep within the compass of Law.

I *John Udall* have been by due Course of Law, convicted and condemned of Felony, for penning and publishing a certain Book, called *The Demonstration of Discipline*; in the Preface whereof, some Matter, as also the Manner of writing, I confess to be in some part so bitter and undutiful, as deserveth justly to be censur'd and punish'd, and justly offensive to the Queen's most excellent Majesty: Wherefore the Trial of the Law imputing unto me all such Defaults as are in that Book, and laying the Punishment of the same, in most grievous manner, upon me; and I seeing the Grievousness of this Offence, do most humbly on my knees, as in the presence of God, submit my self to the Mercy of her Highness, being most sorry that so deep and just Occasions should be given to procure her Majesty's Displeasure against me; promising that if it shall please God to move her Royal Heart to have compassion on me, a most sorrowful condemned Person, that I will for ever hereafter forsake all undutiful and dangerous Courses, and demean my self dutifully and peaceably, as becometh a Minister of the Gospel, and as a loyal Subject to the Queen's most Excellent Majesty.

At

At the same time that Dr. Bond was with me, I receiv'd a Letter from a Friend of mine, that did sollicite Sir *Walter Raleigh* for me; wherein were these words:

SIR *Walter Raleigh* willed me to let you understand, that her Majesty is inform'd of you, that you hold that the Church of *England* is no Church, and the Sacraments of the same no Sacraments; and that all her Ecclesiastical Laws are against the Word of God, and so her Government; and that all Ecclesiastical Matters ought to be governed by a Presbytery, and she herself to be subject to the Censures thereof: And that for these things, and such like, you are not worthy to live. But if you will write half a dozen Lines under your hand, unto Sir *Walter*, concerning these Opinions, that he may shew it to her Majesty, he hopeth to obtain your Life. I know it is an easy thing for you to answer all these things; and therefore do it with speed, and in your writing to Sir *Walter*, take knowledge that he hath sent you such Word.

Hereupon I wrote a Letter to Sir *Walter Raleigh*, and what I hold in these Points, as followeth.

*To the Right Honourable Sir Walter Raleigh Kt.
Lord Warden of the Stannary.*

MY Duty being remembred unto your Lordship, I humbly thank your Honour for your great and honourable Care over me, and for my Good; whereof I trust you shall never be ashamed: most humbly beseeching your good Lordship to be a means to appease her Majesty's Indignation conceiv'd against me, by means of some Accusations untruly suggested. For, God is my Witness, I have never had any earthly thing in so precious account, as to honour her Highness; and to draw her Subjects to acknowledge with all Thankfulness, the exceeding Blessings that God bestoweth upon them by her Majesty's happy Government, whereof I trust mine Adversaries will be Witnesses, when I am dead. I have sent unto your Lordship (as in perplexity I could upon the sudden) what I hold concerning certain Points declared unto me, as from your Lordship; praying that it would please you to make known the Truth thereof unto her Highness: And if neither my Submission, heretofore deliver'd, nor these things now set down, will be accepted to draw her Highness, of her gracious Compassion, to pardon me, that yet it would please her Majesty (that the Land may not be charged with my Blood) to change my Punishment from Death to Banishment. Thus trusting your Lordship will vouchsafe me this Favour, and that it will please her Majesty thereupon graciously to consider of me, I humbly take my leave, from the *White-Lion*, Feb. 22, 1590.

Your Lordship's to command,

John Udall, Prisoner.

1. I do believe, and have often preach'd, that the Church of *England* is a Part of the true visible Church of Christ; and that the Preaching of the Word and Administration of the Sacraments therein, are the holy Ordinances of God, profitable and comfortable to every one that rightly partakes thereof: In which regard I have been, and do yet desire to be, a Preacher in the same Church; and

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have communicated in the Sacraments and Prayers therein, for the space of seven Years at *Kingston*, and about a year at *Newcastle upon Tyne*, immediately before mine Imprisonment: and therefore I do from my Heart utterly renounce the Schism wherewith the *Brownists* have fallen, in condemning the Churches of *England*, and separating themselves from communicating in the publick Ministry thereof.

2. I know no other, but that the Statute-Laws of this Land do maintain the holy Ministry of the Word and Sacraments in such Manner, as any Christian may, with a safe Conscience, both administer therein, and communicate therewithal: Also that the Law which requireth a Subscription to the Articles of Religion, so far as they contain the Doctrine of Faith and Sacraments, is agreeable to the Word of God.

3. I do believe, that by the Word of God, her Majesty hath, and ought to have a supreme Authority over all Persons, in all Causes, both Ecclesiastical and Civil, to enforce every Man to do his Duty, and to be obedient in every thing that is not contrary to the Word of God. And if the Prince should command any thing contrary to God's Word, it is not lawful for the Subjects to rebel or resist, not so much as in Thought, but with Patience and Humility to bear all the Punishments laid upon them; seeking only by Prayer to God, and Supplication to Authority, and such like peaceable means, to have Faults amended.

4. I do believe that by the Word of God, the Churches rightly reformed ought to be governed Ecclesiastically by the Ministers, assisted with Elders; and this is not my private Judgment, but such as I have learned out of the Word of God, been confirmed in by the Writings of the most learned and godly Men of antient and latter Times, and have seen practised with much Peace and Comfort in the best reformed Churches in *Europe*, and even by those Exiles which her Majesty to her great Honour hath hitherto protected.

5. I do believe that the Censures of the Church ought merely to concern the Soul, and may not impeach any Subject, much less any Prince, in the Liberty of Body, Dominion, Goods, or any earthly Privilege whatsoever; and that therefore the Papal Excommunication that deposeth Princes, and freeth their Subjects from their Allegiance, or any part of Christian Obedience to Civil Authority, is blasphemous against God, injurious to all Men, and directly contrary to God's Word: neither do I believe that a Christian Prince ought otherwise to be subject to the Censures of the Church, than our gracious Queen professeth herself to be unto the Preaching of the Word, and Administration of the Sacraments, according to the Doctrine of our Church, in Mr. *Nowell's* Catechism, and the Homilies of the right Use of the Church, at this day appointed publickly to be read.

If I understand of any other thing that I am charged to hold as a strange and private Opinion, I would be willing to shew my Mind freely in it; for my desire is, that her Highness might truly be informed of every thing that I hold: so should I be sure to obtain her gracious Favour, without which I do not desire to live.

These things thus passed, I remained as before, without any great hope of Liberty, or fear of Extremity, unto the next Affizes drew near: at last there came Mr. *Nowell* Dean of *Pauls*, and Mr.

Bb

Dr.

Dr. *Andrews* with a new Submission, yet containing nothing (one Clause excepted) which was not in the former, which I condescended unto; notwithstanding I refused presently to set my hand unto it (tho' they promised in the name of the Council, that in yielding to it I should obtain Pardon and Liberty) because I would do nothing without good Advice and Consideration.

The Copy of the Submission given me by Mr. Dean of Pauls, with his name to it, as followeth.

I *John Udall*, have been heretofore by due Course of Law, convicted and condemned of Felony, for penning and publishing a certain Book, called *The Demonstration of Discipline*; in the Preface whereof, some Matter, as also the Manner of handling of it, I confess in some part to be so bitter and undutiful, as deserveth justly to be censured and punished according to the Laws of this Realm, established under her Highness, and justly offensive to the Queen's most excellent Majesty: wherefore I now seeing the Grievousness of this Offence, do most humbly on my Knees, and in the presence of God, submit myself to the Mercy of her Highness, being most sorry that so deep and just occasion should be given to procure her Majesty's Displeasure against me; promising that if it shall please God to move her Majesty's Royal Heart to have Compassion on me, a most sorrowful condemned Person, I will ever hereafter forsake all undutiful, seditious and dangerous Courses, and demean myself dutifully and peaceably, as becometh a Minister of the Gospel, and a loyal Subject of the Queen's most Excellent Majesty.

This is the true Copy of the Submission sent unto me from her Majesty's most Honourable Privy-Council.

Alexander Nowell.

When I had weighed with my self, that the Clause which is added may admit a good Interpretation, and the omitting of that which is left out of my former Submission, causeth no ill Sense of that which is set down, I condescended (being also advised thereunto by my good and godly Friends) to set my Hand unto it; and thereupon wrote a Letter unto Mr. *Nowell* as followeth.

Right Worshipful Mr. Dean,

I Praise God with all my Heart, that Authority hath so good remembrance of my lamentable Estate, and yet more that by the same I am for my Form of Submission to deal with a Man of that Piety and Wisdom, that you have been worthily in the Church long agoe esteemed to be of, and so have continued to this reverend Age that you are come unto. It may please you, Sir, to understand, that I have considered of the Form of Submission, that your Worship brought unto me, and find nothing in it, but that in a good Conscience I can yield unto; for it requireth not of me any denial or disallowance of the Cause of Discipline debated in the Book, for which I am in question; the substance of which Doctrine I believe to be the undoubted Truth of God, and therefore ought never to deny or disallow it: notwithstanding with my persuasion I take God to witness, that I never purposed

to do or persuade any thing, whereby it might be advanced, but by peaceable means, endeavouring to keep within the compass of Law. Further also the said Form of Submission chargeth me not with any Malice against her Majesty, from which likewise I acknowledge as in the presence of our Saviour Christ, that is ready to come to judge the quick and the dead, that I have been always free, and have carried a Christian, loving and dutiful Affection to her Majesty's Royal Person and Estate, as I know by the Word of God I ought to do; which being so, I have resolved to satisfy the Authority from which you brought me the said Form of Submission, and at your Good-pleasure without further Limitation simply to subscribe it.

Good Mr. *Dean*, in the Bowels of Christ have Compassion of my Estate, more ways lamentable than I can in a few or many words express, or (as I think) any other but only the Spirit that is taught to pray with groans that cannot be uttered: and in such Christian Compassion, by your favourable and earnest mediation to the Authority that may relieve me, procure my Pardon and free Discharge, of the Dangers and Troubles wherein I am; that I may say with the Prophet, *I shall not die, but live, and declare the Works of the Lord.*

So shall not only my poor Wife and Children, but I hope many others praise God for you in that respect, and my self as beholden unto you in a case of Life, continually pray for your good Estate to the Lord of Life blessed for ever. Amen.

After I had thus set my Hand hereunto, I advised also to write unto certain of the Council, and other honourable Persons besides; partly to let them understand in what Sense I had yielded hereunto, and partly to entreat their Favour, and furthermore for my Liberty: the Copy of which Letter (for it was the same word for word to every one, the Title of their several Estates excepted) here ensueth.

Right Honourable,

MY present lamentable Condition enforceth me, in most humble manner, to crave so much leisure of your Lordships from the weighty Affairs of the State, as to consider of these few Lines. The Reverend Mr. *Nowell* Dean of *Pauls*, and Mr. Dr. *Andrews*, a few days ago brought me a Form of Submission (as they said) from Authority, with hope of Favour for my Life, if I would yield unto it. Whereof having considered, and finding nothing in it, but which I had heretofore yielded unto, when Mr. Doctor *Bond* was with me, one Clause excepted, to wit, That the faults do deserve to be punished according to the Laws of the Land; which yet hath no such words, but may bear so good a Sense, as I think I may in such Form submit myself, without either condemning the Suit for a further Reformation, or my self as justly deserving by the Laws to die: I cannot discern sufficient Cause to refuse it, for by the hardest word that I have by due Course of Law been convicted and condemned; I understand the Form of Proceeding by Indictment, Arraignment, Jury, Witnesses and such like, as also by that Clause, That the manner of writing is in some part such, as deserveth justly to be censured and punished by the Laws of this Land;

‘ Land; I mean of such Censures as the good
 ‘ Laws of this Land, administred with Justice, do
 ‘ ordain for punishing of such Offences in the man-
 ‘ ner of Writing; which cannot be of Death,
 ‘ without Malice against her Majesty; from
 ‘ which (I take Almighty God to witness) I have
 ‘ been always free. In regard whereof, I feared
 ‘ lest I might be thought to stand too contentiously
 ‘ and undutifully with Authority, and to be too
 ‘ careless of mine own Estate, if I should not yield
 ‘ to such a Form of Submission as they brought
 ‘ unto me. Wherein having yielded, as far as in
 ‘ Conscience I may, and as Authority by their
 ‘ means requireth of me; my most humble Suit
 ‘ to your Lordships is, that in your Christian and
 ‘ Honourable Compassion of my most lamentable
 ‘ Estate, that it may please your Lordships, by
 ‘ your favourable mediation to her excellent Ma-
 ‘ jesty, to further my most humble Suit, for my
 ‘ Pardon and free Discharge of these my grievous
 ‘ Troubles. So shall I be bound yet more heartily
 ‘ to praise God for your Honours, and to pray
 ‘ unto God for your prosperous Estate long to en-
 ‘ dure, to the Glory of Almighty God, and to
 ‘ your own everlasting Comfort.’

Within four or five days after, Mr. Doctor *Andrews* returned unto me, signifying that all that was done was mistaken, for that was not the Submission that was meant of me, but another. Which when I had perused, I found it the same (only the last Clause left out) which was offered me by the Judges at the Affizes: And he said, the Clerk to whom the making of the Letter to Mr. *Nowell* was committed, put in one for another. And because I utterly refused to consult of it, as having yielded before to so much as I might, he prayed me to understand what I took Exceptions against, and for what Reasons. So we entred into many Discourses; as first, how the Discipline could be said to be against the Queen’s Prerogative Royal, seeing it was (as I said I did believe) expressed in the Scriptures, whereby all lawful Privileges of Princes are warranted. Then we debated whether the Supremacy of a Christian Prince be the same with an Heathen, or diverse from it. After that, whether the Authority of Princes in making Church-Laws, be *de jure*, or *de facto* only: and lastly, of the most Points of Discipline. Thus we continued five or six hours, and at last he would have no answer of me then, but he prayed me to advise of it, for he would come again. I answered, that the oftner he came, the welcomer he should be, but I told him I would not accept of it; yet he came twice after, and took my Reasons of my Refusal to yield thereunto; and promising me all the favour he could procure me, he departed.

After this the Affizes approaching, and the general Report being that it would go hard with me; I being desirous to use any good means, did not only solicit the Earl of *Essex*, and Sir *Walter Raleigh*, who had heretofore dealt for me; but also I was advised to write again unto Mr. *Nowell*, earnestly charging him to take my Case to heart, seeing he had promised to procure me Favour: whereupon I wrote unto him this Letter following.

Right Worshipful Mr. *Nowell*,

‘ **A**S I did rejoice when I perceived that you
 ‘ were employed to deal with me about my
 ‘ Submission, because of that reverend Estimation
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‘ that you have been so long, among the Wor-
 ‘ thies in the Church of God; hoping, that I should
 ‘ have found thereby, some comfortable means of
 ‘ Mediation unto Authority for my release: so I
 ‘ am now occasioned to fear that all that Credit
 ‘ which you are of, shall be used as an Instrument
 ‘ to further and hasten Extremity upon me. For
 ‘ so much time being passed since I voluntarily
 ‘ yielded to that Submission which you brought
 ‘ unto me, and no Liberty appearing from any
 ‘ place, but rather that being given out, that my
 ‘ Submission shall be a special Means to hasten my
 ‘ Death, and no way to procure my Liberty; I
 ‘ am constrained to write unto you, to let you un-
 ‘ derstand, that as I look for that end the next
 ‘ Week at the Affizes at *Kingston* (where I have
 ‘ been a Preacher) which hath so long been threat-
 ‘ ned, but (to the doubling of my Torments)
 ‘ deferred; whereunto I doubt not the Lord will
 ‘ strengthen me, as graciously he hath hitherto
 ‘ done: So I pray you, as you will answer unto
 ‘ God for my Blood, which I am persuaded your
 ‘ Credit being employed to the uttermost (as in
 ‘ the Word and Faith of a Christian you pro-
 ‘ mised) might have preserved, that you would so
 ‘ take my Case to heart, as it may inforce you
 ‘ to leave no Stone unturn’d which may either
 ‘ further my Liberty, or at least clear your Con-
 ‘ science from being any way accessory to my
 ‘ Death. For it will one day be an heavy thing
 ‘ to your Heart, to think that you should be set
 ‘ on work, and the account that is worthily made
 ‘ of you employed under pretence, yea, and
 ‘ as it were with assurance of Life and Liberty,
 ‘ to draw that from a Preacher and Professor of the
 ‘ Gospel, which afterward shall be used to hasten
 ‘ his End: and you will say it had been better
 ‘ that you had never been of any reckoning, than
 ‘ to be made an Instrument to further such an Ac-
 ‘ tion. This I write unto you, not in any troubled
 ‘ affection with the fear of Death, for I thank
 ‘ God I am willing to end my days, and (if it
 ‘ please the Lord) even in this manner; and hope
 ‘ that my Death shall further the Cause for which
 ‘ I suffer, more than my Life: but lest I should
 ‘ neglect any means which might seem to be a fur-
 ‘ therance to prevent the same, or leave that Duty
 ‘ unperformed unto you, which I take my self in
 ‘ Conscience bound to discharge. The Lord make
 ‘ us willing and able to discharge every good Duty,
 ‘ that he enjoineth us, to his Glory, the Good of
 ‘ his Church, and our own Comfort, whether by
 ‘ Life or Death.’

About the same time came a Letter from the King of *Scotland* to a *Scottish* Merchant, one Mr. *Johnson*, lying in *London*, to be delivered to her Majesty (as was said) being written in my behalf, as he had done once before when I was close Prisoner; this Letter did the Merchant deliver to her Majesty, and the Dean of *Paul’s* upon my Letter went to the Council, whereby whatsoever was wrought, as soon as the Judges heard that I was brought to *Kingston*, where the Affizes were then kept, I was immediately returned unto the *White-Lion* in the Evening, before the first Day thereof. Afterward Mr. *Johnson* had the Copy of the King’s Letter sent unto him, which then appeared to be written not for me alone, but also for the rest of my Brethren the Ministers in Prison for the same Cause of Discipline; the Tenor of which Letter here followeth.

RIGHT Excellent, High and Mighty Princess, our dearest Sister and Cousin, in our heartiest manner we recommend us unto you: Hearing of the Apprehension of Mr. *Udall*, and Mr. *Cartwright*, and certain other Ministers of the Evangel within your Realm, of whose good Erudition and fruitful Travels in the Church, we hear a very credible Commendation; howsoever that their diversity from the Bishops and others of your Clergy, in matters touching them in Conscience, hath been a mean by their dilation to work them your misliking; at this present we cannot (weighing the Duty which we owe to such as are afflicted for their Conscience in that Profession) but by our most effectuous and earnest Letter interpose us at your hands, to any harder usage of them for that Cause: requesting you most earnestly, that for our Cause and Intercession it may please you to let them to be relieved of their present strait, and whatsoever further accusation or pursuit depending on that ground, respecting both their former Merit, in setting forth of the Evangel, the Simplicity of their Conscience in this Defence, which cannot well be their lett by Compulsion, and the great slander which could not fail to fall out upon their further straiting for any such occasion: which we assure us your Zeal to Religion, besides the Expectation we have of your Goodwill to pleasure us, will willingly accord to our Request, having such proofs from time to time of our like Disposition to you, in any matters which you recommend unto us. And thus, right Excellent, right High and Mighty Princess, our dear Sister and Cousin, we commit you to God's good Protection. From *Edinburgh* the 12th Day of *June*, 1591.

The just Copy of the King's Letter sent to her Majesty.

Presently upon these things fell out that wretched matter of that leud fellow *Hacket*, whereby the Adversary did take occasion so to slander the Truth, and to disgrace the Professors of the same unto her Majesty, that I thought it bootless to

sue. And so I did little till the Lord Chancellor was dead, and forgotten by such as were sorry for it; so that about *Easter* Term following, I sued for Liberty to go to Church, which was denied me, being a condemned Man: but by the Lord Treasurer's means, I got a Copy of my Indictment, which before I could not obtain.

Hereupon I getting a Pardon framed according to the Indictment, sent it with a Petition by my Wife to the Council, who referred me to the Archbishop, unto whom I both had sent divers Petitions, and dutiful Letters, and also got many of my Friends, both honourable Personages and others, to sue him, yet could not his Good-will be gotten. At last the *Turkey* Merchants having my Consent to go for a time into *Guinea* to teach their People that abide in that place, if they could procure my Liberty, sent unto him for his Consent, who promised his Good-will, so that they would be bound that I should go indeed, when I had my Liberty. But when two of the Antients of the Company went unto him for his Hand thereunto, he would not yield it, unless they would be bound not only that I should go (which they were willing unto) but also that I should tarry there, till I had her Majesty's Licence to come thence.

This Condition they could not yield unto, for that I denied to go upon any such Ground; so was their Suit, and my Hope of Liberty, at an end; saving that one Mr. *Cavell*, who had been the first beginner of it, and being to go into *Turkey* did most affect it, moved the Dean of *Paul's* in it: who thereupon wrote to my Lord Keeper, persuading him of the Convenience of that Journey for me, and my Fitness thereunto. Which Letter when he received, he did so deal with the Archbishop, as they both promis'd at their next meeting at Court to deal with her Majesty to sign my Pardon, that so I might have Liberty to go the Voyage.

But her Majesty never did sign the Pardon, and the *Turkey* Ships going away without him, *Udall* died in the *Marshalsea* Prison about the end of the Year 1592, quite heart-broken with Sorrow and Grief.

XV. *The Trial of Sir JOHN PERROT, Lord Deputy of Ireland, at Westminster, for High-Treason, April 37, 1592.*

34 Eliz.

The COMMISSIONERS were,

*The Lord Chamberlain,
The Lord Buckhurst,
Sir Robert Cecil,
Secretary Woolley,
Mr. Fortescue,
The Master of the Rolls,*

*Sir Edmund Anderson, Lord Chief
Justice of the Common-Pleas.
Justice Periam,
Justice Gawdic,
Justice Fenner,
Mr. Rockeby, one of the Masters of her
Majesty's Court of Request.*



*S*IR John Perrot being brought to the King's-Bench-Bar, accompany'd with the Lieutenant of the Tower, and Sir Henry Lee; and Proclamation for Silence being made, the Lieutenant was commanded to return his Writ of *Habeas-Corpus*.

Then was Sir John commanded to hold up his Hand. Here Sir John Perrot made low Obeysance, and desir'd he might be heard to speak before he held up his Hand.

He protested that he never had thought of Treason against her Majesty, and desir'd that the

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Witnesses might be good and sufficient: He knew well the Place whereunto he was brought, and therefore he would submit himself humbly to their Honours, and said, Sithence it was God's Will, and her Majesty's, he gave God hearty Thanks therefore.

Then was he bid to hold up his Hand again. Whereunto he answer'd, Look what is to be done; and here is as true a Man's Hand as ever came in this Place.

The Effect of the Indictment.

"That the last of January 1587, in the 30th Year of the Queen's Majesty, he the said Sir John Perrot falsely and traitorously, &c. did imagine in his heart to deprive, depose, and disinherit the Queen's most excellent Majesty from the Royal Seat, to take her Life away, to make slaughter in her Realm, to raise Rebellion in England and Ireland; and that he did procure a foreign Power to invade the two Realms.

"That one James Eustace, Viscount Baltinglas, being a false Traitor to her Majesty and the State, sent Letters of Treason from Madrid to the said Sir John Perrot by one Dennis Oroughan an Irish Priest.

"That the said Sir John sent Letters of Treason to the said Viscount Baltinglas into Spain, by the said Dennis Oroughan.

"That whereas the Queen's Majesty, in April the 27th of her Majesty's Reign, did write her Letters to the said Sir John Perrot, signifying unto him that her Pleasure was, that the said Sir John should not proceed in any Matters of Government, without the Advice of some of her Majesty's Council in Ireland, wherein she graciously advised him not to murmur, but to take the same dutifully, and in good part; notwithstanding he the said Sir John, shortly after the Receipt of the said Letters, did send for the Archbishop of Dublin, and reading the same Letters unto him, in a great fury said these words, *If she will use Men thus, she will have cold Service, and some one Day she will have need of me.*

"That in the 29th Year of the Queen's Majesty he did maintain horrible and unknown Traitors, not doing Justice upon them.

"That Pope Gregory XIII. and the King of Spain prepared an Army to invade England; at which time the said Sir John sent Letters to the King of Spain, promising him Aid and Assistance in the Army: which Letters Dennis Oroughan carry'd into Spain, and received of the said Sir John divers Sums of Money therefore.

"That Sir Bryan Orioke, a notorious false Traitor, was procured and animated by the said Sir John to move and stir up Rebellion in Ireland."

Here again Sir John desir'd to speak, and said that he was 64 Years old, and had been long imprison'd, yet very honourably used at my Lord Treasurer's, but found fault with his Lodging in the Tower; and said he was by nature Cholerick, and knew not what Imperfections his Imprisonment might work in him; and therefore if he should happen to fall into any extraordinary Speeches in that honourable Place, he craved Pardon, alledging that the same should not proceed for want of Duty or Obedience.

Then Mr. Sands, Clerk of the Crown, asked him, if he were guilty of this first Indictment.

He answer'd, clapping his Hand upon the Bar in these words; *I am not guilty of any Part of that which is laid down.*

Then was he willed to hold up his Hand again: Whereunto he said, (holding up his Hand) *What again? here is a true Man's Hand.*

The Effect of the second Indictment.

"That the 15th Day of May, in the 27th Year of the Queen, Sir John Perrot being at Dublin, received Letters from Alexander Duke of Parma, craving his Furthurance in giving Aid to the King of Spain's Power.

"That the 20th of June, in the 28th year of the Queen, he sent for Sir William Stanley to entreat and confer with him touching his traitorous Purposes; and that on the 30th of June, 28 Eliz. he talked with the said Sir William Stanley to that effect."

Then he was asked if he were guilty of this Indictment: whereunto he answered these words, viz. *Even as guilty as you are in speaking, Mr. Sands.*

Mr. Sands asked him by whom he would be tried.

I will be tried, said Sir John, by God and good Men, and I shall not remember the most of the Points.

Serj. Puckering. Then said Mr. Serjeant Puckering unto him; you shall be remembered of every matter piecemeal.

Sir John Perrot said, I pray God the Lord be not angry with these Courtes; there is a Judge in Heaven who knoweth all.

Here the Sheriff was commanded to return the Precept directed unto him for the summoning of the Jury for our Sovereign Lady the Queen, and an O-yes made that every Juror should answer to his Name.

The Names of the Jurors.

Richard Martyn Kt.	Robert Carr,
Hugh Offley Esq;	John Stone,
Christopher Read,	Bartholomew Quenye,
John Machell,	John Padge,
John Hautrey,	John Vavasour,
William Kinton,	Humfrey Wylde,
Henry Row,	Henry Goodyer,
William Meggee,	William Hichcooke,
Thomas Fowler,	Thomas Russel.
Richard Weeks,	William Paggenton,
Henry Holford,	Richard Edlyn,
John Powell,	George Millot.

Out of these twenty-four were twelve taken, whereof the Foreman was Hugh Offley Esq;

Then Mr. Sands willed Sir John to mark the Jurors well as they were called to be sworn, to see if he knew Cause of Challenge to any of them, before they were sworn between our Sovereign Lady the Queen and him.

Whereunto he answered: Woe is me that she is made a Party against me! And then he demanded of my Lord Chief Justice of the Common Pleas how many he might challenge.

The Lord Chamberlain answer'd, that they of the Bench were not to give Counsel to the Prisoner.

Then said my Lord Buckburst unto Sir John, If you have any just Cause of Challenge against any

any of them, you may challenge; if not, why should you challenge?

Then he challenged two of the Jurors, and said, Lord send me Justice, and for God's sake let me have good Men; and wished he might have Men of his own sort, and such as knew Service, and feared God; and desired that none might go upon him that had any suit in Law with Sir *Thomas Perrot* his Son; and wished for more good Aldermen: yet if they that were sworn feared God, he cared not.

Here the Indictment was read unto the Jury, and after that an O-yes made, to know if any Man were there to give Evidence against the Prisoner at the Bar in behalf of her Majesty.

Then Serjeant *Puckering* rehearsed to the Jury the principal Points contained in the Indictment aforesaid. But before he handled the same, he opened unto the Jury, that the Original of his Treasons proceeded from the Imagination of his Heart; which Imagination was in it self High-Treason, albeit the same proceeded not to any overt Fact: and the Heart being possessed with the abundance of his traitorous Imagination, and not being able to contain it self, burst forth in vile and traitorous Speeches, and from thence to horrible and heinous Actions; for Mr. Serjeant said, *Ex abundantia Cordis Os loquitur.*

Then Sir *John* pray'd Serjeant *Puckering* to lay aside words, and to proceed to the matter of the Indictment. Whereunto he answered, he would proceed by degrees; but would first begin with his contemptuous Words, which contained in them High-Treason.

Then Serjeant *Puckering* shewed, That Sir *Nicholas Bagnol*, Marshall of Ireland, being with Sir *John Perrot* in his House, and entering in Communication together, and falling into hot words, Sir *John* brake forth into these Speeches, *If it were not for yonder pild and paltry Sword that lieth in the Window, I would not brook these Comparisons:* Speaking of her Majesty's Sword of Justice carried before him.

To this he answered, That he termed the same after that sort, because the Scabbard of the same Sword was old and worn; and within one Week after he caused a new Scabbard to be made. And then falling from that Point to other idle Discourse, my Lord of *Buckhurst* told him, he was before a Bench very wise and learned, and before a wise Jury; and therefore if he spoke not to purpose it would but hurt his Cause, and give them all occasion to think that he had nothing to speak in his own Defence: for if he had, he would not go from the same, and follow other frivolous and unnecessary matters.

Then it was shewed that the Queen's Majesty having directed her Letters of Commandment to Sir *John Perrot* in the behalf of Sir *Tibert Butler*, for the placing of the said Sir *Tibert Butler* in the Barony of *Kaire*, he the said Sir *John* being moved therein by the said Sir *Tibert Butler*, at the Council-Table in the Castle of *Dublin*, used these Speeches, *Stick not so much upon the Queen's Letters of Commandment, for she may command what she will, but we will do what we list.*

To this matter Sir *John* answered; he remembered not what Speeches he then used, and said it might be he used some Speeches cholerickly, as naturally he used to do, for it was his Disposition: but notwithstanding any Speeches whatsoever, yet he said he executed her Majesty's Commandment

therein; and added, that he did always from time to time execute her Majesty's Commandments or Warrants in all things whatsoever.

Then said my Lord Chamberlain, you are not charged with not executing her Majesty's Commandment, but with contemptuous Speeches used against her Majesty in the matter.

Then Sir *John* going from the matter, and speaking more than was needful, my Lord *Anderson* willed him to have patience to hear all, and then to answer all.

Then it was shewed, that Sir *John* calling a Parliament at *Dublin*, among other matters he moved to suppress the Cathedral Church of St. *Patrick* in Ireland; and her Majesty then sending Letters to the contrary, he used these words with a stern Countenance, *Nay, God's Wounds, I think it strange she should use me thus.* With these words the Bishop of *Meath* was moved, and found fault with his undutiful demeanour; and said, he spoke as tho' the Kingdom were his own, and not the Queen's.

To this matter Sir *John* answered by way of Excuse, and said, that the Archbishop of *Dublin* was his mortal Enemy, and that the Reason why he was moved to suppress the said Cathedral Church, was to have an University erected thereupon; but, he said he was withstood by the said Archbishop, because he and his Children received by the said Cathedral Church 800 Marks a year: And he said further, that the said Archbishop bare him the greater Malice, for that the Queen's Majesty sending her Letters unto him for the discharging of many idle and unnecessary Pensions, he discharged among the rest one of the Archbishop's Sons.

It was then declared, that whereas the Office of the Clerk of the Exchequer was void, and that Mr. *Errington* had made humble suit unto her Majesty to be preferred to that Office, in consideration of his good and dutiful Service; her Majesty directing her Letters to Sir *John* for admitting the said Mr. *Errington* into the said Office, he the said Sir *John Perrot* used these undutiful Speeches upon the Receipt of the said Letters, *This fiddling Woman troubles me out of measure; God's Wounds he shall not have the Office, I will give it to Sir Thomas Williams.* This was proved by the Oath of *Philip Williams*.

Against *Philip Williams* Sir *John* took exceptions; affirming the said *Williams* to be his mortal Enemy; and said he was a naughty leud Man, of no Credit, and had abused my Lord Treasurer in a Letter; for the which he said, he did beat him in his Chamber: And further he said, he did write to the Master of the Rolls, and to Mr. *Powle*, touching the leud and undutiful behaviour of the said *Williams*.

Then it was shewed that Sir *John Perrot* having received Letters from her Majesty, wherein she checked him for divers Complaints, having read the same Letter, he used these undutiful Speeches; *It is not safe for her Majesty to break such unkind and sour Bread to her Servants;* he being Lord Deputy, and a Servant of Trust. This was spoken to *Philip Williams*.

Afterwards *Philip Williams* being his Secretary writing to her Majesty in Sir *John Perrot's* Name, among other things he said, *he would be sacrificed for her;* which words Sir *John* reading, bad *Williams* put them out; saying, *he had little cause to be sacrificed for her:* adding, *that he could not forget her*

her ever since the time he could not get Justice of her, against some of her Guard, for murdering some of his Men.

When it was bruited abroad that the Spanish Fleet was in preparation for the invading of England, Sir John entering into Communication with Philip Williams touching the said Army, Philip Williams said, *he hoped God would bless us for her Majesty's sake*: whereunto Sir John Perrot answered, *God's Wounds, and why for her sake? never the more for her sake*. This was proved by the Deposition of Williams.

Here Sir John called for Williams, that they might speak face to face: whereunto Mr. * Attorney said, that Williams was in the Tower in the same State that he was, and was to answer to matters of his Treason as well as he.

Then it was shewed, how the Queen sent him a Letter, wherein she wrote very favourably unto him, advising him to look well unto his Charge, about the time the Spaniards should come: whereupon he spake these words; *Oh silly Woman, now she shall not curb me, she shall not rule me; now God's Lady dear, I shall be her white Boy now again; doth she think to rule me now?*

Shortly after John Garland brought a Letter from her Majesty to Sir John Perrot; whereat he conceived great discontentment, inasmuch that he broke forth into these undutiful Terms following, *God's Wounds, this it is to serve a base Bastard Piss-kitchen Woman; if I had served any Prince in Christendom, I had not been so dealt withal*. Here he prayed the Devil might take him Body and Soul, if ever he uttered such words, and exclaimed against Garland. Sir John talking with Nathaniel Dillan Clerk of the Council of Ireland, asked him this Question, viz. *If her Majesty should be distressed, dost not thou think that I am the fittest Man in England to have the keeping of her Body?* This was verified by the Oath of Nathaniel Dillan.

Talking with the Archbishop of Dublin in his Chamber touching the coming of the Spaniards, Sir John said, *God's Wounds, let them do in England what they can, we shall do well enough in Ireland; if her Majesty were gone, we should do here in Ireland better than they in England should do*. This was justified by the Oath of the Archbishop of Dublin.

Whereunto he said, he renounced God's Mercy if he ever spake any such words.

And all this, Serjeant Puckering said, did declare his malice against her Majesty.

My Lord Buckhurst told him that those Speeches did shew a disloyal mind.

Here Sir John exclaimed against the Witnesses, calling them leud and wicked Men, and saying he was bought and sold.

When Sir John Perrot said, that he wrote his Letters to her Majesty, desiring to be revoked and called home, and made suit to Sir Francis Walsingham to that effect; Mr. Popham told him, that when he saw him curbed, as himself termed it, by the Council, and that he could do nothing without their privity; then he sought to come away, with an intent to make himself a Ruler in Wales.

Here they proceeded to the Treasons.

Mr. Attorney declared that Doctor Craugh being a known Traitor, and a Man that had maintained Religion from time to time, and had se-

duced many People in Ireland, and was a dangerous Instrument to be suffered in those Parts; and Sir John being given hereof to understand, did not use that diligence in the apprehending of him, as became his place: for after he had given out Warrants for the seeking of him, then he gave out a countermand they should use all diligence in apprehending of him in all places, except in the white Knights Country, where Sir John knew the said Craugh to be; which did manifestly shew he would not have him taken.

My Lord Buckhurst said to Sir John, that he granted Warrants to take him where he was not.

Sir John said, there was a God that knew all; marvelling that he having known Religion these forty-six Years, should be charged with favouring of Priests and Massmongers.

Mr. Attorney willed him not to stand upon Religion, for then said he we shall prove you irreligious. Will any Man of Religion seek to have Men murdered? Will any Man of Religion stab a Man in the Cheek, and after bring him to the Fire to be roasted, to make him confess that he knoweth not, and afterwards hang him by martial Law?

Mr. Attorney, to prove Sir John of no Religion, further shewed, that Sir John being in his Chamber at the Castle of Dublin looked out at the Window, and espied Sir Dennys Oroughan, who knew all his secret Treasons, and willed his Chamberlain to call unto him Stephen Seager; who being come, Sir John commanded away his Chamberlain, and locked the Chamber, and willed Seager to look out at the Window, and said, *Seest thou not one beneath in a black Mantle?* Seager said he saw none there; Sir John said there is one there: you see how I am crost by some of the Council here, and he is going to the North with Letters from some of the Council to move them against me; I would have thee take these Letters from him, kill him, cast him aside, and bring those Letters to me. Stephen Seager hereunto answered, that he would rob him of the Letters, but he would not kill him with his hands; or if he would give Commandment to hang him by martial Law, he would see it done. Whereupon Sir John said, *Go thy ways, thou art a paltry Fellow, I did it but to prove thee*. This was proved by the Oath of Seager.

Sir John then called for Seager, to speak with him Face to Face, who justified all that he had said.

My Lord Chamberlain said, now you see you bad him kill one.

Then said Sir John, because he hath sworn it I will not reprove him; it may be I spake such words, but I remember it not.

Mr. Attorney said, we have alledged these matters against you, to shew you to be a Man of no Religion.

Whereat Sir John stormed, and was angry; saying, they went about not only to make him a Traitor to his Prince, but a Traitor to God, which he said they should never do.

* Mr. Solicitor told him that all the Papists desired his Government there.

Mr. Attorney then declared further, that one Richard Morrice, a Priest, a notorious Traitor, being a Passer from Ireland to Viscount Balinglas in Spain, and from thence to Rome, to confer of Rebellions and Invasions for England and Ireland, Sir John Perrot knowing the said Morrice to be a most dangerous Person to the State, would not give

give Order for the taking of the said *Morrice*, as he should have done: but the Bishop of *Cashell* caused him to be apprehended of his own Authority, and sent him to Mr. *Poor* the Sheriff, to be sent to the Castle of *Dublin*; whereupon the Friends of the said *Morrice* told them that *Morrice* had better Friends than all they had; and shortly after *Morrice* was discharged, and never called more in question. And all this was affirmed by the Oath of the Archbishop of *Cashell*, and of the said *Poor*, *vivâ voce*.

Then said Mr. *Attorney*, that *Halie* being a Man that conversed with *Craugh*, and dealt with him in his Treasons, told him that *Poor* had a Warrant to apprehend him and others: Whereupon he told him, that he could be better trusted than twenty such as *Poor* was that should take him; presuming upon the Favour of Sir *John Perrot*.

The Archbishop of *Cashell* did complain to Sir *John*, that the said *Halie* was a notorious Traitor, and thereupon delivered to Sir *John* Articles against him and others, and desired Sir *John* to grant him a Commission for the apprehending of them; praying him in the mean time to keep the said Articles secret until they were apprehended: Notwithstanding, before they could be apprehended, within three days, the self-same Articles were taken from one *Patrick Young*, being a Partner with the said *Halie* in his Treasons; and thereupon they all escaped.

Mr. *Sollicitor* then said unto the Jury, You see *Halie* was accused of Treasons, and the Accusations being delivered to Sir *John* in secret, he sent them to *Halie* before he could be apprehended, which was plain Treason. And this was verified by the Bishop of *Cashell*'s Oath.

The Lord *Chamberlain* said, you ought to have acquainted no body with the Cause, until they had been apprehended.

Sir *John* protested, and took God to his Record, he was ignorant what was become of him.

Then Mr. *Attorney* turning to the Jury said, By this which hath been proved, you may see how he hath always been a Confederate and Maintainer of notable Traitors against her Majesty; namely these three, *Craugh*, *Morrice*, and *Halie*, with others their Confederates.

At what time a Rebellion was raised in the North part of *Ireland*, divers of the said Rebels made Rhymes of her Majesty, wherein they shewed themselves Rebels and Traitors, as concerning her Birth; Traitors as concerning her Person; and Traitors to her Royal Dignity: which Rhymes came to the hands of Sir *Richard Bingham*, and the Rhymers taken and committed to Prison, and one of the said Rhymers sent to Sir *John Perrot* by *Woodhouse*. Sir *Richard Bingham* sent them to Sir *John Perrot*, certifying him what he had done, and prayed Sir *John Perrot* to write his pleasure what should be done with them: whereupon Sir *John* sent him word to discharge them all. Howbeit Sir *Richard* detained the chiefest of them in Prison; but Sir *John* afterward sent a special Warrant to the said Sir *Richard* to discharge him, taking Bonds of him for his Appearance by a Day: All which he confessed to be true, saying, that by virtue of his Patent he might pardon them. This was proved to be true by *Marbury* and *Woodhouse*, *vivâ voce*.

Whereunto Mr. *Attorney* answered, that he could pardon no Traitors to her Majesty's Person, but

ought rather to have proceeded in Justice against them. And here he willed the Jury to consider upon this Point.

Sir *John* then said to Mr. *Attorney*, By God I never saw such a Man since I was born. I pray you sit down and let me speak; and so he turned his talk to *Woodhouse*, and said, he had spoiled the North part of *Ireland*; with other frivolous Speeches.

Sir *Brian Orurke* a notable Traitor, and executed of late at *Tyburn*, about that time, in a *Christmas*, disposing himself to Villany, took down a Picture, and did write *Elizabeth* thereupon; and using the same in most contemptuous and despiteful manner, tied the same to a Horse-tail, and he with others dragged it in the dirt, and hacked it with Gallow-glais Axes, signifying how they would have used her Majesty if they had her in their power. This traitorous Act being made known to Sir *John Perrot*, he would not give Order for the apprehending of the said *Orurke*, to do Justice upon him for so horrible a Treason; whereas he might have had him if he had sent but his Horse-boy for him, and after he was known to be in Company with him. To this he said little.

Sir *Dennis Oroughan* being called to testify against Sir *John Perrot*, and the Book being offered him to swear, Sir *John* said it was no matter whether he were sworn or not, for his Word and his Oath were all one; for there was neither Truth nor Honesty in him.

My Lord *Buckhurst* said he must be sworn, for it was for the Queen.

The said *Dennis Oroughan* told Mr. *Poor*, that he had been in *Spain*, and had brought Letters from Viscount *Baltinglass* to *Feugh Mackbeugh* in *Ireland*, and divers others; and said that he had News to tell the Lord Deputy, that would save the Queen one hundred thousand Pounds. *Poor* discovered this to Sir *John Perrot*, and *Dennis* was committed to Prison in the Castle of *Dublin*.

Sir *John* knowing that *Dennis* was in Prison, sent for him to come unto his Bed-chamber, where he had Conference with him, and told Sir *John* he had brought him a Letter from Viscount *Baltinglass* in *Spain*.

Sir *John* demanding of *Dennis* why he gave him not the Letter at his first coming out of *Spain*? he answered, for fear of being executed, as one Doctor *Halie* late was: and he sent a Letter and a Token to his Wife, that she should bring him the same which was in a Box; which Letter and Box *Margaret Leonard* Wife of Sir *Dennis* did shortly after deliver to Sir *John Perrot* in his Bed-chamber. For Proof whereof one *Rice Thomas*, and *Margaret Leonard* both deposed, that the said Letter was delivered to Sir *John Perrot* as declared. *Feugh Mackbeugh*'s Wife affirmed, that *Dennis* brought her Husband a Letter from *Baltinglass* in *Spain*.

Now *Dennis* being known to have had Conference with a notable Traitor in *Spain*, and to bring two notable Traitors into *Ireland*, and committed to the Castle for Treason, was nevertheless set at liberty in the Castle, and had access to Sir *John* early; and they sat for a long time together, and he had his meat and drink in the Porter's Lodge in the withdrawing Chamber, next to his Bed-chamber, and other places, and commandment to have Wine and whatsoever he wanted, and had a private way to his Bed-chamber. This did Sir

Dennis

Dennis testify himself; to whom *Sir John* said, A mischief on thee, I pray God! Woe be to the time that ever thou wert born, or that ever I saw thee! One *John London* also justified, that the said *Dennis* had the favour and maintenance of *Sir John Perrot* for half a year together.

Here *Sir John Perrot* being pressed by the Queen's Counsel, said unto them, No one Man can answer such three grave learned Men as you are, you cloy me now I cannot speak.

Then said my Lord *Buckhurst* unto him, Truth will answer it self, and Innocency defend it self.

Then my Lord *Chamberlain* said, That never was any Man that came to that place dealt withal so favourably as he was: And greater Men than he have not had that favour, as to bring their Writings and Letters with them.

Then *Sir John* said, He thanked God and the Nurse of Mercy, the Queen's Majesty, whom he called the Handmaid of *Jesus*; and said, he always carried so reverend an opinion of her, that had she not been a Queen, he would have made her one, if it had lain in his power.

Then was touched the extreme Malice *Sir John* shewed against the *Cavener*: and the better to execute his purpose, *Sir John* found means that the *Cavener* should offend the Law, by making an escape out of Prison; and so being escaped, was after taken and hanged.

This matter being urged against *Sir John*, he said, You win Mens Lives away with words.

My Lord *Chamberlain* said, I fear me the *Cavener's* Blood will light upon you.

Now *Sir John Perrot* began to discredit the Testimony of *Dennis* the Priest, saying, he had changed his Religion five times in six years; and he did counterfeit himself a regish Bishop.

The Queen's Attorney then said, If he were so leud a Man of his Life, I marvel you would commerce with him, and repose your self so much upon his honesty.

A Man of no Religion can be no Witness, said *Sir John*; he is a Sorcerer and a Witch.

To which he was answered, If he were so defamed, why did you favour him so much? how many Pardons have you given him? It was said he had given him two.

Sir John proceeded against *Sir Dennis*, and said he had counterfeited his Hand above eight times; was a common Drunkard, a common Lyar, and had been forsworn a thousand times.

The Attorney then said, If he were the worst Man in the world, yet was he worse for *Sir John Perrot*.

Dennis was then called again, and said, that *Sir John* delivered him two Letters to carry to the King of *Spain*, signifying that he would be a Mean to help him to *England* and *Ireland*, so he might have *Wales*: but he would have it as the Princes of *Germany* have their Dukedoms, that is *jure regio*, to be a Prince and Lord himself. and not to depend on any other. And herewithal he delivered to the said *Dennis* fifty Pounds, and so the said *Dennis* departed to *Rosse*.

The said *Dennis* did farther swear, that *Sir John Perrot* and *Sir Brian Orurke* were Confederates together in the Parliament; and that each of them swore to other to further the King of *Spain* in the Action of *England*.

Here *Sir John Perrot* waxed hot against *Sir Dennis*, and said, he was a lousy Villain, and a Rogue, and had the Pox upon him.

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One *Francis White*, and others of *Rosse*, said, that true it was that the said *Dennis* was at *Rosse*, ready to go for *Spain*, and came to him to change Silver into Gold; but after fearing and suspecting some body in the Ship, he would not go himself, but procured one *Davie* to carry the said Letters into *Spain*, with great Charge for the safe delivery thereof, and gave him five pounds for his pains. It was further declared, that *Sir John* having Conference with *Sir William Stanley* in *Ireland*, *Sir John* wished him to revolt, assuring him that the *Irishmen* would live and die with him.

Sir William Stanley going from *Ireland*, to have 1600 Men for the *Low-Countries*, *Feugh Mackbeugh*, being a known Traitor, brought him certain Men, and bad his Men do as *Sir William Stanley* would have them to do, whether it were right or wrong; and thereupon they shook hands and parted.

To this *Sir John Perrot* said, if *Stanley* be a Traitor, what is that to me?

It was proved that *Sir Thomas Williams* sent Letters from *Ireland* into *England*, to *Sir John Perrot*, with strict charge given to the Bearer that he should deliver them safely to his own hands; and made them to be sewed to the Lining of his Doublet within his Bosom: which Letters were delivered to *Sir John Perrot* at *York House*.

John Burgh of *Abson* had Conference with *Sir William Stanley* at the *Groine*, who amongst other Speeches asked him what places in *England* were fittest for Landing, if the King of *Spain* should invade *England* again? *Burgh* answered, *Portsmouth*. *Sir William Stanley* disliked of that, saying he knew nothing, but rather thought *Milford-haven* the fittest place; affirming they should find better Friends in *Wales* than the Queen had, and some of them were near the Queen.

Letters were sent from the Duke of *Parma* to *Sir John Perrot* by one *Browne*, and an Answer from the said *Sir John* to the said Duke by the said *Browne*, to whom the Duke gave a Bark. It was likewise proved that he sent Letters to *Sir William Stanley*.

When *Sir John Perrot* was to come to *England*, he went about to get a Pardon for all his Actions before he would come over, wherein he shewed his guilty Conscience.

Here the Queen's learned Counsel prayed the Jury to consider well of that which had been said, and willed them to go together.

Then *Sir John Perrot* willed them to consider their Charge, and have a Conscience in the matter; and to remember that his Blood would be required at their hands, if they dealt further than their Conscience did warrant them.

Then the Jury departed from the Bar, and within three quarters of an hour returned to the Bar; and being demanded whether the Prisoner were guilty or not of the several Treasons comprised in the Indictment, they answered Guilty.

Then Serjeant *Puckering* in the Queen's Name began to pray Judgment; and *Sir John Perrot* desired most humbly that he might speak with some of their Honours before Sentence should be pronounced.

Whereunto they condescended, and commanded he should be brought to talk with them in the *Chancery*; where after some Communication had among them, they all repaired to their places, and *Sir John* came to the Court of *King's-Bench* be-

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ing

ing with them, and Judgment was stayed, until her Majesty's Pleasure were further known.

Then was the Court adjourned to the *Tuesday* next, being the second of *May*; and so the Court ended, and every Man said, *God save the Queen.*

For the better understanding of the aforefaid Arraignment of Sir *John Perrot* and the Judgment that followeth, it is to be known that at the time of his Arraignment, being the 27th of *April*, Anno 34 *Eliz.* Mr. *Puckering* was the Queen's Serjeant at Law, Mr. *Popham* the Attorney General, and Mr. *Egerton* Solicitor.

But before the day he was brought to receive Judgment, her Majesty's said learned Counsel were removed as followeth; that is to say, Mr. *Puckering* was made Lord Keeper of the great Seal of *England*; Mr. *Popham* was made Lord Chief Justice of the *Queen's-Bench*, and Mr. *Egerton* of Solicitor was made Attorney General.

This making and removing of Officers was done at the Court of *Greenwich* on *Saturday* the 28th of *May* 1592.

My Lord Keeper went to *Westminster* to take his Oath very honourably, with Lords, Knights and Gentlemen, on *Saturday* the 4th of *June* 1592. Anno *Eliz.* 34. And that Day took his Oath, and sat first in the Chancery. On *Wednesday* following he first sat in the Starchamber.

On *Friday* the 26th of *June* Sir *John Perrot* appeared before the Commissioners; who were,

The Lord Chamberlain,	The Lord Chief Justice of the <i>Common-Pleas</i> ,
The Lord <i>Buckhurst</i> ,	Justice <i>Gawdie</i> ,
Sir <i>Robert Cecil</i> ,	Justice <i>Pennel</i> ,
Secretary <i>Woolley</i> ,	Mr. <i>Rookebie</i> one of the
Mr. <i>Fortescue</i> ,	Masters of the Court of Requests.

First the said Sir *John Perrot* that Morning was brought in a Coach from the *Tower* to the *Old Swan*, and thence conveyed by Water to *Westminster-bridge*.

Between the Hours of eight and nine of the Clock he landed at *Westminster-bridge*, and was brought into *Westminster-Hall*, being accompanied with Mr. *Crooke*, Son in Law to the Lieutenant of the *Tower*, on his right Hand, and Mr. *Blunt*, Son to the Lieutenant on his left Hand, and being strongly guarded by divers of the Yeomen of the Guard, with Halberds, and the Lieutenant's Men with Weapons all round about him: and in that fort he was brought up to the *Queen's-Bench* Bar, where he stood for a quarter of an hour bare-headed, expecting the coming of the Commissioners. But Mr. *Rookebie* one of the Commissioners was set, who had taken his place before the coming of Sir *John Perrot* into the Hall, and tarried for the coming of the rest of his Associates.

The said Sir *John Perrot* was clothed in a Doublet and Hose of black Sattin plain, and a Gown of wrought Velvet furred, and a square or flat crowned black felt Hat, with a small Band, and a plain white Ruff.

The said Mr. *Crooke*, and Mr. *Blunt* supplied the room of the Lieutenant, for that he was sick, and could not be there in Person.

Divers of the Queen's Commissioners, and her learned Counsel being come to the Hall, staid un-

til the coming of the Lord Chamberlain, at whose coming they all took their places and sat in Judgment.

Then an O yes was made, and the Lieutenant of the *Tower* called to return his Writ, or Warrant directed unto him for the bringing of the Prisoner forth.

Then Mr. *Crooke* having the said Warrant, which was written in Parchment, and having four or five Seals of red Wax annexed to the same by slit Labels, delivered in the same to the Court; and humbly craved that the Lieutenant might be excused for his absence, and declared the cause thereof.

Whereupon Mr. *Sands*, Clerk of the Crown, taking the said Writ, and turning his Face to the Lord Chamberlain, read the return thereof, being in Latin, the common and ordinary Return of an *Habeas Corpus*.

Then Serjeant *Snagg* for the Queen, being one of her Majesty's learned Counsel, moved the Lords to this effect, That whereas Sir *John Perrot* was before that time indicted of Treason and arraigned, pleaded not Guilty, and put himself on the Country, who found him guilty of High-Treason, therefore he prayed, on her Majesty's behalf, that Judgment might be given accordingly.

Then *Sands*, Clerk of the Crown, spake unto Sir *John*, saying, Thou hast been heretofore indicted of High-Treason by the Name of *John Perrot* late of *London* Knight, and being thereupon arraigned, thereunto didst plead not Guilty; and didst put thy self upon the Country, who found thee guilty of High-Treason: what hast thou now to say for thy self, why thou shouldst not have Judgment to die?

Sir *John* making low Obeisance, answered; First whether he might be permitted to take any Exception against the Indictment, and if he might, then he requested he might be thereunto permitted.

To this the Lord Chief Justice *Anderson* answered, he might not be permitted.

Then Sir *John* made a protestation of a quarter of an hour long, wherein he included the Mercy of her Majesty toward him, extolling her to be the only mirror of Mercy of all the Princes in the World; and said, God forbid that ever his Heart should imagine Treason or utter such unreverend Speeches of her sacred Majesty, who had exalted him so highly from the estate of a Gentleman, and of whose Bounty and gracious Favour he had so liberally tasted; but complained of the hard and false dealings of the Witnesses towards him in these Causes, who he said, falsely, maliciously, and perjuriously accused him, but said he found no fault in the Proceedings of the Law, but that he had good and orderly Proceeding therein: and then again extolling her Majesty's great Mercy and Favour towards him, protested his Innocency in the Cause to be such, that he forsook God's Mercy and his Saviour's Merits, if ever he meant any Treason or Treachery towards that gracious Queen *Elizabeth*; and said, that he knew her Majesty's great Clemency and Mercy towards him proceeded from her Majesty's own Heart, by the mere Providence of God, who knew his Innocence in this Cause, in staying him so long from Judgment, which he affirmed to be now six times; especially after such heinous matters being proved against him, but, as he said, most falsely and untrue.

Whereupon

Whereupon my Lord Chamberlain conceiving these Words to tend, that her Majesty had so long deferred Judgment, being persuaded thereunto of his Innocency in the Fact, and that her Majesty was persuaded that he had been hardly dealt withal, and unworthily condemned; wherefore my Lord Chamberlain said, he was much to blame to use any such Speeches to that end or purpose; and said, That the conceit of his Innocency was not the cause her Majesty deferred his Judgment so long; and used very vehement Speeches against the said Sir *John Perrot* in that point, saying his Treasons were most manifest and apparent, and for his Trial he received more favour than any other Traitor that ever he saw, and there were more Witnesses of his own Men and others than ever he saw against any other Traitor.

Whereupon Sir *John* said, I pray your Lordship interrupt me not: for the Lord Chamberlain began these Speeches in the midst of Sir *John's* matter.

Then said my Lord Chamberlain, you must be interrupted in this Point; and proceeded more vehement and earnest against him than before.

Sir *John Perrot* pray'd his Lordship not to misconstrue his meaning, and said, he meant no such matter touching her Majesty's conceit of his hard usage, as his Lordship took his words to be; for, said he, I can recite my words again, which in effect were, that her Majesty being the only Prince of Mercy, had dealt with him most graciously, in forbearing thus long with him for his Judgment.

Mr. *Egerton*, now Attorney, then stood up, and directing his Speeches to my Lord Chamberlain and the rest of the Bench, said, he had thought to have moved their Lordships touching Sir *John Perrot's* Speeches in that point, which, as he said, were by protesting his Innocency to seduce and deceive the Audience to think him innocent, and not guilty of Treason, and that he had been injuriously condemned; whereas it was most manifest that he was most justly condemned of most heinous Treasons; and that in his Trial he received most favourable hearing.

Whereunto Sir *John Perrot* replied and said, Mr. Attorney, you did me wrong now, as you did me before.

I never did you wrong, said Mr. Attorney.

You did me wrong, said Sir *John*.

Instance wherein I did you wrong, said Mr. Attorney.

You did me wrong, said Sir *John*.

I never did you wrong, said Mr. Attorney.

All these Speeches were spoken with great vehemency each to the other.

My Lord *Buckhurst* directed his Speeches towards Sir *John* to the like effect, touching his Guiltiness and Trial, as my Lord Chamberlain had said before; adding further, That whereas he went about to persuade the Audience, that the Cause which moved her Majesty to defer his Judgment, was her conceit of some hard Proceeding against him at his Arraignment, which was not the Cause indeed, that therein he did injury to the Judge, Jury and Witnesses; and said it was very evilly done of him, to utter any Speeches to any such end: saying further, that my Lord himself had been at and upon the Trial of divers Traitors before that time, far Sir *John's* Betters, and said he had seen divers Traitors condemned of Treason upon a tenth part of the Evidence that was

against him, and yet justly condemned of Treason; and you Sir *John* are condemned justly of a Mass of Treasons; and the said Lord said, in his Conscience he thought him guilty of most heinous Treasons, and that he was worthily condemned: and he said also, that divers and sundry Witnesses very sufficient, had proved Treason against him most manifest; and said withal, Sir *John*, would you have all these, being so many in number, as testified against you, to be all perjured, and you only believed? No, no, it is not possible to be true, neither will any Man believe it, Sir *John*.

My Lord Chamberlain spake again and said, There had been thirty Witnesses produced against him at his Arraignment, who proved Treason against him; and that he was a Traitor worthily condemned of Treason; and said, he never saw any Traitor have such indifferent Trial, and such sufficient Proofs produced against him: adding further, that he might speak his Will, but no Man would believe him; and that he had spoken much already, but not a true word of all he spake.

Then Sir *John* alledged that the Matter was set forward and followed by his Enemies in Ireland, and that he was condemned by Irish Witnesses all, and that no one English Witness had proved Treason against him.

My Lord *Buckhurst* said, He had both Irish and English Witnesses, and those his own Men.

Sir *John* said, it was more than he knew.

Sands said, *Philip Williams* was an Englishman.

Sir *John Perrot* said, He proved no Treason: and further he said, That the Irish Witnesses had no respect of an Oath; and that for a small value, a Man might procure a number to swear any thing. And for proof thereof, he appealed to some of the Bench that had been in Ireland, and threw his Hand towards Mr *Rookeby*, that they knew the same to be true; he also said, that God would plague the Prosecutors of this Cause against him for their corrupt dealing therein.

He also, with great protestation in the midst of his Speeches, utterly denied that ever he intended or meant to murder any Man, as he was falsely accused; and said, that now lately he had found among his Writings a Letter of that wicked fellow's that accused him thereof, *Stephen Seager*, and said he had that Letter about him to prove his Testimony false; and said that that Matter grieved him more than any other Matter. He also with great protestation denied that he was ever a Papist in Heart or Soul, or ever favoured any of them, but was of a sound Religion these 45 Years, ever since the second Year of King *Edward*; and for trial thereof, he referred himself to divers there present that were old Parliament-Men of his Speeches touching Religion in divers Parliaments.

My Lord Chamberlain answered him, That he was not charged for murdering or intending to murder any Person, altho' the same was proved to his face by his own Man.

Sir *John* said; Altho' the same was not objected to his Charge, it was laid open against him to make him infamous to the World, which grieved him most of all; and said, that *Seager* in the end denied it again.

My Lord Chamberlain said, he denied it not, but justified it to his face.

Sir *John* said, that *Seager* said Sir *John* told him that he did it but to prove him what he would do.

Then my Lord *Anderson*, Chief Justice of the Common Pleas, asked him whether he had any thing to say in Arrest of Judgment?

Sir *John* answered, Seeing it pleased God and the Queen he should come to that pass, he had nothing to say, but humbly submitted himself to the Law and their Lordships.

My Lord *Anderson* then asked if he had the Queen's Pardon? Then he said he had no Pardon.

Then my Lord *Anderson* proceeding to pronounce Judgment, began with a long Discourse, reciting divers good Blessings of God upon this Realm, namely the establishing of true Religion, and to be governed with so gracious a Prince, and many other good Blessings of God bestowed upon us; yet notwithstanding, divers wicked and traitorous Persons, discontented with the State, had practised divers and sundry Treasons, which by the great and mighty Providence of God, had been from time to time revealed. And omitting divers foreign Treasons, many Treasons had been practised here at home; and said, That he himself had been at the Arraignment of divers, as namely of *Babington*, *Abington*, with others; adding, that the Treasons of Sir *John Perrot* far surpassed them all, most wickedly conspiring her Majesty's Death and Deprivation, and Invasion of this Realm by foreign Enemies, and taking in the *Spaniards* to the Destruction of so many thousands of good and natural Subjects. Lord *Anderson* contented with the two other Lords, that he was worthily and justly condemned of Treason, of good and sufficient Proof; and said, that at his Arraignment he had Indifferency with Favour, and commended the Goodness and Substantialness of the Jury that tried him at his Arraignment. And then he proceeded to Judgment, which was by him pronounced to this effect:

That he should be carried by the Lieutenant of the Tower, to the Tower, which was the place from whence he came, and from thence to be drawn upon a Hurdle thro' the City of *London* to the place of Execution, and there to be hanged, and to be cut down alive, and his Bowels and Privy-Members to be cut off, and cast in the Fire in his sight, his Head to be cut off, and his Body to be cut in four quarters, to be disposed at the Queen's pleasure, and God have Mercy upon thee.

Then said Sir *John*, Seeing it pleased God and the Queen that he should be thus judged, his Life stood in her Majesty's merciful Hands, whose Life he wished, and prayed God that it might be three times, yea five times as long as she hath lived already; with divers other good and godly Wishes to her Majesty: and he prayed God that among her Subjects the innocent Lambs might be known from the scabbed Goats; and if the living God who knew his Innocency would put it into her Princely Heart to be merciful unto him for his Life, that he would, as always heretofore he did, serve her Majesty most faithfully against her malicious Enemies; yea and to stop the mouth of a Cannon, and fight against the Dogs the *Spaniards*; and said he knew her Majesty to be the Fountain of Mercy, and wished that utter Destruction might ensue to him and his Progeny, if ever he meant Treason against Queen *Elizabeth*: which very words he uttered and wished divers times before and after, and said that shortly God doubtless would make manifest his Innocency, and that to her Majesty and the World.

He also said, that he wished not now to live, by reason of his Infamy in his Country, and that his Name and Blood was corrupted, which had been of antient continuance, and never before that time spotted: and said, Wo be unto me that am the first of my House and Name that ever was attainted or suspected, and shook his Hand: and having a Carnation in his Hand, he said, I care not for Death the value of this Flower, I fear it not; and wished that he had never offended God more than he had offended the Queen's Majesty. Which Words he pronounced contrary at the first, but presently reformed them.

Then he declared he had certain Petitions, which he humbly desired their Lordships to move her Majesty in on his behalf.

The first Petition was, That it would please her Majesty of her abundant Mercy to pardon his Life, that he might have a better Room, for his Lodging was a short Chamber only room for his Bed and a Table, and that he never went out of Doors, nor had any Air to comfort him.

To this my Lord *Chamberlain* answered, that the Room was such as was fit for such a Man as he was.

The second Petition was, that he might have a Preacher appointed unto him, and that he might be permitted to receive the Sacrament, which he said he did not since his Commitment to the Tower, but said he received the same in my Lord Treasurer's House.

To this Petition my Lord *Chamberlain* answered, that he never heard that he desired or wished any such thing before, which if he had, it might have been granted him. Sir *John Perrot* said, that he had requested the Lieutenant for the same twenty times; and said, here is a Man that knoweth the same, meaning and pointing at Mr. *Crooke*, standing next him on his Right Hand: which thing Mr. *Crooke* voluntarily and without asking disavowed; and said he knew no such thing. Then said Sir *John*, Mr. Lieutenant well knoweth it, and will confess the same.

My Lord *Chamberlain* said, he should have his Petition herein granted: And that they, the Justices and Commissioners, had Authority to grant the same without moving her Majesty therein.

The third Petition was, that if he should suffer Death, that then their Lordships would be humble Suitors to her Majesty, that seeing he was a Gentleman born, and that he had been advanced to Place and Calling by her Majesty, and served her Majesty in place of Honour, he might die a Gentleman's Death, and be spared from drawing thro' the Streets, and the rest of the Judgment; and said, he was a Gentleman of antient Descent, and but a Gentleman.

The fourth Petition was, that they would move her Majesty to be good and gracious to his Son, meaning Sir *Thomas Perrot*, and that they would put her Majesty in remembrance of her gracious Promise made unto Sir *Philip Sidney* and Sir *Thomas Perrot*, that her Majesty would be good to them; especially that her Majesty would be good to that virtuous and gracious Lady my Lady *Dorothy*: and then said, that he never received any penny of her Marriage, nor ever assured her any Jointure, for which he was now very sorry; and said, that something moved him so to do, which now grieved him very fore.

He also said, that he had made Estates of his Lands, a dozen, sixteen, and twenty Years past; for

1592. Westm. Lord Deputy of Ireland, for High-Treason. 197

for that he had Children by divers Venters, and that he would have his Lands to remain in his Name, and now he had but one Son, the other having died in her Majesty's Service. He said, peradventure Holes may be now found in the same; therefore he again requested that their Lordships would move her Majesty to be good to his Son and his Wife, and as he heard to a little Son which they had, and which hereafter may do her Majesty Service.

He also oftentimes protested with great protestation that he never meant evil, and wished Confusion to him and his Posterity if he were guilty of Treason. And if he were, he utterly renounced the Merits and Mercy of his Saviour Jesus Christ.

And then speaking to my Lord Chamberlain, said, he excepted his Lordship for that he sat Commissioner for her Majesty, otherwise he was as true a Subject as any in England whosoever; and herewith clapped his Hand upon the Bar mightily.

And as he was departing from the Bar, he returned again towards the Lords and said, he could not dispend 1200*l.* a Year, altho' it was bruited he could dispend many thousands.

He also made mention he was in debt.

Then was he conveyed away from the Bar in the same manner he was brought thither, and brought by Water to the *Old Swan*, for that he could not shoot the Bridge, and all the Guard and others attending him in Wherrys; and from the *Old Swan* he was conveyed in a Coach into the *Tower*, as he was brought from the *Tower* to *Westminster* that Morning.

He also seemed in his Speeches to refer all things to God, who as he said best knew the secret of this Cause. Again and very zealously he wished and hoped that all things should be by him made manifest; and in all his Protestations and Speeches referred him and his to God alone.

Then the Lords and Commissioner sitting a little space after Sir *John's* departure, and until he took Barge, an O Yes was made, and the Commission of Oyer and Terminer was determined by Proclamation made in these words following:

All manner of Persons of *England* and *Ireland*, that had any thing to do before my Lords the Queen's Majesty's Justices of Oyer and Terminer in this present Cause, may depart hence in God's Peace, and the Queen's Majesty's, and keep their Day again upon a new Summons, for my Lords the Queen's Justices do determine their Commission; and then they all cried, *God save the Queen. Amen.*

Then my Lords arose, and it was at the stroke of ten of the Clock at Night.

Afterwards the Queen began to be appeased towards him, and was often heard to applaud that Rescript of *Theodosius*, *Honorius*, and *Arcadius*: *If any Person speak ill of the Emperor thro' a foolish rashness and inadvertency, it is to be despised; if out of Madness, it deserves Pity; if from Malice and Aversion, it calls for Mercy.* But while he thus had hopes of his Life, he fell sick, and died in the *Tower* in *September* following; but the Queen granted his Desire, in suffering his Estate to go to his Son, who had married the Earl of *Essex's* Sister.



XVI. The Trial of ROBERT Earl of Essex, and HENRY Earl of Southampton, before the Lords at Westminster, for High-Treason, the 19th of February, 1600. 43 Eliz.



SPACIOUS Court was made in *Westminster-Hall*, where the Lord Treasurer *Buckhurst* sat as High Steward of *England*, under a Canopy of State; where sat also about the Table, the Earls, Barons, and Judges of the Land, according to their Degrees.

The Judges were these;

The Lord Chief Justice *Popham*, and the Lord Chief Justice *Anderson*.

The Lord Chief Baron,	Justice <i>Walmesley</i> .
Sir <i>William Periam</i> .	Justice <i>Warburton</i> .
Justice <i>Gawdie</i> .	Justice <i>Kingsmill</i> .
Justice <i>Fenner</i> .	Mr. Baron <i>Clarke</i> .

These sat all in the Court next the Bar, before the High Steward. Seven Serjeants at Arms came in with Maces before the High Steward, and laid them down before him in the Court. The King at Arms stood on the one side of the High Steward by his Chair of Estate, and one of her Majesty's

Gentlemen Ushers with his white Rod in his Hand on the other side. The Clerk of the Crown and his Assistant sat before him, to read the common Indictments and Examinations. The Captain of the Guard (*Sir Walter Raleigh*) and forty of the Queen's Guard were there to attend the Service. Then the Serjeant at Arms made three O Yes! and Proclamation, That the Lord High Steward of *England* commanded Silence, and to hear the Commission read, upon pain of Imprisonment. Then the Clerk of the Crown read the Commission, whereunto the Earl of *Essex* was very attentive.

Another Proclamation was made, That the Lord High Steward of *England* commanded all Justices to whom any Writs had been directed for this Service, to bring them in, and certify the same.

Another Proclamation was made by a Serjeant at Arms, That the Lieutenant of the *Tower of London* should return his Precept, and bring forth his Prisoners, *Robert* Earl of *Essex*, and *Henry* Earl of *Southampton*.

Then the Lord High Constable of the *Tower*, the Lieutenant of the *Tower*, and the Gentleman Porter,

Porter, who carried the Ax before the Prisoners, came first in, and the Prisoners followed and made their appearance at the Bar, the Gentleman Porter with the Ax standing before them, with the Ax's Edge from them; and so the Lieutenant delivered his Precept into the Court.

The two Earls (which were Prisoners) kissed one another's Hands, and embraced each other.

Another Proclamation was made, That the Serjeant at Arms to the Queen's Majesty do return his Precept of the Names of all the Peers of *Robert Earl of Essex*, and *Henry Earl of Southampton*, the which he delivered into the Court accordingly.

Another Proclamation was made, That all Earls, Viscounts, and Barons of the Realm of *England*, which were Peers of *Robert Earl of Essex*, and *Henry Earl of Southampton*, and summoned to appear this Day, do make answer to their Names, upon pain and peril that will fall thereon.

Then the Lords were called, and answered and appeared as followeth:

<i>Edward Earl of Oxford.</i>	<i>Edward Lord Morley.</i>
<i>Gilbert Earl of Shrewsbury.</i>	<i>Henry Lord Cobham.</i>
<i>William Earl of Derby.</i>	<i>Henry Lord Stafford.</i>
<i>Edward Earl of Worcester.</i>	<i>Thomas Lord Grey.</i>
<i>George Earl of Cumberland.</i>	<i>Thomas Lord Lumley.</i>
<i>Robert Earl of Sussex.</i>	<i>Henry Lord Windsor.</i>
<i>Edward Earl of Hertford.</i>	<i>William Lord Cbandois.</i>
<i>Henry Earl of Lincoln.</i>	<i>Robert Lord Rich.</i>
<i>Charles Earl of Nottingham.</i>	<i>Thomas Lord Darcy.</i>
<i>Thomas Viscount Bindon.</i>	<i>George Lord Hunsdon.</i>
<i>Thomas Lord De la Ware.</i>	<i>Oliver Lord St. John of Bletso.</i>
	<i>Thomas Lord Burleigh.</i>
	<i>William Lord Compton.</i>
	<i>Thomas Lord Howard.</i>
	<i>Baron of Walden.</i>

Then the Earl of *Essex* desired to know of my Lord Chief Justice, whether he might challenge any of the Peers or no; whereunto the Lord Chief Justice answered, No: and Mr. Attorney General alledged a Case in *Henry VIII's* Time, of my Lord *Darcy*. Whereupon the Earl bad them go on.

[When the Lord *Grey* was called, the Earl of *Essex* laughed upon the Earl of *Southampton*, and jogged him by his Sleeve.]

Then they were called to hold up their Hands at the Bar, which they did. And then the Clerk of the Crown read the Indictments. That being done, they were bid to hold up their Hands again, which they did, and another Indictment was read, whereunto the Earl of *Essex* was attentive. After which, the Clerk of the Crown asked them, whether they were Guilty, or not Guilty: they pleaded not Guilty; and for their Trials they put themselves upon God and their Peers. They spake this severally.

Then my Lord High Steward in a few words gave the Peers a Charge, requiring them to have a due regard of their Consciences.

Serjeant Yelverton's Speech.

First he began to open the Evidence, and shewed the Effect of the Indictment, and held it in his Hand, and said as followeth:

May it please your Grace (speaking to the High Steward) about the 8th of *February* last, my Lord of *Essex* (there Prisoner at the Bar) went about with armed Men very rebelliously to disinherit the Queen of her Crown and Dignity, which

when it came to her Majesty's Ear, she of her abounding Mercy, sent to see if it were possible to stop the Rebellion: and who did she send? She sent (my Lord) no worse Persons than my Lord Keeper, my Lord Chief Justice of *England*, the Earl of *Worcester*, and Sir *William Knowles*, all which went in her Majesty's Name, and commanded the Earls and their Adherents very strictly to dissolve their Assemblies, and to lay down their Arms. But he knowing it, very treacherously imprisoned the said Lords and Counsellors by her Majesty's sent, and altogether refused her Majesty's Authority: and divers of their Confederates cry'd out, Kill them, kill them! thereby putting her Majesty's Council in fear of their Lives; and withal, left them with Sir *Jo. Davis* to keep safe, lest they themselves should miscarry in the City. But, my Lord, I must tell you this by the way, that my Lord of *Essex* can no way excuse nor shadow this his rebellious Purpose, nor turn his Actions to any other intent: for the sending of *Temple* his Secretary into *London* the Night before, manifesteth his determination, without Scruple or Question; for by that means he was in hopes to have had the help of the Citizens, her Majesty's most loyal and loving Subjects: and he used not only his best endeavours to strengthen himself abroad, but also fortified his House at home with strong Defence and Ammunition; all which were Tokens of his Inclinations to a sudden and unexpected Rebellion, and were confirmed in the opinion of all the World, when he withstood divers of her Majesty's Subjects standing in her Highness's Right, and Defence of her Peace, against him and his Confederates. Good my Lord, I beseech your Grace, and you my Lords that are the Peers, to understand, That if any Man do but intend the Death of the King, it is Death by the Law: for he is the Head of the Commonwealth, and all his Subjects as Members ought to obey and stand with him. But as for this Rebellion, being duly considered, it contains in it many Branches of Treason, which are and will be directly proved: which being found to be so, my Lords, who are their Peers, are to find them Guilty. Hereof need to be made no doubt, for it is more manifest than the Sedition of *Catiline* to the City of *Rome*, and consequently *England* is in no less danger; for as *Catiline* entertained the most seditious Persons about all *Rome* to join with him in his Conspiracy, so the Earl of *Essex* had none but Papists, Reculants, and Atheists for his Adjutors and Abettors in their capital Rebellion against the whole Estate of *England*. My Lord, I much wonder that his Heart could forget all the Princely Advancements given him by her Majesty, and be so suddenly besinted, as to turn them all to rebellious Ends; but it seems this overweighing a Man's own Conceit, and an aspiring Mind to wished Honour, is like the Crocodile, which is ever growing as long as he liveth. Your Lordships know in what fort they went into the City, with Armour and Weapons, and how they returned to *Essex-House* again, as you my Lord Admiral, and my Lord of *Cumberland*, with others of their honourable Peers do know; which makes we wonder they do not blush to be so forward to stand upon their Trials without Confession, when their intended Treasons are in all Men's Judgments palpable. For my part, my Lord, I can conjecture nothing hereby; and it will not easily out of my own conceit, but that there is some further Matter in it than as yet appears; but

but my hope is, that God of his Mercy, that hath revealed their Treasons, will not suffer the rest of his or any others to the hurt of the State, or prejudice to her Majesty's most Royal Person, whom I pray God long to preserve from the hands of her Enemies. *Amen*, cry'd the Earl of *Essex* and the Earl of *Southampton*, and God confound their Souls that ever wished otherwise to her sacred Person.

* *Attorney Gen.* May it please your
* *Sir Ed. Coke.* Grace, the Lords Chief Judges, which are the Fathers of the Law, do know that the Thought of Treason to the Prince, by the Law is Death; and he that is guilty of Rebellion, is guilty of an Intent (by the Laws of the Land) to seek the Destruction of the Prince, and so adjudged Treason: and I will prove this unto your Lordships by two several Cases. First, he raiseth Power and Strength in a settled Government, the Law will not suffer it, but it is construed as in case of High-Treason; he that doth usurp upon it, the Law doth intend that he hath purposed the Destruction of the Prince; he that doth assemble Power, if the King doth command him upon his Allegiance to dissolve his Company, and he continue it, without any question it is High-Treason: he that doth levy Forces to take any Town in the Prince's Dominions, it is so likewise. But my Lord of *Essex* hath levied Power to take the Tower of *London*, and to surprize the Queen's own Court; then this must needs be higher than the highest; and he that doth fortify himself against the Prince's Power, must needs be within the compass of Treason. And by your favour, my Lord of *Essex*, I will now speak a word unto you, for I know you can speak as well as any Man; That whereas you say the Law of Nature compelled you to do this, which in judgment you have, tho' most treacherously attempted, I will in a word disprove your own Judgment, admitting you must make that freely your Argument. First, I will open the Quality of your Rebellion; Secondly, the Manner of it; Thirdly, I will touch the Circumstances; and, Lastly, I will observe the Person. The Quality hath High-Treason; for which I think I shall not need to say any more. For the Manner of it, I hold it an unnatural Act for a natural Subject to commit Treason against his natural Sovereign; and methinks it cannot be by any probability denied, but that this High-Treason is, and must be, both against the Law of God, Nature and Reason. And under your Grace's favour, my Lord, the manner of it being of so high a Nature as it is, must needs be High-Treason, which was not only carried in their Hearts, but, for a continual Remembrance, kept in a black Purse, which my Lord of *Essex* wore on his Breast next to his Skin. Let me note unto you, my good Lord, that they being both born under the Government of this Princes, and so highly advanced by her Majesty's Favour, should have trembled once to think of such a Rebellion as they have enterprized. Doth not my Lord of *Essex* now enjoy his Earldom of *Essex* by the Gift of *Henry VIII.* to his Father? Was not he made Master of her Majesty's Horse at twenty-two Years of Age? one of her Majesty's Council? to be Earl Marshal of *England*? General of her Majesty's Forces in *Ireland*? And lastly, hath he not received divers Gifts and Sums of Money, to his own use, of her Majesty's Gracious and Princely Bounty, to the value of thirty thousand Pounds? Yet all

these were as cleverly forgotten, as if they had never been. Now shall I shew you the Person whom this concerns, even her Majesty's sacred Person, against whom their Attempts have been, only for the undertaking of God's Cause, and exercising of Justice with admirable Mercy; and tho' I cannot speak without reverent Commendations of her Majesty's most honourable Justice, yet I think her overmuch Clemency to some, turneth to overmuch Cruelty for herself: for tho' the rebellious Attempts were so exceeding heinous, yet out of her Princely Mercy, no Man was racked, tortured, or pressed to speak any thing farther, than of their own accord, and willing minds, for discharge of their Consciences they uttered; and then, to see the Mercy of God that will have the Truth known, it is admirable beyond the Conceit of Man's Capacity: for they being severally examined, notwithstanding, all agreed directly, without varying. But when her Majesty sent a Counsellor of State to have the Earl come before her, when she heard of his Rebellion, for no other end or purpose but for his Admonishment, he refused to come; and having a guilty Conscience, and suspecting his Treasons were laid open, took consultation to surprize the Court and the Tower of *London*, all at one instant: and for this purpose, had appointed *Blunt* the custody of the Gates, *Sir Jo. Davis* of the Hall, *Sir Charles Davers* of the Presence, and himself of her Majesty's Person. Whereupon *Blunt* said, Ah! what Humour shall we find them in at the Court? This was not all, for the Earl he must call a Parliament, and he would decide matters, not making for his purpose: but now in God's most just Judgment, he of his Earldom shall be *Robert* the last, that of a Kingdom thought to be *Robert* the first. And my Lord did not any whit amuse himself to give order, that if he and his Complices should miscarry in *London*, then the Counsellors which he caused to be imprisoned in his House, should be slain. It was plain Treason in him to stand out, being by them charged to dissolve his Company upon his Allegiance. What shall I need to stand upon further Proofs? it is so evident, and my Lord himself will not deny, but that he had a Schedule, containing in it divers of his Friends Names; which, as I conjecture, must needs contain some other matter, for he durst not let it come to light, but burnt it: and as for *Owen*, *Salisbury*, *Davis* and *Tresham*, they must have the guard of the Lords of the Council, to use them at their pleasure.

Essex. Will your Lordships give us our turns to speak, for he playeth the Orator, and abuseth your Lordships Ears and us with Slanders; but they are but fashions of Orators in corrupt States. Considering some Privileges which we might challenge, equal Answers and equal Hearing were indifferent; for unless it will please your Lordships that we might answer to every particular, we shall soon confound our own Memories, and give Liberty and Advantage to our Enemies, whereupon to lay hold, for lack of precise Answer to each particular Objection. And seeing now, my Lord, you have undertaken the place of a Judge, I beseech you, as you prove against us, we for our selves may answer what may fall out to be fit.

He the Lord of *Essex* was interrupted, and not allowed to speak, until *Henry Witherington's* Examination was read, which imported thus much:

Wither-

Witherington's Examination.

That upon the Sunday morning he was sent for to *Essex-House*, where he found the place guarded with many Gentlemen in Arms, who told his Uncle that came in his Company, that he feared they were come into an ill Action; my Lord of *Essex* bade him very welcome, and intreated him to go with him, for he feared hurt of some private Enemies. And when Mr. *Witherington* perceived the Council were stayed, he feared danger to them; for he heard some bid, *Stab them*; and others, *Let us make an end of them, we shall have the fewer to deal withal*. And he proves further, that order was left, That if the Earl should miscarry in *London*, then the Lord Keeper and the Lord Chief Justice should be killed; and also when the Council had commanded him, upon his Allegiance, to dissolve his Forces, he answered nothing: he likewise saw my Lord of *Bedford* brought in that morning; and Mr. *Witherington*, fearing he might be drawn on to his Destruction, prayed him only to follow him, for when opportunity served in *London*, they would leave the Troop; and that they followed the Earl into *London*, and on a sudden lost him.

Essex. I will not (I protest to God) speak to save my Life; for those that prosecute it against me, shall do me a good turn to rid me of my Misery, and themselves out of Fear. As for Mr. *Witherington*, he does much disparage himself if he saith so, for I protest to God upon my Salvation, I never heard such Words as *Kill him, kill him*; and Mr. *Witherington* came voluntarily to my House, unsent for, and in the forenoon did come into our Company, and took to heart as much as we did whatever we went about: and these are but Reports, for he that is the Witness, is now sent into the Country about some Employments. But if it had been a Secret, Mr. *Witherington* being privy thereto, might have been a good Witness; but being so openly spoken, (as you say) a hundred more might have testified it, yet none spake it besides. And as for locking up the Council, I protest to God it was done in Charity, and without Disloyalty, but intending only to save them, lest they should take hurt; considering the People abroad in the Streets, with a great and sudden Outcry, said, *We shall be slain*. At which time we thought our Enemies had been come to beset the House, for my intent was no otherwise than Loyal to her Majesty and them.

The Lord Keeper, the Earl of *Worcester* and the Lord Chief Justice *Popham*, proved in Court upon their Honours, that they heard the words, *Kill them, kill them*; but they would not charge my Lord of *Essex* that they were spoken either by his Privy or Command.

The Declaration of the Lord Keeper, the Earl of Worcester, and the Lord Chief Justice of England.

Upon Sunday, being the 8th of *February* last past, about ten of the Clock in the forenoon, the Lord Keeper of the Great Seal, the Earl of *Worcester*, Sir *William Knollis* Comptroller of his Majesty's Household, and the Lord Chief Justice of *England*, being commanded by direction from the Queen's Majesty, did repair to the late Earl of *Essex's* House; and finding the Gate shut against them, after a little stay they were let in at the Wicket. And as soon as they were within the

Gate, the Wicket was shut upon them, and all their Servants kept out.

At their coming thither, they found the Court full of Men assembled together in very tumultuous sort: The Earls of *Essex*, *Rutland* and *Southampton*, and the Lord *Sandys*, Master *Parker*, commonly called Lord *Mounteagle*, Sir *Christopher Blunt*, Sir *Charles Davers*, and many other Knights and Gentlemen, and other Persons unknown, which flock'd together about the Lord Keeper, &c. And thereupon the Lord Keeper told the Earl of *Essex*, that they were sent from her Majesty, to understand the cause of this their Assembly, and to let them know, That if they had any particular cause of grief against any persons whatsoever, it should be heard, and they should have Justice.

Hereupon the Earl of *Essex* with a very loud Voice declared, That his Life was sought, and that he should have been murdered in his Bed; that he had been perfidiously dealt with; that his Hand had been counterfeited, and Letters written in his name; and that therefore they were assembled there together to defend their Lives: with much other speech to like effect. Hereupon the Lord Chief Justice said unto the Earl, That if they had any such matter of grief, or if any such matter were attempted or purposed against him, he willed the Earl to declare it; assuring him that it should be truly related to her Majesty, and that it should be indifferently heard, and Justice should be done, whomsoever it concerned.

To this the Earl of *Southampton* objected the Assault made upon him by the Lord *Gray*. Whereunto the Lord Chief Justice said, That in his case, Justice had been done, and the Party imprisoned for it. And hereupon the Lord Keeper did esteems will the Earl of *Essex*, that whatsoever private Matter or Offence he had against any Person whatsoever, if he would deliver it unto them, they would faithfully and honestly deliver it to the Queen's Majesty, and doubted not to procure him honourable and equal Justice, whomsoever it concerned: requiring him, that if he would not declare it openly, that he would impart it unto them privately, and doubted not but they would satisfy him in it.

Upon this there was a great Clamour raised among the multitude, crying, *Away my Lord, they abuse you, they betray you, they undo you, you lose time*. Whereupon the Lord Keeper put on his Hat, and said with a loud Voice, My Lord, let us speak with you privately, and understand your griefs: and I command you all upon your Allegiance, to lay down your weapons, and to depart, which you ought all to do, being thus commanded, if you be good Subjects, and owe that duty to the Queen's Majesty which you profess. Whereupon they all brake out into an exceeding loud shout and cry, crying, *All, all, all*.

And whilst the Lord Keeper was speaking, and commanding them upon their Allegiance, as is before declared, the Earl of *Essex* and the most part of that company did put on their Hats; and so the Earl of *Essex* went into the House, and the Lord-Keeper, &c. followed him, thinking that his purpose had been to speak with them privately, as they had required. And as they were going, some of that disordered Company cried, *Kill them*. And as they were going into the great Chamber, some cried, *Cast the Great Seal out of the Window*. Some other cried there, *Kill them*, and some other said, *Nay, let us shop them up*.

The

The Lord Keeper did often call to the Earl of *Essex* to speak with them privately, thinking still that his meaning had been so, until the Earl brought them into his back Chamber, and there gave order to have the farther door of that Chamber shut fast. And at his going forth out of that Chamber, the Lord Keeper pressing again to have spoken with the Earl of *Essex*, the Earl said, *My Lords, be patient a while, and stay here, and I will go into London, and take order with the Mayor and Sheriffs for the City, and will be here again within this half hour.* And so departed from the Lord Keeper, &c. leaving the Lord Keeper, &c. and divers of the Gentlemen Pensioners in that Chamber, guarded by Sir *John Davis*, *Francis Tresbam*, and *Owen Salisbury*, with musket-shot, where they continued until Sir *Ferdinando Gorges* came and delivered them about four of the Clock in the afternoon.

In the mean time we did often require Sir *John Davis*, and *Francis Tresbam*, to suffer us to depart, or at the least, to suffer some one of us to go to the Queen's Majesty, to inform her where and in what sort we were kept. But they answered, *That my Lord* (meaning the Earl of *Essex*) *had commanded that we should not depart before his return, which* (they said) *would be very shortly.*

Thomas Egerton, C. S.
Edward Worcester.
John Popham.

All which the Lord Chief Justice *Popham* attested, *viva voce.*

Attorney Gen. Yea, my Lord, you had three hundred Men in Arms in your House; why did you not dissolve them, being commanded upon your Allegiance from the Queen to do it?

Essex. They hearing rumours of Men about my House against them put them into such a Fear and Extasy, that it was not in my power suddenly to dissolve them, or to quench their Passions; and the rather, for that Sir *Walter Raleigh* desired Sir *Ferdinando Gorges* to leave their Company, or else they would be all lost; so that they stood amazed, and knew not what to do.

Southampton. Mr. *Attorney*, you speak all this as if it were as true as the Gospel.

Essex. Good my Lord, let me intreat you to mark the Circumstances: Word was brought that Men were sent for into the Country, to take us in our own Houses; then we conceiving the thirsty Appetite of our private Enemies, took our selves to our Arms, and were glad to stand upon our guard for our own Defence. But as for the Lords of the Council that came to my House, we being before advertised that we should be beset, thought it the securest way for those of the Council to keep them there, not knowing what Mischief would ensue.

Attorn. Gen. My Lord, your Grace sees that this is without Colour or Question; for my Lord

Chief Justice had proved it plain, that they would not dissolve their Company that was up in Arms, being charged upon their Allegiance so to do.

Essex. Good my Lord, know whether it were in my Lord of *Southampton's* power or in mine to withhold their Purposes so suddenly: For, not long before Sir *Walter Raleigh* had sent to my House to have Sir *Ferdinando Gorges* to come to him to *Durham-House*; and we fearing him to be a private Enemy, would not suffer Sir *Ferdinando* to go thither, but returned answer, that he would meet him on the Water upon equal Terms: where Sir *Walter Raleigh* used the former Speeches to Sir *Ferdinando Gorges*, wishing him to leave our Company, or else he would be undone. And whereas we are charged to have dealt with Papists, I assure your Lordship, and it is most true, that Papists have been hired and suborned to witness against me; as by the means of one *Sudall*, who was a Seminary Priest, and sent into *Ireland* to deal with Sir *Christopher Blunt*, whom he thought to be inward with me, to touch my Honour and Reputation. Then *Bales*, the Scriviner in the *Old-Baily*, hath confessed under his hand to forge and counterfeit my Hand in at least two Letters; and these two honest Gentlemen can witness it.

Attorney Gen. Ay, by my troth this is true, but it was by the Procurement of one of your own Men.

Essex. Thou swearest it, but it is not on a Book; that Man thou sayest I procured to do it, his name is *John Daniel*, an arrant Thief, one that broke a Standard of mine, and stole a Casket of my Wife's, and many other things. It is very probable that I should trust him so far, that had before betrayed me, is it not? But it is well known who set him at work to attempt against me so much as he hath done, to procure my hand to be counterfeited; and yet this Man, by your Judgment, must be a Practiser in such Matters by my own Consent*. Well, Mr. *Attorney*, I thank God you are not my Judge this Day, you are so uncharitable.

Attorney Gen. Well, my Lord, we shall prove you anon what you are, which your Pride of Heart, and aspiring Mind, hath brought you unto.

Essex. Ah! Mr. *Attorney*, lay your Hand upon your Heart, and pray to God to forgive us both.

Raleigh. That Sir *Ferdinando Gorges* told me upon the Water, that my Lord of *Essex* had put himself into a strong Guard at *Essex-House*, and this is like to be the bloodiest day's work that ever was, wishing him to go to Court with speed for prevention thereof: Then Sir *Walter* wished Sir *Ferdinando Gorges* to refuse their Company, else he would be undone. To this Sir *Walter* was sworn.

Essex. Whatsoever Sir *Walter Raleigh* hath said, differeth altogether from that which Sir *Ferdinando* told us at *Essex-House*, upon his return from the Water.

Attorn. Gen. Well my Lord, what can you devise to say for Sir *John Davis*, another of your Adherents, that Papist? for he hath confessed that

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* The Matter here refer'd to, as it came out upon a strict Enquiry, was thus. The Countess of *Essex* being apprehensive, that in those troublesome times some Mischief might befall her Husband and her self, put some Letters which she had receiv'd from him into a Cabinet, and intrusted it into the hands of a Dutch Woman call'd *Rihove*, who hiding them in her House, they were accidentally discover'd by her Husband *John Daniel*; who reading them over, and observing some Passages in them, which might incense the Queen and endanger the Earl, caused them to be transcrib'd by a Person expert at counterfeiting Hands; and when the timorous Countess was near her time of Lying-in, he told her: that unless she would give him three thousand Pounds, he would put them into the hands of her Husband's Enemies. The good Lady, to prevent that threatening Danger, immediately gave him eleven hundred and seventy Pounds, and still the Impostor only gave her the counterfeit Copies, and kept the Originals to get another Sum for them from the Earl's Enemies; for which he was sentenc'd in the Star-Chamber to perpetual Imprisonment, fined in three thousand Pounds, two of which were to be paid to the Countess, and to stand with his Ears nail'd to the Pillory, with this Inscription, A wicked Forger and Impostor.

he is a Papist and a Catholick, and drawn in by Sir *Christopher Blunt*, one of your chiefest Counsel, and that he called for a Seminary Priest upon his Convertment to absolve him.

Essex. If Sir *John Davis* were such a Man, it cannot be but strange to me to hear it; altho' I cannot search into the Secrets of his Heart to accuse him inwardly, yet I have seen him dutifully come to Prayers, and to the Service of God in my own House with me, and behaved himself very godlily; and of this I can be witness. And as for *Blunt* (God is my Witness) I have been so far from Popery, as I have so earnestly dealt with him to reform himself, inasmuch that he hath told me, I have been very passionate. But whereas you say, we have committed Treason, first prove that true.

Serjeant Yelvert. Why, my Lord, if you deny the raising the Power, why should so many Men come to your House that day?

Southampt. By your favour, Mr. Serjeant *Yelvert*, a word I hope; for my coming thither, it was not strange news, and when I came that same morning to *Essex-House*, I protest I had not above ten or twelve Men attending me, which was but my usual Company, therefore far from purposing to raise a Tumult.

Attorn. Gen. Why, the reason of that was, for that you thought all *London* would have risen with you; but good my Lord, I beseech your Grace to hear the Oath of Sir *Ferdinando Gorges*: whose Evidence was read, and himself there in person did justify the same.

Sir Ferdinando Gorges his Confession.

He deposeth, That in *January* last the Earl of *Essex* wrote to him a Letter, wherein he complained grievously of his Misfortunes, and the miserable Estate he stood in, whereof he purposed shortly to free himself, and therefore prayed Sir *Ferdinando Gorges* to come up to *London* to him: who coming accordingly, the Earl told him how mightily he was crossed and discredited by his private Enemies, which he could not endure; for, saith he, I have 120 Earls, Barons, and Gentlemen, that participate in my discontented Humour, and will join with me, and I desire your Help and Counsel therein. One special Friend I have in the Court, whereby I have Intelligence from time to time: And I hold our selves indifferently affected by the Citizens of *London*, and hope to have a good Party in *Wales*. He confessed also, that they had two several Meetings at *Drury-House*, to consult of these Matters; and the Projects were, Whether it were better first to surprize the Court, or to take the Tower of *London*, or to stir in the City. But most agreed, first to surprize the Court. And then and there Sir *John Davis* took Pen, Ink, and Paper, and set down, That some should keep the Hall, some the Court-Gates, some the Guard-Chamber, and some the Presence-Chamber; saying, many of the Guard had been the Earl of *Essex's* Servants, and were preferred to the Queen by him, and will be more indifferent to deal with than others; and so my Lord shall have a way thro' his own Guards to come to the Privy-Chamber, and the Presence of the Queen. And Sir *Ferdinando Gorges* said to the Earl of *Essex*, Alas! my Lord, what is so small a number of Men able to do in so worthy an Action? and so dissuaded the Earl from surprizing the Court, and rather bade him submit himself to the Queen's Mercy, than pro-

ceed any further. And that the Earl of *Southampton* said at *Essex-House*, Is it not three months since this Plot began, and shall we resolve on nothing? Then upon a sudden they all agreed, first to stir in *London*, where they assured themselves of great Favour: And after the Council was lock'd up, this Deponent followed the Troops into *London*; and after some advice the Earl of *Essex* sent him back again with a Token to deliver to the Lord Chief Justice only, by colour of which Token he set at liberty the Lord Keeper and the rest. Lastly, he confirmed, that he told Sir *Walter Raleigh* first, upon the *Thames*, of my Lord of *Essex's* making his House a Guard, and putting his Friends into Arms, as it is delivered by Sir *Walter Raleigh*.

Queen's Counsel. We desire, that the Examination of Sir *Charles Davers* may be read, which being produced, was then read to this effect:

Sir Charles Davers's Examination.

He confesseth, That before *Christmas* last the Earl of *Essex* entred into Consideration, how he might secure himself to have access to the Queen's Presence without Resistance; and that the Resolution was agreeable to certain Articles written with the Earl of *Essex's* own Hand, and sent to the Earl of *Southampton* to surprize the Court; and that there were divers Consultations about it, and the Points were these: First, to take the Tower, for it would command *London*, then to surprize the Court; and after, the Court being taken and possessed, to have assembled the rest of their Friends, and to have presented themselves to the Queen: and that being done, and the Guards secured, Sir *Christopher Blunt* should keep the outward Gates of the Court, Sir *John Davis* the Hall and Water-gate, Sir *Charles Davers* (this Deponent) should keep the Presence and Guard-Chamber, and seize upon the Halberds and Pensioners Battle-Axes. The Intent was to surprize the Captain of the Guard at the Court, or at his own House, and some others; and then to surprize the Tower of *London*: And that the Earl of *Essex* resolved (these things being accomplished) immediately to have called a Parliament to reform Disorders and private Grievances. That this Deponent utterly disliked of these Courses; and after the Alarm was given at Court, he persuaded the Earl rather to flee into *Wales*, or other parts beyond the Seas for his Security, and avoiding the imminent Danger he was fallen into, than to trust to the City. And lastly, he protested, for his own part, what he had done in the business, was merely for the Love he bore to the Earl of *Southampton*, and not for any Malice or private Discontent otherwise.

When this was read, Mr. *Attorney General* produced the Examination of Sir *John Davis*, which contained in effect as follows:

Sir John Davis's Examination.

He saith, That the Earl's Purpose was, to possess himself of the Court, and to take the Tower of *London*; and that they had several Meetings of Consultation together with the Earl of *Southampton*, Sir *Ferdinando Gorges*, *Jo. Littleton*, Sir *Christopher Blunt*, Sir *Charles Davers*, and this Deponent. And these Matters (he confesseth) the Earl of *Essex* set down all with his own Hand, viz. Sir *Chri-*

Christopher Blunt to keep the outward Gate of the Court himself, this Deponent the Hall and Water-gate, and *Sir Charles Davers* the Prefence and Guard-Chamber; then my Lord of *Essex* and his Forces would have come by Land, and so have possessed the Prefence of the Queen. The question was asked the Earl of *Essex* (as this Deponent saith) how he would deal with Offenders, and such as resisted him, after he should be possessed of these things? He resolved them by way of Answer, That he meant to admit them all to an honourable Trial.

Then was produced the Confession of *Sir Christopher Blunt*, which was as follows.

Sir Christopher Blunt's Examination.

He confesseth that the Earl of *Essex* sent *Wife-man*, about the 20th of *January*, to visit his Wife with Letters of Compliment, and to require him to come up unto him to *London*, to settle his Estate according as he had written unto him before some few days.

Being demanded to what End they went to the City, to join with such strength as they hoped for there; he confesseth, it was to secure the Earl of *Essex's* Life, against such Forces as should be sent against him. And being asked, What, against the Queen's Forces? he answered, that must have been judged afterwards.

But being further asked, whether he did advise to come unto the Court over Night? he saith, no. For, *Sir Ferdinando Gorges* did assure, that the Alarm was taken of it at the Court, and the Guards doubled.

Being asked whether he thought any Prince could have endured, to have any Subject make the City his Mediator? or, to gather force to speak for him? He saith, he is not read in stories of former times; but he doth not know, but that in former times Subjects have used Force for their mediation.

Being asked, what should have been done by any of the Persons that should have been removed from the Queen? He answer'd, that he never found my Lord disposed to shed Blood; but that any that should have been found, should have had indifferent Trial.

Being asked upon his Conscience, whether the Earl of *Essex* did not give him Comfort, that if he came to Authority, there should be a Toleration for Religion? He confesseth, he should have been to blame to have denied it.

Counsel. There is another Examination of *Sir Christopher Blunt's*, I pray let that be read.

Sir Christopher Blunt's second Examination.

He saith, That four or five days before the Insurrection in *London*, the Earl of *Essex* set down divers Articles with his own Hand, with Petitions to the Earl of *Southampton*, *Sir Charles Davers*, *Sir John Davis*, *Sir Ferdinando Gorges*, *Jo. Littleton*, and this Deponent; which were to the effect before remembered. And further this Deponent remembereth, That the Earl of *Essex's* Purpose was (after these things should be over-passed and settled) to alter the State of Government: And further this Deponent confesseth himself to be reconciled to the Pope: And moreover saith, that the Earl of *Essex* said, He looked not that any should be troubled for Religion, and Liberty of Con-

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science; that he received Letters from the Earl of *Essex* the 20th of *January*, to come to *London*, whereupon he came.

The Earl of Rutland's Examination.

He saith, That being in *London*, with the Earl of *Essex*, he heard him cry out in the Streets, *England* is bought and sold to the *Spaniard*: and confesseth, when they had been possessed of *London*, their Purpose was to have taken the Lord Keeper with them to the Court, with the Earl of *Essex's* Company; and that the Earl of *Southampton* and *Sir John Davis* were in special Confederacy and Trust with the Earl of *Essex* in these Causes. Lastly, That the Earl of *Essex* said; he was sure of *Sheriff Smith*: and this Deponent specially noted, the Earl of *Southampton* was very much discontented.

Lord Cromwel's Examination.

He saith, He never heard of the Matter till the same Sunday-morning, when the Earl of *Essex* coming thro' *Fleet-street*, where this Deponent lay, and being sent for by a Man of my Lord's, he came into the Street to him; where my Lord and divers of his Followers took him by the Hand, and bade him welcome, praying him to go along with him; and the Earl of *Essex* cried, It is for the good of the Queen, and of you all, my Masters. First, he went to the Mayor's House, and then to *Sheriff Smith's* House; and being in *Grace-church-street*, and hearing of the Proclamation, the Earl of *Essex* said, Where is the Sheriff? let him bring Muskets and Pistols; for I am credibly informed out of *Ireland*, that the Kingdom of *England* is sold to the *Spaniard*. And so upon the Proclamation the Deponent left him and his Company.

Lord Sandes's Examination.

He saith, He was sent for on Sunday-morning, the same day, by the Earl of *Essex*; and coming to *Essex-House*, he found then but a few there: but in a short time after, came the Earl of *Southampton* with the rest. This Deponent agreeth in divers other Circumstances with former Examinations: He confesseth, he went with the Earl into *London*, and came back with him to *Ludgate*, and there being repulsed, he heard my Lord of *Essex* cry, Charge, charge! and call for his Horse. And he saith, that *Sheriff Smith* was as far in the Matter as the best of them.

Mr. Attorney. Here *Mr. Attorney* urged, that there was a Combination; and one *Pasbell* affirm'd the burning of a black Purse by the Earl of *Essex*, which my Lord confesseth; but saith, that there was nothing in it, but a Key of an Iron-Chest, which he took out, and burnt a Paper in the same Purse, which did not contain above five or six Lines of secret Matter: and, for that he would not have so much as their Names drawn into question, which were altogether ignorant of these Occurrences, did throw the Purse and Paper into the Fire. And also *Pasbell* confesseth further, that when the Earl of *Essex* came out of *London* to his House, he told them, that he was beloved in the City.

Lord Monteagle's Examination.

He saith, He had no Foreknowledge of these Matters; but confesseth, he followed the Earl of *Essex*

Essex down *Fleet-street*, intending to go to the Mayor, and so to his House in *Seething-Lane*. And this Deponent being with the Earl of *Essex* in *Grace-Church-Street*, confesseth he did hear the Earl (when the Lord *Burleigh* came with the Herald of Arms) command some of his Followers to bid the Herald stay, for he would not hear him abuse the Queen's Name. He saith also, he went back with the Earl to *Ludgate*, and they were repulsed.

Mr. Attorney. Now, my Lord, I beseech your Grace, and you, my Lords, that be the Peers, let the due Consideration of these several Examinations and Depositions enter into your Hearts; and do but note, they have all agreed and jumped together in each particular point, notwithstanding they were all severally examined: but I must needs think it the just Judgment of God, in his mere Mercy towards our Sovereign, to have the Truth so marvellously reveal'd; coming from them of their own accords, without Rack or Torture to any of them.

Essex. Mr. Attorney, I answer then this for that point; The self-same Fear, and the self-same Examiner, may make these several Examinations agree all in one, were they never so far distant; but good my Lord, let me intreat your Lordship to consider who they be that testify this against me: My Lord, they are Men within the Danger of the Law, and such as speak with a desire to live; but I think they have much to answer for between God and their Souls and me. I see they charge me with the surprizing of the *Tower*; but upon what ground do they speak? They had only some particular Notes of my Friends Names, but ever very scornfully dashed at me: for when my Friends persuaded me to any course, this was my purpose, to have come with eight or nine honourable Persons, who had just Cause of Discontentment (tho' not equal with mine) unto her Majesty, and so by Petition, prostrating our selves at her Majesty's feet, to have put our selves unto her Mercy. And the Effect of our Desires should have been, that she would have been pleased to have sever'd some from her Majesty, who, by reason of their Potency with her, abused her Majesty's Ears with false Informations; and they were *Cobham*, *Cecil* and *Raleigh*: For we thought my Lord *Cobham* carried himself in such factious and dangerous Courses, as he told her Majesty many Untruths; which was a principal Cause (as I think) of withdrawing her Favour from us. And to that intent, to remove such from her Highness (I confess) was the only Desire we had to present our selves in all Humility before her Majesty, but without any purpose of Hurt to her Highness: for, I protest before God, I do carry as reverent and loyal Duty to her Majesty, as any Man in the World. But now, my Lord, seeing that I have heard the Testimony of Sir *Ferdinando Gorges*, and himself here in Court to testify it, I will say no more, but that if it please her Majesty to be merciful unto him, I will be glad, and pray for it; yet whatsoever he hath said, let my Life and his Dealing testify the Truth: and Sir *Ferdinando*, speak nothing to touch thy self, and speak what thou wilt to me; for I see thou desirest to live, yet speak like a Man.

Lord Admiral. I desire, for the better Satisfaction of my self and Fellow-Peers, that *Gorges* might unfold openly what other Secrets have passed between him and my Lord of *Essex*, touching the State.

Essex. Ah! my Lord Admiral, assure your self, in faith, no Treason: But yet, I pray thee good

Sir *Ferdinando*, speak openly, whatsoever thou dost remember; and with all my heart I desire thee to speak freely.

Gorges. All that I can remember, I have deliver'd in my Examination; and further, I cannot say.

Essex. Yes, *Ferdinando*, if ever you knew any other Matter, which contained any Thought of Treason or Disloyalty, speak it; for they are things not to be forgotten.

Southampton. Good Sir *Ferdinando*, satisfy the Court what was intended among all our Conferences, and Talk of our Enemies, and Discontentments, and Consultations, and what was our best Course for our Defence against them.

Gorges. Some delivered their Minds one way, some another; but, by the Oath I have taken, I did never know or hear any Thought or Purpose of Hurt or Disloyalty intended to her Majesty's Person by my Lord of *Essex*.

Lord Admiral. I desire to know, for the better Satisfaction of my Conscience, whether my Lord of *Essex* did at any time deliver out any Articles in writing under his hand; therein laying open the Projects of his Purpose for surprizing the Court and *Tower*.

Southampton. It was a foolish Action, I must needs confess, the going thro' the *Town*, and that was suddenly passed over: But my Lord's purpose to have Men planted at the Court, was in regard he feared hindrance by private Enemies, that would have stopped his Passage to the Queen; which, I protest, he intended to no other end, but to prostrate himself at her Majesty's feet, and submit to her Mercy, as ye have formerly heard.

Cobham. My Lord of *Essex* (quoth the Lord *Cobham*, standing up) let me know, I intreat you, why you lay such Imputations upon me, as you have deliver'd.

Essex. My Lord, I have forgiven all the World, and therefore you shall not need to insist upon these Circumstances; for I lay not my Cause upon aught that shall do your Lordship any harm for my sake: For, I protest, my Heart bears you no Malice, but what I spake was freely, and in God's presence, hoping her Majesty would have heard us, and our Complaints being but true. And I do further assure your Lordship, that I never spake it out of fear of Death, or desire of Life.

Bacon. My Lord, may it please your Grace, whatsoever my Lord of *Essex* hath here denied, in my conceit it seemeth to be small. I speak not to any ordinary Jury, but to prudent, grave and wise Peers: And this I must needs say, It is evident that you, my Lord of *Essex*, had planted a Pretence in your Heart against the Government; and now, under colour of excuse, you must lay the Cause upon particular Enemies. You put me in remembrance of one *Pisistratus*, that was come into a City, and doting upon the Affections of the Citizens unto him (he having a purpose to procure the Subversion of a Kingdom, and wanting Aid for the accomplishing his Humour) thought it the surest means for the winning of the Hearts of the Citizens unto him, and so in that hope entered the City, and cut his Body over-thwart, to the end they might conjecture he had been in danger: and so by this means held the same Conceit as you and your Complices did; entering the City of *London*, persuading your selves, if they had undertaken your Cause, all would have gone well on your side. And now, my Lord, all you have said, or can say, in answer to these Matters, are but Shadows; and there-

therefore, methinks, it were your best course to confesse, and not to justify.

Effex. May it please your Lordship, I must produce Mr. Bacon for a Witness; for when the Course of private Persecution was in hand, and most assailed me, then Mr. Bacon was the Man that proffer'd me Means to the Queen, and drew a Letter in my name, and in his Brother Sir Nicholas Bacon's name; which Letter he purposed to shew the Queen, and Gosnol was the Man that brought them unto me: wherein I did see Mr. Bacon's Hand pleaded as orderly, and appointed them out that were my Enemies, as directly as might be. Which Letters I know Mr. Secretary Cecil hath seen, and by him it will appear what Conceit he held of me, and no otherwise than he here coloureth and pleadeth the contrary.

Bacon. My Lord, I spent more hours to make you a good Subject, than upon any Man in the World besides; but since you have stirred up this Point, my Lord, I dare warrant you this Letter will not blush: for I did but perform the part of an honest Man, and ever laboured to have done you good, if it might have been, and to no other end; for what I intended for your Good, was wished from the Heart, without Touch of any Man's Honour.

Effex. Well, my Lord, I do here protest before the living God, that an honourable, grave, and wise Counsellor hath lamented and grieved at the Courses he hath seen taken, and therewith hath wished himself often dead; and this I speak upon credible and honourable Information: But I can prove thus much from Sir Robert Cecil's own Mouth; that he, speaking to one of his Fellow-Counsellors, should say, that none in the World but the Infanta of Spain had Right to the Crown of England.

Here Sir Robert Cecil stepped forth into the Court (having kept himself private till then) and humbly desired leave to speak to *Effex*.

Sir R. Cecil. The Difference between you and me is great; for I speak in the Person of an honest Man, and you, my Lord, in the Person of a Traitor: so well I know, you have Wit at will. The Preheminence hath been yours, but I have Innocence, Truth of Conscience, and Honesty, to defend me against the Scandal of slanderous Tongues, and aspiring Hearts; and I protest before God, I have loved your Person, and justify'd your Virtues: and I appeal to God and the Queen, that I told her Majesty, your Afflictions would make you a fit Servant for her. And had not I seen your ambitious Affections inclined to Usurpation, I could have gone on, my Knees to her Majesty to have done you good; but you have a Sheep's Garment in show, and in appearance are humble and religious; but God be thanked, we know you: for indeed your Religion appears by *Blunt*, *Davis* and *Tresham*, your chiefest Counsellors for the present: and by promising Liberty of Conscience hereafter. I stand for Loyalty, which I never lost; you stand for Treachery, wherewith your Heart is possess'd: and you charge me with high things, wherein I defy you to the uttermost. You, my good Lords, Counsellors of State, have had many Conferences, and I do confesse I have said the King of *Scots* is a Competitor, and the King of *Spain* a Competitor, and you I have said are a Competitor: you would depose the Queen, you would be King of *England*, and call a Parliament. Ah, my Lord, were it

but your own Case, the Loss had been the less; but you have drawn a number of noble Persons and Gentlemen of Birth and Quality into your Net of Rebellion, and their Bloods will cry vengeance against you. For my part, I vow to God, I wish my Soul was in Heaven, and my Body at rest, so this had never been.

Effex. Ah Mr. Secretary, I thank God for my Humbling; that you, in the Ruff of your Bravery, came to make your Oration against me here this day.

Cecil. My Lord, I humbly thank God that you did not take me for a fit Companion for you and your Humours; for if you had, you would have drawn me to betray my Sovereign, as you have done: but I would have you name the Counsellor you speak of; name him, name him, name him if you dare, if you dare, I defy you; name him if you dare.

Effex. Here stands an honourable Person (meaning the Earl of *Southampton*) that knows I speak no Fables; he heard it as well as I.

Cecil. Then my Lord of *Southampton*, I adjure you by the Duty you owe to God, Loyalty and Allegiance you owe to your Sovereign, by all Tokens of true Christianity, and by the antient Friendship and Acquaintance once between us, that you name the Counsellor.

Southampt. Mr. Secretary, if you will needs have me name the Counsellor, it was Mr. Comptroller.

Whereupon the Secretary falling down upon his knees, said, I thank God for this day; and upon his knee desired the Lord High Steward, that a Gentleman of the Privy-Chamber (or one that might have access to the Queen) might go, and humbly intreat her Highness to command Mr. Comptroller to come before his Grace.

Hereupon the Lord High Steward calling Mr. *Knevet* (a Gentleman of her Majesty's Privy Chamber) said unto him, go Mr. *Knevet* unto her Majesty, and let her understand Mr. Secretary's Demand.

Cecil. Mr. *Knevet*, you shall have free access unto her Majesty; tell her, that I vow before the God of Heaven, that if she refuse to send Mr. Comptroller, whereby I may clear my self of these open Scandals, I will rather die at her foot, (as her Subject and Vassal) than live to do her any more Service in this honourable degree, wherein her Highness employs me. And withal, let me adjure you, Mr. *Knevet*, that you do not acquaint Mr. Comptroller with the Cause why you come for him.

Mr. *Knevet* went, and not long after return'd with Mr. Comptroller, to whom the Lord High Steward repeated the Cause why he was sent for, and desired him to satisfy the Lords, whether Mr. Secretary did use any such Speech in his Hearing, or to his Knowledge.

Mr. Comptroller. I remember that once in Mr. Secretary's Company, there was a Book read, that treated of such matters; but I never did hear Mr. Secretary use any such words, or to that effect.

Whereupon Mr. Secretary thanked God, that tho' the Earl stood there as a Traitor, yet he was found an honest Man, and a faithful Subject: withal saying, I beseech God to forgive you for this open wrong done unto me, as I do openly pronounce I forgive you from the bottom of my Heart.

Effex. And I, Mr. Secretary, do clearly and freely forgive you with all my Soul; because I mean to die in Charity.

Bacon

Bacon. My Lord, you may now perceive that my Lord of *Essex* went about to procure matter, and to give over on the instant.

South. Well, I beseech your Lordship, let me satisfy your Lordship and the rest thus much, that for my own part, I did never know the Laws. Now to shew the Causes that made me adventure so far as I did: The first occasion that made me adventure into these Courtes, was the Affinity betwixt my Lord of *Essex* and me, I being of his Blood, and marrying his Kinswoman; so that for his sake I should have hazarded my Life: But what I have by my forwardness offended in Act, I am altogether ignorant, but in Thought I am assured never. And if thro' my Ignorance in the Law I have offended, yet I humbly submit my self to her Majesty, and from the bottom of my Heart do beg her gracious Pardon if it please her: and I hope that neither your Lordship nor any of the Peers will hold any of the former Resolutions spoken of by these Orators for any certainty, which depends no otherwise than one upon another. For if any foolish Speeches have passed, I protest, as I shall be saved, that they were never purposed by me, nor understood to be so purposed by me, to the hurt of her Majesty's Person.

Essex. I beseech your Lordship to understand me, and assure your self, that what I now speak, is not with any desire (I protest) to spare one drop of my Blood; and because some Honourable Persons are interested in the Cause, I would (under favour) signify, because the Point hath been so much urged by Mr. Attorney, that at our being in *London* when we were past *Pauls*, word was brought me, that the Chain was drawn at *Ludgate*, and that my Lord of *Cumberland* was there: which when I heard, I was right glad; for if there had been cause, I would have been glad to put myself into so honourable a Person's hands as his: but it was a false Report, for my Lord was not then come thither. After which I went to Sheriff *Smith's* House, and after my coming thither, I sent the Sheriff and Mr. Alderman *Watts* to my Lord Mayor, desiring him to come to us; if he would not, to send four of his Aldermen to see if we demeaned our selves loyally, with intent to put our selves into their hands to use us as they would, or to put us into any Prison; yet in regard of our private Enemies, and the fear of their Treachery, we desired them to shut their Gates: and this was the end for which we went into the City.

Attor. My Lord, if you had no other Purpose, why did you go into *Grace-Church-street* and *Fen-Church-street*, crying out all the way you went, *England* is bought and sold to the *Spaniard*!

Southamp. Mr. Attorney, I protest (as I hope to have Mercy in Heaven) I never heard my Lord speak any such Word, neither did I hear of the Proclamation you speak of, made by my Lord *Burleigh* and the Herald at Arms; neither did I see them: and I deny (my Soul and Conscience bearing me Witness) that I ever knew of any Intent and Meaning, or did ever mean or intend any Treason, Rebellion, or other Action against my Sovereign or the State; but only what I did, was to assist my Lord of *Essex* in his private Quarrel; and therefore, Mr. Attorney, you have urged the matter very far, and you wrong me therein, my Blood be upon your Head. As for my Lord of *Rutland*, whereas he inferreth against me to be a persuader and inviter of my Lord of *Essex* to these Actions, he wrongeth me exceedingly; for he was

never the Man that saw me once discontented, and therefore had small ground or reason so to say. And you, Mr. Attorney, whereas you charge me for a Papist, I protest most unfeignedly, I was never conversant with any of that sort; I only knew one *White* a Priest that went up and down the Town, yet did I never converse with him in all my Life.

Essex. My Lord, and you that be our Peers, I beseech you give me hearing thus far, not that I will speak it for the safeguard of my Life, but with this my desire, I charge the Souls of all them that be our Censurers or Triers; because out of a Form and Custom of speaking, these Orators would make them more odious that come to the Bar, that I may not be thought to have done this upon Revenge: for within these few days I purposed to have received the Communion, to be a Testimony that I was far from bearing of Malice to any, not so much as to my private Enemies. But the falling out between the Earl of *Southampton* and the Lord *Grey*, happening on a Sunday, hindered my Intent; for so soon as I knew of it, I found my Affections to stir on it exceedingly: yet I have since that time laboured, and by my Prayers to God earnestly desired, that I might be armed with Patience to endure all Afflictions. And here I protest before the ever-living God, as he may have Mercy on me, That my Conscience is clear from any disloyal Thought or Harm to her Majesty; and my desire ever hath been to be free from Bloodshed, as Mr. *Dove* can witness. But if in all my Thoughts and Purposes I did not ever desire the good Estate of my Sovereign and Country, as of my own Soul; I beseech the Lord then shew some Mark upon me and my Soul in this place, for a just Vengeance of my Untruths to all the World. And God which knoweth the Secrets of all Hearts, knoweth that I never sought the Crown of *England*, nor ever wished to be a higher degree than a Subject. I greatly endeavoured to have brought my Conscience to peace, only by seeking to secure my Access to the Presence of the Queen, that I might speedily have unfolded my Grievs unto her Majesty against my private Enemies; but not to have shed one drop of their Blood: And this, my Lord, I speak, to the end I might put off all imputation of being an Hypocrite or an Atheist; for I was never Papist, neither did I ever favour any Sectary (as my Lord of *Canterbury* knoweth, and can testify:) for my Religion, it is found, and as I live, I mean to die in it.

Bacon. Well my Lord, may it please your Grace, you may see how weakly he hath shadowed his Purpose, and how slenderly he hath answered the Objections against him. But my Lord, doubting that too much variety of Matter may minister occasion of Forgetfulness; I will only trouble your Lordship's remembrance with this only Point, rightly comparing this Rebellion of my Lord of *Essex* to the Duke of *Guise's*, that came upon the Barricades at *Paris* in his Doublet and Hose, attended upon with 8 Men; but his Confidence in the City was such (even as my Lord's was) that when he had delivered himself so far, and that the shallowness of his own Conceit could not accomplish what he expected, the King for his defence taking Arms against him, he was glad to yield himself, thinking to colour his Pretexts, turned his Practices, and alledged the occasion thereof to be a private Quarrel.

Essex. My Lord, I must confess it was my fault to stand out, and to maintain my House with defence

fence and resisting; but I will not deny but that my Lord of *Southampton* and *Sir Charles Davers* did persuade me to parley with my Lord General: which I hope your Lordship will remember I did yield upon some indifferent Terms and Conditions; which were,

First, That I might have an honourable Trial.

Secondly, That I might deliver my Grievs my self to the Queen.

Thirdly, That I might go in Safety.

Fourthly, That I might have my Minister with me. And,

Lastly, (Which I chiefly beg of her Majesty,) That she would be pleased to redeem some that were with me in the House, and guiltless, for Knowledge, Intent or Action, of what was by me purposed. All which I thought good to remember, and so humbly submit the same to her Majesty's gracious Pleasure.

Serjeant at Arms, Then Proclamation was made, Lieutenant of the *Tower*, withdraw your Prisoners from the Bar. They being removed, the Lords and Peers went together into a private Place made of purpose, behind the Canopy and Chair of Estate; then the two Chief Judges, and the Lord Chief Baron were sent for in to them, to deliver their Opinions in Law, which they did upon two Points;

the one, * *That in case where a Subject attempteth to put himself into such Strength, as the King shall not be able to resist him, and to force and compel the King to govern otherwise than according to his own Royal Authority and Direction, it is manifest Rebellion.* The

other, *That in every Rebellion the Law intendeth as a Consequent the compassing the Death and Deprivation of the King, as foreseeing that the Rebel will never suffer that King to live or reign, who might punish or take revenge of his Treason and Rebellion.* After half an hour they came all out again, and each Man took his place; which being done, the Serjeant at Arms begun at the puny Lord, and called *Thomas Lord Howard*, who stood up bare-headed; then said the Lord High Steward,

L. Steward. My Lord *Thomas Howard*, Whether is *Robert Earl of Essex* guilty of this Treason whereupon he hath been indicted, as you take it upon your Honour, or no?

L. Tho. Howard. Whereupon the Lord *Thomas Howard* made answer, bending his Body, and laying his left Hand upon his right Side, said, Guilty, my Lord, of High-Treason. After which manner all the Peers found him guilty one after another, from the puny to the highest, and so delivered in like sort upon their Honours. Being called over a-new, they found *Henry Earl of Southampton* guilty of High-Treason also.

Serjeant at Arms. Then the Serjeant at Arms commanded the Lieutenant of the *Tower* to bring his Prisoners to the Bar again.

Clerk of the Crown. Then the Clerk of the Crown speaking first to the Earl of *Essex*, said; *Robert Earl of Essex*, you have been arraigned and indicted of High-Treason, you have pleaded not Guilty, and for your Trial you have put your self upon God and your Peers; the Peers here (who have heard the Evidence, and your Answer in your Defence) have found you Guilty: Now what can

you say for your self, why you should not have Judgment of Death?

Essex. I only say this, That since I have committed that which hath brought me within the compass of the Law, I may be counted the Law's Traitor in offending the Law, for which I am willing to die, and will as willingly go thereto as ever did any: But I beseech your Lordship and the rest of the Lords here to have Consideration of what I have formerly spoken, and do me the right as to think me a Christian, and that I have a Soul to save, and that I know it is no time to jest: Lying and Counterfeiting, my Soul abhorreth; for I am not desperate nor void of Grace, now to speak falsely. I do not speak to save my Life, for that I see were vain: I owe God a death, which shall be welcome, how soon soever it pleaseth her Majesty. And to satisfy the opinion of the World, that my Conscience is free from Atheism and Popery, howsoever I have been in this Action misled to transgress the Points of the Law, in the Course and Defence of private Matters, and whatsoever thro' the Weakness of my Wit, and Dulness of Memory, or thro' violent Courses, (if there be any violent that seek either Life or Death;) or if I have omitted or may have uttered any thing otherwise; yet I will live and die in the Faith and true Religion which here I have professed.

Clerk of the Crown. Then the Clerk of the Crown demanded of *Henry Earl of Southampton*, What he could say for himself, why Judgment of Death should not be pronounced against him?

Southampton. My Lords, I must say for my part as I have said before, That since the Ignorance of the Law hath made me incur the Danger of the Law, I humbly submit my self to her Majesty's Mercy; and therefore my Lord High Steward, and my Lord Admiral, I beseech you both, that seeing you are Witnesses I am condemned by the Letter of the Law, it would please you to let the Queen know that I crave her Mercy. I know I have offended her, yet if it please her to be merciful unto me, I may live, and by my Service deserve my Life. I have been brought up under her Majesty, I have spent the best part of my Patrimony in her Majesty's Service with danger of my Life, as your Lordships know; if there were any that could challenge me, that I have ever heretofore committed or intended Treason, or any other thing prejudicial to her Majesty or Estate, God let me never inherit his Kingdom, neither would I desire Mercy: but since the Law hath cast me, I do submit myself to Death, and yet I will not despair of her Majesty's Mercy; for that I know she is merciful, and if she please to extend it, I shall with all humility receive it.

L. Steward. My Lord of *Essex*, the Queen's Majesty hath bestowed many Favours on your Predecessors and your self; I would wish therefore that you likewise would submit your self to her Majesty's Mercy, acknowledging your Offences, and reconciling your self inwardly to her Majesty, by laying open all Matters that were intended to prejudice her Majesty, and the Actors thereof; and thereby no doubt you shall find her Majesty merciful.

Essex. My Lord, you have made an honourable Motion; do but send to me at the time of my Death, and you shall see how penitent and humble I will be towards her Majesty, both in acknowledging her exceeding Favours to my Ancestors, and

and to my self: whereby I doubt not but the penitent suffering of my Death, and sprinkling of my Blood, will quench the evil-conceited Thoughts of her Majesty against me. And I do most humbly desire her Majesty, that my Death may put a period to my Offences committed, and be no more remembered by her Highness. If I had ever perceived any of my Followers to have harboured an evil thought against her Majesty, I would have been the first that should have punished the same, in being his Executioner; and therefore I beseech you, my good Lord, mistake me not, nor think me so proud, that I will not crave her Majesty's Mercy, for I protest (kneeling upon the very Knee of my Heart) I do crave her Majesty's Mercy with all Humility: yet I had rather die than live in Misery.

Then the Lord High Steward, after a few Exhortations unto the Earls to prepare themselves for God, told them, Seeing the Law had found them Guilty, it followed of course that he must proceed to Judgment.

The Earl of *Essex* replied very cheerfully, and said; Yea, my Lord, with a very good Will I pray you go on.

Then the Lord High Steward gave Judgment as followeth:

You must go to the place from whence you came, and there remain during her Majesty's Pleasure; from thence to be drawn on a Hurdle thro' *London* Streets, and so to the place of Execution, where you shall be hanged, bowelled, and quartered; your Head and Quarters to be disposed of at her Majesty's Pleasure, and so God have Mercy on your Souls.

Essex. My Lord, I am not a whit dismayed to receive this Sentence, for I protest Death is as welcome to me as Life; and I shall die as cheerful a Death upon such a Testimony, as ever did Man. And I think it fit my poor Quarters that have done her Majesty true Service in divers parts of the World, should be sacrificed and disposed of at her Majesty's Pleasure; whereunto with all willingness of Heart I have submitted my self. But one thing I beg of you, my Lords, that have free access to her Majesty's Person, humbly to beseech her Majesty to grant me, that (during the short time I shall live) I may have the same Preacher to comfort me, that hath been with me since my Troubles began: for as he that hath been long sick, is most desirous of the Physician which hath been, and is best acquainted with the Constitution of his Body; so do I most wish to have the Comfort and spiritual Physick from the Preacher which hath been and is acquainted with the inward Grievs, and secret Affections of my Soul. And my last Request shall be only this; that it will please her Highness that my Lord *Thomas Howard*, and the Lieutenant of the *Tower* may be partakers with me in receiving the Sacrament, and be a witness of it, in token of what I have protested to be true in this Life, for my Loyalty, Religion, and Peace of Conscience: and then whensoever it shall please her Majesty to call me, I shall be ready to seal the same with my Blood.

The Lords promised they would move the Queen for his Requests.

Essex. I humbly thank your Lordships.

Then the Serjeant at Arms stood up with the Mace on his Shoulder, and after Proclamation was

made, said thus: All Peers that were summoned to be here this Day, may now take their Ease; and all other Persons attending here this Service, may depart in her Majesty's Peace, for my Lord High Steward is pleased to dissolve this Commission.

As the Lords were rising, the Earl of *Essex* said, My Lord *De la Ware*, and my Lord *Morley*, I beseech your Lordships to pardon me for your two Sons that are in Trouble for my sake: I protest upon my Soul they knew not of any thing that was or should have been done, but came to me in the Morning, and I desired them to stay, and they knew not wherefore. And so farewell, my Lords.

The Earl of *Southampton* obtained a Reprieve, but the Earl of *Essex* was ordered for Execution.

ON the 25th of *February*, 1601, which was the Day appointed Camd. Eliz. 621. for his Execution, *Thomas Mountford* and *William Barlow*, Doctors of Divinity, with *Astton*, the Minister of the Church in the Tower, were sent unto him early in the Morning to administer Christian Consolation to his Soul. In presence of these Men he gave Thanks to Almighty God from the bottom of his Heart, that his Designs, which were so dangerous to the State, succeeded not. He told them, he had now look'd thoroughly and seriously into his Sin, and was heartily sorry he had so obstinately defended an unjust Cause at the Bar. He thank'd the Queen she had granted he should not be publicly executed, lest his Mind, which was now settled and composed, might be disturb'd by the Acclamations of the People, protesting that he had now learned how vain a thing the Blast of popular Favour and Applause was. He acknowledg'd how worthy he was to be *spued out* (these were his Words) by the Common-wealth, for the Wickedness of his Enterprize, which he liken'd to a Leprosy spread far and near, and that had infected many.

The Queen in the mean time waver'd in her Mind. One while relenting, she sent her Commands by Sir *Edward Cary* that he should not be executed; but then remembering his perverse Obstinacy, that he scorn'd to ask her Pardon and had declar'd openly that his Life would be the Queen's Destruction, she soon after sent a fresh Command by *Darcy* that he should be put to death.

Then he was brought forth between Moor, 622. the Divines to a Scaffold erected within the Court-yard of the *Tower*: Near which sat the Earls of *Cumberland* and *Hertford*, Viscount *Howard of Bindon*, the Lord *Howard of Walden*, the Lord *Darcy of Chiche*, and the Lord *Compton*. There were present also some of the Aldermen of *London*, and Sir *Walter Raleigh*, who, if we may believe himself, came with an Intent to make Answer if any thing should be objected against him by the Earl at his Death; but others thought he came to feed his Eyes with a Sight of the Earl's Sufferings, and to satiate his Hatred with his Blood. But being admonish'd not to press upon the Earl at his Death, which is the Part rather of ignoble Brutes, he withdrew himself further off, and beheld his Execution out of the Armory.

The Earl, as soon as he was come upon the Scaffold, uncover'd his Head, and lifting up his Eyes to Heaven, acknowledg'd that many and great had been the Sins of his Youth, for which, with

with most fervent Prayer (he beg'd Pardon of the Eternal Majesty of God, thro' Christ his Mediator; especially for this last Sin, which he term'd a bloody, crying, and contagious Sin, wherewith so many had been seduc'd to sin against God, their Prince and Country. He besought the Queen and her Ministers to forgive him, praying for her long Life and prosperous Estate, protesting withal that he never intended to lay violent Hands upon her Person. He gave God Thanks that he had never been Atheist, or Papist, but had plac'd all his Hope and Confidence in the Merits of Christ. He pray'd God to strengthen his Mind against the Terrors of Death; desiring the Stan-

ders-by to join with him in a short Prayer, which with broken Sighs, and fervent Affection of inward Devotion, he presently uttered. Afterwards the Executioner asking Forgiveness, he forgave him: He recited the Apostles Creed, and then laying himself down, placed his Neck upon the Block; and having repeated the first Verses of the 51st Psalm, he said, *In Humility and Obedience I prostrate my self to my deserved Punishment: Thou, O God! have Mercy on thy prostrate Servant: Into thy Hands, O Lord! I commend my Spirit.* His Head was taken off at the third Stroke, but the first took away all Sense and Motion.



XVII. *The Trial of Sir Christopher Blunt, Sir Charles Davers, Sir John Davis, Sir Gilly Merrick, and Henry Cusse, for High-Treason, March 5. 1600. 43 Eliz. **

The COMMISSIONERS were,

The Earl of Nottingham, Lord High Admiral.

The Lord Hunfdon, Lord Chamberlain.

Mr. Secretary Cecil.

The Lord Chief Justice Popham.

Sir John Fortescue, Chancellor of the Exchequer.

Mr. Secretary Herbert, and divers of the Judges.



HE Commission being read, the Court proceeded to the reading of the Indictment.

After which the Clerk asked them if they were guilty of the Indictment, or not guilty.

Sir Christoph. Blunt. My Lords, we desire to know wether we may not confess part of the Indictment, and plead guilty as to the rest.

L. C. J. Your pleading must be general to the whole, either Guilty or not Guilty.

Whereupon they all pleaded *not Guilty*, and a substantial Jury was impannel'd, which consisted of Aldermen of London, and other Gentlemen of good Credit.

Sir Christopher Blunt, Sir Charles Davers, and Sir John Davis, confess'd, That it was their design to come to the Queen with so strong a Force, that they might not be resisted, and to require of her divers Conditions and Alterations of Government; nevertheless they intended no personal harm to the Queen herself, and that was the reason why they could not confess the whole Indictment, because the Indictment charges *that they intended and compassed the Death and Destruction of the Queen.*

L. C. J. Wherever the Subject rebelleth, or riseth in a forcible manner to over-rule the Royal Will and Power of the King, the Wisdom and Foresight of the Laws of this Land maketh this Construction of his Actions, that he intendeth to

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deprive the King both of Crown and Life; for the Law judgeth not of the Fact by the Intent, but of the Intent by the Fact.

Queen's Counsel. This Construction is no Mystery or Quiddity of Law, but an infallible Conclusion warranted by Reason and Experience: for the Crown is not a Garland, or mere outward Ornament, but consists of Pre-eminence and Power; and therefore when the Subject will take upon him to give Law to the King, and to make the Sovereign and commanding Power become subject and commanded, such Subject layeth hold of the Crown, and taketh the Sword out of the King's hand. The Crown is so fasten'd upon the King's Head, that it cannot be pulled off, but Head and Life will follow, as all Examples both at home and abroad do manifest; and therefore when their words testify one thing, and their deeds another, they are but like the Protestation used by *Manlius* Lieutenant of *Catiline*, who conspired against the State of *Rome*, and yet began his Letter, * *Deos hominesque testamur, nos* * *Sallust. nihil aliud, &c.* denying they intended any thing against their Country, but only to provide for their own Safety.

But admitting that the Protestation of the Prisoners was so far true, that they had not at that time in their minds a form'd and distinct Cogitation to have destroyed the Queen's Person, yet nothing is more variable and mutable than the Mind of Man; and especially, *Honores mutant mores;*

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* See a fuller Account of this Trial, in State-Trials, Vol. VII. p. 41. But as Merrick and Cusse's Speeches are at the End of this Trial, and not there; we chose not to omit this, which introduces them.

when they were once aloft, and had the Queen in their hands, and were Peers in my Lord of *Effex's* Parliament, who could promise of what mind they would then be? especially when it is considered that my Lord of *Effex* at his Arraignment defended his first Action of imprisoning the Privy Counsellors, by pretence that he was forced to it by his unruly Company: so that if themselves would not have had, or would not seem to have had that extreme and devilish wickedness of Mind, as to lay violent Hands on the Queen's sacred Person; yet what must be done to satisfy the Multitude and secure their Party, must then be the question. The Example of *Richard* the Third may be remember'd, who (tho' he were King in possession, and the rightful Inheritors but Infants) could never sleep quiet in his Bed till they were made away; much less is it to be expected, that a Catilinary Knot and Combination of Rebels (who have made an Insurrection without so much as the fume of a Title) would ever indure, that a Queen, who had been their Sovereign, and had reigned so many years in such Renown and Policy, should continue longer alive, than should make for their own turn.

After this the afore said *Sir Christopher Blunt*, *Sir Charles Davers*, and *Sir John Davis* said, That now they were better informed, and had entered into a deeper consideration of the matter, they were sorry they had given the Court so much trouble, and had not confessed the Indictment at first.

However, the Queen's Counsel produc'd their Evidence to the Jury, which consisted principally of their several Confessions, and the rest of the Evidence used at the Trial of the Earls of *Effex* and *Southampton*, as mentioned before in the said Trial.

Against *Henry Cuffe* was given in Evidence *Sir Charles Davers's* Confession, who charged him, when there was a debating of the several Enterprises which they should undertake, that he did ever bind firmly and resolutely for attempting the Court.

Also the Earl of *Effex's* Accusation under his Hand avouched by him to his Face, that he was a principal Instigator of him in his Treasons. But the chief Evidence was a declaration of *Sir Henry Nevil*, which described and set out the whole manner of his practising with him.

Cuffe. If my being within *Effex-House* the day of the Rebellion be a foundation to charge me with High-Treason, you may as well charge a Lion that is within a Grate with Treason: And for the Consultation at *Drury-House*, it is no more Treason than the Child in the Mother's Belly is a Child.

* *Sol. Gen.* As to his being in *Effex-house*, he was not there by Force and Compulsion, but freely and voluntarily: there was a distribution in the Action, some were to make good the House, and others to enter the City; and the one part held Correspondence with the other; and in Treasons there can be no Accessaries, all are Principals.

As to the Consultation at *Drury-House*, it was a perfect Treason in it self, because the compassing the Queen's Destruction, which by Judgment of Law was concluded and implied in that Consultation, was Treason in the very Thought and Cogitation, so as that Thought be proved by an overt Act: that same Consultation was an overt Act, tho' it had not been upon a list of Names and Articles in writing, much more being upon matter in writing: and again, the going into the City

was a pursuance and carrying on of the Enterprise against the Court, and not a desisting or departing from it.

L. C. J. If many do conspire to execute Treason against the Prince in one manner, and some of them do execute it in another manner, yet their Act (tho' differing in the Manner) is the Act of all of them who conspire, by reason of the general Malice of the Intent.

Against *Sir Gilly Merrick* the Evidence produc'd proved him guilty of open Rebellion; for that he was a Captain or Commander over the House, and took upon him the charge to keep it and make it good as a place of Retreat, for those who issued out into the City; and fortify'd and barricadoed the same House, making Provision of Muskets, Powder, Pellets, and other Ammunition and Weapons for the holding and defending it; and was a busy, forward and noted Actor in that defence and resistance, which was made against the Queen's Forces brought against it by her Majesty's Lieutenant. It was further proved, that some few days before the Rebellion, he had with great heat and violence displaced certain Gentlemen who were lodged in an House close by *Effex-House*, and there posted divers of my Lord *Effex's* Followers and Accomplices.

It was also proved that the Afternoon before the Rebellion, *Merrick* with a great Company of others, who were all afterwards in the Action, had procured to be play'd before them the Play of deposing King *Richard* the Second; neither was it casual, but a Play bespoke by *Merrick*: and when it was told him by one of the Players, that the Play was old, and they should have Loss in playing it, because few would come to it, there were forty Shillings extraordinary given for it, and so it was play'd.

Upon this Evidence the Jury went from the Bar, and after some time returned and brought them in all Guilty: and accordingly they received Sentence of death; and were all executed at *Tyburn*, except *Sir Christopher Blunt*, and *Sir Charles Davers*, who (being nobly descended) were beheaded upon *Tower-Hill*.

On the 13th of *March*, *Merrick* and *Cuffe* were drawn to *Tyburn*: when they were come to the Gallows, *Cuffe* spake as follows;

' I am brought hither to pay my last Debt to Nature, and to suffer for Crimes committed against God, my Prince and my Country; and as I cannot but discern the infinite Justice of God, when I reflect on the multitude of my Offences, so can I as little doubt but the severity of my Punishment will make way for my admission into the Embraces of his Mercy. We are expos'd here as sad Spectacles and Instances of human Frailty; the Death we are to undergo carries a frightful Aspect, (for even the best of Men desire Life) besides that it is as full of Ignominy as Terror; however, 'tis the Portion of the best of Saints, with whom I assuredly hope to rise again in Christ: not that I would be thought by any one to depend on my own Merits, which I absolutely discard, but I place my entire Trust and Dependence in the Atonement of my Saviour's Blood. I am fully persuaded, that whoever feels a secret Consolation within himself, whilst he groans under the infiction of any earthly Punishment, is chastis'd by God with a paternal Tendernefs, and not in an angry and judicial way.

' But

‘ But to come to the Cause of my death ; there
 ‘ is no body here can possibly be ignorant what a
 ‘ wild Commotion was rais’d on the 8th of *February*, by a particular great, but unadvised Earl.
 ‘ I do here call God, his Angels, and my own
 ‘ Conscience to witness, that I was not in the least
 ‘ concerned therein, but was shut up that whole
 ‘ Day within the House, where I spent the time
 ‘ in very melancholy Reflections.’

Here he was interrupted, and advised not to disguise the Truth by Distinctions, nor palliate his Crime by specious Pretences. Then he proceeded,
 ‘ I confess ’tis a Crime as black as Treason for a
 ‘ Subject who has lost his Prince’s favour, to force
 ‘ his way to the Royal Presence: for my own
 ‘ part, I never persuaded any Man to take up
 ‘ Arms against the Queen, but am most heartily
 ‘ concerned for being an Instrument in bringing
 ‘ that worthy Gentleman, Sir *Henry Nevil*, into
 ‘ danger, and do most earnestly intreat his Pardon. And whereas I said that one and twenty
 ‘ Aldermen out of the twenty four were devoted
 ‘ to the Earl’s Interest, I only meant that they
 ‘ were his Friends, and ready to serve him, but
 ‘ not in the way of open Rebellion.’

Here he was again interrupted, and so began to apply himself to his Devotions, which he manag’d with a great deal of fervour: and then making a solemn profession of his Creed, and asking pardon of God and the Queen, he was dispatch’d by the Executioner.

After him Sir *Giles Merrick* suffer’d in the same way, and with a most undaunted Resolution: for, as if he were weary of living longer, he once or twice interrupted *Cuffe*, and advis’d him to spare a Discourse, which however rational was not very seasonable, when he was taking leave of the World. He clear’d the Lord *Mountjoy* from having any acquaintance with the Design; and intreated those Noblemen who stood by, to intercede with the Queen, that there might not be any farther Proceedings against such, as had unwarily espoused this unhappy Cause.

Five days after, *March 18*. Sir *Christopher Blunt*, and Sir *Charles Davers* were executed on *Tower-Hill*. *Davers* bore his death with a most christian Calmness and Composure, having first craved God’s pardon and the Queen’s, to whom he wish’d all Prosperity; as also the Lord *Grey*’s, who was there present, to whom he acknowledg’d he had been ill affected, not from any Injury he had suffer’d from him, but purely on the Earl of *Southampton*’s account, to whom the Lord *Grey* profess’d an absolute Enmity.

When Sir *Christopher Blunt* came upon the Scaffold, he express’d himself in the following manner:

MY Lords, and you that be present, altho’ I must confess, that it were better fitting the little time I have to breathe, to bestow the same in asking God forgiveness for my manifold and abominable Sins, than to use any other Discourse, especially having both an Imperfection of Speech, and God knows, a weak Memory, by reason of my late grievous Wound: yet to satisfy all those that are present what Course hath been held by me in this late Enterprize, because I was said to be an Instigator, and Setter on of the late Earl, I will truly, and upon the peril of my Soul, speak the Truth.

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It is true, that the first time that ever I understood of any dangerous Discontentment in my Lord of *Essex*, was about three Years ago at *Wansted*, upon his coming one day from *Greenwich*. At that time he spake many things unto me, but descended into no Particulars, but in general Terms.

After which time he never brake with me in any matter tending to the Alteration of the State, (I protest before God) until he came into *Ireland*, other than I might conceive, that he was of an ambitious and discontented Mind. But when I lay at the Castle of *Thomas Lee*, called *Reban*, in *Ireland*, grievously hurt, and doubted of my Life; he came to visit me, and then began to acquaint me with his Intent.

As he thus spake, the Sheriff began to interrupt him, and told him the Hour was past. But my Lord *Grey*, and Sir *Walter Raleigh* Captain of the Guard, called to the Sheriff, and requir’d him not to interrupt him, but to suffer him quietly to finish his Prayers and Confessions. Sir *Christopher Blunt* said, Is Sir *Walter Raleigh* there? Those on the Scaffold answered, yea; to whom Sir *Christopher Blunt* spake on this manner:

Sir *Walter Raleigh*, I thank God that you are present; I had an infinite desire to speak with you, to ask you forgiveness ere I died, both for the wrong done you, and for my particular ill intent towards you: I beseech you forgive me. Sir *Walter Raleigh* answer’d, that he most willingly forgave him, and besought God to forgive him, and to give him his divine Comfort; protesting before the Lord, that whatsoever Sir *Christopher Blunt* meant towards him, for his part, he never had any ill intent towards him: And further said to Sir *Christopher Blunt*, I pray you without offence, let me put you in mind that you have been esteemed, not only a principal Provoker and Persuader of the Earl of *Essex* in all his undutiful Courses, but especially an Adviser in that which hath been confessed of his purpose to transport a great part of her Majesty’s Army out of *Ireland* into *England*, to land at *Milford*, and thence to turn it against her sacred Person. You shall do well to tell the Truth, and to satisfy the World. To which he answered thus:

Sir, if you will give me patience, I will deliver a Truth, speaking now my last, in the presence of God, in whose Mercy I trust. And then he directed himself to my Lord *Grey*, and my Lord *Compton*, and the rest that sat on horseback near the Scaffold.

When I was brought from *Reban* to *Dublin*, and lodged in the Castle, his Lordship and the Earl of *Southampton* came to visit me; and to be short, he began thus plainly with me: *That he intended to transport a choice part of the Army of Ireland into England, and land them in Wales, at Milford, or thereabouts; and so securing his Descent thereby, would gather such other Forces, as might enable him to march to London.* To which I protest before the Lord God, I made this or the like answer; that I would that Night consider of it, which I did.

And the next Day the Earls came again; I told them that such an Enterprize, as it was most dangerous, so would it cost much Blood, and I could not like of it; besides many hazards which at this time I cannot remember unto you, neither will the time permit it. But I rather advised him to go over himself with a good Train, and make sure of the Court, and then make his own Conditions.

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And

And altho' it be true, that (as we all protested in our Examinations and Arraignments) we never resolved of doing hurt to her Majesty's Person; (for in none of our Consultations was there set down any such purpose) yet, *I know, and must confess, if we had failed of our Ends, we should (rather than have been disappointed) even have drawn Blood from her self.* From henceforward he dealt no more with me herein, until he was discharged of his Keeper at *Essex-House*. And then he again asked my Advice, and disputed the matter with me; but resolved not. I went then into the Country, and before he sent for me (which was some ten Days before his Rebellion) I never heard more of the matter. And then he wrote unto me to come up, upon pretence of making some assurances of Land, and the like. I will leave the rest unto my Confessions, given to that honourable Lord Admiral, and worthy Mr. Secretary, (to whom I beseech you Sir *Walter Raleigh* commend me) I can requite their favourable and charitable dealing with me, with nought else but my Prayers for them. And I beseech God of his Mercy to save and preserve the Queen, who hath given Comfort to my Soul, in that I hear she hath forgiven me all but the Sentence of the Law, which I most worthily deserved, and do most willingly imbrace, and hope that

God will have Mercy and Compassion on me, who have offended him as many ways as ever sinful wretch did. I have led a Life so far from his Precepts, as no Sinner more. God forgive it me, and forgive me my wicked Thoughts, my licentious Life, and this right Arm of mine, which (I fear me) hath drawn Blood in this last Action. And I beseech you all bear witness that I die a Catholick, yet so, as I hope to be saved only by the Death and Passion of Christ, and by his Merits, not ascribing any thing to mine own Works. And I trust you are all good People, and your Prayers may profit me. Farewel my worthy Lord *Grey*, and my Lord *Compton*, and to you all, God send you both to live long in Honour. I will desire to say a few Prayers, and imbrace my Death most willingly.

With that he turned from the Rail towards the Executioner: and the Minister offering to speak with him, he came again to the Rail, and besought that his Conscience might not be troubled, for he was resolved; which he desired for God's sake. Whereupon Commandment was given, that the Minister should not interrupt him any further. After which he prepared himself to the Block, and so died very manfully and resolutely.



XVIII. *The Trial of Sir WALTER RALEIGH Kt. at Winton, for High-Treason, the 17th of November, 1603.*
1 Jac. I.

The COMMISSIONERS were,

The Right Honourable Henry Howard, Earl of Suffolk, Lord Chamberlain.
Charles Blunt, Earl of Devon.
Lord Henry Howard, afterward Earl of Northampton.
Robert Cecil, Earl of Salisbury.
Edward Lord Wotton of Morley.

Sir John Stanhope, Vice-Chamberlain.
Lord Chief Justice of England, Popham.
Lord Chief Justice of the Common-Pleas, Anderson.
Mr. Justice Gawdie.
Justice Warburton; and
Sir William Wade.

FIRST the Commission of Oyer and Terminer was read by the Clerk of the Crown-Office; and the Prisoner bid hold up his Hand.

And then presently the Indictment, which was in effect as followeth:

THAT he did conspire, and go about to deprive the King of his Government, to raise up Sedition within the Realm; to alter Religion, to bring in the Roman Superstition, and to procure foreign Enemies to invade the Kingdom. That the Lord *Cobham*, the 9th of June last, did meet with the said Sir *Walter Raleigh* in *Durham-House*, in the Parish of *St. Martins in the Fields*, and then and there had Conference with him, how to advance *Arabella Stuart* to

the Crown and Royal Throne of this Kingdom; and that then and there it was agreed, that *Cobham* should treat with *Aremberg*, Ambassador from the Archduke of *Austria*, to obtain of him 600000 Crowns, to bring to pass their intended Treason. It was agreed that *Cobham* should go to the Archduke *Albert*, to procure him to advance the pretended Title of *Arabella*: from thence knowing that *Albert* had not sufficient means to maintain his own Army in the *Low-Countries*, *Cobham* should go to *Spain* to procure the King to assist and further her pretended Title.

It was agreed, the better to effect all this Conspiracy, that *Arabella* should write three Letters, one to the Archduke, another to the King of *Spain*, and a third to the Duke of *Savoy*; and promise three things:

First,

First, To establish a firm Peace between England and Spain.

Secondly, To tolerate the Popish and Roman Superstition.

Thirdly, To be ruled by them in contracting of her Marriage.

And for the effecting these traitorous Purposes, *Cobham* should return by the Isle of *Jersey*, and should find *Sir Walter Raleigh* Captain of the said Isle there, and take counsel of *Raleigh* for the distributing of the aforesaid Crowns, as the Occasion or Discontentment of the Subjects should give cause and way.

And further, That *Cobham* and his Brother *Brook* met on the 9th of *June* last, and *Cobham* told *Brook* all these Treasons: To the which Treasons *Brook* gave his Assent, and did join himself to all these. And after, on the Thursday following, *Cobham* and *Brook* did speak these words; *That there would never be a good World in England, till the King* (meaning our Sovereign Lord) *and his Cubs* (meaning his Royal Issue) *were taken away.*

And the more to disable and deprive the King of his Crown, and to confirm the said *Cobham* in his Intents, *Raleigh* did publish a Book, falsely written against the most Just and Royal Title of the King, knowing the said Book to be written against the just Title of the King; which Book *Cobham* after that received of him. Further, for the better effecting these traitorous Purposes, and to establish the said *Brook* in his Intent, the said *Cobham* did deliver the said Book unto him the 14th of *June*. And further, the said *Cobham*, on the 16th of *June*, for accomplishment of the said Conference, and by the traitorous Instigation of *Raleigh*, did move *Brook* to incite *Arabella* to write to the three forenamed Princes, to procure them to advance her Title; and that she, after she had obtained the Crown, should promise to perform three things, *viz.* 1. Peace between *England* and *Spain*. 2. To tolerate with Impunity the Popish and Roman Superstitions. 3. To be ruled by them three in the contracting of her Marriage.

To these Motions the said *Brook* gave his Assent. And for the better effecting of the said Treasons, *Cobham* on the 17th of *June*, by the Instigation of *Raleigh*, did write Letters to Count *Aremberg*, and did deliver the said Letters to one *Matthew de Lawrence*, to be delivered to the said Count, which he did deliver, for the obtaining of the 60000 Crowns; which Money by other Letters Count *Aremberg* did promise to perform the Payment of; and this Letter *Cobham* received the 18th of *June*. And then did *Cobham* promise to *Raleigh*, that when he had received the said Money, he would deliver 8000 Crowns to him, to which motion he did consent; and afterwards *Cobham* offered *Brook*, that after he should receive the said Crowns, he would give to him 10000 thereof: to which Motion, *Brook* did assent.

To the Indictment, *Sir Walter Raleigh* pleaded Not Guilty.

THE JURY.

Sir Ralph Conisly,	}	Knights.
Sir Thomas Fowler,		
Sir Edward Peacock,		
Sir William Rowe,		
Henry Goodyer,	}	Esquires.
Roger Wood,		
Thomas Walker,		
Thomas Whitby,		

Thomas Higbgate,
Robert Kempton,
John Chawkey,
Robert Bromley,

} Gentlemen.

Sir Walter Raleigh, Prisoner, was asked, Whether he would take exceptions to any of the Jury?

Raleigh. I know none of them; they are all Christians, and honest Gentlemen, I except against none.

E. Suffolk. You Gentlemen of the King's Learned Counsel, follow the same course as you did the other day.

Raleigh. My Lord, I pray you I may answer the Points particularly as they are delivered, by reason of the Weakness of my Memory and Sickness.

L. C. Just. Popham. After the King's Learned Counsel have delivered all the Evidence, *Sir Walter*, you may answer particularly to what you will.

Heale, the King's Serjeant at Law. You have heard of *Raleigh's* bloody attempts to kill the King and his Royal Progeny, and in place thereof, to advance one *Arabella Stuart*. The Particulars of the Indictment are these: First, That *Raleigh* met with *Cobham* the 9th of *June*, and had Conference of an Invasion, of a Rebellion, and an Insurrection, to be made by the King's Subjects, to depose the King, and to kill his Children, poor Babes that never gave Offence. Here is Blood, here is a new King and Governor. In our King consists all our Happiness, and the true Use of the Gospel; a thing which we all wished to be settled, after the Death of the Queen. Here must be Money to do this, for Money is the Sinew of War. Where should that be had? Count *Aremberg* must procure it of *Philip King of Spain*, five or six hundred thousand Crowns; and out of this Sum *Raleigh* must have eight thousand. But what is that Count *Aremberg*? Though I am no good *Frenchman*, yet it is as much as to say in *English*, Earl of *Aremberg*. Then there must be Friends to effect this: *Cobham* must go to *Albert Archduke of Austria*, for whom *Aremberg* was Ambassador at that time in *England*. And what then? He must persuade the Duke to assist the pretended Title of *Arabella*. From thence *Cobham* must go to the King of *Spain*, and persuade him to assist the said Title. Since the Conquest, there was never the like Treason. But out of whose Head came it? Out of *Raleigh's*, who must also advise *Cobham* to use his Brother *Brook* to incite the Lady *Arabella* to write three several Letters, as aforesaid in the Indictment: all this was on the 9th of *June*. Then three days after, *Brook* was acquainted with it. After this, *Cobham* said to *Brook*, It will never be well in *England*, till the King and his Cubs are taken away. Afterwards, *Raleigh* delivered a Book to *Cobham*, treacherously written against the Title of the King. It appears that *Cobham* took *Raleigh* to be either a God, or an Idol. *Cobham* endeavours to set up a new King, or Governor: God forbid mine Eyes should ever see so unhappy a Change. As for the Lady *Arabella*, she, upon my Conscience, hath no more Title to the Crown than I have, which before God I utterly renounce. *Cobham*, a Man bred in *England*, hath no Experience abroad; but *Raleigh*, a Man of great Wit, Military, and a Sword-man. Now whether these things were bred in a hollow Tree, I leave to them to speak of, who can speak far better than my self. And so sat him down again.

S.r

Sir Ed. Coke, the King's Attorney. I must first, my Lords, before I come to the Cause, give one Caution, because we shall often mention Persons of eminent Places, some of them great Monarchs: Whatever we say of them, we shall but repeat what others have said of them; I mean the Capital Offenders in their Confessions. We professing Law, must speak reverently of Kings and Potentates. I perceive these honourable Lords, and the rest of this great Assembly, are come to hear what hath been scattered upon the Wrack of Report. We carry a just Mind, to condemn no Man, but upon plain Evidence. Here is Mischief, Mischief *in summo gradu*, exorbitant Mischief. My Speech shall chiefly touch these three Points; *Imitation, Supportation, and Defence.*

The Imitation of Evil ever exceeds the Precedent; as on the contrary, Imitation of Good ever comes short. Mischief cannot be supported but by Mischief; yea, it will so multiply, that it will bring all to Confusion. Mischief is ever underprop'd by Falshood of foul Practices: and because all these things did concur in this Treason, you shall understand the Main, as before you did the Bye.

The Treason of the Bye consisteth in these Points: First, that the Lord Grey, Brook, Markham, and the rest, intended by Force in the Night to surprize the King's Court; which was a Rebellion in the Heart of the Realm, yea, in the Heart of the Heart, in the Court. They intended to take him that is a Sovereign, to make him subject to their Power, purposing to open the Doors with Muskets and Caliveers, and to take also the Prince and Council: then under the King's Authority to carry the King to the Tower; and to make a Stale of the Admiral. When they had the King there, to extort three things from him: First, A Pardon for all their Treasons: Secondly, a Toleration of the *Roman* Superstition; which their Eyes shall sooner fall out than they shall ever see; for the King hath spoken these Words in the hearing of many, *I will lose the Crown and my Life, before ever I will alter Religion.* And, thirdly To remove Counsellors. In the room of the Lord Chancellor, they would have placed one *Watson* a Priest, absurd in Humanity and ignorant in Divinity. Brook, of whom I will speak nothing, Lord Treasurer. The great Secretary must be *Markham*; *Oculus Patrie*. A Hole must be found in my Lord Chief Justice's Coat. Grey must be Earl-Marshall, and Master of the Horse, because he would have a Table in the Court; marry, he would advance the Earl of *Worcester* to a higher Place. All this cannot be done without a Multitude: Therefore *Watson* the Priest tells a resolute Man, that the King was in danger of *Puritans* and *Jesuits*; so to bring him in blindfold into the Action, saying, That the King is no King till he be crown'd; therefore every Man might right his own Wrongs: But he is *Rex natus*, his Dignity descends as well as yours, my Lords. Then *Watson* imposeth a blasphemous Oath, that they should swear to defend the King's Person; to keep secret what was given them in charge, and seek all Ways and Means to advance the Catholick Religion. Then they intend to send for the Lord Mayor and the Aldermen, in the King's Name, to the Tower, lest they should make any Resistance, and then to take Hostages of them; and to enjoin them to provide for them Victuals and Munition. Grey, because the King removed before *Midsummer*,

had a further Reach, to get a Company of Sword-men to assist the Action: Therefore he would stay till he had obtained a Regiment from *Ostend* or *Austria*. So you see these Treasons were like *Sampson's* Foxes, which were joined in their Tails, tho' their Heads were sever'd.

Raleigh. You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treason of the Priest.

Attorney. You are not. My Lords, you shall observe three things in the Treasons: First, they had a Watch-word, (the King's Safety); their Pretence was *Bonum in se*; their Intent was *Malum in se*: Secondly, they avouched Scripture; both the Priests had *Scriptum est*; perverting and ignorantly mistaking the Scriptures: Thirdly, They avouch'd the Common Law, to prove that he was no King 'till he was crowned; alledging a Statute of 13 *Eliz.* This, by way of Imitation, hath been the course of all Traitors.

In the 20th of *Edward II.* *Isabella* the Queen, and the Lord *Mortimer*, gave out, that the King's Person was not safe, for the good of the Church and Commonwealth.

The Bishop of *Carlisle* did preach on this Text, *My Head is grieved*, meaning by the Head, the King; that when the Head began to be negligent, the People might reform what is amiss.

In the 3d of *Henry IV.* Sir *Roger Claringdon*, accompany'd with two Priests, gave out That *Richard II.* was alive, when he was dead.

Edward III. caused *Mortimer's* Head to be cut off, for giving counsel to murder the King.

The 3d of *Henry VII.* Sir *Henry Stanley* found the Crown in the Dust, and set it on the King's Head: when *Fitzwater* and *Garret* told him, that *Edward V.* was alive, he said, *If he be alive, I will assist him.* But this cost him his Head.

Edmund de la Pole, Duke of *Suffolk*, killed a Man in the Reign of King *Henry VII.* for which the King would have him hold up his Hand at the Bar, and then pardoned him: Yet he took such an Offence thereat, that he sent to the Noblemen to help to reform the Commonwealth; and then said, he would go to *France* and get Power there. Sir *Roger Compton* knew all the Treason, and discovered *Windon* and others, that were attainted.

He said, there was another thing that would be stood upon, namely, that they had but one Witness. Then he vouched one *Appleyard's* Case, a Traitor in *Norfolk*, who said, a Man must have two Accusers. *Helms* was the Man that accused him; but Mr. Justice *Catlin* said, that that Statute was not in force at that day. His Words were, *Thrust her into the Ditch.*

Then he went on speaking of Accusers, and made this difference: An Accuser is a Speaker by Report, when a Witness is he that upon his Oath shall speak his Knowledge of any Man.

A third sort of Evidence there is likewise, and this is held more forcible than either of the other two; and that is, when a Man, by his Accusation of another, shall, by the same Accusation, also condemn himself, and make himself liable to the same Fault and Punishment: This is more forcible than many Witnesses. So then so much by way of Imitation. Then he defined Treason: There is Treason in the Heart, in the Hand, in the Mouth, in Consummation: comparing that *in Corde* to the Root of a Tree; *in Ore*, to the Bud; *in Manu* to the Blossom; and that which is *in Consummatione*, to the Fruit.

Now

Now I come to your Charge, you of the Jury : The Greatness of Treason is to be considered in these two things, *Determinatione finis*, and *Electiōne mediōrum*. This Treason excelleth in both, for that it was to destroy the King and his Progeny. These Treasons are said to be *Crimen læsæ Majestatis* ; this goeth further, and may be term'd, *Crimen extirpandæ Regiæ Majestatis, & totius Progeniei suæ*. I shall not need, my Lords, to speak any thing concerning the King, nor of the Bounty and Sweetness of his Nature, whose Thoughts are innocent, whose Words are full of Wisdom and Learning, and whose Works are full of Honour ; although it be a true Saying, *Nunquam nimis quod nunquam satis*. But to whom do you bear Malice ? to the Children ?

Raleigh. To whom speak you this ? You tell me News I never heard of.

Attorney. Oh Sir, do I ? I will prove you the notoriousest Traitor that ever came to the Bar. After you have taken away the King, you would alter Religion : as you, Sir *Walter Raleigh*, have followed them of the Bye in Imitation ; for I will charge you with the Words.

Raleigh. Your Words cannot condemn me ; my Innocency is my Defence. Prove one of these things wherewith you have charg'd me, and I will confess the whole Indictment, and that I am the horriblest Traitor that ever lived, and worthy to be crucified with a thousand thousand Torments.

Attorney. Nay, I will prove all : Thou art a Monster ; thou hast an *English* Face, but a *Spanish* Heart. Now you must have Money : *Aremberg* was no fooler in *England* (I charge thee *Raleigh*) but thou incitedst *Cobham* to go unto him, and to deal with him for Money, to bestow on discontented Persons, to raise Rebellion on the Kingdom.

Raleigh. Let me answer for my self.

Attorney. Thou shalt not.

Raleigh. It concerneth my Life.

Ld. Ch. Just. Sir *Walter Raleigh*, Mr. Attorney is but yet in the General ; but when the King's Counsel have given the Evidence wholly, you shall answer every Particular ?

Attorney. Oh ! do I touch you ?

Lord Cecil. Mr. Attorney, when you have done with this General Charge, do you not mean to let him answer every Particular ?

Attorney. Yes, when we deliver the Proofs to be read. *Raleigh* procured *Cobham* to go to *Aremberg* which he did by his Instigation : *Raleigh* supped with *Cobham* before he went to *Aremberg* ; after Supper, *Raleigh* conducted him to *Durham-House* ; from thence *Cobham* went with *Lawrency*, a Servant of *Aremberg's*, unto him, and went in by a back-way. *Cobham* could never be quiet until he had entertained this Motion, for he had four Letters from *Raleigh*. *Aremberg* answer'd, The Money should be performed, but knew not to whom it should be distributed. Then *Cobham* and *Lawrency* came back to *Durham-House*, where they found *Raleigh*. *Cobham* and *Raleigh* went up, and left *Lawrency* below, where they had secret Conference in a Gallery ; and after, *Cobham* and *Lawrency* departed from *Raleigh*. Your Jargon was Peace : What is that ? *Spanish* Invasion, *Scotish* Subversion. And again, you are not a fit Man to take so much Money for procuring of a lawful Peace, for Peace procured by Money is dishonourable. Then *Cobham* must go to *Spain*, and

return by *Jersey*, where you were Captain : And then, because *Cobham* had not so much Policy, or at least Wickedness, as you, he must have your Advice for the distribution of the Money. Would you have deposed so good a King, lineally descended of *Elizabeth*, eldest Daughter of *Edward IV* ? Why then must you set up another ? I think you meant to make *Arabella* a Titular Queen, of whose Title I will speak nothing ; but sure you meant to make her a Stale. Ah ! good Lady, you could mean her no Good.

Raleigh. You tell me News, Mr. Attorney.

Attorney. Oh Sir ! I am the more large, because I know with whom I deal : For we have to deal to-day with a Man of Wit.

Raleigh. Did I ever speak with this Lady ?

Attorney. I will track you out before I have done. *Englishmen* will not be led by persuation of Words, but they must have Books to persuade.

Raleigh. The Book was written by a Man of your Profession, Mr. Attorney.

Attorney. I would not have you impatient.

Raleigh. Methinks you fall out with your self ; I say nothing.

Attorney. By this Book you would persuade Men, that he is not the lawful King. Now let us consider some Circumstances : My Lords, you know my Lord *Cobham* (for whom we all lament and rejoice ; lament in that his House, which hath stood so long unspotted, is now ruined ; rejoice, in that his Treasons are reveal'd :) he is neither Politician nor Sword-man ; *Raleigh* was both, united in the Cause with him, and therefore Cause of his Destruction. Another Circumstance is, the secret contriving of it. *Humphry Stafford* claimed Sanctuary for Treason. *Raleigh*, in his *Machiavelian* Policy, hath made a Sanctuary for Treason : He must talk with none but *Cobham* ; because, faith he, one Witness can never condemn me. For *Brook* said unto Sir *Griffith Markham*, *Take heed how you do make my Lord Cobham acquainted ; for whatsoever he knoweth, Raleigh the Witch will get it out of him*. As soon as *Raleigh* was examined on one point of Treason concerning my Lord *Cobham*, he wrote to him thus ; *I have been examined of you and confessed nothing*. Further, you sent to him by your trusty *Francis Kemish*, that one Witness could not condemn ; and therefore bad his Lordship be of good Courage. Came this out of *Cobham's* Quiver ? No : but out of *Raleigh's Machiavelian* and devilish Policy. Yea, but *Cobham* did retract it ; why then did ye urge it ? Now then see the most horrible Practices that ever came out of the bottomless Pit of the lowest Hell. After that *Raleigh* had Intelligence that *Cobham* had accused him, he endeavour'd to have Intelligence from *Cobham*, which he had gotten by young Sir *John Payton* : But I think it was the Error of his Youth.

Raleigh. The Lords told it me, or else I had not been sent to the Tower.

Attorney. Thus *Cobham*, by the Instigation of *Raleigh*, enter'd into these Actions : So that the question will be, Whether you are not the principal Traitor, and he would nevertheless have enter'd into it ? Why did *Cobham* retract all that same ? First, Because *Raleigh* was so odious, he thought he should fare the worse for his sake. Secondly, he thought thus with himself, If he be free, I shall clear my self the better. After this, *Cobham* asked for a Preacher to confer with, pretending

pretending to have Dr. *Andrews*; but indeed he meant not to have him, but Mr. *Galloway*; a worthy and reverend Preacher, who can do more with the King (as he said) than any other; that he, seeing his constant Denial, might inform the King thereof. Here he plays with the Preacher. If *Raleigh* could persuade the Lords, that *Cobham* had no intent to travel, then he thought all should be well. Here is Forgery! In the *Tower Cobham* must write to Sir *Thomas Vane*, a worthy Man, that he meant not to go into *Spain*: which Letter *Raleigh* devised in *Cobham's* Name.

Raleigh. I will wash my hands of the Indictment, and die a true Man to the King.

Attorney. You are the absolute Traitor that ever was.

Raleigh. Your Phrases will not prove it, Mr. *Attorney*.

Attorney. *Cobham* writeth a Letter to my Lord *Cecil*, and doth will *Mellis's* Man to lay it in a *Spanish Bible*, and to make as tho' he found it by chance. This was after he had Intelligence with this Viper, that he was false.

Lord Cecil. You mean a Letter intended to me; I never had it.

Attorney. No, my Lord, you had it not. You, my Masters of the Jury, respect not the Wickedness and Hatred of the Man, respect his Cause: if he be guilty, I know you will have care of it, for the Preservation of the King, the Continuance of the Gospel authorized, and the Good of us all.

Raleigh. I do not hear yet, that you have spoken one word against me; here is no Treason of mine done: If my Lord *Cobham* be a Traitor, what is that to me?

Attorney. All that he did was by thy Instigation, thou Viper; for I thou thee, thou Traitor.

Raleigh. It becometh not a Man of Quality and Virtue, to call me so: But I take comfort in it, it is all you can do.

Attorney. Have I anger'd you?

Raleigh. I am in no case to be angry.

C. J. Popham. Sir *Walter Raleigh*, Mr. *Attorney* speaketh out of the Zeal of his Duty, for the Service of the King, and you for your Life; be valiant on both sides.

Now they proceed to the Reading the Proofs.

The Lord Cobham's Examination read.

He confesseth, he had a Passport to go into *Spain*, intending to go to the Archduke, to confer with him about these Practices; and because he knew the Archduke had not Money to pay his own Army, from thence he meant to go to *Spain*, to deal with the King for the 600,000 Crowns, and to return by *Jersey*; and that nothing should be done, until he had spoken with Sir *Walter Raleigh* for distribution of the Money to them which were discontented in *England*. At the first beginning, he breathed out Oaths and Exclamations against *Raleigh*, calling him Villain and Traitor; saying he had never entered into these Courses, but by his Instigation, and that he would never let him alone.

Here Mr. *Attorney* willed the Clerk of the Crown-Office to read over these last Words again (*He would never let him alone.*)

The Lord Cobham's Examination.

Besides he spake of Plots and Invasions; of the Particulars whereof he could give no Account, tho' *Raleigh* and he had conferred of them. Further he said, he was afraid of *Raleigh*, that when he should return by *Jersey*, that he would have deliver'd him and the Money to the King. Being examined of Sir *Arthur Gorge*, he freed him, saying, They never durst trust him; but Sir *Arthur Savage* they intended to use, because they thought him a fit Man.

Raleigh. Let me see the Accusation: This is absolutely all the Evidence can be brought against me; poor Shifts! You Gentlemen of the Jury, I pray you understand this. This is that which must either condemn, or give me Life: which must free me, or send my Wife and Children to beg their Bread about the Streets: This is that must prove me a notorious Traitor, or a true Subject to the King. Let me see my Accusation, that I may make my Answer.

Clerk of the Council. I did read it, and shew you all the Examinations.

Raleigh. At my first Examination at *Windsor*, my Lords asked me, what I knew of *Cobham's* Practice with *Aremberg*, I answer'd negatively: And as concerning *Arabella*, I protest before God, I never heard one word of it. If that be proved, let me be guilty of ten thousand Treasons. It is a strange thing you will impute that to me, when I never heard so much as the Name of *Arabella Stuart*, but only the Name of *Arabella*.

After being examin'd, I told my Lords, that I thought my Lord *Cobham* had Conference with *Aremberg*; I suspected his visiting of him: for after he departed from me at *Durham-House*, I saw him pass by his own Stairs, and passed over to *St. Mary Saviours*, where I knew *Lawrency*, a Merchant, and a Follower of *Aremberg*, lay, and therefore likely to go unto him. My Lord *Cecil* asked my Opinion concerning *Lawrency*; I said, that if you do not apprehend *Lawrency*, it is dangerous, he will fly: if you do apprehend him, you shall give my Lord *Cobham* notice thereof. I was asked who was the greatest Man with my Lord *Cobham*; I answer'd, I knew no Man so great with him as young *Wyat* of *Kent*.

As soon as *Cobham* saw my Letter to have discover'd his Dealing with *Aremberg*, in his Fury he accus'd me; but before he came to the Stair-foot he repented, and said he had done me wrong. When he came to the end of his Accusation, he added, that if he had brought this Money to *Jersey*, he fear'd that I would have deliver'd him and the Money to the King. Mr. *Attorney*, you said this never came out of *Cobham's* Quiver; he is a simple Man. Is he so simple? no; he hath a Disposition of his own, he will not easily be guided by others; but when he has once taken head in a Matter, he is not easily drawn from it: he is no Babe. But it is strange for me to devise with *Cobham*, that he should go to *Spain*, to persuade the King to disburse so much Money, he being a Man of no Love in *England*, and I having resign'd my room of chiefest Command, the Wardenship of the *Stannaries*. Is it not strange for me to make my self *Robin Hood*, or a *Kett*, or a *Cade*? I knowing *England* to be in better Estate to defend it self than ever it was. I knew *Scotland* united; *Ireland* quieted, wherein of late our Forces were dispersed; *Denmark* assured, which before was suspected. I knew, that

that having lost a Lady whom Time had surpriz'd, we had now an active King, a lawful Successor, who would himself be present in all his Affairs. The State of *Spain* was not unknown to me: I had written a Discourse, which I had intended to present unto the King, against Peace with *Spain*. I knew the *Spaniards* had six Repulses; three in *Ireland*, and three at Sea, and once in 1588, at *Cales*, by my Lord Admiral. I knew he was discourag'd and dishonour'd. I knew the King of *Spain* to be the proudest Prince in Christendom; but now he cometh creeping to the King my Master for Peace. I knew, whereas before he had in his Port six or seven score Sail of Ships, he hath now but six or seven. I knew of twenty-five Millions he had from his *Indies*, he hath scarce one left. I knew him to be so poor, that the Jesuits in *Spain*, who were wont to have such large Allowance, were fain to beg at the Church-Door. Was it ever read or heard, that any Prince should disburse so much Money without a sufficient Pawn? I knew her own Subjects, the Citizens of *London*, would not lend her Majesty Money, without Lands in Mortgage. I knew the Queen did not lend the States Money, without *Flushing*, *Brill*, and other Towns for a Pawn. And can it be thought, that he would let *Cobham* have so great a Sum?

I never came to the Lord *Cobham's*, but about Matters of his Profit; as the ordering of his House, paying of his Servants Board-Wages, &c. I had of his, when I was examin'd, four thousand Pounds worth of Jewels for a Purchase; a Pearl of three thousand Pound; and a Ring worth five hundred Pound. If he had had a fancy to run away, he would not have left so much to have purchas'd a Lease in Fee-Farm. I saw him buy three hundred Pounds worth of Books to send to his Library at *Canterbury*, and a Cabinet of thirty Pound, to give to Mr. Attorney, for drawing the Conveyances: and God in Heaven knoweth, not I, whether he intended to travel or no. But for that Practice with *Arabella*, or Letters to *Aremberg* framed, or any Discourse with him, or in what Language he spake unto him; if I knew any of these things, I would absolutely confess the Indictment, and acknowledge my self worthy ten thousand Deaths.

Cobham's second Examination read.

The Lord *Cobham* being requir'd to subscribe to an Examination, there was shewed a Note under Sir *Walter Raleigh's* hand; the which when he had perus'd, he paus'd, and after brake forth into these Speeches: Oh Villain! Oh Traitor! I will now tell you all the Truth; and then said, His Purpose was to go into *Flanders*, and into *Spain*, for the obtaining the aforesaid Money; and that *Raleigh* had appointed to meet him in *Jersey* as he return'd home, to be advis'd of him about the Distribution of the Money.

L. C. J. Popham. When *Cobham* answer'd to the Interrogatories, he made scruple to subscribe; and being urg'd to it, he said, if he might hear me affirm, that a Person of his Degree ought to set his hand, he would: I lying then at *Richmond* for fear of the Plague, was sent for, and I told he ought to subscribe; otherwise it were a Contempt of a high nature: then he subscribed. The Lords question'd with him further, and he shew'd them a Letter, as I thought written to me, but it was indeed written to my Lord *Cecil*: he desired to see the Letter again, and then said, Oh Wretch!

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Oh Traitor! whereby I perceiv'd you had not perform'd that Trust he had repos'd in you.

Raleigh. He is as passionate a Man as lives; for he hath not spared the best Friends he hath in *England* in his Passion. My Lords, I take it, he that has been examined, has ever been asked at the time of his Examination, if it be according to his meaning, and then to subscribe. Methinks, my Lords, when he accuses a Man, he should give some Account and Reason of it: It is not sufficient to say, we talked of it. If I had been the Plotter, would not I have given *Cobham* some Arguments, whereby to persuade the King of *Spain*, and answer his Objections? I knew *Westmoreland* and *Botwell*, Men of other Understandings than *Cobham*, were ready to beg their Bread.

Sir Tho. Fowler, one of the Jury. Did Sir *Walter Raleigh* write a Letter to my Lord before he was examined concerning him, or not?

Attorney. Yes.

Lord Cecil. I am in great dispute with my self to speak in the Case of this Gentleman: A former Dearness between me and him, ty'd so firm a Knot of my Conceit of his Virtues, now broken by a Discovery of his Imperfections. I protest, did I serve a King that I knew would be displeased with me for speaking, in this Case I would speak, whatever came of it; but seeing he is compacted of Piety and Justice, and one that will not mislike of any Man for speaking a Truth, I will answer your Question.

Sir *Walter Raleigh* was staid by me at *Windsor*, upon the first News of *Copley*, that the King's Person should be surprized by my Lord *Grey*, and Mr. *George Brook*; when I found *Brook* was in, I suspected *Cobham*, then I doubted *Raleigh* to be a Partaker. I speak not this, that it should be thought I had greater Judgment than the rest of my Lords, in making this haste to have them examined. *Raleigh* following to *Windsor*, I met with him upon the Terras, and willed him, as from the King, to stay; saying, the Lords had something to say to him: then he was examined, but not concerning my Lord *Cobham*, but of the surprizing Treason. My Lord *Grey* was apprehended, and likewise *Brook*; by *Brook* we found, that he had given notice to *Cobham* of the surprizing Treason, as he deliver'd it to us; but with as much sparingness of a Brother, as he might. We sent for my Lord *Cobham* to *Richmond*, where he stood upon his Justification, and his Quality; sometimes being froward, he said he was not bound to subscribe, wherewith we made the King acquainted. *Cobham* said, if my Lord Chief Justice would say it were a Contempt, he would subscribe; whereof being resolv'd, he subscrib'd. There was a Light given to *Aremberg*, that *Lawrency* was examined; but that *Raleigh* knew that *Cobham* was examined, is more than I know.

Raleigh. If my Lord *Cobham* had trusted me in the Main, was not I as fit a Man to be trusted in the Bye?

Lord Cecil. *Raleigh* did by his Letters acquaint us that my Lord *Cobham* had sent *Lawrency* to *Aremberg*, when he knew not he had any Dealings with him.

Lord Hen. Howard. It made for you, if *Lawrency* had been only acquainted with *Cobham*, and not with you. But you knew his whole Estate, and were acquainted with *Cobham's* Practice with *Lawrency*; and it was known to you before, that *Lawrency* depended on *Aremberg*.

Ff

Attorney.

Attorney. 1. *Raleigh* protested against the surprizing Treason. 2. That he knew not of the Matter touching *Arabella*. I would not charge you, *Sir Walter*, with a Matter of Falshood: You say you suspected the Intelligence that *Cobham* had with *Aremberg* by *Lawrency*.

Raleigh. I thought it had been no other Intelligence, but such as might be warranted.

Attorney. Then it was but lawful Suspicion. But to that whereas you said, that *Cobham* had accused you in Passion, I answer three ways: 1. I observed when *Cobham* said, Let me see the Letter again, he paus'd; and when he did see that Count *Aremberg* was touch'd, he cry'd out, Oh Traitor! Oh Villain! now will I confess the whole Truth. 2. The Accusation of a Man on hearfay, is nothing: Would he accuse himself on Passion, and ruinat his Case and Posterity, out of malice to accuse you? 3. Could this be out of Passion? Mark the Manner of it; *Cobham* had told this at least two Months before to his Brother *Brook*, *You are Fools, you are on the Bye, Raleigh and I are on the Main; we mean to take away the King and his Cubs*: this he deliver'd two Months before. So mark the Manner and the Matter; he would not turn the Weapon against his own Bosom, and accuse himself to accuse you.

Raleigh. Hath *Cobham* confessed that?

Ld. Ch. Just. This is spoken by Mr. Attorney, to prove that *Cobham's* Speech came not out of Passion.

Raleigh. Let it be proved that *Cobham* said so.

Attorney. *Cobham* saith, he was a long time doubtful of *Raleigh*, that he would send him and the Money to the King. Did *Cobham* fear lest you would betray him in *Jersey*? then of necessity there must be Trust between you. No Man can betray a Man, but he that is trusted, in my understanding. This is the greatest Argument to prove that he was acquainted with *Cobham's* Proceedings. *Raleigh* has a deeper Reach, than to make himself, as he said, *Robin Hood*, a *Kett*, or *Cade*; yet I never heard that *Robin Hood* was a Traitor; they say he was an Outlaw. And whereas he saith that our King is not only more wealthy and potent than his Predecessors, but also more politick and wise, so that he could have no hope to prevail; I answer, There is no King so potent, wise and active, but he may be overtaken thro' Treason. Whereas you say *Spain* is so poor, discourfing so largely thereof; it had been better for you to have kept in *Guiana*, than to have been so well acquainted with the State of *Spain*. Besides, if you could have brought *Spain* and *Scotland* to have joined, you might have hoped to prevail a great deal the better. For his six Overthrows, I answer, he hath the more Malice, because Repulses breed Desire of Revenge. Then you say you never talked with *Cobham*, but about Leases, and letting Lands, and ordering his House; I never knew you Clerk of the Kitchen, &c. If you had fallen on your Knees at first, and confessed the Treason, it had been better for you. You say, he meant to have given me a Cabinet of thirty Pound; perhaps he thought by those means to have anticipated me therewith. But you say all these are Circumstances: I answer, all this Accusation in Circumstance is true. Here now I might appeal to my Lords, that you take hold of this, that he subscribed not to the Accusation.

Lord Hen. Howard. *Cobham* was not then pressed to subscribe.

Attorney. His Accusation being testify'd by the Lords, is of as great force, as if he had subscribed. *Raleigh* saith again, if the Accuser be alive, he must be brought face to face to speak; and alledges 25 *Edward III.* that there must be two sufficient Witnesses, that must be brought face to face before the Accused; and alledgeth 10 and 13 *Elizabeth*.

Raleigh. You try me by the *Spanish* Inquisition, if you proceed only by the Circumstances, without two Witnesses.

Attorney. This is a treasonable speech.

Raleigh. *Evertete Hominem justum in Causa sua injustum est.* Good my Lords, let it be proved, either by the Laws of the Land, or the Laws of God, that there ought not to be two Witnesses appointed; yet I will not stand to defend this Point in Law, if the King will have it so: it is no rare thing for a Man to be falsely accused. A Judge condemn'd a Woman in *Sarum* for killing her Husband on the Testimony of one Witness; afterwards his Man confessed the Murder, when she was executed: who after being touch'd in Conscience for the Judgment, was used to say, *Quod nunquam de hoc facto animam in vita sua purgaret.* It is also commanded by the Scripture; *Allocutus est Jehova Moysen, In Ore duorum aut trium Testium, &c.*

If Christ requireth it, as it appeareth, *Mat. 18.* if by the Canon, Civil Law, and God's Word, it be required, that there must be two Witnesses at the least; bear with me if I desire one.

I would not desire to live, if I were privy to *Cobham's* Proceedings. I have been a Slave, a Villain, a Fool, if I had endeavour'd to set up *Arabella*, and refus'd so gracious a Lord and Sovereign. But urge your Proofs.

Ld. Ch. Just. You have offer'd Questions on diverse Statutes, all which mention two Accusers in case of Indictments: you have deceiv'd your self, for the Laws of 25 *Edward III.* and 5 *Edward VI.* are repeal'd. It sufficeth now if there be Proofs made either under Hand, or by Testimony of Witnesses, or by Oaths; it needs not the Subscription of the Party, so there be Hands of credible Men to testify the Examination.

Raleigh. It may be an Error in me; and if those Laws be repeal'd, yet I hope the Equity of them remains still; but if you affirm it, it must be a Law to Posterity. The Proof of the Common Law is by Witness and Jury; let *Cobham* be here, let him speak it. Call my Accuser before my Face, and I have done.

Attorney. *Scientia Sceleris est mera Ignorantia.* You have read the Letter of the Law, but understand it not. Here was your Anchor-hold, and your Rendezvous: you trust to *Cobham*, either *Cobham* must accuse you, or no body; if he did, then it would not hurt you, because he is but one Witness; if he did not, then you are safe.

Raleigh. If ever I read a Word of the Law or Statute, before I was Prisoner in the Tower, God confound me.

Attorney. Now I come to prove the Circumstances of the Accusation to be true. *Cobham* confessed he had a Pass-port to travel, hereby intending to present Overtures to the Arch-Duke, and from thence to go to *Spain*, and there to have conference with the King for Money. You say he promised to come home by *Jersey*, to make merry with you and your Wife.

Raleigh. I said in his return from *France*, not *Spain*.

Attorney.

Attorney. Further, in his Examination he saith, nothing could be set down for the Distribution of the Money to the Discontented, without Conference with *Raleigh*. You said it should have been for Procurement of Peace, but it was for raising Rebellion. Further, *Cobham* saith, he would never have enter'd into these Courses, but by your Instigation, and that you would never let him alone. Your Scholar was not apt enough to tell us all the Plots, that is enough for you to do, that are his Master. You intended to trust Sir *Arthur Savage*, whom I take to be an honest and true Gentleman, but not Sir *Arthur Gorge*.

Raleigh. All this is but one Accusation of *Cobham's*, I hear no other thing; to which Accusation he never subscribed nor avouched it. I beseech you, my Lords, let *Cobham* be sent for, charge him on his Soul, on his Allegiance to the King; if he affirm it, I am guilty.

Lord Cecil. It is the Accusation of my Lord *Cobham*, it is the Evidence against you: must it not be of force without his Subscription? I desire to be resolv'd by the Judges, whether by the Law it is not a forcible Argument of Evidence.

Judges. My Lord, it is.

Raleigh. The King at his Coronation is sworn *In omnibus Judiciis suis equitatem, non rigorem Legis, observare.* By the Rigour and Cruelty of the Law it may be a forcible Evidence.

Ld. Ch. Just. That is not the Rigour of the Law, but the Justice of the Law; else when a Man hath made a plain Accusation, by Practice he might be brought to retract it again.

Raleigh. Oh my Lord, you may use Equity.

Ld. Ch. Just. That is from the King; you are to have Justice from us.

Lord Anderson. The Law is, if the Matter be proved to the Jury, they must find you guilty; for *Cobham's* Accusation is not only against you, there are other things sufficient.

Lord Cecil. Now that Sir *Walter Raleigh* is satisfy'd, that *Cobham's* Subscription is not necessary, I pray you, Mr. Attorney, go on.

Raleigh. Good Mr. Attorney be patient, and give me leave.

Lord Cecil. An unnecessary Patience is a Hindrance, let him go on with his Proofs, and then reflect them.

Raleigh. I would answer particularly.

Lord Cecil. If you would have a Table and Pen and Ink, you shall.

Then Paper and Ink was given him.

Here the Clerk of the Crown read the Letter, which the Lord *Cobham* did write in *July*, which was to the effect of his former Examination; further saying, I have disclos'd all: To accuse any one falsely, were to burden my own Conscience.

Attorney. Read *Copley's* Confession the 8th of *June*; he saith, He was offer'd 1000 Crowns to be in this Action.

Here *Watson's* Additions were read.

The great Mass of Money from the Count was impossible, &c.

Brook's Confession read.

There have Letters passed, saith he, between *Cobham* and *Aremberg*, for a great Sum of Money to assist a second Action, for the surprizing of his Majesty.

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Attorney. It is not possible it was of Passion; for it was in talk before three Men, being severally examined, who agreed in the Sum to be bestow'd on discontented Persons; That *Grey* should have 12000 Crowns, and *Raleigh* should have 8000, or 10000 Crowns.

Cobham's Examination, *July* 18.

If the Money might be procur'd (saith he) then a Man may give Pensions. Being ask'd if a Pension should not be given to his Brother *Brook*, he deny'd it not.

Lawrency's Examination.

Within five days after *Aremberg* arrived, *Cobham* resorted unto him. That Night that *Cobham* went to *Aremberg* with *Lawrency*, *Raleigh* supped with him.

Attorn. *Raleigh* must have his part of the Money, therefore now he is a Traitor. The Crown shall never stand one Year on the Head of the King (my Master) if a Traitor may not be condemn'd by Circumstances: For if A. tells B. and B. tells C. and C. D. &c. you shall never prove Treason by two Witnesses.

Raleigh's Examination was read.

He confesseth *Cobham* offered him 8000 Crowns, which he was to have for the furtherance of the Peace between *England* and *Spain*; and that he should have it within three days. To which, he said, he gave this Answer; When I see the Money, I will tell you more: for I had thought it had been one of his ordinary idle Conceits, and therefore made no account thereof.

Raleigh. The Attorney hath made a long Narration of *Copley*, and the Priests, which concerns me nothing, neither know I how *Cobham* was alter'd. For he told me, if I would agree to further the Peace, he would get me 8000 Crowns. I asked him, Who shall have the rest of the Money? He said, I will offer such a Nobleman (who was not named) some of the Money. I said, he will not be persuaded by you, and he will extremely hate you for such a Motion. Let me be pinch'd to death with hot Irons, if ever I knew there was any Intention to bestow the Money on discontented Persons. I had made a Discourse against the Peace, and would have printed it: If *Cobham* changed his mind, if the Priests, if *Brook* had any such Intent, what is that to me? They must answer for it. He offer'd me the Money before *Aremberg* came, that is difference of time.

Serj. Philips. *Raleigh* confesseth the matter, but avoideth it by distinguishing of Times. You said it was offer'd you before the coming of *Aremberg*, which is false. For you being examined whether you should have such Money of *Cobham*, or not; you said, yea, and that you should have it within two or three days. *Nemo moriturus praesumitur mentiri.*

Ld. Henry Howard. Alledge me any Ground or Cause, wherefore you gave ear to my Lord *Cobham* for receiving Pensions, in Matters you had not to deal with.

Raleigh. Could I stop my Lord *Cobham's* Mouth?

Ld. Cecil. Sir *Walter Raleigh* presseth, that my Lord *Cobham* should be brought Face to Face. If he ask things of Favour and Grace, they must come only from him that can give them. If we sit here as Commissioners, how shall we be satisfied whether he ought to be brought, unless we hear the Judges speak?

F f 2

Ld.

Ld. Ch. Just. This thing cannot be granted, for then a number of Treasons should flourish: The Accuser may be drawn by Practice, whilst he is in Person.

Judge Gawdy. The Statute you speak of, concerning two Witnesses in Case of Treason, is found to be inconvenient, therefore by another Law it was taken away.

Raleigh. The common Trial of England is by Jury and Witnesses.

Ld. Ch. Just. No, by Examination: If three conspire a Treason, and they all confess it; here is never a Witness, yet they are condemned.

Judge Warburton. I marvel, Sir *Walter*, that you being of such Experience and Wit, should stand on this Point; for so many Horse-stealers may escape, if they may not be condemned without Witnesses. If one should rush into the King's Privy-Chamber, whilst he is alone, and kill the King (which God forbid) and this Man be met coming with his Sword drawn all bloody; shall not he be condemned to death? My Lord *Cobham* hath, perhaps, been laboured withal; and to save you, his old Friend, it may be that he will deny all that which he hath said.

Raleigh. I know not how you conceive the Law.

Ld. Ch. Just. Nay, we do not conceive the Law, but we know the Law.

Raleigh. The Wisdom of the Law of God is absolute and perfect, *Hec fac, & vives, &c.* But now by the Wisdom of the State, the Wisdom of the Law is uncertain. Indeed where the Accuser is not to be had conveniently, I agree with you; but here my Accuser may, he is alive, and in the House. *Susanna* had been condemned, if *Daniel* had not cried out, *Will you condemn an innocent Israelite, without Examination or Knowledge of the Truth?* Remember, it is absolutely the Commandment of God: If a false Witness rise up, you shall cause him to be brought before the Judges; if he be found false, he shall have the Punishment which the Accused should have had. It is very sure for my Lord to accuse me is my certain Danger, and it may be a means to excuse himself.

Ld. Ch. Just. There must not such a Gap be opened for the Destruction of the King, as would be if we should grant this. You plead hard for yourself, but the Laws plead as hard for the King. I did never hear that Course to be taken in a Case of Treason, as to write one to another, or speak one to another, during the time of their Imprisonment. There hath been Intelligence between you: and what under-hand Practices there may be, I know not. If the Circumstances agree not with the Evidence, we will not condemn you.

Raleigh. The King desires nothing but the knowledge of the Truth, and would have no advantage taken by Severity of the Law. If ever we had a gracious King, now we have; I hope, as he is, such are his Ministers. If there be but a Trial of five Marks at common Law, a Witness must be deposed. Good my Lords, let my Accuser come Face to Face, and be deposed.

Ld. Ch. Just. You have no Law for it: God forbid any Man should accuse himself upon his Oath.

Attorn. The Law presumes, a Man will not accuse himself to accuse another. You are an odious Man: For *Cobham* thinks his Cause the worse that you are in it. Now you shall hear of some Stirs to be raised in Scotland.

Part of Copley's Examination.

' Also *Watson* told me, that a special Person told him, that *Aremberg* offer'd to him 1000 Crowns to be in that Action; and that *Brook* said, the Stirs in Scotland came out of *Raleigh's* Head.'

Raleigh. *Brook* hath been taught his Lesson.

Ld. Hen. Howard. This Examination was taken before; did I teach him his Lesson?

Raleigh. I protest before God, I meant it not by any Privy-Counsellor; but because Money is scant, he will juggle on both sides.

Raleigh's Examination.

' The way to invade England, were to begin with Stirs in Scotland.'

Raleigh. I think so still: I have spoken it to divers of the Lords of the Council, by way of Discourse and Opinion.

Attorn. Now let us come to those words, of destroying the King and his Cubs.

Raleigh. O barbarous! if they, like unnatural Villains, should use those words, shall I be charged with them? I will not hear it, I was never any Plotter with them against my Country, I was never false to the Crown of England. I have spent 4000 Pounds of my own against the Spanish Faction, for the Good of my Country. Do you bring the words of these hellish Spiders, *Clark*, *Watson*, and others, against me?

Attorn. Thou hast a Spanish Heart, and thy self art a Spider of Hell; for thou confessest the King to be a most sweet and gracious Prince, and yet hast conspired against him.

Watson's Examination read.

' He said, that *George Brook* told him twice, That his Brother, the Lord *Cobham*, said to him, that you are but on the Bye, but *Raleigh* and I are on the Main.'

Brook's Examination read.

' Being ask'd what was meant by this Jargon, the Bye and the Main? he said, That the Lord *Cobham* told him, that *Grey* and others were in the Bye, he and *Raleigh* were on the Main. Being asked, what Exposition his Brother made of these Words? he said, he is loth to repeat it. And after faith, by the Main was meant the taking away of the King and his Issue; and thinks on his Conscience, it was infused into his Brother's Head by *Raleigh*.'

Cobham's Examination read.

' Being ask'd, if ever he had said, *It will never be well in England, till the King and his Cubs were taken away*; he said, he had answered before, and that he would answer no more to that Point.'

Raleigh. I am not named in all this: There is a Law of two sorts of Accusers, one of his own Knowledge, another by Hear-say.

E. of Suffolk. See the Case of *Arnold*.

Ld. Ch. Just. It is the Case of Sir *Will. Thomas*, and Sir *Nicholas Arnold*.

Raleigh. If this may be, you will have any Man's Life in a Week.

Attorn. *Raleigh* saith, that *Cobham* was in a Passion when he said so. Would he tell his Brother any

any thing of Malice against *Raleigh*, whom he lov'd as his Life?

Raleigh. *Brook* never loved me; until his Brother had accused me, he said nothing.

Ld. Cecil. We have heard nothing that might lead us to think that *Brook* accused you, he was only in the surprizing Treason; for by accusing you he should accuse his Brother.

Raleigh. He doth not much care for that.

Ld. Cecil. I must judge the best. The Accusation of his Brother was not voluntary; he pared every thing as much as he could to save his Brother.

Cobham's Examination read.

'He saith he had a Book written against the Title of the King, which he had of *Raleigh*, and that he gave it to his Brother *Brook*: and *Raleigh* said it was foolishly written.'

Attorn. After the King came within twelve Miles of *London*, *Cobham* never came to see him; and intended to travel without seeing the Queen and the Prince. Now in this Discontentment you gave him the Book, and he gave it his Brother.

Raleigh. I never gave it him, he took it off my Table. For I well remember a little before that time I received a Challenge from Sir *Amias Preston*, and for that I did intend to answer it, I resolved to leave my Estate settled, therefore laid out all my loose Papers, amongst which was this Book.

Ld. Howard. Where had you this Book?

Raleigh. In the old Lord Treasurer's Study, after his Death.

Ld. Cecil. Did you ever shew or make known the Book to me?

Raleigh. No, my Lord.

Ld. Cecil. Was it one of the Books which was left to me or my Brother?

Raleigh. I took it out of the Study in my Lord Treasurer's House in the Strand.

Ld. Cecil. After my Father's decease, Sir *Walter Raleigh* desired to search for some Cosmographical Descriptions of the *Indies*, which he thought were in his Study, and were not to be had in Print; which I granted, and would have trusted Sir *Walter Raleigh* as soon as any Man: tho' since for some Infirmities, the Bands of my Affection to him have been broken; and yet reserving my Duty to the King my Master, which I can by no means dispense with, by God I love him, and have a great Conflict within my self: But I must needs say, Sir *Walter* used me a little unkindly to take the Book away without my knowledge; nevertheless, I need make no Apology in behalf of my Father, considering how useful and necessary it is for Privy Counsellors and those in his Place to intercept and keep such kind of Writings; for whosoever should then search his Study, may in all likelihood find all the notorious Libels that were writ against the late Queen; and whosoever should rummage my Study, or at least my Cabinet, may find several against the King, our Sovereign Lord, since his Accession to the Throne.

Raleigh. The Book was in Manuscript, and the late Lord Treasurer had wrote in the beginning of it with his own Hand, these Words, *This is the Book of Robert Snagg*. And I do own, as my Lord *Cecil* has said, that I believe they may

also find in my House, almost all the Libels that have been writ against the late Queen.

Attorn. You were no Privy-Counsellor, and I hope never shall be.

Ld. Cecil. He was not a sworn Counsellor of State, but he has been called to Consultations.

Raleigh. I think it a very severe Interpretation of the Law, to bring me within Compass of Treason for this Book, writ so long ago, of which no body had read any more than the Heads of the Chapters, and which was burnt by *G. Brook* without my privity; admitting I had delivered the same to the Lord *Cobham*, without allowing or approving, but discommending it, according to *Cobham's* first Accusation: and put the Case, I should come to my Lord *Cecil*, as I have often done, and find a Stranger with him, with a Packet of Libels, and my Lord should let me have one or two of them to peruse: This I hope is no Treason.

Attorn. I observe there was Intelligence between you and *Cobham* in the Tower; for after he said, it was against the King's Title, he denied it again.

Sir Will. Wade. First my Lord *Cobham* confessed it, and after he had subscribed it, he revoked it again: To me he always said, that the Drift of it was against the King's Title.

Raleigh. I protest before God, and all his Works, I gave him not the Book.

Note, Sir *Robert Wroth* speaketh, or whispereth something secretly.

Attorn. My Lords, I must complain of Sir *Robert Wroth*, he says this Evidence is not material.

Sir Rob. Wroth. I never spake the words.

Attorn. Let Mr. Serjeant *Philips* testify whether he heard him say the words or no.

Ld. Cecil. I will give my Word for Sir *Robert Wroth*.

Sir Rob. Wroth. I will speak as truly as you, Mr. Attorney, for by God I never spake it.

Ld. Ch. Just. Wherefore should this Book be burnt?

Raleigh. I burned it not.

Serjeant Philips. You presented your Friend with it when he was discontented. If it had been before the Queen's Death, it had been a less Matter; but you gave it him presently when he came from the King, which was the time of his Discontentment.

Raleigh. Here is a Book supposed to be treasonable; I never read it, commended it; or delivered it, nor urged it.

Attorn. Why this is cunning.

Raleigh. Every thing that doth make for me is cunning, and every thing that maketh against me is probable.

Attorn. Lord *Cobham* saith, that *Kemish* came to him with a Letter torn, and did wish him not to be dismay'd, for one Witness could not hurt him.

Raleigh. This poor Man hath been close Prisoner these eighteen Weeks; he was offered the Rack to make him confess. I never sent any such Message by him, I only writ to him, to tell him what I had done with Mr. Attorney; having of his at that time a great Pearl and a Diamond.

Ld. H. Howard. No Circumstance moveth me more than this. *Kemish* was never on the Rack, the King gave charge that no Rigour should be used.

Commissioners. We protest before God, there was no such matter intended to our knowledges.

Raleigh.

Raleigh. Was not the Keeper of the Rack sent for, and he threatned with it?

Sir W. Wade. When Mr. Solicitor and my self examined *Kemish*, we told him he deserved the Rack, but did not threaten him with it.

Commissioners. It was more than we knew.

Cobham's Examination read.

He saith, *Kemish* brought him a Letter from *Raleigh*, and that part which was concerning the Lords of the Council was rent out; the Letter contained that he was examined, and cleared himself of all; and that the Lord *H. Howard* said, because he was discontent, he was fit to be in the Action. And further, that *Kemish* said to him from *Raleigh* that he should be of good Comfort, for one Witness could not condemn a Man for Treason.

Ld. Cecil. *Cobham* was ask'd, whether, and when, he heard from you? he said, every day.

Raleigh. *Kemish* added more, I never bade him speak those Words.

Note, Mr. Attorney here offered to interrupt him.

Ld. Cecil. It is his last Discourse; give him leave, Mr. Attorney.

Raleigh. I am accused concerning *Arabella*, concerning Money out of *Spain*. My Lord Chief Justice saith, a Man may be condemned with one Witness, yea, without any Witness. *Cobham* is guilty of many things, *Conscientia mille Testes*; he hath accused himself, what can he hope for but Mercy? My Lords, vouchsafe me this Grace: Let him be brought, being alive, and in the House; let him avouch any of these things, I will confess the whole Indictment, and renounce the King's Mercy.

Ld. Cecil. Here hath been a touch of the Lady *Arabella Stuart*, a near Kinswoman of the King's. Let us not scandal the innocent by Confusion of Speech: She is as innocent of all these things as I, or any Man here; only she received a Letter from my Lord *Cobham*, to prepare her; which she laugh'd at, and immediately sent it to the King. So far was she from Discontentment, that she laugh'd him to scorn. But you see how far the Count of *Aremberg* did consent.

The Lord Admiral (*Nottingham*) being by in a Standing, with the Lady *Arabella*, spake to the Court.

The Lady doth here protest upon her Salvation, that she never dealt in any of these things; and so she willed me to tell the Court.

Ld. Cecil. The Lord *Cobham* wrote to my Lady *Arabella*, to know if he might come to speak with her, and gave her to understand, that there were some about the King that laboured to disgrace her; she doubted it was but a Trick. But *Brook* saith, his Brother moved him to procure *Arabella* to write Letters to the King of *Spain*; but he saith, he never did it.

Raleigh. The Lord *Cobham* hath accused me, you see in what manner he hath forsworn it. Were it not for his Accusation, all this were nothing. Let him be asked, if I knew of the Letter which *Lawrency* brought to him from *Aremberg*. Let me speak for my Life, it can be no hurt for him to be brought; he dares not accuse me. If you grant

me not this Favour, I am strangely used, *Campion* was not denied to have his Accusers face to face.

Ld. Ch. Just. Since he must needs have Justice, the acquitting of his old Friend may move him to speak otherwise than the Truth.

Raleigh. If I had been the Infuser of all these Treasons into him; you Gentlemen of the Jury, mark this, he said I have been the Cause of all his Miseries, and the Destruction of his House, and that all Evil hath happened unto him by my wicked Counsel: If this be true, whom hath he cause to accuse, and to be revenged on, but on me? And I know him to be as revengeful as any Man on Earth.

Attorn. He is a Party, and may not come; the Law is against it.

Raleigh. It is a Toy to tell me of Law; I defy such Law, I stand on the Fact.

Ld. Cecil. I am afraid my often speaking (who am inferior to my Lords here present) will make the World think I delight to hear my self talk. My Affection to you, Sir *Walter Raleigh*, was not extinguished, but flaked, in regard of your Deserts. You know the Law of the Realm (to which your Mind doth not contest) that my Lord *Cobham* cannot be brought.

Raleigh. He may be, my Lord.

Ld. Cecil. But dare you challenge it?

Raleigh. No.

Ld. Cecil. You say that my Lord *Cobham*, your main Accuser, must come to accuse you. You say he hath retracted: I say, many Particulars are not retracted. What the Validity of all this is, is merely left to the Jury. Let me ask you this, If my Lord *Cobham* will say you were the only Instigator of him to proceed in the Treasons, dare you put your self on this?

Raleigh. If he will speak it before God and the King, that ever I knew of *Arabella's* Matter, or the Money out of *Spain*, or of the surprising Treason; I put my self on it, God's Will and the King's be done with me.

Ld. H. Howard. How! if he speak things equivalent to that you have said?

Raleigh. Yes, in the main Point.

Ld. Cecil. If he say, you have been the Instigator of him to deal with the *Spanish* King, had not the Council cause to draw you hither?

Raleigh. I put my self on it.

Ld. Cecil. Then, Sir *Walter Raleigh*, call upon God, and prepare your self; for I do verily believe my Lords will prove this. Excepting your faults (I call them no worse) by God I am your Friend. The Heat and Passion in you, and the Attorney's Zeal in the King's Service, makes me speak this.

Raleigh. Whosoever is the Workman, it is reason he should give an account of his Work to the Work-master. But let it be proved that he acquainted me with any of his Conferences with *Aremberg*: he would surely have given me some Account.

Ld. Cecil. That follows not: If I set you on work, and you giwe me no account, am I therefore innocent?

Attorn. For the Lady *Arabella*, I said she was never acquainted with the matter. Now that *Raleigh* had Conference in all these Treasons, it is manifest: The Jury hath heard the matter. There is one *Dyer*, a Pilot, that being in *Lisbon*, met with

a *Portugal* Gentleman who ask'd him if the King of *England* was crown'd yet? To whom he answered, *I think not yet, but he shall be shortly.* Nay, faith the *Portugal*, that shall never be, for his Throat will be cut by *Don Raleigh* and *Don Cobham* before he be crowned.

Dyer was called and sworn, and deliver'd this Evidence.

Dyer. I came to a Merchant's House in *Lisbon*, to see a Boy that I had there; there came a Gentleman into the House, and enquiring what Countryman I was, I said, an *Englishman*. Whereupon he asked me, if the King was crowned? And I answered, No, but that I hoped he should be so shortly. Nay, faith he, he shall never be crowned; for *Don Raleigh* and *Don Cobham* will cut his Throat ere that Day come.

Raleigh. What infer you upon this?

Attorn. That your Treason hath Wings.

Raleigh. If *Cobham* did practise with *Aremberg*, how could it not but be known in *Spain*? Why did they name the Duke of *Buckingham* with *Jack Straw's* Treason, and the Duke of *York* with *Jack Cade*, but that it was to countenance his Treason?

Consider you Gentlemen of the Jury, there is no Cause so doubtful which the King's Counsel cannot make good against the Law. Consider my Disability, and their Ability: They prove nothing against me, only they bring the Accusation of my Lord *Cobham*, which he hath lamented and repented as heartily, as if it had been for an horrible Murder: for he knew that all this Sorrow which should come to me, is by his means. Presumptions must proceed from precedent or subsequent Facts. I have spent 40000 Crowns against the *Spaniard*. I had not purchased 40 Pound a Year. If I had died in *Guiana*, I had not left 300 Marks a Year to my Wife and Son. I that have always condemned the *Spanish* Faction, methinks it is a strange thing that now I should affect it! Remember what *St. Austin* says, *Sic judicate tanquam ab alio mox judicandi; unus judex, unum Tribunal.* If you would be contented on Presumptions to be delivered up to be slaughtered, to have your Wives and Children turned into the Streets to beg their Bread; if you would be contented to be so judged, judge so of me.

Serj. Philips. I hope to make this so clear, as that the Wit of Man shall have no Colour to answer it. The Matter is Treason in the highest Degree, the End to deprive the King of his Crown. The particular Treasons are these: First, to raise up Rebellion, and to effect that, to procure Money; to raise up Tumults in *Scotland*, by divulging a treasonable Book against the King's Right to the Crown; the purpose, to take away the Life of his Majesty and his Issue. My Lord *Cobham* confesseth *Sir Walter Raleigh* to be guilty of all these Treasons. The Question is, whether he be guilty as joining with him, or instigating of him? The Course to prove this, was by my Lord *Cobham's* Accusation. If that be true, he is guilty; if not, he is clear. So whether *Cobham* say true, or *Raleigh*, that is the Question. *Raleigh* hath no Answer: but the Shadow of as much Wit, as the Wit of Man can devise. He useth his bare Denial; the Denial of a Defendant must not move the Jury. In the Star-Chamber, or in the Chancery,

for matter of Title, if the Defendant be called in question, his Denial on his Oath is no Evidence to the Court to clear him, he doth it *in propria causa*; therefore much less in Matters of Treason. *Cobham's* Testification against him before then, and since, hath been largely discoursed.

Raleigh. If Truth be constant, and Constancy be in Truth, why hath he forsworn that that he hath said? You have not proved any one thing against me by direct Proofs, but all by Circumstances.

Attorn. Have you done? The King must have the last.

Raleigh. Nay, Mr. Attorney, he which speaketh for his Life, must speak last. False Repetitions and Mistakings must not mar my Cause. You should speak *secundum allegata & probata*. I appeal to God and the King in this Point, whether *Cobham's* Accusation be sufficient to condemn me?

Attorn. The King's Safety and your Clearing cannot agree. I protest before God, I never knew a clearer Treason.

Raleigh. I never had intelligence with *Cobham* since I came to the Tower.

Attorn. Go to, I will lay thee upon thy Back, for the confidentest Traitor that ever came at a Bar. Why should you take 8000 Crowns for a Peace?

Ld. Cecil. Be not so impatient, good Mr. Attorney, give him leave to speak.

Attorney. If I may not be patiently heard, you will encourage Traitors, and discourage us. I am the King's sworn Servant, and must speak: If he be Guilty, he is a Traitor; if not, deliver him.

Note. Here Mr. Attorney sat down in a Chafe, and would speak no more, until the Commissioners urged and intreated him. After much ado, he went on, and made a long Repetition of all the Evidence, for the Direction of the Jury; and at the repeating of some things, *Sir Walter Raleigh* interrupted him, and said, he did him wrong.

Attorney. Thou art the most vile and execrable Traitor that ever lived.

Raleigh. You speak indiscreetly, barbarously and uncivilly.

Attorney. I want Words sufficient to express thy viperous Treasons.

Raleigh. I think you want Words indeed, for you have spoken one thing half a dozen times.

Attorney. Thou art an odious Fellow, thy Name is hateful to all the Realm of *England* for thy Pride.

Raleigh. It will go near to prove a measuring Cast between you and me, Mr. Attorney.

Attorney. Well, I will now make it appear to the World, that there never lived a viler Viper upon the face of the Earth than thou. And therewithal he drew a Letter out of his Pocket, saying further, My Lords, you shall see, this is an Agent that hath writ a Treatise against the *Spaniard*, and hath ever so detested him; this is he that hath spent so much Money against him in Service; and yet you shall all see whether his Heart be not wholly *Spanish*. The Lord *Cobham*, who of his own Nature was a good and honourable Gentleman, till overtaken by this Wretch, now finding his Conscience heavily burdened with some Courses which the Subtily of this Traitor had drawn him into; my Lords, he could be at no rest with

with himself, nor quiet in his thoughts, until he was eased of that heavy Weight: out of which Passion of his Mind, and Discharge of his Duty to his Prince, and his Conscience to God, taking it upon his Salvation that he wrote nothing but the Truth, with his own Hands he wrote this Letter. Now, Sir, you shall see whether you had Intelligence with *Cobham*, within four days before he came to the *Tower*. If he be wholly *Spanish*, that desired a Pension of 1500*l.* a Year from *Spain*, that *Spain* by him might have Intelligence, then *Raleigh* is a Traitor: He hath taken an Apple, and pinned a Letter unto it, and threw it into my Lord *Cobham's* Window; the Contents whereof were this, *It is doubtful whether we shall be proceeded with or no, perhaps you shall not be tried.* This was to get a Retraction. Oh! it was *Adam's* Apple, whereby the Devil did deceive him. Further, he wrote thus, *Do not as my Lord of Essex did; take heed of a Preacher; for by his Persuasion he confessed, and made himself guilty.* I doubt not but this day God shall have as great a Conquest by this Traitor, and the Son of God shall be as much glorified, as when it was said, *Vicisti Galilee*; you know my Meaning. What tho' *Cobham* retracted, yet he could not rest nor sleep till he confirmed it again. If this be not enough to prove him a Traitor, the King my Master shall not live three years to an end.

Nota. Here Mr. Attorney produced the Lord *Cobham's* Letter, and as he read it, inserted some Speeches.

‘ I Have thought fit to set down this to my Lords, wherein I protest on my Soul to write nothing but the Truth. I am now come near the period of my time, therefore I confess the whole Truth before God and his Angels. *Raleigh*, four days before I came from the *Tower*, caused an Apple (*Eve's Apple*) to be thrown in at my Chamber-Window; the effect of it was, to intreat me to right the Wrong that I had done him, in saying, *that I should have come home by Jersey*; which under my hand to him I have retracted. His first Letter I answered not, which was thrown in the same manner; wherein he prayed me to write him a Letter, which I did. He sent me word, that the Judges met at Mr. Attorney's House, and that there was good hope the Proceedings against us should be stayed: He sent me another time a little Tobacco. At *Aremberg's* coming, *Raleigh* was to have procured a Pension of fifteen hundred Pounds a Year, for which he promised, that no Action should be against *Spain*, the *Low-Countries*, or the *Indies*, but he would give knowledge beforehand. He told me, the States had Audience with the King. (Attorney, *Ab! is not this a Spanish Heart in an English Body?*) ‘ He hath been the original Cause of my Ruin; for I had no dealing with *Aremberg*, but by his Instigation. He hath also been the cause of my Discontentment; he advised me, not to be overtaken with Preachers, as *Essex* was; and that the King would better allow of a constant Denial, than to accuse any.’

Attorney. Oh damnable Atheist! He hath learned some Text of Scripture to serve his own purpose, but falsely alledg'd. He counsels him not to

be counselled by Preachers, as *Essex* was: He died the Child of God, God honoured him at his Death; thou wast by when he died: *Et Lupus & turpes instant morientibus Ursæ.* He died indeed for his Offence. The King himself spake these Words; *He that shall say, Essex died not for Treason, is punishable.*

Raleigh. You have heard a strange Tale of a strange Man. Now he thinks, he hath Matter enough to destroy me; but the King and all of you shall witness, by our Deaths, which of us was the Ruin of the other. I bid a poor Fellow throw in the Letter at his Window, written to this purpose; *You know you have undone me, now write three Lines to justify me.* In this I will die, that he hath done me wrong: Why did not he acquaint him with my Dispositions?

Ld. Ch. Just. But what say you now of the Letter, and the Pension of 1500*l. per annum*?

Raleigh. I say, that *Cobham* is a base, dishonourable, poor Soul.

Attorney. Is he base? I return it into thy Throat on his behalf: But for thee, he had been a good Subject.

Ld. Ch. Just. I perceive you are not so clear a Man, as you have protested all this while; for you should have discovered these Matters to the King.

Nota. Here *Raleigh* pulled a Letter out of his Pocket, which the Lord *Cobham* had written to him, and desired my Lord *Cecil* to read it, because he only knew his Hand; the effect of it was as follows:

Cobham's Letter of Justification to Raleigh.

‘ Seeing my self so near my End, for the discharge of my own Conscience, and freeing my self from your Blood, which else will cry Vengeance against me; I protest upon my Salvation I never practised with *Spain* by your Procurement; God so comfort me in this my Affliction, as you are a true Subject, for any thing that I know. I will say as *Daniel*, *Purus sum a sanguine hujus.* So God have mercy upon my Soul, as I know no Treason by you.’

Raleigh. Now I wonder how many Souls this Man hath! He damns one in this Letter, and another in that.

Here was much ado: Mr. Attorney alledged, that his last Letter was politickly and cunningly urged from the Lord *Cobham*, and that the first was simply the Truth; and that left it should seem doubtful that the first Letter was drawn from my Lord *Cobham* by promise of Mercy, or hope of Favour, the Lord Chief Justice willed that the Jury might herein be satisfied.

Whereupon the Earl of *Devonshire* delivered, that the same was meer voluntary, and not extracted from the Lord *Cobham* upon any Hopes or Promise of Pardon.

Nota. This was the last Evidence: whereupon a Marshal was sworn to keep the Jury private. The Jury departed, and staid not a quarter of an hour, but returned, and gave their Verdict, Guilty.

Serj.

Serj. Heale demanded Judgment against the Prisoner.

Clerk of the Crown. Sir *Walter Raleigh*, Thou hast been indicted, arraigned, and pleaded Not Guilty, for all these several Treasons; and for Trial thereof, hast put thy self upon thy Country; which Country are these, who have found thee Guilty. What canst thou say for thy self, why Judgment and Execution of Death should not pass against thee?

Raleigh. My Lords, the Jury have found me Guilty: They must do as they are directed. I can say nothing why Judgment should not proceed. You see whereof *Cobham* hath accused me: You remember his Protestations, that I was never Guilty. I desire the King should know of the Wrongs done unto me since I came hither.

Ld. Chief Just. You have had no Wrong, Sir *Walter*.

Raleigh. Yes, of Mr. Attorney. I desire my Lords to remember three things to the King.

1. I was accused to be a Practiser with *Spain*: I never knew that my Lord *Cobham* meant to go thither; I will ask no Mercy at the King's hands, if he will affirm it. 2. I never knew of the Practice with *Arabella*. 3. I never knew of my Lord *Cobham's* Practice with *Aremberg*, nor of the surprising Treason.

Ld. Ch. Just. In my Conscience, I am persuaded that *Cobham* hath accused you truly. You cannot deny, but that you were dealt with to have a Pension to be a Spy for *Spain*; therefore you are not so true to the King as you have protested your self to be.

Raleigh. I submit my self to the King's Mercy; I know his Mercy is greater than my Offence. I recommend my Wife, and Son of tender years, unbrought up, to his Compassion.

Ld. Ch. Just. I thought I should never have seen this Day, to have stood in this Place to give Sentence of Death against you; because I thought it impossible, that one of so great Parts should have fallen so grievously. God hath bestowed on you many Benefits. You had been a Man fit and able to have served the King in good Place. You had brought your self into a good State of Living; if you had enter'd into a good Consideration of your Estate, and not suffered your own Wit to have intrapped your self, you might have lived in good Comfort. It is best for Man not to seek to climb too high, lest he fall: nor yet to creep too low, lest he be trodden on. It was the Poesy of the wisest and greatest Counsellor of our time in *England*, *In medio spatio mediocria firma locantur*. You might have lived well with 3000 l. a Year, for so I have heard your Revenues to be. I know nothing might move you to be discontented; but if you had been down, you know Fortune's Wheel, when it is turned about, riseth again. I never heard that the King took away any thing from you, but the Captainship of the Guard, which he did with very good reason, to have one of his own Knowledge, whom he might trust, in that Place. You have been taken for a wise Man, and so have shewed Wit enough this day. Again, for Monopolies for Wine, &c. if the King had said, It is a Matter that offends my People, should I burden them for your private Good? I think you could not well take it hardly, that his Subjects were eased tho' by your private Hindrance. Two Vices have lodged chiefly in you; one is an eager Ambition, the other corrupt Covetousness. Ambition, in

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desiring to be advanced to equal Grace and Favour, as you have been before-time; that Grace you had then, you got not in a Day or Year. For your Covetousness, I am sorry to hear that a Gentleman of your Wealth should become a base Spy for the Enemy, which is the vilest of all other; wherein on my Conscience *Cobham* hath said true: by it you would have increased your Living 1500 l. a Year. This Covetousness is like a Canker, that eats the Iron Place where it lives. Your Case being thus, let it not grieve you, if I speak a little out of Zeal, and Love to your Good. You have been taxed by the World, with the Defence of the most heathenish and blasphemous Opinions, which I list not to repeat, because Christian Ears cannot endure to hear them, nor the Authors and Maintainers of them be suffered to live in any Christian Commonwealth. You know what Men said of *Harpool*. You shall do well, before you go out of the World, to give Satisfaction therein, and not to die with these Imputations on you. Let not any Devil persuade you to think there is no Eternity in Heaven: for if you think thus, you shall find Eternity in Hell-Fire. In the first Accusation of my Lord *Cobham*, I observed his Manner of speaking; I protest before the Living God, I am persuaded he spoke nothing but the Truth. You wrote, that he should not in any case confess any thing to a Preacher, telling him an Example of my Lord of *Essex*, that noble Earl that is gone; who, if he had not been carried away with others, had lived in Honour to this Day among us: He confessed his Offences, and obtained Mercy of the Lord, for I am verily persuaded in my Heart, he died a worthy Servant of God. Your Conceit of not confessing any thing, is very inhuman and wicked. In this World is the time of confessing, that we may be absolv'd at the Day of Judgment. You have shewed a fearful Sign of denying God, in advising a Man not to confess the Truth. It now comes in my mind, why you may not have your Accuser come face to face: for such an one is easily brought to retract, when he seeth there is no hope of his own Life. It is dangerous that any Traitors should have Access to, or Conference with one another; when they see themselves must die, they will think it best to have their Fellow live, that he may commit the like Treason again, and so in some sort seek Revenge.

Now it resteth to pronounce the Judgment, which I wish you had not been this day to have received of me: For if the Fear of God in you had been answerable to your other great Parts, you might have lived to have been a singular good Subject. I never saw the like Trial, and hope I shall never see the like again.

The Judgment.

But since you have been found guilty of these horrible Treasons, the Judgment of this Court is, That you shall be had from hence to the Place whence you came, there to remain until the day of Execution; and from thence you shall be drawn upon a Hurdle thro' the open Streets to the Place of Execution, there to be hanged and cut down alive, and your Body shall be opened, your Heart and Bowels pluck'd out, and your Privy Members cut off, and thrown into the Fire before your Eyes; then your Head to be stricken off from your Body, and your Body shall be divided

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into four Quarters, to be disposed of at the King's Pleasure: And God have Mercy upon your Soul.

Sir *Walter Raleigh* besought the Earl of *Devonshire*, and the Lords, to be Suiters on his behalf to the King; that in regard of Places of Estimation he did bear in his Majesty's time, the Rigour of his Judgment might be qualified, and his Death be honourable, and not ignominious.

Wherein after they had promised him to do their utmost Endeavours, the Court rose, and the Prisoner was carried up again to the Castle.

FOURTEEN Years Sir *Walter* had spent in the *Tower*, and being weary of a State wherein he could be only serviceable by his Pen, but not in a Capacity of serving and enriching his Country any other way, (of whom Prince *Henry* would say, that no King but his Father would keep such a Bird in a Cage;) at length he fell upon an Enterprize of a Golden Mine in *Guiana* in the Southern Parts of *America*.

The Proposition of this was presented and recommended to his Majesty by Sir *Ralph Winwood* Secretary of State, as a Matter not in the Air, or Speculative, but Real, and of Certainty; for that Sir *Walter* had seen of the Ore of the Mine, and tried the Richness of it, having gotten a Pound from thence by the hands of Captain *Kemish's* ancient Servant.

Sir *Ralph Winwood's* Recommendations of the Design, and the earnest Sollicitations for his Enlargement by the Queen and Prince, and the *French Leiger*, (with much affection to his Deserts, not without some politick Designs on *Spain*) together with the Asseverations of Sir *Walter* of the Truth of the Mine, work'd upon his Majesty, who thought himself in honour obliged, nay, in a manner engaged (as the Declaration which he published after the Death of Sir *Walter* tells us) not to deny unto his People the Adventure and Hope of so great Riches to be fought and achieved at the Charge of Voluntiers, especially since it stood so well with his Majesty's Politick and Magnanimous Courses in these his flourishing times of Peace, to nourish and encourage noble and generous Enterprizes for Plantations, Discoveries, and opening of a new Trade.

Count *Gondomar* (an active and subtle Instrument to serve his Master's ends) took alarm at this, and represented to his Majesty the Enterprize of Sir *Walter* to be hostile and predatory, intending a breach of the Peace between the two Crowns. But notwithstanding, Power at last is granted to Sir *Walter* to set forth Ships and Men for that Service. However, the King commanded him, upon pain of his Allegiance, to give him under his hand (promising, on the Word of a King, to keep it secret) the Number of his Men, the Burden and Strength of his Ships, together with the Country and River which he was to enter: Which being done accordingly by Sir *Walter*, that very original Paper was found in the *Spanish* Governor's Closet at *St. Thomas's*. So active were the *Spanish* Ministers, that Advertisement was sent to *Spain*, and thence to the *Indies*, before the *English* Fleet got out of the *Thames*.

But as we have just Cause to admire the more than usual Activity of the *Spanish* Agents, so may we wonder no less at the Miscarriage of his Majesty's present Ministers, who, notwithstanding he had pass'd his Royal Word to the contrary, yet they did help Count *Gondomar* to that very Paper; so much both King and Court were at *Gondomar's* Service.

A Commission † indeed is granted, but by *Gondomar's* means is limited, That the Fleet should commit no Outrages upon the King of *Spain's* Subjects by Land, unless they began first.

With this Commission, and the Company of several brave Captains, and other Knights and Gentlemen of great Blood and Worth, he set out in quest of the Mine, with a compleat Fleet of twelve Sail; letting fall a Speech at his Departure, which was rather an Argument of his Wit than his Wisdom; That his whole History of the World had not the like Precedent, of a King's Prisoner to purchase Freedom, and his Bosom-Favourite to have the Halter, but in Scripture, *Mordecai* and *Haman*; meaning himself and the Earl of *Somerset*. To which he was told, that the King replied, *He might die in that Deceit*. Which he did, for *Somerset* was saved. Of whom was made good what Sir *Walter* used to say of Favourites, That Minions were not so happy as vulgar Judgments thought them, being frequently commanded to uncomely, and sometimes to unnatural Employments.

On the 17th of *November*, he arriv'd at *Guiana*, having been much retarded by contrary Winds, and having lost several of his Voluntiers in the Voyage, by a violent Calenture.

When Sir *Walter* was returned to *Plymouth*, Sir *Lewis Steukly*, Vice-Admiral of the County of *Devon*, seiz'd him, being commission'd by his Majesty to bring him to *London*; which could add no Terror to a Person who could expect nothing less.

When he was brought to *London*, he was permitted the confinement of his own House: But finding the Court wholly guided by *Gondomar*, he could hope for little Mercy; therefore he wisely contriv'd the design of an Escape into *France*; which Sir *Lewis Steukly* betrayed.

The Voyage proving unsuccessful, King *James* was willing to sacrifice the Life of * Sir *Walter* to the Advancement of Peace with *Spain*, but not upon such grounds as the Embassador had design'd: for he desir'd a Judgment upon the pretended Breach of Peace, that by this Occasion he might sily gain from the *English* an Acknowledgment of his Master's Right in those Places, and hereafter both stop their Mouths, and quench their Heat and Valour.

Hence they resolv'd to proceed against him upon his old Condemnation †, for having had Experience upon a former Trial, they cared not to run the hazard of a second. Accordingly upon *Wednesday*, the 28th of *October*, Anno Dom. 1618, the Lieutenant of the *Tower*, in pursuance of a Writ of *Habeas Corpus* to him directed, brought Sir *Walter Raleigh* from the *Tower* to the King's Bench Bar at *Westminster*. Where

† This Commission bears Date Aug. 26. 1616. and is to be found in Rymer's *Fœdera*, Vol. 16. p. 789 wherein no mention is made of the King of *Spain* or his Subjects, notwithstanding it is so insinuated in the King's Proclamation against Sir *Walter Raleigh*, June 11. 1618. which is extant in Rymer's *Fœder*. Vol. 17. p. 92.

* Mr. Henry Yelverton. * Mr. Attorney spake in effect thus†: My Lords, Sir *Walter Raleigh*, the Prisoner at the Bar, was, fifteen Years since, convicted of High Treason, by him committed against the Person of his Majesty, and the State of this Kingdom, and then received the Judgment of Death to be hang'd, drawn, and quarter'd: His Majesty, of his abundant Grace, hath been pleas'd to shew Mercy upon him 'till now, that Justice calls unto him for Execution.

Sir *Walter Raleigh* hath been a Statesman, and a Man, who, in regard of his Parts and Quality, is to be pitied: He hath been as a Star, at which the World hath gaz'd; but Stars may fall, nay, they must fall, when they trouble the Sphere wherein they abide. It is therefore His Majesty's Pleasure now to call for Execution of the former Judgment, and I now require Order for the same.

Then Mr. *Fanshawe*, Clerk of the Crown, read the Record of the Conviction and Judgment, and called to the Prisoner, to hold up his Hand, which he did. Then was the Prisoner ask'd, What he could say for himself, why Execution should not be awarded against him?

Sir *Walter Raleigh*. My Lords, my Voice is grown weak, by reason of my late Sickness, and an Ague, which I now have; for I was even now brought hither out of it.

* Sir Henry Mountague. Lord Chief Justice*. Sir *Walter*, your Voice is audible enough.

Sir *Walter*. Then, my Lord, all that I can say is this; That the Judgment which I received to die so long since, I hope it cannot now be strain'd to take away my Life; for that since it was His Majesty's Pleasure to grant me a Commission to proceed in a Voyage beyond the Seas, wherein I had Power, as Marshal, on the Life and Death of others, so, under Favour, I presume I am discharged of that Judgment: For, by that Commission I departed the Land, and undertook a Journey, to honour my Sovereign, and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in *Guiana*; but the Voyage, notwithstanding my Endeavour, had no other Success, but what was fatal to me, the Loss of my Son, and waisting of my whole Estate.

Being about to proceed, he was by the Lord Chief Justice interrupted, who spake:

Lord Chief Justice. Sir *Walter Raleigh*, this which you now speak, touching your Voyage, is not to the purpose, neither can your Commission any way help you, by that you are not pardon'd; for by words of a special Nature, in Case of Treason, you must be pardon'd, and not implicitly. There was no Word tending to Pardon in all your Commission, and therefore you must say something else to the purpose; otherwise, we must proceed to give Execution.

Sir *Walter Raleigh*. If your Opinion be so, my Lord, I am satisfied, and so put myself on the Mercy of the King, who I know is gracious; and, under Favour, I must say I hope he will be pleas'd to take Commiseration upon me. As concerning that Judgment which is so long past, and which, I think, here are some could witness, nay, his Majesty was of Opinion, that I had hard Measure therein.

Lord Chief Justice. Sir *Walter Raleigh*, you must remember yourself; you had an honourable Trial, and so were justly convicted; and it were Wisdom in you now to submit yourself, and to confess your Offence did justly draw upon you that Judgment which was then pronounced against you; wherefore I pray you attend what I shall say unto you. I am here call'd to grant Execution upon the Judgment given you Fifteen Years since; all which Time you have been as a dead Man in the Law, and might at any Minute been cut off, but the King in Mercy spared you. You might think it heavy, if this were done in cold Blood, to call you to Execution, but it is not so; for new Offences have stirr'd up his Majesty's Justice, to remember to revive what the Law hath formerly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these Vertues, for now you shall have Occasion to use them. Your Faith hath heretofore been question'd, but I am resolv'd you are a good Christian; for your Book, which is an admirable Work, doth testify as much. I would give you Counsel, but I know you can apply unto yourself far better than I am able to give you; yet will I, with the good Neighbour in the Gospel, who finding one in the Way, wounded and distress'd, pour'd Oil into his Wounds, and refresh'd him, I give unto you the Oil of Comfort; though, in respect that I am a Minister of the Law, mix'd with Vinegar. Sorrow will not avail you in some kind: For, were you pain'd, Sorrow would not ease you; were you afflicted, Sorrow would not relieve you; were you tormented, Sorrow could not content you; and yet, the Sorrow for your Sins would be an everlasting Comfort to you. You must do as that valiant Captain did, who perceiving himself in danger, said, in defiance of Death; *Death, thou expectest me, but maugre thy Spite, I expect thee.* Fear not Death too much, nor fear not Death too little: not too much, lest you fail in your Hopes; not too little, lest you die presumptuously. And here I must conclude with my Prayers to God for it; and that he would have mercy on your Soul. And so the Lord Chief Justice ended with these Words; *Execution is granted.*

Sir *Walter Raleigh*. My Lord, I desire thus much Favour, that I may not be cut off suddenly; for I have something to do in Discharge of my Conscience, and something to satisfy his Majesty in, something to satisfy the World in; and I desire I may be heard at the Day of my Death. And here I take God to be my Judge, before whom I shall shortly appear, I was never disloyal to his Majesty, which I will justify where I shall not fear the Face of any King on Earth: And so I beseech you all to pray for me.

The Court having awarded Execution, the Sheriffs of *Middlesex* were commanded for that Purpose to take him into their Custody, who presently carried him to the *Gatehouse*.

But all Persons have wonder'd how that old Sentence, that had lain dormant sixteen years and upwards against Sir *Walter*, could have been made use of to take off his Head afterwards: Considering the then Lord Chancellor *Verulam* told him positively, (as Sir *Walter* was acquainting him with that

† See State-Trials, Vol. VIII. p. 568. and p. 569. for the Warrant to behead Sir *Walter*.
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that Proffer of Sir *William St. Leon* for a Pecuniary Pardon, which might have been obtained for a less Sum than his *Guiana* Preparations amounted to) in these words: 'Sir, the Knee-Timber of your Voyage is Money; spare your Purse in this Particular, for upon my life you have a sufficient Pardon for all that is passed already, the King having, under his Broad-Seal, made you Admiral of your Fleet, and given you power of the Martial Law over the Officers and Soldiers.'

It was the Opinion of most Lawyers, That he, who by his Majesty's Patent had power of Life and Death over the King's Liege People, should be esteemed or judged *Rectus in Curia*, and free from all old Convictions.

But Sir *Walter* hath made the best Defence for his *Guiana* Actions, in his Letter to his Majesty, which is here inserted.

May it please your most excellent Majesty,

IN my Journey outward-bound, I had my Men murdered at the Island, and yet spared to take Revenge: If I did discharge some *Spanish* Barques taken without Spoil; if I did forbear all parts of the *Spanish Indies*, wherein I might have taken twenty of their Towns on the Sea-Coasts, and did only follow the Enterprize I undertook for *Guiana*, where, without any Directions from me, a *Spanish* Village was burnt, which was new set up within three Miles of the Mine; by your Majesty's favour, I find no reason why the *Spanish* Embassador should complain of me. If it were lawful for the *Spaniards* to murder twenty-six *Englishmen*, binding them back to back, and then cutting their Throats, when they had traded with them a whole month, and came to them on the Land without so much as one Sword; and that it may not be lawful for your Majesty's Subjects, being charged first by them, to repel Force by Force; we may justly say, O miserable *English!* If *Parker* and *Metham* took *Campeach* and other Places in the *Honduras*, seated in the Heart of the *Spanish Indies*, burnt Towns, killed the *Spaniards*, and had nothing said to them at their Return, and my self forbore to look into the *Indies* because I would not offend; I may justly say, O miserable Sir *Walter Raleigh!* If I spent my poor Estate, lost my Son, suffered by Sicknes, and otherwise, a world of Miseries; if I have resisted with the manifest hazard of my Life, the Robberies and Spoils which my Company would have made; if when I was poor, I might have made my self rich; if when I had gotten my Liberty, which all Men, and Nature itself do so much prize, I voluntarily lost it; if, when I was sure of my Life, I render'd it again; if I might elsewhere have sold my Ship and Goods, and put five or six thousand Pounds in my Pocket, and yet have brought her into *England*: I beseech your Majesty to believe, that all this I have done, because it should not be said to your Majesty, that your Majesty had given Liberty and Trust to a Man whose end was but the recovery of his Liberty, and who had betrayed your Majesty's Trust. My Mutineers told me, that if I returned for *England* I should be undone; but I believed in your Majesty's Goodness, more than in all their Arguments. Sure I am, that I am the first that being free, and able to enrich my self, have embraced Poverty and Peril: And as

sure I am, that my Example shall make me the last. But your Majesty's Wisdom and Goodness I have made my Judge; who have ever been, and shall ever be,

Your Majesty's most humble Vassal,

Walter Raleigh.

But this Apology, tho' never so persuasive, could not satisfy *Gondomar's* Rage, who was resolv'd to sacrifice the only Favourite left of Queen *Elizabeth*, to the *Spanish* Interest: And who, as *Osburn* remarks, was the only Person of *Essex's* Enemies that died lamented; and the only Man of Note left alive, that had help'd to beat the *Spaniard* in the Year 1588.

The Night before the Execution, Sir *Walter Raleigh* wrote the following Letters, the one to the King, the other to his Wife.

Sir WALTER RALEIGH's Letter to the KING.

THE Life which I had, most mighty Prince, the Law hath taken from me, and I am now but the same Earth and Dust, out of which I was made. If my Offence had any Proportion with your Majesty's Mercy, I might despair, or if my Deserving had any Quantity with your Majesty's unmeasurable Goodness, I might yet have Hope; but it is you that must judge, and not I. Name, Blood, Gentility, or Estate, I have none; no not so much as a Being, no not so much as a *Vitam plantæ*: I have only a penitent Soul in a Body of Iron, which moveth towards the Loadstone of Death, and cannot be withheld from touching it, except your Majesty's Mercy turn the Point towards me that expelleth. Lost I am for bearing of vain Man, for bearing only, and never believing nor accepting: And so little Account I made of that Speech of his, which was my Condemnation (as my forsaking him doth truly witness) that I never remembred any such thing, till it was at my Trial objected against me. So did he repay my Care, who cared to make him good, which I now see no Care of Man can effect. But God (for my Offence to him) hath laid this heavy Burden on me, miserable and unfortunate Wretch that I am. But for not loving you (my Sovereign) God hath not laid this Sorrow on me; for he knows (with whom I am not in case to lye) that I honoured your Majesty by Fame, and loved and admired you by Knowledge; so that whether I live or die, your Majesty's loving Servant I will live and die. If now I write what seems not well-favoured (most merciful Prince) vouchsafe to ascribe it to the Counsel of a dead Heart, and to a Mind that Sorrow hath confounded. But the more my Misery is, the more is your Majesty's Mercy, (if you please to behold it) and the less I can deserve, the more liberal your Majesty's Gift shall be: Herein you shall only imitate God, by giving free Life; and by giving it to such a one, from whom there can be no Retribution, but only a Desire to pay a lent Life with the same great Love, which the same great Goodness shall bestow on it. This being the first Letter that ever your Majesty receiv'd from a dead Man: I humbly submit my self to the Will of God, my supreme Lord, and shall willingly and patiently suffer whatsoever it shall please your Majesty to afflict me withal.

WALTER RALEIGH

Sir WALTER RALEIGH's Letter to his Wife.

YOU shall now receive (my dear Wife) my last Words in these my last Lines. My Love I send you, that you may keep it when I am dead; and my Counsel, that you may remember it when I am no more. I would not by my Will present you with Sorrows (Dear Bessie) let them go into the Grave with me, and be buried in the Dust. And seeing that it is not God's Will that I should see you any more in this Life, bear it patiently, and with a Heart like thy self. First I send you all the Thanks which my Heart can conceive, or my Words can rehearse, for your many Travails, and Care taken for me; which tho' they have not taken Effect as you wished, yet my Debt to you is not the less; but pay it I never shall in this World. Secondly, I beseech you, for the Love you bare me living, do not hide your self many Days, but by your Travels seek to help your miserable Fortunes, and the Right of your poor Child. Thy mourning cannot avail me, I am but Dust. Thirdly, You shall understand that my Land was conveyed bona fide to my Child: The Writings were drawn at Midsummer was twelve Months, my honest Cousin Brett can testify so much, and Doiberry too can remember somewhat therein. And I trust my Blood will quench their Malice that have cruelly murder'd me, and that they will not seek also to kill thee and thine with extreme Poverty. To what Friend to direct thee I know not, for all mine have left me in the true time of Trial. And I perceive that my Death was determin'd from the first Day. Most sorry I am, God knows, that being thus surpriz'd with Death I can leave you in no better Estate. God is my Witness, I meant you all my Office of Wines, or all that I could have purchased by selling it, half my Stuff, and all my Jewels, but some one for the Boy; but God hath prevented all my Resolutions, that great God that ruleth all in all: but if you can live free from Want, care for no more, the rest is but Vanity. Love God, and begin betimes to repose your self upon him, and therein shall you find true and lasting Riches, and endless Comfort: For the rest, when you have travelled and wearied your Thoughts over all sorts of worldly Cogitations, you shall but sit down by Sorrow in the end. Teach your Son also to love and fear God whilst he is yet young, that the Fear of God may grow with him; and then God will be a Husband to you, and a Father to him; a Husband and a Father which cannot be taken from you. Baili oweth me 200 l. and Adrian 600 l. in Jersey. I also have much owing me besides. The Arrearages of the Wines will pay your Debts. And howsoever you do, for my Soul's sake, pay all poor Men. When I am gone, no doubt you shall be sought to, for the World thinks that I was very rich. But take heed of the Pretences of Men, and their Affections, for they last not but in honest and worthy Men; and no greater Misery can befall you in this Life than to become a Prey, and afterwards to be despised. I speak not this (God knows) to dissuade you from Marriage, for it will be best for you both in respect of the World and of God. As for me, I am no more yours, nor you mine, Death hath cut us asunder; and God hath divided me from the World, and you from me. Remember your poor Child for his Father's sake, who chose you, and loved you in his happiest Times. Get those Letters (if it be possible) which I writ to the Lords, wherein I sued for Life: God is my

Witness, it was for you and yours that I desir'd Life; but it is true that I disdain'd my self for begging of it: For know it (my dear Wife) that your Son is the Son of a true Man; and who, in his own respect, despiseth Death and all his misshapen and ugly Forms. I cannot write much, God he knows how hardly I steal this time while others sleep, and it is also time that I should separate my Thoughts from the World. Beg my dead Body, which living was denied thee; and either lay it at Sherburne (and if the Land continue) or in Exeter-Church by my Father and Mother. I can say no more, Time and Death call me away; the everlasting, powerful, infinite, and omnipotent God, that Almighty God, who is Goodness it self, the true Life and true Light, keep thee and thine, have Mercy on me, and teach me to forgive my Persecutors and Accusers, and send us to meet in his glorious Kingdom. My dear Wife farewell. Bless my poor Boy. Pray for me, and let my good God hold you both in his Arms. Written with the dying Hand of sometimes thy Husband, but now alas overthrown.

WALTER RALEIGH.

UPON Thursday the 29th of Octob. 1618. Sir Walter Raleigh was conveyed by the Sheriffs of London to a Scaffold in the Old Palace-Yard at Westminster, about nine of the Clock in the morning of the same day.

Whereupon, when he came, with a chearful Countenance he saluted the Lords, Knights and Gentlemen there present.

After which, a Proclamation was made for Silence, and he address'd himself to speak in this manner.

I desire to be borne withal, for this is the third Day of my Fever; and if I shall shew any Weakness, I beseech you to attribute it to my Malady, for this is the Hour in which it is wont to come.

Then pausing a while, he sat, and directed himself towards a Window, where the Lords of Arundel, Northampton, and Doncaster, with some other Lords and Knights, sat, and spake as followeth:

I thank God, of his infinite Goodness, that he hath brought me to die in the Light, and not in Darknes; (but by reason that the Place where the Lords, &c. sat, was some distance from the Scaffold, that he perceived they could not well hear him, he said) I will strain my Voice, for I would willingly have your Honours hear me.

But my Lord of Arundel said, Nay, we will rather come down to the Scaffold, which he and some others did.

Where being come, he saluted them severally, and then began again to speak as followeth, viz.

As I said, I thank God heartily, that he hath brought me into the Light to die, and that he hath not suffer'd me to die in the dark Prison of the Tower, where I have suffer'd a great deal of Misery and cruel Sicknes; and I thank God that my Fever hath not taken me at this time, as I prayed to God it might not.

There are two main Points of Suspicion that his Majesty, as I hear, hath conceived against me.

To resolve your Lordships wherein his Majesty cannot be satisfy'd, which I desire to clear, and to resolve your Lordships of:

One

One is, That his Majesty hath been inform'd that I have often had Plots with *France*, and his Majesty had good Reason to induce him thereunto.

One Reason that his Majesty had to conjecture so was, that when I came back from *Guiana*, being come to *Plymouth*, I endeavoured to go in a Bark to *Rochel*, which was, for that I would have made my Peace before I had come to *England*.

Another Reason was, That upon my Flight, I did intend to fly into *France*, for the saving of my self, having had some Terror from above.

A third Reason, that his Majesty had Reason to suspect, was the *French* Agent's coming to me; besides, it was reported that I had a Commission from the *French* King at my going forth: These are the Reasons that his Majesty had, as I am inform'd, to suspect me.

But this I say, for a Man to call God to Witness to a Fallhood at the Hour of Death, is far more grievous and impious, and that a Man that so doth cannot have Salvation, for he hath no time of Repentance; then what shall I expect, that am going instantly to render up my Account? I do therefore call God to witness, as I hope to be saved, and as I hope to see him in his Kingdom, which I hope I shall within this Quarter of an Hour, I never had any Commission from the *French* King, nor never saw the *French* King's Hand-writing in all my Life; neither knew I that there was a *French* Agent, nor what he was, till I met him in my Gallery at my Lodging unlook'd for: If I speak not true, O Lord! let me never enter into thy Kingdom.

The second Suspicion was, That his Majesty had been inform'd, that I should speak dishonourably and disloyally of my Sovereign; but my Accuser was a base *Frenchman*, and runagate Fellow, one that hath no Dwelling, a kind of a Chymical Fellow, one that I knew to be perfidious; for being by him drawn into the Action of fearing my self at *Winchester*, in which I confess my Hand was toucht, he being sworn to Secresy over-night, revealed it the next Morning.

But this I speak now, what have I to do with Kings? I have nothing to do with them, neither do I fear them; I have only now to do with my God, in whose Presence I stand; therefore to tell a Lye, were it to gain the King's Favour, were vain: Therefore, as I hope to be sav'd at the last Judgment-day, I never spoke dishonourably, disloyally, or dishonestly of his Majesty in all my Life; and therefore I cannot but think it strange that that *Frenchman*, being so base and mean a Fellow, should be so far credited as he hath been.

I have dealt truly, as I hope to be sav'd, and I hope I shall be believ'd: I confess I did attempt to escape, I cannot excuse it, but it was only to save my Life.

And I do likewise confess, that I did feign my self to be ill-disposed and sick at *Salisbury*; but I hope it was no Sin, for the Prophet *David* did make himself a Fool, and suffer'd Spittle to fall down upon his Beard, to escape from the Hands of his Enemies, and it was not imputed unto him: So, what I did, I intended no Ill, but to gain and prolong time till his Majesty came, hoping for some Commiseration from him.

But I forgive this *Frenchman* and Sir *Lewis Steukley*, with all my heart, for I have receiv'd

the Sacrament this Morning of Mr. Dean of *Westminster*, and I have forgiven all Men; but that they are perfidious, I am bound in Charity to speak, that all Men may take heed of them.

Sir *Lewis Steukley*, my Keeper and Kinsman, hath affirmed that I should tell him, that my Lord *Carew*, and my Lord of *Doncaster* here, did advise me to escape; but I protest before God, I never told him any such thing, neither did the Lords advise me to any such Matter, neither is it likely that I should tell him any such thing two of Privy-Counsellors; neither had I any Reason to tell him, or he to report it; for it is well known, he left me six, seven, eight, nine and ten Days together alone, to go whither I listed, whilst he rode himself about the Country.

He further accused me, that I should shew him a Letter, whereby I did signify unto him that I would give him ten Thousand Pounds for my Escape; but God cast my Soul into everlasting Fire, if I made any such Proffer of ten Thousand Pounds, or one Thousand: but indeed I shewed him a Letter, that if he would go with me, there should be Order taken for his Debts when he was gone; neither had I ten Thousand Pounds to give him; for if I had had so much, I could have made my Peace better with it other way, than in giving it to *Steukley*.

Further, When I came to Sir *Edward Pelham's* House, who had been a Follower of mine, and who gave me good Entertainment; he gave out that I had there receiv'd some Dram of Poison, when I answer'd him that I feared no such thing, for I was well assur'd of them in the House, and therefore wisht him to have no such Thought. Now God forgive him, for I do, and I desire God to forgive him; I will not only say, God is a God of Revenge; but I desire God to forgive him, as I do desire to be forgiven of God.

Then looking over his Note of Remembrance, Well, said he, thus far I have gone; a little more, a little more, and I will have done by and by.

It was told the King that I was brought *per Force* into *England*, and that I did not intend to come again; but Sir *Charles Parker*, M. *Tresham*, M. *Leake*, and divers know how I was dealt withal by the common Soldiers, which were 150 in Number, who mutiny'd, and sent for me to come into the Ship to them, for unto me they would not come, and there I was forced to take an Oath that I would not go into *England* till that they would have me; otherwise they would have cast me into the Sea, and therewithal they drove me into my Cabbin, and bent all their Forces against me.

Now after I have taken this Oath, with Wine and other things, such as I had about me, I drew some of the chiefest to desist from their Purposes; and at length I persuaded them to go into *Ireland*, which they were willing unto, and would have gone into the North Parts of *Ireland*, which I dissuaded them from, and told them that they were *Red-Shankes* that inhabited there: and with much ado I persuaded them to go into the South Parts of *Ireland*, promising them to get their Pardons, and was forc'd to give them 125 *l.* at *Kinsale*, to bring them home, otherwise I had never got from them.

I hear likewise there was a Report that I meant not to go to *Guiana* at all, and that I knew not of any Mine, nor intended any such Thing or Matter,

Matter, but only to get my Liberty, which I had not the Wit to keep.

But I protest it was my full Intent, and for Gold; for Gold, for the Benefit of his Majesty and my self, and of those that ventur'd and went with me, with the rest of my Countrymen: But he that knew the Head of the Mine would not discover it, when he saw my Son was slain, but made away himself.

And then turning to the Earl of *Arundel*, he said, My Lord, being in the Gallery of my Ship, at my Departure, I remember your Honour took me by the Hand, and said, You would request one thing of me, which was, That whether I made a good Voyage or a bad, I should not fail, but to return again into *England*; which I then promised you, and gave you my Faith I would; and so I have.

To which my Lord answer'd, and said, It is true, I do very well remember it, they were the very last Words I spake unto you.

Another Slander was raised of me, That I would have gone away from them, and left them at *Guiana*.

But there were a great many worthy Men that accompanied me always; as my Serjeant-Major, *George Raleigh*, and divers others, which knew my Intent was nothing so.

Another Opinion was held of me, that I carried with me to Sea 16000 Pieces, and that was all the Voyage I intended, only to get Money into my Hands.

As I shall answer it before God, I had not in all the World in my Hands, or others to my Use, either directly or indirectly, above a hundred Pounds, whereof, when I went, I gave my Wife twenty-five Pounds thereof; but the Error thereof came, as I perceived, by looking over the Scrivener's Books, where they found the Bills of Adventure arising to a great Sum, so raised that false Report.

Only I will borrow a little time of Mr. Sheriffs to speak of one thing, that doth make my Heart to bleed to hear that such an Imputation should be laid upon me; for it is said, that I should be a Persecutor of the Death of the Earl of *Essex*, and that I stood in a Window over-against him when he suffer'd, and puffed out Tobacco in disdain of him. God I take to Witness, I shed Tears for him when he died; and as I hope to look God in the Face hereafter, my Lord of *Essex* did not see my Face when he suffer'd, for I was afar off in the Armory, where I saw him, but he saw not me.

I confess indeed I was of a contrary Faction, but I know my Lord of *Essex* was a noble Gentleman, and that it would be worse with me when he was gone; for I got the Hate of those which

wished me well before, and those that set me against him, afterwards set themselves against me, and were my greatest Enemies, and my Soul hath many times been grieved that I was not nearer him when he died; because, as I understood afterwards, that he asked for me at his Death, to have been reconciled unto me.

And these be the material Points I thought good to speak of, and I am now at this Instant to render up an Account to God; and I protest, as I shall appear before him, this that I have spoken is true, and I hope I shall be believed.

Then a Proclamation being made, that all Men should depart the Scaffold, he prepared himself for Death; giving away his Hat, his Cap, with some Money, to such as he knew, that stood near him.

And then taking his leave of the Lords, Knights, Gentlemen, and others of his Acquaintance, and amongst the rest, taking his leave of my Lord of *Arundel*, he thanked him for his Company, and intreated him to desire the King that no scandalous Writing to defame him might be published after his Death; saying further unto him, I have a long Journey to go, and therefore I will take my leave.

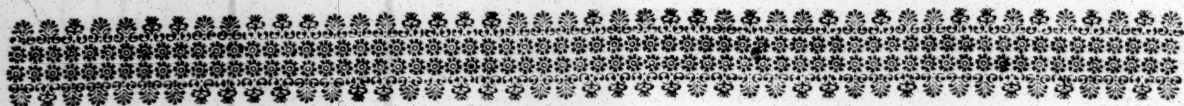
And then putting off his Doublet and Gown, desired the Headfman to shew him the Ax; which not being suddenly granted unto him, he said, I prithee let me see it, dost thou think that I am afraid of it? so it being given unto him, he felt along upon the Edge of it, and smiling, spake unto Mr. Sheriff, saying, This is a sharp Medicine, but it is a Physician that will cure all Diseases.

Then going to and fro upon the Scaffold on every Side, he intreated the Company to pray to God to give him Strength.

Then having ended his Speech, the Executioner kneeled down and asked him Forgiveness; the which laying his Hand upon his Shoulder he forgave him.

Then being asked which Way he would lay himself on the Block, he made Answer and said, so the Heart be streight, it is no matter which way the Head lieth: So laying his Head on the Block, his Face being towards the East, the Headfman throwing down his own Cloak, because he would not spoil the Prisoner's Gown, he giving the Headfman a Sign when he should strike, by lifting up his Hands, the Executioner struck off his Head at two Blows, his Body never shrinking nor moving. His Head was shewed on each Side of the Scaffold, and then put into a red Leather Bag, and his wrought Velvet Gown thrown over it, which was afterwards conveyed away in a Mourning Coach of his Lady's.





XIX. *The Trials of Robert Winter, Thomas Winter, Guy Fawks, John Grant, Ambrose Rookwood, Robert Keyes, Thomas Bates and Sir Everard Digby, at Westminster for High-Treason, being Conspirators in the Gunpowder-Plot. 27 Jan. 1605. 3 Jac. I.*

The COMMISSIONERS were,

*The Earl of Nottingham.
The Earl of Suffolk.
The Earl of Worcester.
The Earl of Devonshire.
The Earl of Northampton.
The Earl of Salisbury.*

*The Lord Chief Justice of England, Sir
John Popham.
The Lord Chief Baron of the Exchequer,
Thomas Fleming.
Sir Peter Warburton Kt. one of the Justices
of the Common-Pleas.*

The Effect of the Indictment.

THAT whereas our Sovereign Lord the King had, by the Advice and Assent of his Council, for divers weighty and urgent Occasions concerning his Majesty, the State, and Defence of the Church and Kingdom of England, appointed a Parliament to be holden at his City of Westminster; That Henry Garnet, Superior of the Jesuits within the Realm of England, (called also by the several names of *Wally, Darcy, Roberts, Farmer, and Henry Philips*) Oswald Tesmond Jesuit, otherwise called *Oswald Greenwell, John Gerrard* Jesuit, (called also by the several names of *Lee and Brooke*) Robert Winter, Thomas Winter, Gentlemen, Guy Fawkes Gent. otherwise called *Guy Johnson, Robert Keyes* Gent. and Thomas Bates Yeoman, late Servant to Robert Catesby Esquire; together with the said Robert Catesby and Thomas Percy Esquires, John Wright and Christopher Wright Gentlemen, in open Rebellion and Insurrection against his Majesty, lately slain, and Francis Tresham Esq; lately dead; as false Traitors against our said Sovereign Lord the King, did traitorously meet and assemble themselves together; and being so met, the said Henry Garnet, Oswald Tesmond, John Gerrard, and other Jesuits, did maliciously, falsely, and traitorously move and persuade as well the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as the said Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, That our said Sovereign Lord the King, the Nobility, Clergy, and whole Commonalty of the Realm of England, (Papists excepted) were Hereticks; and that all Hereticks were accursed and excommunicate; and that none Heretick could be a King; but that it was lawful and meritorious to kill our said Sovereign Lord the King, and all other Hereticks within this Realm of England, for the Advancing and Enlargement of the pretended and usurped Authority and Jurisdiction of the Bishop of Rome, and for the restoring of the superstitious Romish Religion within this Realm of

England. To which traitorous Persuasions, the said Thomas Winter, Guy Fawkes, Robert Keyes, Thomas Bates, Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, traitorously did yield their Assents: And that thereupon the said Henry Garnet, Oswald Tesmond, John Gerrard, and divers other Jesuits; Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as also the said Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, traitorously amongst themselves did conclude and agree, with Gunpowder, as it were with one Blast, suddenly, traitorously and barbarously to blow up and tear in pieces our said Sovereign Lord the King, the excellent, virtuous, and gracious Queen Anne, his dearest Wife, the most noble Prince Henry, their eldest Son, and future Hope and Joy of England; and the Lords Spiritual and Temporal, the Reverend Judges of the Realm, the Knights, Citizens and Burgeses of Parliament, and divers other faithful Subjects and Servants of the King in the said Parliament, for the Causes aforesaid, to be assembled in the House of Parliament; and all them, without any respect of Majesty, Dignity, Degree, Sex, Age or Place, most barbarously, and more than beastly, traitorously and suddenly to destroy and swallow up. And further did most traitorously conspire and conclude amongst themselves, That not only the whole Royal Issue-Male of our said Sovereign Lord the King should be destroyed and rooted out; but that the Persons aforesaid, together with divers other false Traitors, traitorously with them to be assembled, should surprize the Persons of the noble Ladies Elizabeth and Mary, Daughters of our said Sovereign Lord the King, and falsely and traitorously should proclaim the said Lady Elizabeth to be Queen of this Realm: And thereupon should publish a certain traitorous Proclamation in the name of the said Lady Elizabeth; wherein, as it was especially agreed by and between the said Conspirators, That no mention should be made at the first, of the alteration of Religion established within

within this Realm of England; neither would the said false Traitors therein acknowledge themselves to be Authors, or Actors, or Devisers of the aforesaid most wicked and horrible Treasons, until they had got sufficient Power and Strength for the assured Execution and Accomplishment of their said Conspiracy and Treason; and that then they would avow and justify the said most wicked and horrible Treasons, as Actions that were in the number of those, *Quæ non laudantur, nisi peracta*, which be not to be commended before they be done: but by the said feign'd and traitorous Proclamation they would publish, That all and singular Abuses and Grievances within this Realm of England, should, for satisfying of the People, be reform'd. And that as well for the better concealing, as for the more effectual accomplishing of the said horrible Treasons, as well the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, and *Francis Tresham*, by the traitorous Advice and Procurement of the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, and other Jesuits, traitorously did further conclude and agree, that as well the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, and *Francis Tresham*, thereupon severally and traitorously should receive several corporal Oaths upon the holy Evangelists, and the Sacrament of the Eucharist, That they the Treasons aforesaid would traitorously conceal and keep secret, and would not reveal them, directly or indirectly, by Words or Circumstances, nor ever would desist from the Execution and final Accomplishment of the said Treasons, without the consent of some three of the aforesaid false Traitors first in that behalf traitorously had: And that thereupon as well the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christ. Wright*, and *Francis Tresham*, did traitorously take the said several corporal Oaths severally, and did receive the Sacrament of the Eucharist aforesaid, by the Hands of the said *Henry Garnet*, *John Gerrard*, *Oswald Tesmond*, and other Jesuits. And further, that the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, and *Francis Tresham*, by the like traitorous Advice and Counsel of the said *Henry Garnet*, *John Gerrard*, *Oswald Tesmond*, and other Jesuits, for the more effectual compassing and final execution of the said Treasons, did traitorously among themselves conclude and agree to dig a certain Mine under the said House of Parliament, and there secretly, under the said House, to bestow and place a great Quantity of Gunpowder; and that according to the said traitorous Conclusion, the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the said *Robert Catesby*, *Thomas Percy*, *John Wright*, and *Christopher Wright*, afterwards secretly, not without great labour and difficulty, did dig and make the said Mine unto the midst of the Foundation of the Wall of the said House of Parliament, the said Foundation being of the thickness of three yards, with a traitorous Intent to bestow and place a great Quantity of Gunpowder in the Mine aforesaid, so as aforesaid traitorously to be made for the traitorous accomplishing of their traitorous Purposes aforesaid. And that the said *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, to-

gether with the said *Robert Catesby*, *Thomas Percy*, *John Wright*, and *Christopher Wright*, finding and perceiving the said Work to be of great difficulty, by reason of the Hardness and Thickness of the said Wall; and understanding a certain Cellar under the said House of Parliament, and adjoining to a certain House of the said *Thomas Percy*, then to be letten to farm for a yearly Rent, the said *Thomas Percy*, by the traitorous Procurement, as well of the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, and other Jesuits, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as of the said *Robert Catesby*, *John Wright*, and *Christopher Wright*, traitorously did hire the Cellar aforesaid for a certain yearly Rent and Term: and then those Traitors did remove twenty Barrels full of Gunpowder out of the said House of the said *Thomas Percy*, and secretly and traitorously did bestow and place them in the Cellar aforesaid, under the said House of Parliament, for the traitorous effecting of the Treason, and traitorous Purposes aforesaid. And that afterwards the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, and other Jesuits, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes* and *Thomas Bates*, together with the said *Robert Catesby*, *Thomas Percy*, *John Wright* and *Christopher Wright* traitorously did meet with *Robert Winter*, *John Grant*, and *Ambrose Rookwood*, and *Francis Tresham*, Esquires; and traitorously did impart to the said *Robert Winter*, *John Grant*, *Ambrose Rookwood*, and *Francis Tresham*, the Treasons, traitorous Intentions and Purposes aforesaid; and did require the said *Robert Winter*, *John Grant*, *Ambrose Rookwood*, and *Francis Tresham*, to join themselves as well with the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as with the said *Robert Catesby*, *Thomas Percy*, *John Wright*, and *Christopher Wright*, in the Treasons, traitorous Intentions and Purposes aforesaid; and traitorously to provide Horse, Armour, and other Necessaries, for the better Accomplishment and effecting of the said Treasons. To which traitorous Motion and Request, the said *Robert Winter*, *John Grant*, *Ambrose Rookwood*, and *Francis Tresham*, did traitorously yield their Assents, and as well with the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, *Robert Winter*, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as with the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, and *Francis Tresham*, in the said Treasons, traitorous Intentions and Purposes aforesaid, traitorously did adhere and unite themselves: And thereupon several corporal Oaths, in form aforesaid, traitorously did take, and the Sacrament of the Eucharist, by the hands of the said Jesuits did receive, to such Intent and Purpose, as is aforesaid; and Horses, Armour, and other Necessaries for the better effecting of the said Treasons, according to their traitorous Assents aforesaid, traitorously did provide. And that afterwards all the said false Traitors did traitorously provide, and bring into the Cellar aforesaid ten other Barrels full of Gunpowder, newly bought, fearing lest the former Gunpowder, so as aforesaid bestow'd and placed there, was become dankish; and the said several Quantities of Gunpowder aforesaid, with Billets and Faggots, lest they should be spy'd, secretly and traitorously did cover. And that afterwards the said false Traitors traitorously provided, and brought into the Cellar aforesaid, four Hogsheds full of Gunpowder, and laid divers great Iron Bars and Stones upon the said four Hogsheds, and the

aforesaid other Quantities of Gunpowder: And the said Quantities of Gunpowder, Bars, and Stones, with Billets and Faggots, lest they should be espy'd, secretly and traitorously did likewise cover. And that the said *Guy Fawkes*, afterwards, for a full and final Accomplishment of the said Treasons, traitorous Intentions and Purposes aforesaid, by the traitorous Procurement, as well of the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, and other Jesuits, *Robert Winter*, *Thomas Winter*, *Robert Keyes*, *Thomas Bates*, *John Grant*, and *Ambrose Rookwood*, as of the said *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, and *Francis Tresham*, traitorously had prepared, and had upon his Person Touchwood and Match, therewith traitorously to give fire to the several Barrels, Hogheads, and Quantities of Gunpowder aforesaid, at the time appointed for the Execution of the said horrible Treasons. And further, that after the said horrible Treasons were, by the great Favour and Mercy of God, in a wonderful manner discover'd, not many hours before it should have been executed, as well the said *Henry Garnet*, *Oswald Tesmond*, *John Gerrard*, *Robert Winter*, *Thomas Winter*, *Robert Keyes*, *Thomas Bates*, *John Grant*, and *Ambrose Rookwood*, as the said *Robert Catesby*, *Thomas Percy*, *John Wright*, and *Christopher Wright*, traitorously did fly and withdraw themselves, to the intent traitorously to stir up and procure such Popish Persons, as they could, to join with them in actual, publick, and open Rebellion against our said Sovereign Lord the King; and to that end did publish divers feigned and false Rumours, that the Papists Throats should have been cut; and that thereupon divers Papists were in Arms, and in open, publick, and actual Rebellion against our said Sovereign Lord the King, in divers Parts of this Realm of *England*.

To this Indictment they all pleaded, Not guilty; and put themselves upon God and the Country.

Then did Sir *Edward Philips*, Kt. his Majesty's Serjeant at Law, open the Indictment to this effect, as followeth.

The matter that is now to be offer'd to you my Lords the Commissioners, and to the Trial of you the Knights and Gentlemen of the Jury, is Matter of Treason; but of such Horror, and monstrous Nature, that before now,

The Tongue of Man never deliver'd,
The Ear of Man never heard,
The Heart of Man never conceited,
Nor the Malice of hellish or earthly Devil
ever practised.

For, if it be abominable to murder the least;
If to touch God's Anointed be to oppose themselves against God;

If (by Blood) to subvert Princes, States and Kingdoms, be hateful to God and Man, as all true Christians must acknowledge:

Then, how much more than too too monstrous shall all Christian Hearts judge the Horror of this Treason; to murder and subvert -

Such a King,
Such a Queen,
Such a Prince,
Such a Progeny,
Such a State,
Such a Government,
So complete and absolute,
That God approves,
The World admires,

All true *English* Hearts honour and reverence,

The Pope and his Disciples only envies and maligns?

The Proceeding wherein, is properly to be divided into three general Heads.

First, Matter of Declaration.

Secondly, Matter of Aggravation.

Thirdly, Matter of Probation.

My self am limited to deal only with the Matter of Declaration, and that is contain'd within the Compass of the Indictment only.

For the other two, I am to leave to him to whose Place it belongeth.

The Substance of which Declaration consisteth in four Parts.

First, in the Persons and Qualities of the Conspirators.

Secondly, In the Matter conspired.

Thirdly, In the Mean and Manner of the Proceeding and Execution of the Conspiracy.

And Fourthly, Of the End and Purpose why it was so conspired.

As concerning the first, being the Persons; they were, *Garnet*, *Gerrard*, *Tesmond*, Jesuits not then taken. *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, *Thomas Bates*, *Everard Digby*, *Ambrose Rookwood*, *John Grant*, *Robert Winter*, at the Bar. *Robert Catesby*, *Thomas Percy*, *John Wright*, *Christopher Wright*, slain in Rebellion. *Francis Tresham*, lately dead. All grounded Romanists and corrupted Scholars of so irreligious and traitorous a School.

As concerning the second, which is the Matter conspired; it was,

First, to deprive the King of his Crown.

Secondly, To murder the King, the Queen, and the Prince.

Thirdly, To stir Rebellion and Sedition in the Kingdom.

Fourthly, To bring a miserable Destruction amongst the Subjects.

Fifthly, To change, alter, and subvert the Religion here established.

Sixthly, To ruinate the State of the Commonwealth, and to bring in Strangers to invade it.

As concerning the third, which is the Mean and Manner how to compass and execute the same; they did all conclude,

First, That the King, and his People (the Papists excepted) were Hereticks.

Secondly, That they were all cursed, and excommunicated by the Pope.

Thirdly, That no Heretick could be King.

Fourthly, That it was lawful and meritorious to kill and destroy the King, and all the said Hereticks.

The Mean to effect it, they concluded to be, that,

First, The King, the Queen, the Prince, the Lords Spiritual and Temporal, the Knights and Burgeesses of the Parliament, should be blown up with Powder.

Secondly, That the whole Royal Issue Male should be destroy'd.

Thirdly, That they would take into their Custody *Elizabeth* and *Mary* the King's Daughters, and proclaim the Lady *Elizabeth* Queen.

Fourthly, That they should feign a Proclamation in the name of *Elizabeth*, in which no mention should be made of Alteration of Religion, nor that they were Parties to the Treason, until they had raised Power to perform the same; and then

to

to proclaim, All Grievances in the Kingdom should be reformed.

That they also took several Oaths, and receiv'd the Sacrament; First, for Secrecy; Secondly, for Prosecution; except they were discharg'd thereof by three of them.

That after the Destruction of the King, the Queen, the Prince, the Royal Issue Male, the Lords Spiritual and Temporal, the Knights and Burgeses, they should notify the same to foreign States; and thereupon Sir Edmund Baynam an attainted Person of Treason, and styling himself Prime of the damned Crew, should be sent and make the same known to the Pope, and crave his Aid: an Embassador fit both for the Message and Persons, to be sent betwixt the Pope and the Devil.

That the Parliament being prorogued till the 7th of February, they in December made a Mine under the House of Parliament, purposing to place their Powder there; but the Parliament being then further adjourned till the 3d of October, they in Lent following hired the Vault, and placed therein 20 Barrels of Powder.

That they took to them, Robert Winter, Grant and Rookwood, giving them the Oaths and Sacrament as aforefaid, as to provide Munition.

July 20. They laid in more ten Barrels of Powder, laying upon them divers great Bars of Iron, and pieces of Timber, and great massy Stones, and covered the same with Faggots, &c.

September 20. They laid in more, 4 Hogsheads of Powder, with other Stores and Bars of Iron thereupon.

November 4. (The Parliament being prorogued to the 5th) at 11 a clock at Night, Fawkes had prepared (by the procurement of the rest) Touchwood and Match, to give fire to the Powder the next Day.

That the Treason being miraculously discovered, they put themselves, and procured others to enter into open Rebellion; and gave out most untruly, It was for that the Papists Throats were to be cut.

* Sir Edward Coke. * *Attor. General.* It appeareth to your Lordships, and the rest of this most honourable and grave Assembly, even by that which Mr. Serjeant hath already opened, that these are the greatest Treasons that ever were plotted in England, and concern the greatest King that ever was of England. But when this Assembly shall further hear, and see discovered the Roots and Branches of the same, not hitherto published, they will say indeed, *Quis hæc posteris sic narrare poterit, ut facta non ficta esse pvideantur?* That when these things shall be related to Posterity, they will be reputed matters feigned, not done. And therefore in this so great a Cause, upon the Carriage and Event whereof the Eye of all Christendom is at this day bent; I shall desire that I may with your Patience be somewhat more copious, and not so succinct, as my usual manner hath been; and yet will I be no longer than the very Matter it self shall necessarily require. But before I enter into the particular Narration of this Cause, I hold it fit to give Satisfaction to some, and those well affected amongst us, who have not only marvelled, but grieved, that no speedier Expedition hath been used in these Proceedings, considering the Monstrousness and continual Horror of this so desperate a Cause.

1. It is, *Ordo Naturæ*, agreeable to the Order of Nature, that things of great weight and magnitude should slowly proceed, according to that of the Poet, *Tarda solet magnis rebus adesse fides*. And surely of these things we may truly say, *Nunquam ante dies nostros talia acciderunt*; neither hath the Eye of Man seen, nor the Ear of Man heard the like things to these.

2. *Veritas temporis filia*, Truth is the Daughter of Time; especially in this Case, wherein by timely and often Examinations, First, Matters of greatest moment have been lately found out. Secondly, some known Offenders, and those Capital, but lately, apprehended. Thirdly, Sundry of the principal Arch-Traiters before unknown, now manifested, as the Jesuits. Fourthly, Heretical, treasonable and damnable Books lately found out; one of Equivocation, and another, *De officio Principis Christiani*, of Francis Tresham's.

3. There have been already twenty and three several days spent in Examinations.

4. We should otherwise have hanged a Man unattainted, for Guy Fawkes passed for a time under the name of John Johnson: So that if by that name greater Expedition had been made, and he hanged, though we had not missed of the Man, yet the Proceeding would not have been so orderly or justifiable.

5. The King out of his Wisdom and great Moderation, was pleased to appoint this Trial in time of Assembly in Parliament, for that it concerned especially those of the Parliament.

Now touching the Offences themselves, they are so exorbitant and transcendent, and aggregated of so many bloody and fearful Crimes, as they cannot be aggravated by any Inference, Argument or Circumstance whatsoever; and that in three respects:

First, Because this Offence is *Primæ impressionis*, and therefore *sine Nomine*, without any name which might be *adequatum*, sufficient to express it, given by any Legist, that ever made or writ of any Laws. For the highest Treason that all they could imagine, they called it only *Crimen læsæ Majestatis*, the violating of the Majesty of the Prince. But this Treason doth want an apt name, as tending not only to the Hurt, but to the Death of the King; and not the Death of the King only, but of his whole Kingdom, *Non Regis sed Regni*, that is, to the Destruction and Dissolution of the Frame and Fabrick of this antient, famous, and ever-flourishing Monarchy; even the Deletion of our whole Name and Nation: *And therefore hold not thy tongue, O God, keep not still silence, refrain not thyself, O God; for lo thine Enemies make a murmuring, and they that hate thee have lift up their Heads: They have said come, and let us root them out, that they be no more a People, and that the Name of Israel may be no more in remembrance.* Psal. 83. 1, 2, 3, 4, 5.

Secondly, It is, *Sine exemplo*, beyond all Examples, whether in Fact or Fiction, even of the tragick Poets, who did beat their Wits to represent the most fearful and horrible Murders.

Thirdly, It is, *Sine modo*, without all measure or stint of Iniquity; like a Mathematical Line, which is, *divisibilis in semper divisibilia*, infinitely divisible.

It is Treason to imagine or intend the Death of the King, Queen, or Prince.

For Treason is like a Tree whose Root is full of Poison, and lieth secret and hid within the Earth, resembling the Imagination of the Heart of Man, which is so secret as God only knoweth it.

Now the Wisdom of the Law provideth for the blasting and nipping, both of the Leaves, Blossoms, and Buds which proceed from this Root of Treason; either by Words, which are like to Leaves, or by some overt Act, which may be resembled to Buds or Blossoms, before it cometh to such Fruit and Ripeness, as would bring utter Destruction and Desolation upon the whole State.

It is likewise Treason to Kill the Lord Chancellor, Lord Treasurer, or any Justice of the one Bench or other; Justices of Assize, or any other Judge mentioned in the Statute of 25 *Edw. III.* sitting in their Judicial Places, and exercising their Offices. And the Reason is, for that every Judge so sitting by the King's Authority, representeth the Majesty and Person of the King; and therefore it is *Crimen lese Majestatis*, to kill him, the King being always in Judgment of Law present in Court. But in the high Court of Parliament, every Man by virtue of the King's Authority, by Writ under the Great Seal, hath a judicial Place; and so consequently the killing of every of them had been a several Treason; and *Crimen lese Majestatis*. Besides that to their Treasons were added open Rebellion, Burglary, Robbery, Horsestealing, &c. So that this Offence is such, as no Man can express it, no Example pattern it, no Measure contain it.

Concerning foreign Princes; there was here a Protestation made for the clearing of them from all Imputation and Aspersions whatsoever.

First, For that whilst Kingdoms stood in Hostility, hostile Actions are holden honourable and just.

Secondly, It is not the King's Serjeant, Attorney, or Solicitor, that in any sort touch or mention them: For we know that great Princes and Personages are reverently and respectfully to be spoken of; and that there is *Lex in sermone tenenda*. But it is *Fawkes*, *Winter*, and the rest of the Offenders, that have confessed so much as hath been said: And therefore the King's Counsel Learned doth but repeat the Offender's Confession, and charge or touch no other Person. They have also slander'd unjustly our great Master King *James*, which we only repeat, to shew the Wickedness and Malice of the Offenders.

Thirdly, So much as is said concerning foreign Princes, is so woven into the matter of the Charge of these Offenders, as it cannot be sever'd, or singled from the rest of the matter; so as it is inevitable, and cannot be pretermitted.

Now as this Powder-Treason is in it self prodigious and unnatural, so it is in the Conception and Birth most monstrous, as arising out of the dead Ashes of former Treasons. For it had three Roots, all planted and watered by Jesuits, and *English* Romish Catholics: The first Root in *England*, in *December* and *March*; the second in *Flanders*, in *June*; the third in *Spain*, in *July*. In *England* it had two Branches, one in *December* was twelve Months before the death of the late Queen of blessed Memory; another in *March* wherein she died.

First in *December*, *Anno Dom. 1601.* do *Henry Garnet* Superior of the Jesuits in *England*, *Robert Tesmond* Jesuit, *Robert Catesby* (who was *bono subactio & versuto ingenio & profunda perfidia*) together with *Francis Tresham* and others, in the names, and for the behalf of all the *English* Romish Catholics, imploy *Thomas Winter* into *Spain*, as for the general good of the Romish Catholick Cause; and by him doth *Garnet* write his Letters to Father *Creswell*,

Jesuit residing in *Spain*, in that behalf. With *Thomas Winter* doth *Tesmond*, alias *Greeneway* the Jesuit, go as an Associate and Confederate in that Conspiracy. The Message (which was principally committed unto the said *Winter*) was, that he should make a Proposition and Request to the King of *Spain*, in the behalf and names of the *English* Catholics, That the King would send an Army hither into *England*, and that the Forces of the Catholics in *England* should be prepared to join with him, and do him Service. And further, that he should move the King of *Spain* to bestow some Pensions here in *England*, upon sundry Persons Catholics, and devoted to his Service: And moreover, to give Advertisement, that the said King of *Spain*, making use of the general Discontentment that young Gentlemen and Soldiers were in, might no doubt, by relieving their Necessities, have them all at his devotion.

And because that in all Attempts upon *England*, the greatest Difficulty was ever found to be the Transportation of Horses; the Catholics in *England* would assure the King of *Spain* to have always in readines for his Use and Service, 1500 or 2000 Horses, against any occasion or enterprize. Now *Thomas Winter* undertaking this Negotiation, and with *Tesmond* the Jesuit coming into *Spain*, by means of Father *Creswell* the Legier Jesuit there, as hath been said, had readily Speech with *Don Pedro Franceca* second Secretary of State, to whom he imparted his Message, as also to the Duke of *Lerma*; who assured him, that it would be an Office very grateful to his Master, and that it should not want his best Furtherance.

Concerning the Place for landing of the King of *Spain's* Army, which from the *English* Romish Catholics he desired might be sent to invade the Land; it was resolved, That if the Army were great, then *Essex* and *Kent* were judged fittest, (where note by the way, who was then Lord Warden of the Cinque Ports:) If the Army were small, and trusted upon Succour in *England*, then *Milford-haven* was thought more convenient.

Now there being at that time Hostility betwixt both Kingdoms, the King of *Spain* willingly embraced the Motion, saying, that he took the Message from the Catholics very kindly, and that in all things he would respect them with as great Care as his proper *Castilians*. But for his further answer and full dispatch, *Thomas Winter* was appointed to attend the Progress. In the end whereof, being in Summer time, Count *Miranda* gave him this answer in the behalf of his Master, That the King would bestow 100000 Crowns to that use, half to be paid that Year, and the rest the next Spring following; and withal required that we should be as good as our Promise, for the next Spring he meant to be with us, and set foot in *England*. And lastly, he desired on the King's behalf, of *Winter*, that he might have certain Advertisement and Intelligence, if so it should in the mean time happen that the Queen did die. *Tho. Winter* laden with these Hopes, returns into *England* about a Month before *Christmas*, and delivered answer of all that had passed, to *Henry Garnet*, *Robert Catesby*, and *Francis Tresham*. But soon after set that glorious Light, her Majesty died: *Miracano; Sol occubuit, Nox nulla secuta est.*

Presently after whose Death was *Christopher Wright*, another Messenger sent over into *Spain* by *Garnet*, (who likewise did write by him to *Creswell*, for the furtherance of the Negotiation) *Catesby* and

and *Tresham*, in the name and behalf of all the Romish Catholicks in *England*; as well to carry News of her Majesty's Death, as also to continue the aforesaid Negotiation for an Invasion and Pensions, which by *Tho. Winter* had before been dealt in. And in the *Spanish* Court, about two Months after his arrival there, doth *Christopher Wright* meet with *Guy Fawkes*; who upon the 22d of *June* was employed out of *Flanders* from *Brussels* by Sir *William Stanley*, *Hugh Owen*, (whose Finger hath been in every Treason which hath been of late Years detected) and *Baldwyn* the Legier Jesuit in *Flanders*; from whom likewise the said *Fawkes* carried Letters to *Creswell* in *Spain*, for the countenancing and furtherance of his Affairs.

Now the End of *Fawkes*'s employment was, to give Advertisment to the King of *Spain*, how the King of *England* was like to proceed rigorously with the Catholicks, and to run the same course which the late Queen did; and withal to intreat that it would please him to send an Army into *England* to *Milford-haven*, where the Romish Catholicks would be ready to assist him; and then the Forces that should be transported in *Spinola*'s Gallies, should be landed where they could most conveniently. And these their several Messages did *Christopher Wright* and *Guy Fawkes* in the end intimate and propound to the King of *Spain*. But the King as then very honourably answered them both, that he would not in any wise further listen to any such Motion, as having before dispatched an Embassy into *England*, to treat concerning Peace. Therefore this Course by foreign Forces failing, they fell to the Powder-Plot, *Catesby* and *Tresham* being in at all; in the Treason of the Earl of *Essex*, in the Treason of *Watson* and *Clarke* Seminary Priests, and also in this of the Jesuits; such a greedy Appetite had they to practise against the State.

The rest of that which Mr. Attorney then spake continuedly, was by himself divided into three general Parts. The first containing certain Considerations concerning this Treason. The second Observations about the same. The third a Comparison of this Treason of the Jesuits, with that of the Seminary Priests, and that other of *Raleigh* and others.

For the Considerations concerning the Powder-Treason, they were in Number eight: That is to say, 1. The Persons by whom. 2. The Persons against whom. 3. The Time when. 4. The Place where. 5. The Means. 6. The End. 7. The secret Contriving. And lastly, the admirable Discovery thereof.

1. For the Persons offending, or by whom, they are of two sorts; either of the Clergy, or Laity: and for each of them there is a several Objection made. Touching those of the Laity, it is by some given out, that they are such Men, as admit just Exception, either desperate in Estate, or base, or not settled in their Wits; such as are *Sine Religione*, *Sine Sede*, *Sine Fide*, *Sine Re*, & *Sine Spe*; without Religion, without Habitation, without Credit, without Means, without Hope. But (that no Man, tho' never so wicked, may be wronged) true it is, they were Gentlemen of good Houses, of excellent Parts, howsoever most perniciously seduced, abused, corrupted, and jesuited, of very competent Fortunes and States. Besides that *Percy* was of the House of *Northumberland*, Sir *William Stanley*, who principally employed *Fawkes* into *Spain*, and *John Talbot* of *Grafton*, who at the

least is in Case of Misprision of High-Treason, both of great and honourable Families. Concerning those of the Spirituality, it is likewise falsely said, That there is never a religious Man in this Action. For I never yet knew a Treason without a Romish Priest; but in this there are very many Jesuits, who are known to have dealt and passed thro' the whole Action: Three of them are Legiers and Statesmen, as *Henry Garnet* alias *Walley*, the Superior of the Jesuits, Legier here in *England*; Father *Creswell* Legier Jesuit in *Spain*, Father *Baldwyn* Legier in *Flanders*, as *Parsons* at *Rome*; besides their cursory Men, as *Gerrard*, *Oswald*, *Tesmond* alias *Greeneway*, *Hammond*, *Hall*, and other Jesuits. So that the principal Offenders are the seducing Jesuits; Men that use the Reverence of Religion, yea, even the most sacred and blessed Name of *Jesus*, as a Mantle to cover their Impiety, Blasphemy, Treason and Rebellion, and all manner of Wickedness; as by the help of *Christ* shall be made most apparent to the Glory of God, and the Honour of our Religion. Concerning this Sect, their Studies and Practices principally consist in two DD's, to wit, in Deposing of Kings, and Disposing of Kingdoms: their Profession and Doctrine is a Religion of Distinctions, the greatest part of them being without the Text, and therefore in very deed, idle and vain Conceits of their own Brains: not having *Membra dividenda*, that is, all the parts of the division warranted by the Word of God; and *ubi lex non distinguit, nec nos distinguere debemus*. And albeit that Princes hold their Crowns immediately of and from God, by Right of lawful Succession and Inheritance inherent by Royal Blood; yet think these Jesuits with a Goose-quill, within four distinctions to remove the Crown from the Head of any King christened, and to deal with them, as the old *Romans* are said to have done with their Viceroyes, or petty Kings, who in effect were but Lieutenants unto them, to crown and uncrown them at their pleasures. Neither so only, but they will proscribe and expose them to be butchered by Vassals, which is against their own Canons, for Priests to meddle in cause of Blood. And by this means they would make the Condition of a King far worse than that of the poorest Creature that breatheth. First saith *Simanca*; *Hæretici omnes ipso jure sunt Excommunicati, & à Communione fidelium diris proscriptionibus separati, & quotannis in cena Domini excommunicantur à Papa*: So then every Heretick stands and is reputed with them as excommunicated and accursed, if not *de Facto*, yet *de Jure*, in Law and Right, to all their Intents and Purposes; therefore may he be deposed, proscribed and murdered. I, but suppose he be not a professed Heretick, but dealeth reservedly, and keepeth his Conscience to himself; how stands he then? *Simanca* answers, *Quæri autem solet an Hæreticus occultus excommunicatus sit ipso Jure, & in alias etiam penas incidat contra Hæreticos statutas? Cui quæstioni simpliciter Jurisperiti respondent, quod etsi hæresis occulta sit, nihilominus occultus Hæreticus incidit in illas penas*. Whether he be a known or a secret Heretick all is one, they thunder out the same Judgment and Curse for both; whereas *Christ* saith, *Nolite judicare, judge not*, which is, saith *Augustine*, *Nolite judicare de occultis*, of those things which are secret. But suppose that a Prince thus accursed and deposed, will estoons return and conform himself to their Romish Church, shall he then be restored to his State, and again receive his Kingdom? nothing less: For saith *Simanca*, *Si Reges aut alii Principes*

Principes Christiani facti sunt Heretici, protinus subjecti & vassalli ab eorum dominio liberantur; nec jus hoc recuperabunt, quamvis postea reconcilientur Ecclesiae. O but, *Sancta Mater Ecclesia nunquam claudit gremium redeunti*; our Holy Mother the Church never shuts her Bosom to any Convert. It is true, say they, but with a Distinction, *Quoad Animam*: Therefore so he may, and shall be restored; that is, spiritually, in respect of his Soul's health. *Quoad Animam*, he shall again be taken into the Holy Church; but not *Quoad Regnum*, in respect of his Kingdom or State Temporal, he must not be restored. The reason is, because all hold only thus far, *Modo non fit ad damnum Ecclesiae*, so that the Church receive thereby no detriment. I, but suppose that such an unhappy deposed Prince have a Son, or lawful and right Heir, and he also not to be touched or spotted with his Father's Crime, shall not he at the least succeed, and be invested into that princely Estate? Neither will this down with them; Heresy is a Leprosy, and hereditary Disease: *Et ex leprosis parentibus leprosi generantur filii*; of leprous Parents, come leprous Children. So that saith *Simanca*, *Propter Haresim Regis, non solum Rex regno privatur, sed & ejus filii a regni successione pelluntur, ut noster Lupus* (who is indeed, *Vir secundum nomen ejus*, a Wolf as well in Nature as Name) *luculenter probat*. Now if a Man doubt whom they here mean by an Heretick, *Creswell* in his Book called *Philopater*, gives a plain Resolution; *Regnandi jus amittit* (saith he) *qui Religionem Romanam deserit*, he is the Heretick we speak of; even whosoever forsakes the Religion of the Church of Rome, he is accursed, deprived, proscribed, never to be absolved but by the Pope himself, never to be restored either in himself, or his Posterity.

One place amongst many out of *Creswell's Philopater*, shall serve to give a Taste of the jesuitical Spirits and Doctrine; which is, *Sett. 2. pag. 109. Hinc etiam infert universa Theologorum ac Jurisconsultorum Ecclesiasticorum schola* (*& est certum & de fide*) *quemcumque Principem Christianum, si à Religione Catholica manifesto disflexerit, & alios advocare voluerit, excidere statim omni potestate ac dignitate, ex ipsa vi juris tum humani tum divini, hocque antedictam sententiam supremi pastoris ac judicis contra ipsum prolatam, & subditos quoscumque liberos esse ab omni Juramenti obligatione, quod de obedientia tanquam Principi legitimo præstitissent, posseque & debere* (*si vires habeant*) *istiusmodi hominem tanquam Apostatam, Hereticum, ac Christi Domini Desertorem, & Reipub. suæ inimicum hostemque ex hominum Christianorum dominatu ejicere, ne alios inficiat, vel suo exemplo aut Imperio à fide avertat. Atque hæc certa, definita & indubitata virorum doctissimorum sententia.* That is, this inference also doth the whole School both of Divines and Lawyers make, (and it is a Position certain, and to be undoubtedly believed) that if any Christian Prince whatsoever, shall manifestly turn from the Catholick Religion, and desire or seek to reclaim other Men from the same, he presently falleth from all princely Power and Dignity; and that also by virtue and force of the Law it self, both divine and human, even before any Sentence pronounced against him by the supreme Pastor and Judge. And that his Subjects, of what Estate or Condition soever, are freed from all bond of Oath of Allegiance, which at any time they had made unto him as to their lawful Prince. Nay, that they both may and ought (provided they have competent Strength and Force) cast out such a Man from bearing Rule a-

mongst Christians, as an Apostate, an Heretick, a Backslider and Revolter from our Lord Christ, and an Enemy to his own State and Commonwealth, lest perhaps he might infect others, or by his Example or Command turn them from the Faith. And this is the certain, resolute, and undoubted Judgment of the best learned Men. But *Tresham* in his Book, *De Officio Principis Christiani*, goeth beyond all the rest; for he plainly concludeth and determineth, that if any Prince shall but favour, or shew countenance to an Heretick, he presently loseth his Kingdom. In his fifth Chapter, he propoundeth this Problem, *An aliqua possit secundum Conscientiam subditis esse Ratio, cur legitimo suo Regi bellum sine scelere moveant?* Whether there may be any lawful Cause, justifiable in Conscience, for Subjects to take Arms without Sin, against their lawful Prince and Sovereign? The Resolution is, *Si Princeps hereticus sit & obstinate ac pertinaciter intolerabilis, summi Pastoris divina potestate deponatur, & aliud caput constituatur, cui subditi se jungant, & legitimo ordine & auctoritate tyrannidem amoveant. Princeps indulgendo hereticos non solum Deum offendit, sed perdit & regnum & gentem.* Their Conclusion therefore is, that for Heresy, as above is understood, a Prince is to be deposed, and his Kingdom bestowed by the Pope at pleasure; and that the People, upon pain of Damnation, are to take part with him whom the Pope shall so constitute over them. And thus whilst they imagine with the Wings of their light-feathered Distinctions to mount above the Clouds and Level of vulgar Conceits, they desperately fall into a Sea of gross Absurdities, Blasphemy, and Impiety. And surely the Jesuits were so far engaged in this Treason, as that some of them stick not to say, that if it should miscarry, that they were utterly undone, and that it would overthrow the State of the whole Society of the Jesuits: And I pray God that in this, they may prove true Prophets, that they may become like the Order of *Templarii*, so called for that they kept near the Sepulchre at Jerusalem, who were by a general and universal Edict in one Day throughout Christendom quite extinguished, as being *Ordo Impietatis*, an Order of Impiety. And so from all Sedition and privy Conspiracy, from all false Doctrine and Heresy, from Hardness of Heart and Contempt of thy Word and Commandment, Good Lord deliver us. Their Protections and Pretences, are to win Souls to God; their Proofs weak, light, and of no value; their Conclusions false, damnable, and damned Heresies: The first mentioneth God, the second favourereth of weak and frail Man, the last of the Devil; and their Practice easily appeareth out of the Dealing of their Holy Father.

Henry III. of France for killing a Cardinal was excommunicated, and after murdered by *James Clement* a Monk: That Fact doth *Sixtus Quintus* then Pope, instead of orderly censuring thereof, not only approve, but commend in a long Consistory Oration. That a Monk, a religious Man, saith he, hath slain the unhappy French King in the midst of his Host, it is *rarum, insigne, memorabile Facinus*, a rare, a notable, and a memorable Act; yea further, it is *Facinus non sine Dei optimi Maximi particulari providentia & dispositione, &c.* A Fact done not without the special Providence and Appointment of our good God, and the Suggestion and Assistance of his Holy Spirit; yea, a far greater work than was the slaying of *Holofernes* by Holy *Judith*.

Verus Monachus fictum occiderat, a true Monk had killed the false Monk; for that, as was reported, Henry III. sometimes would use that Habit when he went in Procession: And for France, even that part thereof which entertaineth the Popish Religion, yet never could of ancient time brook this usurped Authority of the See of Rome; namely, that the Pope had Power to excommunicate Kings, and absolve Subjects from their Oath of Allegiance: which Position is so directly opposite to all the Canons of the Church of France, and to all the Decrees of the King's Parliament there, as that the very Body of Sorbonne, and the whole University at Paris condemn'd it as a most schismatical, pestilent and pernicious Doctrine of the Jesuits; as may appear in a Treatise made to the French King, and set out 1602. intitled, *Le franc Discours*. But to return to the Jesuits, *Catesby* was resolved by the Jesuits, that the Fact was both lawful and meritorious; and herewith he persuaded and settled the rest, as they seemed to make doubt.

Concerning *Thomas Bates*, who was *Catesby's* Man, as he was wound into this Treason by his Master, so was he resolved, when he doubted of the Lawfulness thereof, by the Doctrine of the Jesuits. For the Manner, it was after this sort: *Catesby* noting that his Man observ'd him extraordinarily, as suspecting somewhat of that which he the said *Catesby* went about, called him to him at his Lodging in *Puddle-wharf*; and in the Presence of *Thomas Winter*, asked him what he thought the Business was they went about, for that he of late had so suspiciously and strangely marked them. *Bates* answered, that he thought they went about some dangerous Matter, whatsoever the Particular were: whereupon they asked him again what he thought the Business might be; and he answered that he thought they intended some dangerous Matter about the Parliament-house, because he had been sent to get a Lodging near unto that Place. Then did they make the said *Bates* take an Oath to be secret in the Action; which being taken by him, they then told him that it was true, that they were to execute a great Matter; namely, to lay Powder under the Parliament-House to blow it up. Then they also told him that he was to receive the Sacrament for the more assurance, and thereupon he went to Confession, to the said *Tesmond* the Jesuit; and in his Confession told him, that he was to conceal a very dangerous piece of work, that his Master *Catesby* and *Thomas Winter* had imparted unto him, and said he much feared the Matter to be utterly unlawful, and therefore therein desired the Counsel of the Jesuit; and revealed unto him the whole Intent and Purpose of blowing up the Parliament-House upon the first Day of the Assembly; at what time the King, the Queen, the Prince, the Lords Spiritual and Temporal, the Judges, the Knights, Citizens and Burgeses, should all have been there convented and met together. But the Jesuit being a Confederate therein before, resolved and encouraged him in the Action; and said that he should be secret in that which his Master had imparted unto him, for that it was for a good Cause. Adding moreover, that it was not dangerous unto him, nor any Offence to conceal it: and thereupon the Jesuit gave him Absolution, and *Bates* received the Sacrament of him, in the Company of his Master *Robert Catesby* and *Thomas Winter*. Also when *Rookwood* in the Presence of sundry of the Traitors (having first received the Oath of Secrecy) had by *Catesby* im-

parted unto him the Plot of blowing up the King and State; the said *Rookwood* being greatly amazed thereat, answered, that it was a Matter of Conscience to take away so much Blood: but *Catesby* replied, that he was resolved, and that by good Authority (as coming from the Superior of the Jesuits) that in Conscience it might be done, yea, tho it were with the Destruction of many Innocents, rather than the Action should quail. Likewise Father *Hammond* absolved all the Traitors at *Robert Winter's* House, upon Thursday after the Discovery of the Plot, they being then in open Rebellion: And therefore, *Hos, O Rex magne, caveto*; and let all Kings take heed, how they either favour or give Allowance or Connivance unto them.

2. The second Consideration respecteth the Persons against whom this Treason was intended; which are, 1. The King, who is God's Anointed. Nay, it hath pleased God to communicate unto him his own Name; *Dixi, Dii estis*, not substantially or essentially so, neither yet on the other side *Usurpative*, by unjust Usurpation, as the Devil and the Pope; but *Potestative*, as having his Power derived from God within his Territories. 2. Their natural Liege Lord, and dread Sovereign, whose just Interest and Title to this Crown may be drawn from before the Conquest; and if he were not a King by Descent, yet deserved he to be made one for his rare and excellent Endowments and Ornaments both of Body and Mind. Look into his true and constant Religion and Piety, his Justice, his Learning above all Kings christened, his Acumen, his Judgment, his Memory; and you will say that he is indeed, *Solus preteritis major, meliorque futuris*. But because I cannot speak what I would, I will forbear to speak what I could. Also against the Queen, a most gracious and graceful Lady, a most virtuous, fruitful, and blessed Vine, who hath happily brought forth such Olive-branches, as that *in benedictione erit Memoria ejus*, her Memory shall be blessed of all our Posterity. Then against the Royal Issue Male, next under God, and after our Sovereign the future Hope, Comfort, Joy, and Life of our State. And as for preserving of the good Lady *Elizabeth* the King's Daughter, it should only have been for a time to have served for their Purposes, as being thought a fit Project to keep others in Appetite for their own further Advantage; and then God knoweth what would have become of her. To conclude, against all the most honourable and prudent Counsellors, and all the true-hearted and worthy Nobles, all the Reverend and Learned Bishops, all the grave Judges and Sages of the Law, all the principal Knights, Gentry, Citizens and Burgeses of Parliament, the Flower of the whole Realm. *Horret Animus*, I tremble even to think of it: Miserable Desolation! no King, no Queen, no Prince, no Issue Male, no Counsellors of State; no Nobility, no Bishops, no Judges! O barbarous, and more than *Scythian* or *Thracian* Cruelty! No mantle of Holiness can cover it, no pretence of Religion can excuse it, no shadow of good Intention can extenuate it; God and Heaven condemn it, Man and Earth detest it, the Offenders themselves were ashamed of it; wicked People exclaim against it, and the Souls of all true Christian Subjects abhor it: miserable, but yet sudden had their Ends been, who should have died in that fiery Tempest, and Storm of Gunpowder. But more miserable had they been that had escaped; and what horrible Effects the blowing up of so much

much Powder and Stuff would have wrought, not only amongst Men and Beasts, but even upon insensible Creatures, Churches, and Houses, and all places near adjoining; you who have been martial Men best known. For my self, *Vox faucibus hæret*: So that the King may say with the kingly Prophet David; *O Lord, the Proud are risen against me, and the Congregation, even Synagoga, the Synagogue of naughty Men have sought after my Soul, and have not set thee before their Eyes*, Psal. 86. 14. *The Proud have laid a Snare for me, and spread a Net abroad, yea, and set Traps in my way*, Psal. 140. 5. *But let the Ungodly fall into their own Nets together, and let me ever escape them*, Psal. 141. 11. We may say, *If the Lord himself had not been on our side; yea, if the Lord himself had not been on our side, when Men rose up against us, they had swallowed us up quick, when they were so wrathfully displeased at us: But praised be the Lord, which hath not given us over for a Prey unto their Teeth. Our Soul is escaped even as a Bird out of the Snare of the Fowler, the Snare is broken, and we are deliver'd; our Help standeth in the name of the Lord which hath made Heaven and Earth*, Psalm. 124.

3. The third Consideration respects the Time when this Treason was conspired; wherein note that it was *Primo Jacobi*, even at that time when his Majesty used so great Lenity towards Recusants, in that by the space of a whole Year and four Months, he took no Penalty by Statute of them. So far was his Majesty from Severity, that besides the benefit and grace before specified, he also honoured all alike with Advancement and Favours; and all this was continued until the Priests Treason, by *Watson* and *Clarke*. But as there is *Misericordia puniens*, so is there likewise *Crudelitas parcens*: For they were not only by this not reclaimed, but (as plainly appeareth) became far worse. Nay, the Romish Catholicks did at that very time certify that it was very like, the King would deal rigorously with them, and the same do these Traitors now pretend, as the chiefest Motive; whereas indeed they had Treason on foot against the King, before they saw his Face in *England*: Neither afterwards, for all the Lenity he used towards them, would any wit desist or relent from their wicked Attempts. Nay, (that which cometh next to be remembered in this part of their Arraignment) they would pick out the time of Parliament for the Execution of their hideous Treasons, wherein the Flower of the Land being assembled, for the Honour of God, the Good of his Church, and this Commonwealth; they might as it were with one Blow, not wound, but kill and destroy the whole State: So that with these Men, *Impunitas continuum affectum tribuit peccandi*, Lenity having once bred a hope of Impunity, begat not only Insolency, but Impenitency and Increase of Sin.

4. We are to consider the Place, which was the sacred Senate, the House of Parliament. And why there? For that, say they, unjust Laws had formerly been there made against Catholicks: Therefore that was the fittest place of all others to revenge it, and to do Justice in. If any ask who should have executed this their Justice, it was Justice *Fawkes*, a Man like enough to do according to his Name. If by what Law they meant to proceed; it was Gunpowder-Law, fit for Justices of Hell. But concerning those Laws which they so calumniate as unjust, it shall in few words plainly appear, that they were of the greatest both

Moderation and Equity that ever were any. For from the Year 1 *Eliz.* unto 11. all Papists came to our Church and Service without scruple. I myself have seen *Cornwallis*, *Beddingfield*, and others at Church: so that then for the space of 10 Years, they made no Conscience nor doubt to communicate with us in Prayer. But when once the Bull of Pope *Pius Quintus* was come and published, wherein the Queen was accursed and deposed, and her Subjects discharged of their Obedience and Oath, yea cursed if they did obey her; then did they all forthwith refrain the Church, then would they have no more Society with us in Prayer: So that Recusancy in them is not for Religion, but in an acknowledgment of the Pope's Power, and a plain manifestation what their Judgment is concerning the Right of the Prince in respect of Regal Power and Place. Two years after, viz. 13 *Eliz.* was there a Law made against the bringing in of Bulls, &c. Anno 18. came *Mayne* a Priest to move Sedition. Anno 20. came *Campion* the first Jesuit, who was sent to make a Party here in *England*, for the Execution of the former Bull: Then follow treasonable Books. Anno 23 *Eliz.* after so many years Sufferance, there were Laws made against Recusants, and seditious Books: The Penalty or Sanction for Recusancy, was not loss of Life, or Limb, or whole State, but only a pecuniary Mulct and Penalty, and that also until they would submit and conform themselves, and again come to Church, as they had done for 10 years before the Bull. And yet afterwards the Jesuits and Romish Priests both coming daily into, and swarming within the Realm, and infusing continually this Poison into the Subjects Hearts, that by reason of the said Bull of *Pius Quintus*, her Majesty stood excommunicated and deprived of her Kingdom, and that her Subjects were discharged of all Obedience to her, endeavouring by all means to draw them from their Duty and Allegiance to her Majesty, and to reconcile them to the Church of *Rome*; then 27 *Eliz.* a Law was made, that it should be Treason for any (not to be a Priest and an *Englishman*, born the Queen's natural Subject, but for any) being so born her Subject, and made a Romish Priest, to come into any of her Dominions, to infect any of her loyal Subjects with their treasonable and damnable Persuasions and Practices: yet so, that it concerned only such as were made Priests since her Majesty came to the Crown, and not before.

Concerning the Execution of these Laws, it is to be observed likewise, that whereas in the Quinquenny, the five years of Queen *Mary*, there were cruelly put to death about 300 Persons for Religion; in all her Majesty's time by the space of 44 years and upwards, there were for treasonable Practices executed, in all not 30 Priests, nor above five Receivers and Harbourers of them; and for Religion not any one. And here by the way, I desire those of Parliament to observe, that it is now questioned and doubted, whether the Law of Recusants and Reconciled Persons do hold for *Ireland* also, and the parts beyond the Seas: that is, whether such as were there reconciled be within the compass of the Statute or not, to the end it may be cleared and provided for.

Now against the usurped Power of the See of *Rome*, we have of former times about 13 several Acts of Parliament: So that the Crown and the King of *England* is no ways to be drawn under the Government of any foreign Power whatsoever, neither oweth Duty to any, but is immediately under God himself.

himself. Concerning the Pope, for 33 of them, namely unto *Sylvester*, they were famous Martyrs. But *Quicumque desiderat primatum in terris, inveniet confusionem in celis*: He that desires Primacy upon Earth, shall surely find Confusion in Heaven.

5. The fifth Consideration is of the End, which was to bring a final and fatal Confusion upon the State. For howsoever they sought to shadow their Impiety with the Cloke of Religion, yet they intended to breed a Confusion fit to get new Alterations; for they went to join with Romish Catholics, and discontented Persons.

6. Now the sixth Point, which is the Means to compass and work these Designs, were damnable; by Mining, by 36 Barrels of Powder, having Crows of Iron, Stones and Wood laid upon the Barrels, to have made the Breach the greater. Lord, what a Wind, what a Fire, what a Motion and Commotion of Earth and Air would there have been! But as it is in the Book of Kings, when *Elias* was in the Cave of the Mount *Horeb*, and that he was called forth to stand before the Lord, behold a mighty strong Wind rent the Mountains, and brake the Rocks; *sed non in vento Dominus, but the Lord was not in the Wind*. And after the Wind, came a Commotion of the Earth and Air; *Et non in Commotione Dominus, the Lord was not in that Commotion*: And after the Commotion came Fire; *& non in igne Dominus, the Lord was not in the Fire*. So neither was God in any part of this monstrous Action. The Authors whereof were in this respect worse than the very damned Spirit of *Dives*, who, as it is in the Gospel, desired that others should not come in *locum tormentorum*.

7. The next Consideration is, the secret Continuing and Carriage of this Treason; to which purpose there were four means used:

First, *Catesby* was commended to the Marquis for a Regiment of Horse in the *Low-Countries*, (which is the same that the Lord *Arundel* now hath) that under that pretence he might have furnished this Treason with Horses without Suspicion.

The Second means was an Oath, which they solemnly and severally took, as well for Secrecy, as Perseverance and Constancy in the execution of their Plot. The Form of the Oath was as follows:

YOU shall swear by the blessed Trinity, and by the Sacrament you now purpose to receive, never to disclose directly nor indirectly, by Word or Circumstance, the matter that shall be proposed to you to keep secret, nor desist from the Execution thereof, until the rest shall give you leave.

This Oath was, by *Gerrard* the Jesuit, given to *Catesby*, *Percy*, *Christopher Wright*, and *Thomas Winter* at once; and by *Greenwell* the Jesuit, to *Bates*, at another time, and so to the rest.

The Third, was the Sacrament; which they impiously and devilishly prophaned to this end.

But the Last, was their perfidious and perjurious Equivocating, abetted, allowed, and justified by the Jesuits, not only simply to conceal or deny an open Truth, but religiously to aver, to protest upon Salvation, to swear that which themselves know to be most false; and all this, by reserving a secret and private Sense inwardly to themselves: whereby they are, by their ghostly Fathers, persuaded, That they may safely and lawfully elude any Question whatsoever.

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And here was shewed a Book written not long before the Queen's death, at what time *Thomas Winter* was employed into Spain, entituled, *A Treatise of Equivocation*. Which Book being seen and allowed by *Garnet*, the Superior of the Jesuits, and *Blackwel* the Archpriest of England, in the beginning thereof, *Garnet* with his own hand put out those words in the Title of *Equivocation*, and made it thus; *A Treatise against Lying and fraudulent Dissimulation*. Whereas in deed and truth it makes for both, *Speciosaque nomina Culpa imponis, Garnette, tuæ*. And in the end thereof, *Blackwel* besprinkles it with his Blessing, saying, *Tractatus iste, valde doctus & vere pius, & Catholicus est; certe S. Scripturarum, Patrum, Doctorum, Scholasticorum, Canonistarum & optimarum Rationum præfidiis plenissime firmat æquitatem equivocationis; ideoque dignissimus est qui Typis propagetur, ad consolationem afflictorum Catholicorum, & omnium piorum instructionem*. That is, *This Treatise is very learned, godly, and Catholick, and doth most fully confirm the Equity of Equivocation, by strong Proofs out of holy Scriptures, Fathers, Doctors, Schoolmen, Canonists, and soundest Reasons; and therefore worthy to be published in Print, for the Comfort of afflicted Catholics, and Instruction of all the godly*.

Now, in this Book there is *Propositio mentalis, verbalis, scripta, and mixta*; distinguishing of a mental, a verbal, a written, and a mixed Proposition; a very Labyrinth to lead Men into Error and Falshood.

For example, to give you a little taste of this Art of Cozening: A Man is asked upon Oath this Question, Did you see such a one to-day? He may by this Doctrine answer, No, tho' he did see him, viz. reserving this secret Meaning, not with purpose to tell my Lord Chief Justice: Or, I see him not *visone beatifica*, or, not in *Venice*, &c. Likewise to answer thus; I was in the Company; reserving and intending secretly as added, this word *Not*: As *Strange* the Jesuit did to my Lord Chief Justice and my self. Take one or two of these out of that very Book, as for purpose: A Man cometh unto *Coventry* in time of a suspicion of Plague, and at the Gates the Officers meet him, and upon his Oath examine him, Whether he came from *London* or no, where they think certainly the Plague to be: This Man knowing for certain the Plague not to be at *London*, or at least knowing that the Air is not there infectious, and that he only rid thro' some secret place of *London*, not staying there, may safely swear, he came not from *London*; answering to their final Intention in their Demand, that is, whether he came so from *London*, that he may endanger their City of the Plague, although their immediate Intention were to know, whether he came from *London* or no. That Man (saith the Book) the very Light of Nature would clear from Perjury.

In like manner, One being convented in the Bishop's Court, because he refuseth to take such a one to his Wife, as he had contracted with, *per verba de presenti*, having contracted with another privily before, so that he cannot be Husband to her that claimeth him; may answer, That he never contracted with her *per verba de presenti*: understanding, that he did not so contract that it was a Marriage; for that is the final Intention of the Judge, to know whether there were a sufficient Marriage between them or no.

I i

Never

Never did Father *Cranmer*, Father *Latimer*, Father *Ridley*, those blessed Martyrs, know these Shifts, neither would they have used them to have saved their Lives. And surely let every good Man take heed of such Jurors or Witnesses, there being no Faith, no Bond of Religion or Civility, no Conscience of Truth in such Men; and therefore the Conclusion shall be that of the Prophet *David*, *Dominè libera Animam meam a labiis iniquis & à lingua dolosa; Deliver me, O Lord, from lying Lips, and from a deceitful Tongue.*

S. P. Q. R. was sometimes taken for these Words, *Senatus Populusque Romanus; the Senate and People of Rome*: but now they may truly be expressed thus, *Stultus Populus querit Romam; A foolish People that runneth to Rome.* And here was very aptly and delightfully inserted and related the Apologue or Tale of the Cat and the Mice: The Cat having a long time preyed upon the Mice, the poor Creatures at last, for their Safety, contained themselves within their Holes; but the Cat finding his Prey to cease, as being known to the Mice, that he was indeed their Enemy and a Cat, deviseth this Course following, viz. Changeth his Hue, getteth on a Religious Habit, shaveth his Crown, walks gravely by their Holes: And yet perceiving that the Mice kept their Holes, and looking out, suspected the worst, he formally, and father-like, said unto them, *Quod fueram non sum, frater; caput aspice tonsum! Ob Brother, I am not as you take me for, no more a Cat; see my Habit and shaven Crown!* Hereupon some of the more credulous and bold among them, were again, by this Deceit, snatched up; and therefore, when afterwards he came as before to entice them forth, they would come out no more, but answered, *Cor tibi restat idem, vix tibi presto fidem: Talk what you can, we will never believe you, you have still a Cat's Heart within you:* You do not watch and pray, but you watch to prey. And so have the Jesuits, yea, and Priests too, for they are all joined in the Tails like *Sampson's* Foxes, *Ephraim* against *Manasses*, and *Manasses* against *Ephraim*, but both against *Judah*.

8. The last Consideration is concerning the admirable Discovery of this Treason, which was by one of themselves, who had taken the Oath and Sacrament, as hath been said, against his own will: The Means was by a dark and doubtful Letter sent to my Lord *Mounteagle*.

And thus much as touching the Considerations: the Observations follow, to be considered in this Powder-Treason, and are briefly thus:

1. If the Cellar had not been hired, the Mine-work could hardly, or not at all have been discovered; for the Mine was neither found nor suspected until the Danger was past, and the capital Offenders apprehended, and by themselves, upon Examination, confessed.

2. How the King was divinely illuminated by Almighty God, the only Ruler of Princes, like an Angel of God, to direct and point as it were to the very place, to cause a Search to be made there, out of those dark Words of the Letter concerning a terrible Blow.

3. Observe a miraculous Accident which befel in *Stephen Littleton's* House, called *Holbach*, in *Staffordshire*, after they had been two days in open Rebellion, immediately before the Apprehension of these Traitors: For some of them standing by the Fire-side, and having set two pound and an half of Powder to dry in a Platter before the Fire, and

underfet the said Platter with a great Linen Bag full of other Powder, containing some fifteen or sixteen pounds; it so fell out, that one coming to put more Wood into the Fire, and casting it on, there flew a Coal into the Platter, by reason whereof the Powder taking fire and blowing up, scorched those who were nearest, as *Catesby*, *Grant*, and *Rookwood*, blew up the Roof of the House; and the Linen-Bag which was set under the Platter being therewith suddenly carried out thro' the Breach, fell down in the Court-yard whole and unfired: which if it had took fire in the Room, would have slain them all there, so that they never should have come to this Trial: and *Lex justior nulla est, quam necis artifices arte perire sua?*

4. Note, that Gunpowder was the Invention of a Fryar, one of the *Romish* Rabble, as Printing was of a Soldier.

5. Observe the sending of *Bainham*, one of the damned Crew, to the High-Priest of *Rome*, to give signification of this Blow, and to crave his Direction and Aid.

6. That for all their stirring and rising in open Rebellion, and notwithstanding the false Rumours given out by them, That the Throats of all Catholics should be cut; such is his Majesty's blessed Government, and the Loyalty of his Subjects, as they got not any one Man to take their parts besides their own Company.

7. Observe, the Sheriff, the ordinary Minister of Justice, according to the Duty of his Office, with such Power as he on a sudden by Law collected, suppressed them.

8. That God suffered their intended Mischief to come so near the Period, as not to be discovered, but within few hours before it should have been executed.

9. That it was in the entring of the Sun into the Tropick of *Capricorn*, when they began their Mine; noting, that by Mining, they should descend; and by Hanging, ascend.

10. That there never was any Protestant Minister in any Treason and Murder as yet attempted within this Realm.

I am now come to the last part, which I proposed in the beginning of this Discourse; and that is, touching certain Comparisons of this Powder-Treason of the Jesuits, with that of *Raleigh*, and the other of the Priests *Watson* and *Clarke*.

1. They had all one End, and that was the *Romish* Catholick Cause.

2. The same Means, by Popish and discontented Persons, Priests and Lay-men.

3. They all plaid at hazard: The Priests were at the Bye, *Raleigh* at the Main, but these in at all; as purposing to destroy all the King's Royal Issue, and withal the whole Estate.

4. They were all alike obliged by the same Oath and Sacrament.

5. The same Proclamations were intended (after the Fact) to be published for Reformation of Abuses.

6. The like Army provided for invading, to land at *Milford-haven*, or in *Kent*.

7. The same Pensions of Crowns promised.

8. The agreeing of the Times of the Treason of *Raleigh* and these Men, which was when the Constable of *Spain* was coming hither: and *Raleigh* said, there could be no Suspicion of any Invasion, seeing that the Constable of *Spain* was then expected

pected for a Treaty of Peace; and the Navy might be brought to the *Groyne* under pretence of the Service in the *Low-Countries*. And *Raleigh* further said, That many more were hanged for Words, than for Deeds. And before *Raleigh's* Treason was discovered, it was reported in *Spain*, that *Don Raleigh* and *Don Cobham* should cut the King of *England's* Throat.

I say not, that we have any Proofs, that these of the Powder-Plot were acquainted with *Raleigh*, or *Raleigh* with them: but as before was spoken of the Jesuits and Priests, so they all were joined in the Ends, like *Sampson's* Foxes in the Tails, howsoever sever'd in their Heads.

The Conclusion shall be from the admirable Clemency and Moderation of the King, in that howsoever these Traitors have exceeded all others their Predecessors in Mischief, and so *Crescente Malitia, crescere debuit & Pœna*; yet neither will the King exceed the usual Punishment of Law, nor invent any new Torture or Torment for them; but is graciously pleased to afford them as well an ordinary Course of Trial, as an ordinary Punishment, much inferior to their Offence. And surely worthy of Observation is the Punishment by Law provided and appointed for High-Treason, which we call *Crimen læsæ Majestatis*. For first, after a Traitor hath had his just Trial, and is convicted and attainted, he shall have his Judgment to be drawn to the place of Execution from his Prison, as being not worthy any more to tread upon the face of the Earth whereof he was made: Also for that he hath been retrograde to Nature, therefore is he drawn backward at a Horse-Tail. And whereas God hath made the Head of Man the highest and most supreme Part, as being his chief Grace and Ornament, *Pronaque cum spectent Animalia cætera terram, Os homini sublime dedit*; he must be drawn with his Head declining downward, and lying so near the Ground as may be, being thought unfit to take benefit of the common Air. For which cause also he shall be strangled, being hanged up by the Neck between Heaven and Earth, as deemed unworthy of both, or either; as likewise, that the Eyes of Men may behold, and their Hearts condemn him. Then is he to be cut down alive, and to have his Privy Parts cut off and burnt before his Face, as being unworthily begotten, and unfit to leave any Generation after him. His Bowels and inlay'd Parts taken out and burnt, who inwardly had conceived and harboured in his Heart such horrible Treason. After, to have his Head cut off, which had imagined the Mischief. And lastly, his Body to be quartered, and the Quarters set up in some high and eminent Place, to the View and Detestation of Men, and to become a Prey for the Fowls of the Air.

And this is a Reward due to Traitors, whose Hearts be hardened: For that it is Physick of State and Government, to let out corrupt Blood from the Heart. But, *Pœnitentia vera nunquam sera, sed pœnitentia sera raro vera*: True Repentance is indeed never too late; but late Repentance is seldom found true: which yet I pray the merciful Lord to grant unto them, that having a Sense of their Offences, they may make a true and sincere Confession both for their Souls Health, and for the Good and Safety of the King and this State. And for the rest that are not yet apprehended, my Prayer to God is, *Ut aut convertantur ne pereant, aut confundantur ne noceant*; that either they may

be converted, to the end they perish not, or else confounded, that they hurt not.

After this, by the direction of Master Attorney-General, were their several Examinations (subscribed by themselves) shewed particularly unto them, and acknowledged by them to be their own, and true, wherein every one had confessed the Treason. Then did Master Attorney desire, That albeit that which had been already done and confessed at the Bar, might be all-sufficient for the Declaration and Justification of the Course of Justice then held, especially seeing we have *Reos confitentes*, the Traitors own voluntary Confessions at the Bar; yet for further Satisfaction to so great a Presence and Audience, and their better Memory of the Carriage of these Treasons, the voluntary and free Confessions of all the said several Traitors in writing subscribed with their own proper Hands, and acknowledged at the Bar by themselves to be true, were openly and distinctly read: by which, amongst other things, it appeared that *Bates* was absolved for what he undertook concerning the Powder-Treason, and being therein warranted by the Jesuits. Also it appeared, that *Hammond* the Jesuit, after that he knew the Powder-Treason was discovered, and that these Traitors had been in actual Rebellion, confessed them, and gave them Absolution: and this was on Thursday the 7th of November.

Here also was mention made by Master Attorney of the Confessions of *Watson* and *Clarke*, Seminary Priests, upon their Apprehension; who affirmed, that there was some Treason intended by the Jesuits, and then in hand; as might appear,

1. By their continual negotiating at that time with *Spain*, which they assured themselves tended to nothing but a Preparation for a foreign Commotion.

2. By their collecting and gathering together such great Sums of Money, as then they had done, therewith to levy an Army when time should serve.

3. For that sundry of the Jesuits had been tampering with Catholicks, as well to dissuade them from Acceptance of the King at his first coming, saying, That they ought rather to die, than to admit of any Heretick (as they continually termed his Majesty) to the Crown; and that they might not, under pain of Excommunication, accept of any but a Catholick for their Sovereign; as also to dissuade Catholicks from their Loyalty after the State was settled.

Lastly, In that they had both bought up store of great Horses throughout the Country, and conveyed Powder and Shot, and Artillery, secretly to their Friends; wishing them not to stir, but keep themselves quiet until they heard from them.

After the reading of their several Examinations, Confessions, and voluntary Declaration as well of themselves, as of some of their dead Confederates, they were all by the Verdict of the Jury found guilty of the Treasons contained in their Indictment.

And then being severally asked, What they could say, wherefore Judgment of Death should not be pronounced against them? there was not one of these (except *Rookwood*) who would make any continued Speech, either in Defence or Extension of the Fact.

Thomas Winter only desired, that he might be hanged both for his Brother and himself.

Guy Fawkes being asked, Why he pleaded Not Guilty, having nothing to say for his Excuse? answered, That he had so done in respect of certain Conferences mention'd in the Indictment, which he said that he knew not of: which were answered to have been set down according to Course of Law, as necessarily pre-supposed before the Resolution of such a Design.

Keys said, That his Estate and Fortunes were desperate, and as good now as at another time, and for this Cause rather than for another.

Bates craved Mercy.

Robert Winter, Mercy.

John Grant was a good while mute; yet after, submissively said, He was guilty of a Conspiracy intended, but never effected.

But *Ambrose Rookwood* first excused his denial of the Indictment, for that he had rather lose his Life than give it. Then did he acknowledge his Offence to be so heinous, that he justly deserved the Indignation of the King, and of the Lords, and the Hatred of the whole Commonwealth; yet could he not despair of Mercy at the hands of a Prince, so abounding in Grace and Mercy: And the rather, because his Offence, tho' it were incapable of any Excuse, yet not altogether incapable of some Extenuation, in that he had been neither Author nor Actor, but only persuaded and drawn in by *Catesby*, whom he loved above any worldly Man: and that he had concealed it not for any Malice to the Person of the King or to the State, or for any ambitious Respect of his own, but only drawn with the tender Respect, and the faithful and dear Affection he bare to Mr. *Catesby* his Friend, whom he esteem'd dearer than any thing else in the World. And this Mercy he desired not for any fear of the Image of Death, but for grief that so shameful a Death should leave so perpetual a blemish and blot unto all Ages, upon his Name and Blood. But howsoever that this was his first Offence, yet he humbly submitted himself to the Mercy of the King, and prayed that the King would herein imitate God, who sometimes doth punish corporaliter, non mortaliter, corporally, yet not mortally.

Then was related how that on the Friday immediately before this Arraignment, *Robert Winter* having found opportunity to have Conference with *Fawkes* in the Tower, in regard of the nearness of their Lodgings, should say to *Fawkes*, as *Robert Winter* and *Fawkes* confessed, That he and *Catesby* had Sons, and that Boys would be Men, and that he hoped they would revenge the Cause; nay, that God would raise up Children to *Abraham* out of Stones: Also that they were sorry, that no body did set forth a Defence or Apology of their Action, but yet they would maintain the Cause at their Deaths.

Here also was reported *Robert Winter's* Dream, which he had before the blasting with Powder in *Littleton's* House, and which he himself confessed and first notified, viz. That he thought he saw Steeples stand awry, and within those Churches strange and unknown Faces. And after, when the foresaid Blast had the Day following scorched divers of the Confederates, and much disfigured the Faces and Countenances of *Grant*, *Rookwood*, and others; then did *Winter* call to mind his Dream, and to his remembrance thought, that the Faces of his Associates so scorched, resembled those which he had seen in his Dream.

Then was Sir *Everard Digby* arraigned, and after his Indictment was read; wherein he was charged, not only to have been acquainted with the Powder-Treason, and concealed it, and taken the double Oath of Secrecy and Constancy therein, but likewise to have been an Actor in this Conspiracy; and lastly to have exposed, and openly shewed himself in the Rebellion in the Country amongst the rest of the Traitors. All which after he had attentively heard and marked, knowing that he had confessed it, and the Strength and Evidence of the Proofs against him, and convicted with the Testimony of his own Conscience, shewed his Disposition to confess the principal part of the said Indictment, and so began to enter into a Discourse. But being advertized that he must first plead to the Indictment directly, either Guilty, or not Guilty; and that afterwards he should be licensed to speak his Pleasure; he forthwith confessed the Treason contained in the Indictment, and so fell into a Speech, whereof there were two Parts, viz. Motives, and Petitions. The first Motive which drew him into this Action, was not Ambition or Discontentment of his Estate, neither Malice to any in Parliament, but the Friendship and Love he bare to *Catesby*, which prevailed so much, and was so powerful with him, as that for his sake he was ever contented and ready to hazard himself and his Estate. The next Motive was the cause of Religion, which alone, seeing (as he said) it lay at the stake, he entered into Resolution to neglect in that behalf, his Estate, his Life, his Name, his Memory, his Posterity, and all worldly and earthly Felicity whatsoever; tho' he did utterly extirpate, and extinguish all other hopes for the restoring of the Catholick Religion in England. His third Motive was, that Promises were broken with the Catholicks. And lastly, That they generally feared harder Laws from this Parliament against Recusants, as that Recusants Wives, and Women should be liable to the Mulct as well as their Husbands and Men. And further, that it was supposed, that it should be made a *Premunire*, only to be a Catholick.

His Petitions were, That since his Offence was confined and contained within himself, that the Punishment also of the same might extend only to himself, and not to be transferred either to his Wife, Children, Sisters, or others: and therefore for his Wife he humbly craved, that she might enjoy her Jointure; his Son, the benefit of an Entail made long before any thought of this Action; his Sisters, their just and due Portions, which were in his hands; his Creditors their rightful Debts, which that he might more justly set down under his Hand, he requested that before his Death, his Man (who was better acquainted both with the Men, and the Particulars than himself) might be licensed to come unto him. Then prayed he Pardon of the King and Lords for his Guilt. And lastly, he entreated to be beheaded; desiring all Men to forgive him, and that his Death might satisfy them for his Trespas.

To this Speech forthwith answered Sir *Edward Coke* Attorney-General, but in respect of the time (for it grew now dark) very briefly:

1. For his Friendship with *Catesby*, that it was mere Folly and wicked Conspiracy.
2. His Religion, Error, and Herefy.
3. His Promises, idle and vain Presumptions, as also his Fears, false Alarms, Concerning Wives

Wives that were Recusants, if they were known so to be before their Husbands (though they were good Protestants) took them, and yet for outward and worldly Respects whatsoever, any would match with such; great reason there is, that he or they should pay for it, as knowing the Penalty and Burden before: for *volenti & scienti non fit Injuria*; No Man receives Injury in that, to which he willingly and knowingly agreeth and consenteth. But if she were no Recusant at the time of Marriage, and yet afterwards he suffer her to be corrupted and seduced, by admitting Priests and Romanists into his House; good reason likewise that he, be he Papist or Protestant, should pay for his Negligence and Misgovernment.

4. Concerning the Petitions for Wife, for Children, for Sisters. &c. O how he doth now put on the bowels of Nature and Compassion, in the peril of his private and domestical Estate! But before, when the publick State of his Country, when the King, the Queen, the tender Princes, the Nobles, the whole Kingdom were designed to a perpetual Destruction; where was then this Piety, this religious Affection, this Care? All Nature, all Humanity, all Respect of Laws both divine and human, were quite abandoned; then was there no Conscience made to extirpate the whole Nation, and all for a pretended Zeal to the Catholick Religion, and the Justification of so detestable and damnable a Fact.

Here did Sir *Everard Digby* interrupt Mr. Attorney, and said that he did not justify the Fact, but confessed that he deserved the vilest Death, and most severe Punishment that might be: But he was an humble Petitioner for Mercy, and some Moderation of Justice. Whereupon Mr. Attorney replied, that he should not look by the King to be honoured in the manner of his Death, having so far abandoned all Religion and Humanity in his Action: But that he was rather to admire the great Moderation and Mercy of the King, in that for so exorbitant a Crime, no new Torture answerable thereunto was devised to be inflicted upon him. And for his Wife and Children, whereas he said that for the Catholick Cause he was content to neglect the Ruin of himself, his Wife, his Estate, and all; he should have his desire as it is in the *Psalms*, *Let his Wife be a Widow, and his Children Vagabonds, let his Posterity be destroyed, and in the next Generation let his Name be quite put out.* For the paying of your Creditors, it is equal and just; but yet fit the King be first satisfied and paid, to whom you owe so much, as that all you have is too little: yet these things must be left to the Pleasure of his Majesty, and the Course of Justice and Law.

Earl of Northamp. You must not hold it strange, Sir *Everard Digby*, though at this time being pressed in Duty, Conscience and Truth, I do not suffer you to wander in the Labyrinth of your own idle Conceits, without opposition, to seduce others, as your self have been seduced, by false Principles, or to convey your self by Charms of Imputation, by Clouds of Error, and by Shifts of lately devised Equivocation, out of that straight wherein your late secure and happy Fortune hath been unluckily entangled, but yet justly surprized by the Rage and Revenge of your own rash Humours. If in this Crime (more horrible than any Man is able to express) I could lament the Estate of any Person upon Earth, I could pity you; but thank your self and your bad Counsellors for leading you into a Crime of such a

kind, as no less benumbeth in all faithful, true and honest Men, the Tenderness of Affection, than did in you the Sense of all Humanity.

That you were once well thought of and esteemed by the late Queen, I can witness, having heard her speak of you with that Grace, which might have encouraged a true Gentleman to have run a better Course. Nay, I will add further, that there was a time wherein you were as well affected to the King our Master's Expectation, though perhaps upon false Rumours and Reports, that he would have yielded Satisfaction to your unprobable and vast Desires; but the Seed that wanted moisture (as our Saviour himself reporteth) took no deep Root: that Zeal which hath no other End or Object than the pleasing of it self, is quickly spent; and *Trajan*, that worthy and wise Emperor, had reason to hold himself discharged of all Debts to those that had offended more by Prevarication, than they could ever deserve by Industry.

The Grace and Goodness of his Majesty in giving Honour at his first coming unto many Men of your own Affection, and (as I think) unto your self; his Facility in admitting all without distinction of *Trojan* or of *Tyrian*, to his Royal Presence, upon just occasions of Access; his Integrity in setting open the Gate of civil Justice unto all his Subjects equally and indifferently, with many other Favours that succeeded by the Progression of Peace; are so palpable and evident to all Men, that have either Eyes of Understanding, or Understanding of Capacity, as your self and many others have been driven of late to excuse and countenance your execrable Ingratitude with a false and scandalous Report of some further Hope and Comfort yielded to the Catholicks for Toleration or Connivance, before his coming to the Crown, than since hath been performed, made good or satisfied.

I am not ignorant, that this seditious and false Alarm hath awaked and incited many working Spirits to the prejudice of the present State, that might otherwise have slept as before with silence and sufferance; it hath served for a Shield of Wax against a Sword of Power: it hath been used as an Instrument of Art to shadow false Approaches, till the *Trojan Horse* might be brought within the Walls of the Parliament, with a Belly stuffed, not as in old time with armed *Greeks*, but with hellish Gunpowder. But howsoever God had blinded you and others in this Action, as he did the King of *Egypt* and his Instruments, for the brighter Evidence of his own powerful Glory; yet every Man of Understanding could discern, that a Prince whose Judgment had been fixed by Experience of so many Years upon the Poles of the *North* and the *South*, could not shrink upon the sudden: no nor since with fear of that Combustion which *Catesby* that Arch-Traitor, like a second *Phaeton*, would have caused in an instant in all the Elements. His Majesty did never value Fortunes of the World, in lesser Matter than Religion, with the Freedom of his Thoughts: he thought it no safe Policy (professing as he did, and ever will) to call up more Spirits into the Circle than he could put down again; he knew, that *omne regnum in se aivsum desolabitur*, Philosophy doth teach, that whatsoever any Man may think in secret thought, that where one doth hold of *Cephas*, another of *Apollo*, openly Diffension ensues, *Quod insitum alieno solo est, in id quo alitur natura vertente degenerat*; and the World will ever apprehend, that *Quorum est commune symbolum, facillimus est transitus*.

Touching

Touching the Point itself of promising a kind of Toleration to Catholicks, as it was divulged by these two Limbs of *Lucifer, Watson* and *Percy*, to raise a ground of Practice and Conspiracy against the State and Person of our dear Sovereign; let the Kingdom of *Scotland* witness for the space of so many Years before his coming hither, whether either Flattery or Fear (no, not upon that Enterprize of the 17th of *November*, which would have put the patience of any Prince in *Europe* to his proof) could draw from the King the least Inclination to this dispensative Indifference, that was only believed, because it was eagerly desired.

Every Man doth know how great Art was used, what strong Wits sublimed, and how many Ministers suborned and corrupted many Years both in *Scotland* and in foreign Parts, to set the King's Teeth an edge with fair Promises of future Helps and Supplies, to that happy End of attaining his due Right in *England*, when the Sun should set, to rise more gloriously in the same Hemisphere, to the wonder both of this Island and of the World. But all in vain; for *jacta erat alea*, the King's Compass had been set before, and by a more certain Rule, and they were commonly cast off as forlorn Hopes in the King's Favour, that ran a Course of ranking themselves in the foremost Front of foreign Correspondency.

Upon notice given to his Majesty from hence some Years before the Death of the late Queen, that many Men were grown suspicious of his Religion, by Rumours spread abroad, that some of those in foreign Parts, that seemed to be well-affected to his future Expectation, had used his Name more audaciously, and spoken of his Favour to the Catholicks more forwardly than the King's own Conscience and unchangeable Decree could acknowledge or admit (either with a purpose to prepare the Minds of foreign Princes, or for a practice to estrange and alienate Affections at home) not only utterly renounced and condemned these Encroachments of blind Zeal, and rash Proceedings, by the Voices of his own Ministers, but was careful also for a Caution to succeeding Hopes, so far as lay in him, that by the Disgrace of the Delinquents in this kind, the Minds of all *English* Subjects chiefly might be secured, and the World satisfied.

No Man can speak in this Case more confidently than my self, that received in the Queen's time, for the space of many Years, Directions and Warnings to take heed, that neither any further Comfort might be given to Catholicks, concerning future Favours, than he did intend, which was to bind all Subjects in one Kingdom to one Law, concerning the Religion established, howsoever in Civil Matters he might extend his Favour as he found just cause: nor any Seeds of Jealousy and Diffidence sown in the Minds of Protestants by *Semcis* and *Achitophels*, to make them doubtful of his Constancy, to whom he would confirm with his dearest Blood, that Faith which he had sucked from the Breast of his Nurse, apprehended from the Cradle of his Infancy, and maintained with his uttermost Endeavour, Affection and Strength; since he was more able out of reading and disputing, to give a reason of those Principles which he had now digested and turned to Nutriment.

He that wrote the Book of Titles before the late Queen's Death, declares abundantly by seeking to possess some Foreign Prince of the King's Hereditary Crowns, when the Cause should come

to the proof, and may witness instead of many; what hope there was of the King's Favour or Affection to Catholicks in the case of Toleration or Dispensation, with Exercise of Conscience. For every Man may guess that it was no slight or ordinary degree of Despair, that made him and other of his Suit renounce their Portion in the Son and Heir of that renowned and rare Lady, *Mary Queen of Scotland*, a Member of the Roman Church; as some did in *David*, *Nulla nobis pars in David, nec hereditas in filio Isai*: For hereof by Lettets intercepted in their Passage into *Scotland*, the Records and Proofs are evident. His Majesty, so long as he was in expectation of that which by the Work and Grace of God he doth now possess, did ever seek to settle his Establishment upon the Faith of Protestants in generality, as the most assured Sheet-Anchor. For tho' he found a number on the other side, as faithful and as well-affected to his Person, Claim and Interest, as any Men alive, as well in respect of their dependency upon the Queen his Mother, as for the taste which they had of the sweetness of himself; yet finding with what strength of Blood many have been over-carried out of a Fervency in Zeal in former Times, observing to what Censures they were subject, both in Points of Faith, and Limitation of Loyalty: And last of all, forecasting to what end their former Protestation would come, when present Satisfaction should shrink; he was ever fearful to embark himself for any further Voyage and Adventure in this Strait, than his own Compass might steer him, and his Judgment level him.

If any one green Leaf for Catholicks could have been visibly discerned by the Eye of *Catesby*, *Winter*, *Garnet*, *Fawkes*, &c. they would neither have entred into Practice with foreign Princes during the Queen's time for prevention of the King's Lawful and Hereditary Right, nor have renewed the same both abroad and at home by Missions and Combinations, after his Majesty was both applauded and entred.

It is true, that by Confessions we find, that false Priest *Watson*, and Arch-Traitor *Percy*, to have been the first Devils and Divulgers of this scandalous Report, as an accursed Ground, whereon they might with some Advantage, as it was conceived, build the Castles of their Conspiracy.

Touching the first, no Man can speak more soundly to the point than my self: for being sent into the Prison by the King to charge him with this false Alarm, only two days before his Death, and upon his Soul to press him in the presence of God, and as he would answer it at another Bar, to confess directly whether at either of both these times he had access unto his Majesty at *Edinburgh*, his Majesty did give him any Promise, Hope or Comfort of Encouragement to Catholicks concerning Toleration; he did there protest upon his Soul that he could never win one Inch of Ground, or draw the smallest Comfort from the King in those degrees, nor further than that he would have them apprehend, that as he was a Stranger to this State, so till he understood in all Points how those matters stood, he would not promise Favour any way; but did protest that all the Crowns and Kingdoms in this World, should not induce him to change any jot of his Profession, which was the Pasture of his Soul, and Earnest of his eternal Inheritance. He did confess that in very deed, to keep up the Hearts of Catholicks in Love and Duty to the King, he had imparted the King's words to many, in a better

better Tune, and a higher kind of Descant, than his Book of plain Song did direct; because he knew that others like fly Bargemen looked that way, when their stroke was bent another way. For this he craved pardon of the King in humble manner, and for his main Treasons of a higher Nature than these Figures of Hypocrisy; and seemed penitent, as well for the Horror of his Crime, as for the Falseness of his Whisperings.

It hindered not the Satisfaction which may be given to *Percy's* Shadow (the most desperate *Boute-feu* in the Pack) that as he died impenitent, for any thing we know; so likewise he died silent in the Particulars. For first, it is not strange that such a Traitor should devise so scandalous a Slander out of the Malice of his Heart, intending to destroy the King by any means, and to advance all means that might remove obstructions and impediments to the Plot of Gunpowder. The more odious that he could make him to the Party Malecontent, and the more sharply that he could set the Party Malecontent upon the point and humour of Revenge; the stronger was his Hope at the giving of the last Blow, to be glorified and justified. But touching the truth of the matters, it will be witnessed by many, that this Traitor *Percy* after both the first and second return from the King, brought to the Catholics no spark of Comfort, of Encouragement, of Hope; whereof no stronger Proof of Argument doth need, than that *Fawkes* and others were employed both into *Spain* and other Parts, for the reviving of a Practice suspended and covered, after *Percy's* coming back; as in likelihood they should not have been, in case he had returned with a Branch of Olive in his Mouth, or yielded any Ground of Comfort to resolve upon.

Therefore I thought it thus far needful to proceed, for the clearing of those Scandals that were cast abroad, by these forlorn Hopes and graceless Instruments. It only remains that I pray for your Repentance in this World for the Satisfaction of many, and Forgiveness in the next World, for the saving of your self; having had by the King's Favour so long a time to cast up your Account, before your appearance at the Seat of the great Auditor.

Then spake the Earl of *Salisbury*, especially to that Point, of his Majesty's breaking of Promise with Recusants, which was used and urged by Sir *Everard Digby*, as a motive to draw him to participate in this so hideous a Treason. Wherein his Lordship, after acknowledgment that Sir *Everard Digby* was his Ally, and having made a zealous and religious Protestation concerning the Sincerity and Truth of that which he would deliver; shortly and clearly defended the Honour of the King herein, and freed his Majesty from all Imputation and Scandal of Irresolution in Religion, and in the constant and perpetual maintaining thereof; as also from having at any time given the least hope, much less promise of Toleration. To which purpose he declared how his Majesty, as well before his coming to this Crown, as at that very time, and always since, was so far from making of Promise, or giving Hope of Toleration, that he ever professed he should not endure the very Motion thereof from any.

And here his Lordship shewed what was done at *Hampton-Court* at the time of *Watson's* Treason, where some of the greater Recusants were convicted: and being found then not to have their Fingers in Treason, were sent away again with Encouragement to persist in their dutiful Carriage, and with Promise only of thus much Favour, That those mean Profits which had accrued since the King's time to his Majesty for their Recusancy, should be forgiven to the principal Gentlemen, who had both at his Entry shewed so much Loyalty, and had kept themselves so free since from all Conspiracies.

Then did his Lordship also (the rather to shew how little truth Sir *Everard Digby's* words did carry in any thing which he had spoken) plainly prove, that all his Protestations wherein he denied so constantly to be privy to the Plot of Powder, were utterly false, by the Testimony of *Fawkes* (there present at the Bar) who had confessed, that certain Months before that Session, the said *Fawkes* being with *Digby* at his House in the Country, about what time there had fallen much wet; *Digby* taking *Fawkes* aside after Supper, told him, that he was much afraid that the Powder in the Cellar was grown dank, and that some new must be provided, lest that should not take fire.

Next, the said Earl did justly and greatly commend the Lord Mounteagle for his loyal and honourable Care of his Prince and Country, in the speedy bringing forth of the Letter sent unto him; wherein he said, that he had shewed both his Discretion and Fidelity. Which Speech being ended, *Digby* then acknowledged, that he spake not that of the Breach of Promise out of his own Knowledge, but from their Relation whom he trusted; and namely from Sir *Tho. Tresham*.

Now were the Jury returned, who having delivered their Verdict, whereby they jointly found those seven Prisoners, arraigned upon the former Indictment, Guilty; Serjeant *Philips* craved Judgment against those seven upon their Conviction, and against Sir *Everard Digby* upon his own Confession.

Then the Lord Chief Justice of *England*, after a grave and prudent Relation and Defence of the Laws made by Queen *Elizabeth* against Recusants, Priests, and Receivers of Priests, together with the several Occasions, Progresses and Reasons of the same; and having plainly demonstrated and proved that they were all necessary, mild, equal, moderate, and to be justified to all the World; pronounced Judgment.

Upon the rising of the Court, Sir *Everard Digby* bowing himself towards the Lords, said, If I may but hear any of your Lordships say, you forgive me, I shall go more cheerfully to the Gallows. Whereunto the Lords said, God forgive you, and we do.

And so according to the Sentence, on Thursday following being the 30th of *January*, Execution was done upon Sir *Everard Digby*, *Robert Winter*, *John Grant*, and *Thomas Bates*, at the West end of *Paul's Church*; and on Friday following, upon *Thomas Winter*, *Ambrose Rookwood*, *Robert Keyes*, and *Guy Fawkes*, within the old *Palace-yard* at *Westminster*, not far from the *Parliament-House*.



XX. *The Trial of HENRY GARNET, Superior of the Jesuits in England, at the Guild-Hall of London, for High-Treason, being a Conspirator in the Gunpowder-Plot.* 28 March 1606. 4 Jac. I.

The COMMISSIONERS present were,

Sir Leonard Holyday, Lord Mayor.
The Earl of Nottingham.
The Earl of Suffolk.
The Earl of Worcester.
The Earl of Northampton.
The Earl of Salisbury.

Lord Chief Justice of England, Sir John Popham.
The Lord Chief Baron of the Exchequer.
Sir Christopher Yelverton Kt. one of his Majesty's Justices of the King's-Bench.



THE Substance and Effect of the Indictment of *Henry Garnet*, Superior of the Jesuits in *England*, appeareth before in the Relation of the former Arraignment, and therefore unnecessary to be repeated again; which Indictment was summarily and effectually repeated by Sir *John Croke* Kt. his Majesty's Serjeant at Law, in this manner:

Sir *John Croke*. This Person and Prisoner here at the Bar, this Place, and this present Occasion and Action do prove that true, which the Author of all Truth hath told us; That *nihil est occultum, quod non manifestabitur*; & *nihil est secretum, quod non revelabitur* & *in palam veniet*: There is nothing hid that shall not be made manifest, there is nothing secret that shall not be revealed and come in publick. And that God by whom Kings do reign, *Consilium pravorum dissipat*, doth scatter and bring to nought the Counsel of the Wicked.

That he spake with fear and trembling, and with horror and amazedness, against that rotten Root of that hideous and hateful Tree of Treason, and of that detestable and unheard-of Wickedness, he did crave Pardon for it; affirming that no Flesh could mention it without Astonishment.

He shewed that *Henry Garnet* of the Profession of the Jesuits, otherwise *Wally*, otherwise *Darcy*, otherwise *Roberts*, otherwise *Farmer*, otherwise *Philips* (for by all those Names he called himself) stood indicted of the most barbarous and damnable Treasons, the like whereof was never heard of: That he was a Man, *multorum Nominum*, but not *boni Nominis*; of many Names, as appeared by the Indictment, but of no good Name; adorned by God and Nature, with many Gifts and Graces, if the Grace of God had been joined with them: But that wanting, *quanto ornatior* in other Gifts, *tanto nequior*.

That this *Garnet* (his Majesty summoning his Parliament to be holden at *Westminster* the 19th of *March*, in the first Year of his Reign, and by divers Prorogations continuing it till the third of *October* last) together with *Catesby* lately slain in open Rebellion, and with *Oswald Tesmond* a Jesuit, other-

wife *Oswald Greenwell*, as a false Traitor against the most mighty and most renowned King our Sovereign Lord King *James*; the 9th of *June* last, traitorously did conspire and compass,

To depose the King, and to deprive him of his Government;

To destroy and kill the King, and the noble Prince *Henry* his eldest Son: Such a King, and such a Prince, such a Son of such a Father, whose Virtues are rather with amazed silence to be wondered at, than able by any Speech to be expressed.

To stir Sedition and Slaughter throughout the Kingdom.

To subvert the true Religion of God, and whole Government of the Kingdom.

To overthrow the whole State of the Commonwealth.

The Manner how to perform these horrible Treasons, the Serjeant said *Horreo dicere*, his Lips did tremble to speak it, but his Heart praised God for his mighty Deliverance. The Practice so inhuman, so barbarous, so damnable, so detestable, as the like was never read nor heard of, or ever entered into the Heart of the most wicked Man to imagine. And here he said, he could not but mention that religious Observation so religiously observed by his religious Majesty, wishing it were engraven in Letters of Gold, in the Hearts of all his People; The more hellish the Imagination, the more divine the Preservation.

This *Garnet*, together with *Catesby* and *Tesmond*, had Speech and Conference together of these Treasons, and concluded most traitorously, and devilishly,

That *Catesby*, *Winter*, *Fawkes*, with many other Traitors lately arraigned of High-Treason, would blow up with Gunpowder in the Parliament-House, the King, the Prince, the Lords Spiritual and Temporal, the Judges of the Realm, the Knights, Citizens and Burgesses, and many other Subjects and Servants of the King assembled in Parliament, at one Blow, traitorously and devilishly to destroy them all, and piece-meal to tear them in sunder, without respect of Majesty, Dignity, and Degree, Age or Place.

And for that purpose, a great Quantity of Gunpowder was traitorously and secretly placed, and hid by these Conspirators under the Parliament-House.

This being the Substance and the Effect of the Indictment, *Garnet* did plead, Not guilty to it; and a very discreet and substantial Jury, with allowance of Challenges unto the Prisoner, were sworn at the Bar for the Trial of him.

To whom the Serjeant shew'd that they should have Evidences to prove him guilty, that should be *Luce clariores*, that every Man might read them running.

They should have *Testimonia Rerum*, and *Loquentia signa*, Witnesses and Testimonies of the things themselves.

Reum confitentem, or rather *Reos confitentes, accusantes invicem*.

That every one may say unto him, *Serve nequam*, thou wicked Subject, thou wicked Servant, *ex ore tuo te judico*, of thine own Mouth I judge thee, of thine own Mouth I condemn thee.

And this shall be made so manifest by him that best can do it, as shall stop the Mouth of all Contradiction.

* *Sir Ed. Coke.* * *Attor. Gen.* Your Lordships may perceive by the parts of the Indictment which have been succinctly open'd, that this is but a latter Act of that heavy and woful Tragedy, which is commonly called the Powder-Treason; wherein some have already play'd their Parts, and according to their Demerits suffer'd condign Punishment and Pains of Death. We are now to proceed against this Prisoner for the same Treason; in which respect the necessary Repetition of some things before spoken, shall at the least seem tolerable: for that, *Nunquam nimis dicitur, quod nunquam satis dicitur*; It is never said too often, that can never be said enough. Nay, it may be thought justifiable to repeat in this Case; for that in respect of the Confluence and Access of People at the former Arraignment, many could not hear at that time: And yet, because I fear it would be tedious; for that most of all my Lords Commissioners, and of this honourable and great Assembly, were present at the Arraignment, and for that I am now to deal with a Man of another Quality, I will only touch, and that very little, of the former Discourse or Evidence; and that little also shall be mingled with such new Matter, as shall be worth the hearing, as being indeed of weight and moment: and all this with very great brevity.

But before I further proceed to the opening of this so great a Cause, I hold it fit and necessary to give Satisfaction to two divers and adverse sorts of Men, who, according to the divers Affections of their Hearts, have divined and conjectur'd diversly of the Cause of the Procrastination and Delay of Proceeding, especially against this Person; the Matter wherewith he stands charged being so transcendent and exorbitant as it is. The first sort of these, out of their hearty Love and Loyalty to their natural Liege Lord and King, and to their dear Country and this State, have feared the Issue of this Delay, lest that others might be animated by such Protraction of Judgment, to perpetrate the like: for they say (and it is most true) *Quia non profertur cito contra malos sententia, absque timore ullo filii hominum perpetrant mala*; Because speedy Justice is

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not executed against wicked Men, the People without all Fear commit Wickedness. And pity it were that these good Men should not be satisfy'd. The other sort are of those, who in respect no greater Expedition hath been used against this Prisoner at the Bar, fall to excusing of him, as gathering these Presumptions and Conjectures: First, that if he, or any of the Jesuits, had indeed been justly to be touched with this most damnable and damned Treason, surely they should have been brought forth and try'd before this time. Secondly, That there was a Bill exhibited in Parliament concerning this Treason, and this Traitor, but that it was deferred and proceeded not, for want of just and sufficient Proofs. Nay, Thirdly, There was a particular Apology spread abroad for this Man, and another general for all Jesuits and Priests, together with this Imputation, That King-killing and Queen-killing was not indeed a Doctrine of theirs, but only a Fiction and Policy of our State, thereby to make the Popish Religion to be despised and in disgrace.

Now for these Men, pity it were that the Eye of their Understanding should not be enlightned and cleared, that so being by demonstrative and luculent Proofs convinced, they may be to their Prince and Country truly converted. First therefore concerning the Delay, (tho' it be true, *Quod flagellatur in corde, qui laudatur in ore*) yet must I remember the great Pains of my Lords the Commissioners of his Majesty's Privy Council in this Cause: for *Garnet* being first examin'd upon the 13th of the last Month, hath sithence been again examin'd and interrogated above twenty several times, which lasted to the 26th of March, within two days of this Arraignment. Touching the Bill in Parliament, it was indeed exhibited before *Garnet* was apprehended; but his Majesty's gracious Pleasure was, that albeit this Treason be without all Precedent and Example, yet they should quietly and equally be indicted, arraigned, publicly heard, and proceeded withal in a moderate, ordinary, and just Course of Law. Concerning their Apologies, and the Fictions of State (as they term them) answer shall be made, by God's Grace, in the proper Place, when I come to lay open the Plots and Practices of the Jesuits, to the Satisfaction of all this honourable and great Assembly. But first I have an humble Petition to present to your Lordships, and the rest of this grave Auditor for my self, in respect that I am necessarily to name great Princes, yet with Protestation and Caution, that no Blot is intended to be laid upon any of them. I know there is *Lex in sermone tenenda*, A Law and Rule to be observed in speaking, especially in this kind; and that Kings and great Princes, and the mighty Men of this Earth are to be reverently and respectfully dealt withal: and therefore I humbly recommend unto you these Considerations, concerning this Point of mentioning foreign States.

1st, That the Kingdoms were at those times in open Enmity and Hostility, and that might be honourable at one time which was not so at another: so that hostile Actions were then justifiable and honourable, as being in times of Hostility and War.

2dly, In these things it is not the King's Attorney that speaks, but *Garnet* the Jesuit: As also that it proceedeth from an inevitable Necessity; for that the Examinations as well of this, as of the rest of the Traitors, cannot otherwise be open'd and urged

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against

against them : so is the mention of great Men, by the Impudency of these wicked Traitors, woven into their Confessions, as they cannot be sever'd.

And with this Comfort I conclude the Preface, That I hope in God, this Day's Work, in the Judgment of so many as shall be attentive and well disposed, shall tend to the Glory of Almighty God, the Honour of our Religion, the Safety of his most excellent Majesty and his royal Issue, and the Security of the whole Commonwealth.

For Memory and Method, all that I shall speak may be contracted to two general Heads.

First, I will consider the Offences, together with certain Circumstances,

Precedent before the Offence,
Concurrent with the Offence,
Subsequent after the Offence.

Secondly, I will lay down some Observations concerning the same.

For the proper Name of this Offence, because I must speak of several Treasons, for distinction and separation of this from the other, I will name it the Jesuits Treason, as belonging to them both *ex congruo & condigno* ; they were the Proprietaries, Plotters and Procurers of it : and in such Crimes *plus peccat autor, quam actor* ; The Author or Procurer, offendeth more than the Actor or Executer : as may appear by God's own Judgment given against the first Sin in Paradise, where the Serpent had three Punishments inflicted upon him, as the original Plotter ; the Woman two, being as the mediate Procurer ; and Adam but one, as the Party seduced.

Circumstances precedent and subsequent so termed here, are indeed in their proper Natures all High Treasons ; but yet in respect of the Magnitude, nay Monstrousness of this Treason, may comparatively, without any discountenance to them in this Case, be used as Circumstances. And because I am to deal with the Superior of the Jesuits, I will only touch such Treasons, as have been plotted and wrought by the Jesuits, of whom this Man was Superior ; and those Treasons also sithence this Garnet his coming into England ; whereof he may truly say, *Et quorum pars magna fui*.

The coming of this Garnet into England (which very Act was a Treason) was about twenty years past, viz. in July 1586. in the twenty-eighth Year of the Reign of the late Queen, of famous and blessed Memory : whereas the Year before, namely the twenty-seventh Year of Elizabeth, there was a Statute made, whereby it was Treason for any, who was made a Romish Priest by any Authority from the See of Rome, sithence the first Year of her Reign, to come into her Dominions : which Statute the Romanists calumniate as a bloody, cruel, unjust, and a new upstart Law, and abuse that Place of our Saviour, *O Jerusalem, Jerusalem, thou that killest the Prophets, and stonest them that are sent unto thee, &c. Mat. 23. 37.* to that purpose : But indeed it is both mild, merciful and just, and grounded upon the antient fundamental Laws of England. For (as hath already in the former Arraignments been touched) before the Bull of *Impius Pius Quintus*, in the eleventh Year of the Queen, wherein her Majesty was excommunicated and deposed, and all they accursed who should yield any Obedience unto her, &c. there were no Recusants in England, all came to Church (howsoever popishly inclin'd, or persuaded in most Points) to the same divine Service we now use ; but thereupon presently they refused to assemble in our Churches, or join

with us in publick Service, not for Conscience of any thing there done, against which they might justly except out of the Word of God, but because the Pope had excommunicated and deposed her Majesty, and cursed those who should obey her : and so upon this Bull ensued open Rebellion in the North, and many Garboils. But see the Event : Now most miserable in respect of this Bull, was the State of Romish Recusants ; for either they must be hanged for Treason, in resisting their lawful Sovereign, or curs'd for yielding due Obedience unto her Majesty. And therefore of this Pope it was said by some of his own Favourites, that he was *Homo pius & doctus, sed nimis credulus* ; a holy and a learned Man, but over-credulous ; for that he was inform'd and believed that the Strength of the Catholicks in England was such, as was able to have resisted the Queen. But when the Bull was found to take such an effect, then was there a Dispensation given, both by *Pius Quintus* himself, and Gregory the Thirteenth, That all Catholicks here might shew their outward Obedience to the Queen, *ad redimendam vexationem, & ad ostendendam externam obedientiam* ; but with these Cautions and Limitations : 1. *Rebus sic stantibus, Things so standing as they did.* 2. *Donec publica Bullæ executio fieri posset* ; that is to say, They might grow into Strength, until they were able to give the Queen a Mate, that the publick Execution of the said Bull might take place. And all this was confessed by Garnet under his own hand, and now again openly confessed at the Bar.

In the twentieth Year of Queen Elizabeth, came Campion the Jesuit and many others of his Profession with him, purposely to make a Party in England for the Catholick Cause, to the end that the Bull of *Pius Quintus* might be put in execution. And tho' all this while Recusancy, being grounded upon such a disloyal Cause, were a very dangerous and disloyal thing ; yet was there no Law made in that behalf until the twenty-third Year of her Majesty's Reign ; and that also imposing only a Mulct or Penalty upon it, until Conformity were offer'd and shew'd. Anno 26 Eliz. came Parry with a Resolution from Cardinal de Como, and others, that it was lawful to kill her Majesty, as being excommunicated and deposed. Whereupon her Majesty entring into Consultation how (together with her Safety, and the Protection of her Subjects) she might avoid the imminent Dangers, and yet draw no Blood from these Priests and Jesuits, found out this moderate and mild Course, as the best Means to prohibit their coming at all into her Land ; there never being any King who would endure, or not execute any such Persons, within their Dominions, as should deny him to be lawful King, or go about to withdraw his Subjects from their Allegiance, or incite them to resist or rebel against him. Nay, the bringing in of a Bull by a Subject of this Realm against another, in the time of Edward I. was adjudged Treason. But by the way, for that Garnet had exclaim'd, saying, Shew us where was your Church before Luther, design the Place, name the Persons, and so forth ; it is answer'd by a Comparison of a Wedge of pure Gold, which coming into the hands of Impostors, is by their Sophistifications and Mixtures, for Gain and worldly Respects, increased and augmented into a huge Body and Mass, and retaining still an outward fair Shew and Tincture of Gold. Where is now the pure Gold, saith one, shew me the Place ? I answer, in that Mass ; but for the extracting thereof, and purifying it from Dross, that must be done by the Art of the Workman,

man, and the Trial of the Touchstone. So the true Religion and Service of Almighty God, being for human Respects, and worldly Pomp, mixed and overladen with a number of superstitious Ceremonies and Inventions of Man; yet ever had God his true Church, holding his Truth, which hath been by skilful Workmen, with the Touchstone of the Word of God, refined and separate from the Dross of Man's Inventions.

But to proceed: In the twenty-eighth Year of Queen *Elizabeth*, being the Year 1586, in June, came *Garnet* into *England*, breaking thro' the Wall of Treason; being in truth, *Totus compositus ex proditione*: And this was at that time when the great Armada of *Spain*, which the Pope blessed, and christen'd by the Name of *The invincible Navy*, was by the Instigation of that High-Priest of *Rome*, preparing and collecting together of many Parcels, out of divers Parts, where they could be bought, or hired or borrowed; and therefore may be called a compounded Navy, having in it 158 great Ships. The Purveyors, and Fore-runners of this Navy and Invasion, were the Jesuits; and *Garnet* among them being a Traitor, even in his very entrance and footing in the Land. But the Queen with her own Ships, and her own Subjects, did beat this Armada, God himself (whose Cause indeed it was) fighting for us against them, by Fire, and Seas, and Winds, and Rocks, and Tempests, scattering all and destroying most of them: for *offenso Creatore, offenditur omnis Creatura; The Creator being offended, every Creature is readily armed to revenge his Quarrel*: in which respect he is called the Lord of Hosts. So that of 158, scarce 40 of their Ships returned to the Bar of their own Haven; and as it is reported, most of them also perished: insomuch, that in this respect, we may say of Queen *Elizabeth*, as the Poet writeth of the Christian Emperor:

*O nimium dilecta Deo, cui militat æther,
Et conjurati veniunt ad classica venti.*

Observe here, that about the time of this Invasion, there being in *Spain* met in Consultation about that Business, the Cardinal of *Austria*, the Duke of *Medina*, Count *Fuentes*, two *Irish* Bishops, with sundry Military Men, and amongst others *Winslade*, an *Englishman*; the *Irish* Bishops perceiving that they expected a Party of Catholics in *England*, resolved that true it was, that it was not possible to do any good here in *England*, unless there were a Party of Catholics made before-hand. But such, said they, was the Policy of *England*, as that could never be effected; for if any Suspicion or Fear arose, the Catholics should quickly be either shut up, or quite cut off. Oh, saith an old Soldier there present, *Hoc facit pro nobis, That makes for us*; for by that means their Souls shall go to Heaven for their Religion, their Bodies to the Earth for their Treason, and their Lands and Goods to us as Conquerors: this was indeed that they principally aim'd at.

Note here, that sithence the Jesuits set foot in this Land, there never passed four Years without a most pestilent and pernicious Treason, tending to the Subversion of the whole State.

After that hostile Invasion in 88, the Jesuits fell again to secret and treasonable Practices: for in the Year 92, came *Patrick Cullen*, who was incited by Sir *William Stanley*, *Hugh Owen*, *Jaques Fraunces*, and *Holt* the Jesuit, and resolved by the said *Holt* to kill the Queen; to which purpose he received Absolution, and then the Sacrament, at

the hands of the said Jesuit, together with this ghostly Counsel, That it was both lawful and meritorious to kill her. Nay, said *Jaques*, that base Laundress's Son, (who was a continued Practiser both with this *Cullen* and others, to destroy her Majesty) The State of *England* is and will be so settled, that unless Mistress *Elizabeth* be suddenly taken away, all the Devils in Hell will not be able to prevail against it, or shake it.

Now *Cullen's* Treason was accompany'd with a Book called *Philopater*, written for the abetting and warranting of such a devilish Act in general, by *Creswel* the Legier Jesuit in *Spain*, under the Name of *Philopater*.

Anno 94. came *Williams* and *Yorke* to the same end, viz. to kill the Queen; being wrought to undertake so vile and detestable a Fact by Father *Holt* the Jesuit, and other his Complices: And thereupon the said *Williams* and *Yorke* in the Jesuits College received the Sacrament together of Father *Holt*, and other Jesuits, to execute the same. And that Treason likewise was accompany'd with a Book written by the Legier Jesuit and Rector and *Rome*, *Parsons*, under the Name of *Doleman*, concerning Titles, or rather Tittles; a leud and a lying Book, full of Falshood, Forgery and Male-diction.

Anno 97. came *Squire* from *Spain*, to poison her Majesty, incited, directed, and warranted by *Walpole* a Jesuit, then residing there; at whose hands likewise, after Absolution, he received the Sacrament, as well to put the Practice in execution, as to keep it secret. All these Treasons were freely and voluntarily confessed by the Parties themselves under their own hands, and yet remain extant to be seen.

In the Year 1601. when Practices fail'd, then was foreign Force again attempted; for then (as in the former Arraignment hath been declared) was *Thomas Winter* employ'd to the King of *Spain*, together with *Tesmond* the Jesuit, by this *Garnet*, who wrote his Letters to *Arthur*, alias *Joseph Creswell*, (the only Man whom I have heard of, to change his Christian Name) the Legier Jesuit in *Spain*, for the furtherance of that Negotiation; which was, as hath been said, to offer the Services of the *English* Catholics to the King, and to deal further concerning an Invasion, with Promise from the Catholics here of Forces, both of Men and Horses, to be in a readiness to join with him. This Negotiation, by the means of *Creswel*, to whom *Garnet* wrote, took such effect, that the two Kingdoms standing then in Hostility, the Proposition of the *English* Romish Catholics was accepted and entertain'd; an Army to invade (as hath been specify'd in the former Arraignment) promised, and 100000 Crowns to be distributed amongst Romanists and discontented Persons, making of a Party in *England*, and for the furtherance of the said Service granted. In the mean time the King earnestly desired, That if the Queen of *England* should happen to die, he might receive present and certain Advertisement thereof.

Now this Treason was accompany'd with the Pope's own writing: For now doth the Holy Father cause to be sent hither to *Garnet* two Briefs or Bulls, one to the Clergy, and another to the Laity; wherein observe the Title, the Matter, the Time. The Title of the one was, *Dilectis Filiis, Principibus, & Nobilibus Catholicis Anglicanis, Salutem & Apostolicam Benedictionem*: that is, *To our beloved Sons the Nobles and Gentlemen of England, which are Catholics, Greeting and Apostolical Benediction*. The

Title of the other was, *Dilectis Filiis, Archipresbytero, & reliquo Clero Anglicano, &c. To our beloved Sons, the Archpriest, and the rest of the Catholick Clergy.* The matter was, That after the Death of her Majesty, whether by Course of Nature, or otherwise, whosoever should lay Claim or Title to the Crown of *England*, tho' never so directly and nearly interested therein by Descent and Blood Royal; yet unless he were such an one as would not only tolerate the Catholick (Romish) Religion, but by all his best Endeavours and Force promote it, and according to the antient Custom would, by a solemn and sacred Oath, religiously promise and undertake to perform the same, they should admit or receive none to be King of *England*: His words are these, *Quantumcunque propinquitate sanguinis niterentur, nisi ejusmodi essent qui fidem Catholicam non modo tolerarent, sed omni ope ac studio promoverent, & more Majorum Jurejurando se id praeistituros susciperent, &c.*

As for King *James* (at whom the Pope aimed) he hath indeed both *Propinquitatem* and *Antiquitatem Regalis Sanguinis*, Propinquity and Antiquity of Blood Royal, for his just Claim and Title to this Crown, both before and since the Conquest.

To insist upon the Declaration and Deduction of this point, and pass along thro' the Series and Course of so many Ages and Centuries, as it would be over long for this place, so further I might herein seem as it were to gild Gold: Only in a word, His Majesty is lineally descended from *Margaret* the Saint, Daughter of *Edward*, Son of King *Edmund*, Grandchild of Great *Edgar* the *Britain* Monarch. Which *Margaret*, sole Heir of the *English-Saxon* King, was married to *Malcolme* King of *Scotland*; who by her had Issue *David* the *Holy* their King, from whom that Race Royal at this day is deduced; and *Maud* the Good, Wife of the first and learned *Henry* King of *England*, from whom his Majesty directly and lineally proceedeth, and of whom a Poet of that time wrote:

*Nec decor effecit fragilem, non sceptrum superbam,
Sola potens humilis, sola pudica decens.*

And lastly, his Majesty cometh of *Margaret* also the eldest Daughter of *Henry VII.* who was descended of that famous Union of those two fair Roses, the White and the Red, *York* and *Lancaster*; the effecting of which Union cost the Effusion of much *English* Blood, over and besides fourscore or thereabouts of the Blood-Royal. But a more famous Union is by the Goodness of the Almighty perfected in his Majesty's Person of divers Lions, two famous, antient, and renowned Kingdoms, not only without Blood, or any Opposition, but with such an universal Acclamation and Applause of all sorts and degrees (as it were with one Voice) as never was seen or read of. And therefore most Excellent King, for to him I will now speak;

*Cum triplici fulvum conjunge leone leonem,
Ut varias Atavus junxerat ante Rosas:
Majus opus varios sine pugna unire leones,
Sanguine quam varias consociasse Rosas.*

These four noble and magnanimous Lions, so firmly and individually united, are able, without any Difficulty or great Labour, to subdue and overthrow all the Letters and Bulls (and their Calves also) that have been, or can be sent into *England*.

Now for the Time, observe that these Bulls or Briefs came upon the aforesaid Negotiation of *Thomas Winter* into *Spain*, at what time an Army

should shortly after have been sent to invade the Land: and this was to be put in execution, *Quandocunque contingeret miseram illam feminam ex hac vita excedere*; Whensoever it should happen that that miserable Woman (for so it pleased the High Priest of *Rome* to call great *Queen Elizabeth*) should depart this Life. Was *Queen Elizabeth* miserable? It is said that *Miseria constat ex duobus contrariis, scilicet, Copia & Inopia; ex Copia tribulationis, & Inopia consolationis.* Was she, I say, miserable, whom Almighty God so often and so miraculously protected, both from the Arrow that flieth by day, their great *Armada*, and from the Pestilence that walketh in the darkness, their secret and treacherous Conspiracies? that did beat her most potent Enemies? that set up a King in his Kingdom? that defended Nations, and harboured and protected distressed People? that protected her Subjects in Peace and Plenty, and had the Hearts of the most and the best of her Subjects? that reigned Religiously and Gloriously, and died Christianly and in Peace? Oh blessed Queen, our late dear Sovereign, *semper bonos nomenque tuum laudesque manebunt.* But *Queen Elizabeth* of famous Memory, (for *Memoria ejus semper erit in benedictione*) as a bright Morning-Star, in fulness of time lost her natural Light, when the great and glorious Sun appeared in our *Horizon*.

And now sithence the coming of our great King *James*, there have not passed, I will not say four, nay not two months, without some Treason.

First, in *March 1603.* upon the death of her Majesty, and before they had seen his Majesty's Face, was *Christopher Wright* employed into *Spain*, by *Garnet*, *Catesby*, and *Tresham*, to give advertisement of the Queen's death, and to continue the former Negotiation of *Thomas Winter*: And by him also doth this *Garnet* write to *Creswell* the Jesuit, in Commendation, and for Assistance and Furtherance of his Business.

As also on the 22d of *June* following, was *Guy Fawkes* sent out of *Flanders*, by *Baldwin* the Jesuit, by *Sir William Stanley*, and *Hugh Owen*, about the same Treason; and by Letters from *Baldwin* directed and commended to *Creswell* the Legier Jesuit in *Spain*, for the procuring of his Dispatch, as in the former Arraignment hath been declared.

In the same *June* doth *Garnet* the Superior, together with *Gerrard* and other Jesuits and Jesuited Catholicks, labour not only in providing of Horses, which by *Thomas Winter* and *Christopher Wright*, upon their several Negotiations, they, in the names of all the Catholicks in *England*, had promised the King of *Spain*, to assist and do him Service withal, at such time as the said King should send his Forces to invade, either at *Milford-Haven*, or in *Kent*, as hath before been shewed; but also did, by force of the said two Bulls or Briefs, dissuade the Romish Catholicks from yielding their due Obedience to his Majesty, for that he was not of the Roman Religion: contrary to the Practice of the true Church and Churchmen, that undergo Wars, *ferendo, non feriendo, with Patience, not with Strokes*; their Weapons being properly *Orationes & Lachrymae, Prayers and Tears.*

On the same *June 9.* which was in 1603. *primo Jacobi*, brake out likewise the Treason of the Romish Priests, *Watson* and *Clarke*, as also that other of *Sir Walter Raleigh* and others. But the Jesuits seeing that the Peace was now in great forwardness, and having advertisement also, that the King of *Spain* did now distaste their Propositions, so that there

there was no further hope left for Force; then fell they again to secret Practice. As for the Bulls or Briefs before-mention'd, when *Catesby* had informed *Garnet* that King *James* was proclaimed, and the State settled, they were by *Garnet*, as himself hath affirmed, burnt. But to proceed:

In *March* 1603. *Garnet* and *Catesby*, (a pestilent Traitor) confer together, and *Catesby* in general telleth him (tho' most falsly) That the King had broken Promise with the Catholics, and therefore assuredly there would be Stirs in *England* before it were long. In *September* following, meets *Catesby* and *Thomas Percy*; and after an unjust, but a grievous Complaint made by *Catesby* of the King's Proceedings, for that contrary to their Expectations, his Majesty both did hold, and was like continually to run the same Course, which the Queen before had held; *Percy* presently breaks forth into this devilish Speech, That there was no way but to kill the King, which he the said *Percy* would undertake to do. But *Catesby*, as being *versuto ingenio & profunda perfidia*, a cunning, a wily, and a deep Traitor, intending to use this so furious and fiery a Spirit to a further Purpose, doth as it were stroke him for his great forwardness, yet with sage and stayed Counsel tells him; No, *Tom*, thou shalt not adventure thy self to so small purpose: If thou wilt be a Traitor, there is a Plot to greater advantage, and such a one as can never be discovered, viz. the Powder-Treason.

In *January*, in the first Year of his Majesty, *Garnet* took out a General Pardon under the Great Seal of *England*, of all Treasons, (which Pardon his Majesty of his Grace granted to all Men at his first entrance into his Kingdom) under the name of *Henry Garnet* of *London* Gent. but therein he never used any of his *alias dictus Walley, Farmer*, or any other of his feigned names. But *Catesby* fearing lest any of those whom he had or should take into Confederacy, being touched in Conscience with the horror of so damnable a Fact, might give it over, and endanger the Discovery of the Plot, seeks to *Garnet*, (as being the Superior of the Jesuits, and therefore of high Estimation and Authority amongst all those of the Romish Religion) to have his Judgment and Resolution in Conscience, concerning the Lawfulness of the Fact, that thereby he might be able to give Satisfaction to any who should in that behalf make doubt or scruple to go forward in that Treason. And therefore *Catesby* coming to *Garnet*, propounded unto him the Case, and asketh, Whether for the Good and Promotion of the Catholick Cause against Hereticks, (the necessity of Time and Occasion so requiring) it be lawful or not, amongst many *No-cents*, to destroy and take away some *Innocents* also. To this Question, *Garnet* advisedly and resolvedly answered, That if the Advantage were greater to the Catholick part, by taking away some *Innocents* together with many *No-cents*, then doubtless it should be lawful to kill and destroy them all. And to this purpose he alledged a Comparison of a Town or City which was possessed by an Enemy, if at the time of taking thereof there happen to be some few Friends within the place, they must undergo the Fortune of the Wars in the general and common Destruction of the Enemy. And this Resolution of *Garnet*, the Superior of the Jesuits, was the strongest, and the only Bond, whereby *Catesby* afterwards kept and retained all the Traitors in that so abominable and detestable a Confederacy: For in *March* following, *Catesby*, *Thomas*

Winter, and others, resolve upon the Powder-Plot; and *Fawkes*, as being a Man unknown, and withal a desperate Person and a Soldier, was resolved upon as fit for the executing thereof; to which purpose he was in *April* following by *Thomas Winter* fought and fetched out of *Flanders* into *England*.

In *May*, in the 2d Year of his Majesty, *Catesby*, *Percy*, *John Wright*, *Thomas Winter*, and *Fawkes* meet: And having, upon the Holy Evangelists, taken an Oath of Secrecy and Constancy to this effect:

YOU shall swear by the blessed Trinity, and by the Sacrament you now purpose to receive, never to disclose directly or indirectly, by Word or Circumstance, the matter that shall be proposed to you to keep secret, nor desist from the Execution thereof, until the rest shall give you leave:

They all were confessed, had Absolution, and received thereupon the Sacrament, by the hands of *Gerrard* the Jesuit then present.

In *June* following, *Catesby* and *Greenwell* the Jesuit confer about the Powder-Treason. And at *Midsummer*, *Catesby* having speech with *Garnet* of the Powder-Treason, they said, that it was so secret, as that it must prevail before it could be discovered. Then *Garnet* seemed to desire that the Pope's Consent might be obtained: but *Catesby* answered, that he took that as granted by the Pope in the two Bulls or Briefs before; for that, said he, if it were lawful not to receive, or to repel him, as the said Bulls or Briefs did import, then is it lawful also to expel or cast him out.

Upon the 7th of *July*, 1604, was the Parliament prorogued until the 7th of *February*: And in *November* following, *Thomas Bates*, being (as hath been declared more at large in the former Arraignment) fetched in by *Catesby*, his Master, to participate in the Powder-Treason, for better Assurance of his Secrecy, and Prosecution thereof, is by *Greenwell* the Jesuit confessed, encouraged, and told, That being for a good Cause, he might and ought, not only conceal it, as committed unto him in secret by his Master; but further said, That it was no offence at all, but justifiable and good.

About this time was *Robert Keyes* taken into the Confederacy, and by *Catesby* resolved of the Lawfulness thereof from the Jesuits.

On the 11th of *December*, they enter'd the Mine: and in *March* following, which was in 1605, was *Guy Fawkes* sent over to Sir *William Stanley*, with Letters from *Garnet*, to *Baldwin* the Legier Jesuit there, to take order, That against the time of the Blow, the Forces might be brought near to the Sea-side, to the end that they might suddenly be transported into *England*: And there doth *Fawkes*, by consent of the Confederates, give *Owen* the Oath of Secrecy and Perseverance, and then acquaints him with the whole Treason: Who having been a most malicious and inveterate Traitor, greatly applauded it, and gave his Consent and Counsel for the furtherance thereof.

In *May* 1605, fell out certain Broils in *Wales* by the Romish Catholics; at what time also *Rookwood* was by *Catesby* acquainted with the Powder-Treason, and resolv'd of the Lawfulness of the Fact by him as from the Jesuits.

Now doth *Garnet* write to the Pope, That Commandment might come from his Holiness, or else

else from *Aquaviva* the General of the Jesuits, for the staying of all Commotions of the Catholicks here, in *England*, intending indeed to set their whole Rest of the Catholick Romish Cause upon the Powder-Plot, and in the mean time to lull us asleep in Security, in respect of their dissembled Quietness and Conformity; as also lest Impediment might be offer'd to this main Plot by reason of any suspicion of the stirring of Papists, or of inquiry after them upon occasion of any petty Commotions or Broils. But when he further desired, that it might be so enjoind upon Censures, that latter Request was not granted, lest it might indeed be an Impediment to the Powder-Plot.

In *June* following doth *Greenwell* the Jesuit consult with *Garnet* his Superiour, of the whole Course of the Powder-Treason at large; wherein observe the politick and subtle Dealing of this *Garnet*. First, he would not (as he saith) confer of it with a Layman, (other than *Catesby* whom he so much trusted) Why so? because that might derogate from the Reverence of his Place, That a Jesuit and a Superior of them, should openly join with Laymen in cause of so much Blood. And therefore, Secondly, as he would consult of it with a Priest and a Jesuit, one of his own Order, and his Subject; so for his further security, he would consult thereof with *Greenwell* the Jesuit, as in a disguised Confession. And being inform'd that the Discourse would be too long to repeat kneeling, he answer'd that he would consult with him of it in Confession walking; and so accordingly in an ambulatory Confession, he at large discoursed with him of the whole Plot of the Powder-Treason; and that a Protector (after the Blow given) should be chosen out of such of the Nobility as should be warned and reserved.

In this Month likewise was there a great Conference and Consultation betwixt *Garnet*, *Catesby*, and *Francis Tresham*, concerning the Strength of the Catholicks in *England*, to the end that *Garnet* might by Letters send direct Advertisement thereof to the Pope; for that his Holiness would not be brought to shew his Inclination concerning any Commotion or Rising of the Catholick Party, until such time as he should be certainly inform'd that they had sufficient and able Force to prevail.

And in *August* following, *Garnet* in a Conference had about the acquainting of the Pope with the Powder-Treason, named and appointed Sir *Edmund Baynam* for to carry that Message to the Pope; yet not to him as Pope, but to him as a temporal Prince: and by him doth *Garnet* write Letters in that behalf; as also for staying of Commotions, under pain of Censures, well knowing that before his Letters could be answer'd, the House of Parliament (according to their Designs) should have been blown up, and the whole State overthrown. But this Trick he used like a Thief, that going to steal and take Partridges with a Setting-Dog, doth rate his Dog for questing, or going too near, until he hath laid his Net over them, for fear the Game should be sprung, and the Purpose defeated.

In this Month also doth *Garnet* write to *Baldwine* the Legier Jesuit in the Low Countries, in the behalf of *Catesby*, that *Owen* should move the Marquis for a Regiment of Horses for him the said *Catesby*; not with any intent, as it was agreed, that *Catesby* should undertake any such charge, but that under colour of it, Horses and other Necessaries might be provided without suspicion to furnish the Traitors.

In *September* following doth *Parsons* the Jesuit write to *Garnet*, to know the Particulars of the Project in hand, for the Journey to *St. Winifred's Well* in this Month. It was but a Jargon, to have better opportunity, by colour thereof, to confer and retire themselves to those parts.

In *October* doth *Garnet* meet the other Traitors at *Coughton* in *Warwickshire*, which was the Place of Rendezvous, whither they resorted out of all Countries.

Upon the first of *November*, *Garnet* openly prayeth for the good Success of the great Action, concerning the Catholick Cause in the beginning of the Parliament: and Prayer is more than Consent; for *Nemo orat, sed qui sperat & credit*. He in the Prayer used two Verses of a Hymn, *Gentem auferte perfidam credentium de finibus, ut Christo laudes debitas persolvamus alacriter*.

Now was the Letter with the Lord *Monteagle*, whose Memory shall be blessed, on the fourth of *November*; by the Providence of the Almighty, not many hours before the Treason should have been executed, was it fully discover'd.

On the fifth of *November*, being the time when the Traitors expected that their devilish Practice should have taken effect, they convented at *Dunchurch*, under colour of a great Hunting-Match, appointed by Sir *Everard Digby*, as being a Man of Quality and Account thereabout; purposing by this means to furnish themselves with Company for their intended Insurrection and Rebellion: for that Men being gather'd together, and a Tumult suddenly raised, the Traitors thought that every or most of them would follow the present Fortune, and be easily persuaded to take part with them; and that they might easily surprize the Person of the Lady *Elizabeth*, then being in those Parts, in the *L. Harrington's House*.

Upon the sixth of *November*, early in the Morning, *Catesby* and the said Confederates dispatch'd *Tho. Bates* with a Letter to *Garnet* the Superior of the Jesuits, who was (as they well knew) then ready at *Coulton*, near unto them, earnestly entreating his Help and Assistance for the raising of *Wales*, and putting so many as he could into open Rebellion. At what time *Garnet*, and *Greenwell* (who then of purpose was there with *Garnet*) then certainly perceiving that the Plot was indeed discover'd, and knowing themselves to be the chiefest Authors thereof, prophesy'd the Overthrow of the whole Order of the Jesuits; saying, That they feared that the Discovery and Miscarrying of this Practice, would utterly undo and overthrow the whole Society of the Jesuits. But *Greenwell* the Jesuit being carry'd with a more violent and fiery Spirit, posseth up and down to incite such as he could to rise up in open Rebellion: And meeting in Master *Abington's House* with *Hall*, another Jesuit, adviseth him the said *Hall* likewise to lose no time, but forthwith to seek to raise and stir up so many as he could: But *Hall* seeming to deliberate thereof, whether seeing no end of so rash an Attempt, or fearing by that means to be himself apprehended, *Tesmond* told him that he was a flegmatick Fellow; and said, a Man may herein see the difference betwixt a flegmatick Man (such as he meant *Hall* was) and a cholerick, as he said himself was: And further added, that he was resolv'd to do his best Endeavours for the raising of a Rebellion, under this false Pretext and Colour, That it was concluded that the Throats of all the Catholicks in *England* should be cut; so persuading

ding himself to incite them to take Arms for to stand upon their guard and defence: and with this Device he posted away into the County of *Lancaster*. Afterwards *Hall* the Jesuit, otherwise called *Oldcorn*, being urged by *Humphrey Littleton* with the evil Success of their intended Treason, that surely God was displeased and offended with such bloody and barbarous Courses, instead of an humble Acknowledgment of the Justice of God, and a Sense of the Wickedness of the Treason, fell rather satanically to argue for the Justification of the same; and said, Ye must not judge the Cause by the Event; for the eleven Tribes of *Israel* were by God himself commanded to go and fight against *Benjamin*, yet were they twice overthrown: So *Lewis of France* fighting against the *Turk*, his Army was scatter'd, and himself died of the Plague: And lastly, the Christians defending of *Rhodes*, were by the *Turks* overcome. And these he apply'd to the Powder-Treason, and persuaded *Littleton* not to judge it ungodly or unlawful by the Event. †

Observe here a double Consequent of this Powder-Treason. First, open Rebellion, as hath been shewed both immediately before, and more at large in the former Arraignment; and since that, Blasphemy in *Garnet* the Superior of the Jesuits: for, he having liberty in the Tower to write, and sending a Letter (which Letter was openly shewed in the Court before him) to an Acquaintance of his in the Gate-house, there was nothing therein to be seen but ordinary Matter, and for certain Necessaries: But in the Margin, which he made very great and spacious, and underneath, where there remained clean Paper, he wrote cunningly with the Juice of an Orange, or of a Lemon, to publish his Innocency, and concerning his Usage; and there denieth those things which before he had freely and voluntarily confessed: and said, that for the *Spanish* Treason, he was freed by his Majesty's Pardon; and as for the Powder-Treason, he hoped, for want of Proof against him, to avoid that well enough: but concludeth blasphemously, applying the Words which were spoken of our Blessed Saviour, to himself in this damnable Treason, and faith, *Neceſſe eſt ut Homo moriatur pro Populo; It is neceſſary that one Man die for the People*: Which Words *Caiaphas* spake of Christ. Wherein note his Prevarication and Equivocation; for before the Lords Commissioners, he truly and freely confessed his Treasons, being (as himself, under his own hand, confesseth) overwhelm'd *tanta nube testium*; and yet *ad faciendum populum*, in his Letters which he wrote abroad, he clearth himself of the Powder-Treason. And thus much concerning the two Circumstances subsequent, which were Rebellion and Blasphemy.

The Circumstances concurring, are concerning the Persons both offending and offended. For the principal Person offending, here at the Bar, he is, as you have heard, a Man of many Names, *Garnet*, *Wally*, *Darcy*, *Roberts*, *Farmer*, *Philips*: and surely I have not commonly known and observed a true Man, that hath had so many false Appellations: He is by Country an *Englishman*, by Birth a Gentleman, by Education a Scholar, afterwards a Corrector of the Common Law Print, with *Mr. Tottle* the Printer; and now is to be corrected by the Law. He hath many Gifts and Endowments of Nature, by Art learned, a good Linguist, and by Profession a Jesuit, and a Superior, as indeed he is superior to all his Predecessors in devilish Treason; a Doctor of Jesuits, that is, a Doc-

tor of five DD's, as Diffimulation, Deposing of Princes, Disposing of Kingdoms, Daunting and Detering of Subjects, and Destruction.

Their Diffimulation appeareth out of their Doctrine of Equivocation: Concerning which it was thought fit to touch something of that which was more copiously delivered in the former Arraignment, in respect of the Presence of *Garnet* there, who was the Superior of the Jesuits in *England*, concerning the Treatise of Equivocation seen and allowed by *Garnet*, and by *Blackwell* the Archpriest; wherein, under the Pretext of the Lawfulness of a mixt Proposition to express one part of a Man's Mind, and retain another, People are indeed taught not only simple Lying, but fearful and damnable Blasphemy. And whereas the Jesuits ask, why we convict and condemn them not for Heresy; it is for that they will equivocate, and so cannot that way be try'd or judg'd according to their Words.

Now for the Antiquity of Equivocation, it is indeed very old, within little more than three hundred years after Christ, used by *Arius* the Heretick, who having in a General Council been condemned, and then by the Commandment of *Constantine* the Emperor sent into Exile, was by the said Emperor, upon instant Intercession for him, and Promise of his future Conformity to the *Nicene* Faith, recalled again: who returning home, and having before craftily set down in writing his heretical Belief, and put it into his Bosom, when he came into the Presence of the Emperor, and had the *Nicene* Faith propounded unto him, and was thereupon asked, whether he then did indeed, and so constantly would hold that Faith, he (clapping his Hand upon his Bosom where his Paper lay) answered and vowed that he did, and so would constantly profess and hold that Faith (laying his Hand on his Bosom where the Paper of his Heresy lay) meaning fraudulently (by way of Equivocation) that Faith of his own, which he had written and carried in his Bosom.

For these Jesuits, they indeed make no Vow of speaking Truth, and yet even this Equivocating and Lying is a kind of Unchastity, against which they vow and promise: For as it hath been said of old, *Cor lingua ſæderat naturæ ſanctio, veluti in quodam certo Connubio: ergo cum diſſonent cor & loquutio, Sermo concipitur in Adulterio*: that is, The Law and Sanction of Nature, hath (as it were) married the Heart and Tongue, by joining and knitting of them together in a certain kind of Marriage; and therefore when there is Discord between them two, the Speech that proceeds from them, is said to be conceived in Adultery, and he that breeds such Bastard-Children offends against Chastity.

But note the heavy and woeful Fruit of this Doctrine of Equivocation: *Francis Tresham* being near his natural Death in the Tower, had of charity his Wife permitted (for his Comfort) to come unto him: who understanding that her Husband had before directly and truly accused *Garnet* of the *Spanish* Treason, left belike her Husband should depart this Life with a Conscience that he had revealed any thing concerning the Superior of the Jesuits, a very little before he died, drew him to this; that his own Hand being so feeble as that he could not write himself, yet he caused his Servant then attending on him, to write that which he did dictate, and therein protested upon his Salvation, That he had not seen the said *Garnet* of

of sixteen years before, and thereupon prayed that his former Confession to the contrary might in no wise take place; and that this Paper of his Retraction which he had weakly and dyingly subscribed, might, after his Death, be delivered to the Earl of *Salisbury*: Whereas Master Garnet himself hath clearly confessed the *Spanish* Treason, and now acknowledged the same at the Bar; and he and Mrs. *Fawkes*, and others, directly confess and say, That Garnet and *Tresham* had, within two years space, been very often together, and also many times before: But, *Qualis vita, finis ita*. And Garnet himself, being at the Bar afterwards urged to say what he thought of such the Departure of *Francis Tresham* out of this Life, answered only this; I think he meant to equivocate.

Thus were they stained with their own Works, and went a whoring with their own Inventions, as it is in the Psalm. So that this is indeed *Gens perfida*, according to the Hymn, *a perfidious People*; and therefore *Jurat? crede minus; non Jurat? credere noli. Jurat, non jurat hostis, ab hoste cave*.

For their Doctrine of deposing of Princes, *Simanca* and *Philopater* are plain, (as hath in the former Arraignment been more amply declared, and was now again at large to Garnet's face repeated:) If a Prince be an Heretick, then is he excommunicated, cursed, and deposed; his Children deprived of all their Right of Succession, himself not to be restored to his Temporal Estate upon Repentance. And by an Heretick, they profess, that he is intended and meant, namely, whosoever doth not hold the Religion of the Church of *Rome*. Nay, there is an easier and a more expedite way than all these to fetch off the Crown from off the Head of any King christen'd whatsoever; which is this, That *Princeps indulgendo hereticis, amittit Regnum; if any Prince shall but tolerate or favour Hereticks, he loseth his Kingdom*. Nay, whereas Garnet, in defence of this usurped Power of the High Priest of *Rome*, alledged, *Nos Sanctorum, &c.* out of the Decretals; in the very next Title before that, there is another Decree that passeth all we have recited; wherein it is shewed, that *Zachary* the Pope deposed *Childerick of France*, for nothing else there specified, *sed quia inutilis*, but only for that he was reputed unprofitable to govern.

Now as concerning their Daunting and Detering of Subjects, which is a part of the Jesuits Profession; it were good that they would know and remember, how that the most noble and famous Kings of *England* never were afraid of Popes Bulls, no not in the very Midnight of Popery, as *Edward the Confessor*, *Henry I.* *Edward I.* *Richard II.* *Henry IV.* *Henry V.* &c. And in the time of *Henry VII.* and in all their times, the Pope's Legate never passed *Calais*, but stay'd there, and came not to *England*, until he had taken a solemn Oath to do nothing to the detriment of the Crown or State.

For the Persons offended, they were these:

First, The King, of whom I have spoken often, but never enough: A King of high and most noble antient Descent, as hath been briefly declared; and in himself full of all Imperial Virtues, Religion, Justice, Clemency, Learning, Wisdom, Memory, Affability, and the rest.

Secondly, The Queen; and she, in respect of her happy Fruitfulness, is a great Blessing, insomuch that of her, in that respect, may be said, she is *Ortu magna, Viro major, sed maxima Prole*; great in Birth, greater in her Marriage, but to all Posterity greatest, in the blessed Fruit of her Womb, as

having brought forth the greatest Prince that ever *England* had.

Thirdly, The noble Prince, of whom we may say, with the Poet, *Quæ te tam læta tulere secula? Qui tanti talem genuere parentes?* Never Prince, true Heir-Apparent to the Imperial Crown, had such a Father, nor ever King had such a Son.

Fourthly, Then the whole Royal Issue, the Council, the Nobility, the Clergy, nay our Religion it self, and especially this City of *London*; that is famous for her Riches, more famous for her People, (having above five hundred thousand Souls within her and her Liberties) most famous for her Fidelity, and more than most famous of all the Cities in the World for her true Religion and Service of God. Hold up thy Head, noble City, and advance thy self, for that never was thy Brow blotted with the least taint or touch, or suspicion of Disloyalty: Thou mayst truly say with the Prophet *David*, *I will take no wicked thing in hand, I hate the sin of unfaithfulness, there shall no such cleave unto me*. Therefore for thy Fidelity thou art honoured with the Title of *The King's Chamber*, as an inward place of his greatest Safety: And for thy comfort and joy this day, hath *Britain's* great King honoured thee with the Proceeding upon this great and honourable Commission; after the heavy and doleful Rumours this other day, when it was certainly known that King *James* was in safety, well did the Fidelity of this City appear, (whereof I was an Eye-witness) *Una voce conclamaverunt omnes, Salva Londinum, salva Patria, salva Religio, Jacobus Rex noster salvus; Our City, our Country, our Religion is safe, for our King James is in safety*.

The Observations are many, and only in a word to be touched:

1. That in the *Spanish* Treason before-mention'd, and this Powder-Treason, there was the same Order, Cause and End. The Order was, first, to deal by secret Practice and Treason, and then by Force and Invasion. The Cause which they pretend, was the Romish Catholick Religion. The End was the final Destruction of the Royal Succession, yea, even *occidere Regnum*, to overthrow and dissolve the whole Kingdom.

2. Note, that even the Enemy hath acknowledged, that our State is so settled and established, as neither Strength nor Stratagem can prevail, unless there be a Party made in *England*.

3. We shall never have Bull more to come from *Rome to England*, because they shall never have a Party strong enough to encounter with so many Lions.

4. All their Canons, Decrees, and new-found Doctrines tend to one of these two Ends; either worldly Pride, or wicked Policy; for the amplitude and enlargement of the Pope's Authority, and for the safety of the Jesuits, Priests, &c.

5. Observe that *Baynam*, a Layman, and one of the damned Crew, and so naming himself, was sent to inform the Pope as a Temporal Prince.

6. I conceive their Fall to be near at hand, both by Divinity and by Philosophy. For the first, there are now in *England* about four hundred Priests: so many were there in *Israel* in the days of *Ahab*; *Who*, saith God, *shall go and deceive Ahab, that he may fall?* A lying Spirit in the Mouths of his four hundred Prophets undertook and effected it; their Fall was near, when once a lying Spirit had possessed the Priests, according to the Vision of *Michæas*, as now it hath possessed the Jesuits. 2dly, The Imitation of Good for the most part comes short of

of the Pattern; but the Imitation of Evil ever exceeds the Example. Now no Imitation can exceed this Fact, and therefore their time is at an end.

7. Many condemn it now, that would have commended it, if it had taken effect; for this, say they, is *E numero eorum quæ non laudantur nisi peracta*.

8. They and their Adherents spread abroad false Rumours; as that the King should have broken Promise with them concerning Toleration: which mixture of God's Service, rather than he would suffer; he would lose Children, Crown, Life, and all. Nay, they may see there is no such hope left, for that his Majesty bringeth up his Royal Issue in the true Religion and Service of the Almighty.

Lastly, Observe the wonderful Providence of God in the admirable Discovery of this Superior Jesuit to be party to this Treason; and that in two respects:

1. In respect of the means of Secrecy, used by him in conference only with *Catesby* of the Laity. (2.) They had a strong and a deep Oath given them both for Secrecy and Perseverance. (3.) They hereupon received the holy Sacrament. (4.) They were allowed and taught by the Jesuits, to equivocate upon Oath, Salvation or otherwise: And how then should it be discovered? (5.) Their secret Intelligence was such, as that it was impossible by the Wit of Man to be found out. And therefore,

2. The second thing is, How this Treason being long sithence plotted, the Providence of God did continually from time to time divert and put off the executing thereof, by unexpected putting off the times of assembly in Parliament. For the Parliament began the 19th of March, in the first Year of his Majesty's Reign, and continued till the 7th of July following, before which time the Conspirators could not be ready: from thence it was prorogued until the 7th of February, against which time they could not make the Mine ready, in respect that they could not dig there, for that the Commissioners of the Union sat near the place, and the Wall was thick, and therefore they could not be provided before the 7th of February; and on the 7th of February the Parliament was prorogued until the 5th of October. After this, they found another Course, and altered the place from the Mine to the Cellar. O blessed Change of so wicked a Work! Oh! but these fatal Engineers are not yet discovered, and yet all things are prepared. Oh prorogue it once more! And accordingly, God put it into his Majesty's heart (having then not the least suspicion of any such matter) to prorogue the Parliament; and further, to open and enlighten his Understanding, out of a mystical and dark Letter, like an Angel of God, to point to the Cellar, and command that to be searched; so that it was discovered thus miraculously, but even a few hours before the Design should have been executed.

The Conclusion thereof shall be this; *Qui cum Jesu itis, non itis cum Jesuitis*: For, They encourage themselves in mischief, and commune among themselves secretly, how they may lay snares, and say, that no man shall see them. But God shall suddenly shoot at them with a swift arrow, that they shall be wounded: in so much that who so seeth it shall say, This hath God done; for they shall perceive that it is his work.

Then were repeated the Proofs for every of the particular Accusations aforesaid, by the express

and voluntary Confessions of *Garnet*, and of his Complices themselves, and of two credible Witnesses sworn at the Bar, and openly heard *viva voce*, and acknowledged by *Garnet* himself to be Men without exception.

Then Mr. *Garnet* having Licence of the Court to answer what he could for himself, spake, and divided all which had been objected, to his remembrance, into four parts, *viz.*

Containing matter of,

1st, Doctrine.

2dly, Recusants.

3dly, Jesuits in general.

4thly, Himself in particular.

1st, In Doctrine, he remembered two points:

1. Concerning Equivocation; whereunto he answered, That their Church condemned all Lying, but especially if it be in Cause of Religion and Faith, that being the most pernicious Lye of all others, and by *S. Augustine* condemned in the *Priscillianists*: Nay, to lye in any cause is held a Sin and Evil; howsoever of eight degrees which *St. Augustin* maketh, the lowest indeed is to lye for to procure the Good of some, without hurting of any. So then our Equivocation is not to maintain Lying, but to defend the use of certain Propositions: For a Man may be asked of one, who hath no Authority to interrogate, or examined concerning something which belongeth not to his Cognizance who asketh, As what a Man thinketh, &c. So then no Man may equivocate, when he ought to tell the Truth, otherwise he may. And so *St. Augustine* upon *John* saith, That Christ denied he knew the Day of Judgment, *viz.* with purpose to tell it to his Disciples; and so *St. Thomas* and others who handle this Matter, chiefly under the Title of Confession.

2. For the second Point, which was the Power of the Pope in deposing of Princes, his Answer was threefold. (1.) That therein he only propounded and followed the general Doctrine of the Church. (2.) That this Doctrine of the Power of the Pope, was by all other Catholick Princes tolerated without Grievance. (3.) That yet for his own part, he always made a Difference in the matter of Excommunicating and Deposing of Princes, betwixt the Condition and State of our King and of others, who having sometimes been Catholicks, did or shall afterwards fall back. As for *Simanca*, and other Writers, whatsoever they set down of the deposing of Hereticks, it is to be understood of those Princes, who having sometimes professed the Faith of the Church of *Rome*, do afterwards make a Defection from the same.

2dly, For Recusants; 1. I desire them not to impute any Offence or Crime of mine, to the Prejudice of the Cause of Religion. 2. Concerning their not going to Church; whereas it was urged by Mr. *Attorney*, that the ground of their not going to Church, was the Excommunication and Bull of *Pius Quintus*; and that now they may go, for that his Majesty is not denounced Excommunicate: I answer, That it followeth not; for the *Arians* and Catholicks had the same Service in their Churches, yet came they not together; and I know divers my self, who, before that Bull, refused to go to Church all the time of Queen *Elizabeth*, though perhaps most Catholicks did indeed go to Church before. It was about the end of the Council of *Trent*, where this matter was discussed by twelve

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learned

learned Men, and concluded not lawful. And this was occasioned, for that *Calvin* himself held it not lawful for any Protestant to be present, not only at our Mass, wherein perhaps they may say there is Idolatry, but not at our Even-Song, being the same with theirs.

3dly, Concerning the Jesuits, he said, That if any were privy to such horrible Treasons, it was impious, especially in Men of their Profession: But said, that he talked with some of them about it, and that they denied it.

4thly, Touching my self, The Negotiation into *Spain* was indeed propounded unto me, and I was also acquainted with the Negotiation for Money, but ever intended it should be bestowed for the Relief of poor Catholics: But when they were there, they moved for an Army; which when they afterwards acquainted me withal, I disliked it, and said, it would be much disliked at *Rome*: only I must needs confess I did conceal it after the Example of Christ, who commands us, when our Brother offends, to reprove him, for if he do amend, we have gained him; yet I must needs confess, that the Laws made against such Concealing, are very good and just, for it is not fit the Safety of a Prince should depend upon any other Man's Conscience. So that I am verily persuaded, if they yielded to me, it had been good: but what their Intent and Meaning was, in desiring an Army, I knew not, and I was charged not to meddle therein, no not with the Money which was to be sent for Pensions, though it was to maintain the Title of the King.

The Earl of *Salisbury* then demanded, To maintain whose Title?

Garnet answered, The Title of the King of *Spain*.

The Earl of *Northampton* asked him, Why he did not oppose himself against it, and forbid it, as he might have done? For, *Qui cum possit non prohibet, jubet*.

Whereupon *Garnet* answered, That he might not do it: and for sending of Letters, and commending some Persons thereby, he confessed he did it often, as they were commended to him without knowing either their Purposes, or some of their Persons; for he never knew Mr. *Wright*, for whom he writ.

The Earl of *Salisbury* then replied to *Garnet*, I must now remember you, how little any of your Answers can make for your Purpose, when you would seek to colour your dealing with *Baynam*, by professing to write to *Rome* to procure a Countermand of Conspiracies; and yet you know, when he took his Journey towards *Rome*, the Blow must needs have been passed, before the time he could have arrived to the Pope's Presence, (such being your Zeal and his Haste for any such Prevention) as it was about the 20th of our *October* when he passed by *Florence* towards *Rome*.

To which *Garnet* made no great answer, but let it pass: and then went on with his Defence of sending Letters in Commendation of many of those with which he had been formerly charged, and so confessed that he had written Commendation of *Fawkes*, thinking that he went to serve as a Soldier, not knowing then of any other Purpose he had in hand. And as for Sir *Edmund Baynam*, what he or Mr. *Catesby* intended, he knew not in particular; only Mr. *Catesby* asked him in general, the Question of the Lawfulness to destroy Innocents with Nocents, as had been before objected

against him; which at first, I thought, said *Garnet*, had been an idle Question, though afterwards I did verily think, he intended something that was not good. Whereupon having shortly after this, received Letters from *Rome*, to prohibit all Insurrections intended by Catholics, which might perturb this State; *Garnet* informed *Catesby* thereof, and told him, That if he proceeded against the Pope's will, he could not prevail: but *Catesby* refused and said, he would not take notice of the Pope's pleasure by him. Notwithstanding, he shewed to *Catesby* the general Letter which he had received from *Rome*, but said he would inform the Pope, and tell *Garnet* also in particular, what Attempt he had in hand, if he would hear it; which afterwards he offered to do, but *Garnet* refused to hear him, and at two several times requested him to certify the Pope what he intended to do.

And when Sir *Edmund Baynam* (as he pretended) was to go over into *Flanders* for a Soldier, *Garnet* thought good to send him to the Pope's Nuncio, and to commend him to other Friends of his, That they should send him to inform the Pope of the distressed Estate of Catholics in *England*: The rather, that the Pope having a Lay-man there, might be acquainted with all their Proceedings; and that *Baynam* might then learn of the Pope, what course he would advise the Catholics in *England* to take for their own Good: but wished *Baynam* in no case to use *Garnet's* name to the Nuncio in that behalf.

Then were the two Witnesses called for; both of them Persons of good Estimation, that overheard the Interlocution betwixt *Garnet* and *Hall* the Jesuit, viz. Mr. *Fauset* a Man learned and a Justice of Peace, and Mr. *Lockerson*. But Mr. *Fauset* being not present, was sent for to appear; and in the mean time Mr. *Lockerson*, who being deposed before *Garnet*, delivered upon his Oath, that they heard *Garnet* say to *Hall*, They will charge me with my Prayer for the good Success of the great Action, in the beginning of the Parliament, and with the Verses which I added in the end of my Prayer:

*Gentem auferte perfidam
Credentium de finibus,
Ut Christo Laudes debitas
Perfolvamus alacriter.*

It is true indeed (said *Garnet*) that I prayed for the good Success of that great Action; but I will tell them, that I meant it in respect of some sharper Laws, which I feared they would then make against Catholics: and that answer shall serve well enough.

Here *Garnet* replied, That for the two Gentlemen that heard the Interlocution, he would not charge them with Perjury, because he knew them to be honest Men; yet he thought they did mistake some things, though in the substantial parts, he confessed, he could not deny their Relation. And for the main Plot, he confessed, that he was therewithal acquainted by *Greenwell* particularly; and that *Greenwell* came perplexed unto him to open something, which Mr. *Catesby* with divers others intended: to whom he said, He was contented to hear by him what it was, so as he would not be acknown to Mr. *Catesby*, or to any other, that he was made privy to it. Whereupon Father *Greenwell* told him the whole Plot, and all the Particulars thereof, with which he protested, that he

he was very much distempered, and could never sleep quietly afterwards, but sometimes prayed to God, that it should not take effect.

To that the Earl of *Salisbury* replied, That he should do well to speak clearly of his Devotion in that point; for otherwise he must put him in remembrance, that he had confessed to the Lords, that he had offered Sacrifice to God for stay of that Plot, unless it were for the good of the Catholick Cause; and in no other fashion (said his Lordship) was this State beholden to you for your Masses and Oblations. Adding thus much farther, That he wonder'd why he would not write to his Superior *Aquaviva*, as well of this particular Powder-Treason, as to procure Prohibition for other smaller Matters.

Garnet faintly answered, he might not disclose it to any, because it was matter of secret Confession, and would endanger the Life of divers Men.

Whereunto the Earl of *Northampton* replied, That that Matter of Confession, which before he refused to confess, because he would save Lives, he confessed it now to endanger his own Life; and therefore his former Answer was idle and frivolous.

Then *Garnet* told the Lords, That he commanded *Greenwell* to dissuade *Catesby*, which he thought he did; and if *Catesby* had come to him upon *Alballow-day*, he thought he could so far have ruled him, as he would have been persuaded to desist.

Then said the Earl of *Salisbury*, Why did you refuse to hear *Catesby* tell you all the Particulars, when he would have told you, if you had been desirous to prevent it?

Garnet replied, That after *Greenwell* had told him what it was which *Catesby* intended, and that he called to mind what *Catesby* said to him, at his first breaking with him in general Terms, his Soul was so troubled with dislike of that Particular, as he was loth to hear any more of it.

Well then (said the Earl of *Salisbury*) you see his Heart: and then turning to the Lords Commissioners, he desired leave of them, that he might use some Speech concerning the Proceeding of the State in this great Cause, from the first beginning until that hour; and so began to this effect: That although the Evidence had been so well distributed and opened by Mr. Attorney, as he had never heard such a Mass of Matter better contracted, nor made more intelligible to the Jury, to whom it was not his part to speak, nor his purpose to meddle with Mr. *Garnet* in Divinity, or in the Doctrine of Equivocation, in which latter he saw how he had played his Master-prize; yet because he had been particularly used in this Service with other of the Lords Commissioners, by whom nothing was more desired, next the Glory of God, than to demonstrate to the World, with what Sincerity and Moderation his Majesty's Justice was carried in all Points, he would be bold to say somewhat of the Manner of this Arraignment, and of the Place where it was appointed. For the first, he said, That seeing there was nothing to which this State might more attribute the infinite Goodness and Blessings of God, than to the Protection of the true Religion, which had groaned so long under the bitter Persecutions of Men of his Profession; he confessed, that he held himself greatly honoured, to be an Assistant amongst so many great Lords at the Seat of Justice, where God's Cause should receive so much Honour, by discrediting the Person of *Garnet*, on whom the common Adversary had thought to confer the Usurpation

of such an eminent Jurisdiction: For otherwise, who did not know, that the Quality of poor *Henry Garnet* might have undergone a more ordinary Form of Trial, and haply in some other Place of less Note and Observation? And so his Lordship took an Occasion to declare, That the City of *London* was so dear to the King, and his Majesty so desirous to give it all Honour and Comfort, as when this Opportunity was put into his hands, whereby there might be made so visible an Anatomy of Popish Doctrine, from whence these Treasons have their Source and Support, he thought he could not chuse a fitter Stage than the City of *London*, which was not only rightly termed, *The Chamber of his Empire*, but was by his Majesty esteemed as his greatest and safest Treasury; who accounteth no Riches comparable to his Subjects Hearts, and acknowledgeth that such a Circuit did never contain so many faithful Subjects within the Walls: A Matter well appearing to his own Eyes amongst others, upon the decease of the late Queen of precious Memory, when he attending most of the Peers and Privy-Counsellors of this Kingdom, who were accompanied with no small number of noble and faithful Gentlemen, had seen them all stayed from entry within the Gates of this City, until they had publickly declared with one Voice, that they would live and die with the King our Sovereign Lord. To you therefore, Mr. *Garnet* (said the Earl of *Salisbury*) must I address my self, as the Man in whom it appeareth best what horrible Treasons have been covered under the Mantle of Religion, which heretofore had been Petty Treason for a Protestant to have affirmed. Such hath been the Iniquity of false Tongues, who have always sought to prove the Truth a Lyar. Of which impudent Calumnies the State is so tender, as you do best know, (Mr. *Garnet*) that since your Apprehension, even till this Day, you have been as christianly, as courteously, and as carefully used, as ever Man could be, of any Quality, or any Profession: yea, it may truly be said, that you have been as well attended for Health or otherwise, as a Nurse-Child. Is it true or no, said the Earl?

It is most true (my Lord) said *Garnet*, I confess it.

Well then (said the Earl) if your strange Doctrine of Equivocation be observed, and your Hardness of Heart to deny all things; let it not be forgotten, that this Interlocution of yours with *Hall*, over-heard by others, appears to be *digitus Dei*: for thereby had the Lords some light, and proof of Matter against you, which must have been discovered otherwise by Violence and Coercion, a matter ordinary in other Kingdoms, though now forborn here: but it is better as it is, for the Honour of the State, for so were your own Words, that you thought it best to tell the truth at last, when you saw you were confounded *tanta nube testium*. In which I protest, that I do confidently assure my self, that you would as easily have confessed your self to be Author of all the Action, as the Concealer, but that his Majesty and my Lords were well contented to draw all from you without Racking, or any such bitter Torments.

Then speaking to *Garnet*, he said; I pray you, Mr. *Garnet*, what encouraged *Catesby* that he might proceed, but your resolving him in the first Proposition? What warranted *Fawkes*, but *Catesby's* Explication of *Garnet's* Arguments? as appears

infallibly by *Winter's* Confession, and by *Fawkes*, that they knew the Point had been resolved to Mr. *Catesby*, by the best Authority.

Then *Garnet* answered, That Mr. *Catesby* was to blame to make such Application.

To that the Earl replied, That he must needs be bold with him, to drive him from the Trust he had, to satisfy the World by his Denials, by putting him in mind, how after the Interlocution betwixt him and *Hall*, when he was called before all the Lords, and was asked, not what he said, but whether *Hall* and he had Conference together, desiring him not to equivocate; how stiffly he deny'd it upon his Soul, reiterating it with so many detestable Execrations, as the Earl said, it wounded their Hearts to hear him: and yet as soon as *Hall* had confessed it, he grew ashamed, cried the Lords Mercy, and said, he had offended, if Equivocation did not help him.

To this *Garnet* answered, That when one is asked a Question before a Magistrate, he was not bound to answer before some Witnesses be produced against him, *Quia nemo tenetur prodere seipsum*. Then *Garnet* falling into some Professions of his well-wishing to his Majesty, and being put in mind of the Answer he made concerning the Excommunication of Kings, wherein he referred himself to the Canon of *Nos Sanctorum*, he answered, that his Majesty was not yet excommunicated.

Then the Earl of *Salisbury* bade him deal plainly, for now was the time, Whether in case the Pope, *per Sententiam Orthodoxam*, should excommunicate the King's Majesty of *Great Britain*, his Subjects were bound to continue their Obedience?

To this *Garnet* denied to answer, by which the Hearers might see his Mind.

From that Matter he began to make request, That where he had confessed the receiving of two Briefs or Bulls from the Pope, in the Queen's time, by which all Catholics were forbidden to adhere to any Successor that was not obedient to the Church of *Rome*, his Majesty would be pleased to make a favourable Interpretation, because he had shewed them to very few Catholics in *England*, in the Queen's time; and when he understood that the Pope had changed his Mind, then he burnt the Bulls.

To that it was said, That belike the Pope changed his Mind, when the King was so safely possessed of his Estate, and *Garnet* with his Complices began to feel their own Impiety, and so as *Catesby* said to *Percy*, did resolve roundly of that Treason, which would speed all at once.

Then *Garnet* began to use some Speeches, that he was not consenting to the Powder-Treason.

Whereupon the Earl of *Salisbury* said, Mr. *Garnet*, give me but one Argument that you were not consenting to it, that can hold in any indifferent Man's Ear or Sense, besides your bare Negative. But *Garnet* replied not.

Then Mr. Attorney-General spake in answer to *Garnet* more particularly, to this effect:

1. For Equivocation, it is true indeed, that they do outwardly to the World condemn Lying and Perjury, because the contrary were too palpable, and would make them odious to all Men: But it is open and broad Lying and Forswearing, not secret and close Lying and Perjury, or swearing a Falshood, which is most abominable, and without Defence or Example. And if they allow it not generally in others, yet at least in themselves, their Confederates and Associates in Treasonable Practices, they will both warrant and defend it, especially when it may serve their turn for such Purposes and Ends as they look after.

sonable Practices, they will both warrant and defend it, especially when it may serve their turn for such Purposes and Ends as they look after.

2. Concerning the usurped Power of the Pope in Deposing of Princes; neither is it the general Doctrine of the Church, as he falsely said, neither allowed or tolerated by all Princes, who are otherwise of their Religion, as may appear out of the *French* Discourse written to the *French* King against the re-admitting of the Jesuitical Faction. And whereas he would pick-a-thanke in seeming to spare and exempt King *James* our Sovereign, it is not possible to avoid their Distinction of being excommunicated *de Jure*, if not *de Facto*, howsoever it be true also, that the Pope doth *de Facto* curse all Hereticks. For Recusants not going to Church, the Example of the Catholics not joining in Service and Prayer with the *Arians*, who denied a main Article of the Christian Creed, doth no ways hold, neither can it agree to us, of whom no such impious Blasphemy can be shewed or imagined. That *Garnet* said, he knew some, who before the Bull came, went not to Church, it may be true perhaps in some one or two perverted and perverse Men like himself; but whereas he produced the Council of *Trent*, as if there the Matter had been determined, and thereupon inferreth, that after that all Romish Catholics refused to meet with us at Church in time of Prayer, it is a gross Error: for the last Session of that Council was in the Year of our Lord 1563, which was in the fifth Year of Queen *Elizabeth*; whereas I shewed, and am able to justify and prove, That their Romish *English* Catholics came to our Service in our Churches until the nineteenth Year of her Majesty, which was many Years after that Council was ended.

Concerning *Garnet* himself; 1st, For that Answer of his, That he knew of the Powder-Treason by Confession, it is true which before was spoken, that such Acts as this is, *Non laudantur nisi peracta*, are then only commended, when they are performed: but otherwise, First, *Greenwell's* was no Sacramental Confession, for that the Confitent was not penitent: nay, himself hath clearly delivered under his hand, That the Powder-Treason was told him, not as a Fault, but by way of Consultation and Advice. 2^{dly}, It was a future thing to be done, and not already then executed. 3^{dly}, *Greenwell* told it not of himself, that he should do it, but of *Fawkes*, *Percy*, *Catesby*, *Winter*, and others; and therefore he ought to have discovered them, for that they were no Confitents. 4^{thly}, He might and ought to have discovered the Mischief, for Preservation of the State, though he had concealed the Persons. 5^{thly}, *Catesby* told it unto him *extra Confessionem*, out of Confession; saying, They might as well turn him out, as have kept him out. Lastly, By the common Law, howsoever it were (it being *crimen læsæ Majestatis*) he ought to have disclosed it.

Now for that *Garnet* denied that he was a principal Author and Procurer of this Treason, but only that he had received Knowledge thereof; the contrary is clear and manifest, both out of his own Confessions, by himself acknowledged, and apparently proved, in that he resolved *Catesby* concerning the Lawfulness and Merit thereof, and that he prayed for the good Success of the Powder-Treason, which is more than either Consultation or Consent. Besides, he must remember him of the old Versicle, *Qui non prohibet quod prohibere potest, consentire*

consentire videtur. Garnet might have commanded *Greenwell*, that told him of the Powder-Treason, to have desisted, but did not: But *Greenwell* went still on with the Treason, and when it was disclosed, went into the Country to move Rebellion, which doubtless he would never have done, if *Garnet* had forbidden him; therefore he said, he might say with the Orator *Tully*, *Cui adsunt testimonia rerum, quid opus est verbis?* Moreover, Mr. Attorney added, How *Garnet* writ first for *Thomas Winter*, then for *Kit Wright*, after that for *Guy Fawkes*, then for *Sir Edward Baynam*, and afterwards for *Catesby*, for a Regiment of Horse; and that *Garnet* was for the *Infanta*, and by his Briefs intended to keep out the King, except he should tolerate and swear to maintain the Romish Religion.

Then Mr. Attorney spake of the Interlocution betwixt *Garnet* and *Hall*, and said, That in all their Speeches they never named God, nor confessed their Innocency: But as soon as they spake together, *Hall* spake first; and then *Garnet* said, he suspected one, whose Name they that were set to overhear them, could not hear, to have disclosed something against them: But it may be otherwise, for he said he was much subject to that Frailty of Suspicion. He said he received a Note from *Rookwood*, that *Greenwell* was gone over Seas; and another, that *Gerrard* was gone to Father *Parsons*, and that Mistress *Anne* was in Town (meaning Mistress *Anne Fawkes*) and many other things were by them uttered in that Conference.

By this time came in Mr. *Forset*, who being deposed, affirmed likewise, that their Examination, and the Matter therein contained, were true: saying further, that both of them took Notes of that which they heard from *Garnet* and *Hall*, as near as possibly they could, and set down nothing in their Examinations, but those things, wherein both their Notes and perfect Memories agreed and assented; and that many things that were very material, and of great moment, were left out of their Examinations, because both their Notes and Memories did not perfectly agree therein.

And now one of the Letters, which were written with Sack, was shewed to the Court; by which appeared that *Hall* and *Garnet* had Interlocution together. Mr. Attorney here inferred that the necessary End of Justice was, *ut poena ad paucos, metus ad omnes perveniat*; and urged the Examination of *Garnet*, wherein he confessed that when *Tesmond* alias *Greenwell*, made relation to him of the great Blow by the Powder-Treason, who should have the Protection, *Greenwell* said, the Lords that should be left alive should chuse a Protector. And further, Mr. Attorney urged the writing of another Letter written with Sack to *Sayer* alias *Rookwood*, a Priest in the Gatehouse: But of this Point much is formerly mentioned.

Here Mr. Attorney ending, my Lord of *Northampton* spake to the Prisoner this Speech following.

Earl of *North*. Though no Man alive can be less apt or willing than my self, to add the least grain or scruple of Improvement to the weight of any Man's Calamity, that groans under the heavy burden of a distressed State, *Vel gravatis addere gravamina*, whereof I have as many Witnesses as the World hath Eyes; yet as the Case stands now in this Trial, Mr. *Garnet*, between my dear Sovereign, *ex cujus spiritu*, as one said of *Alexander*, *nos omnes spiritum*

ducimus; and you that were so well content, to let the course of Conspiracy run forward to the stopping of this Breath before the time, which God by Nature doth prescribe between his Honour and your Error, his just Proceedings and your painted Shows, his Sincerity and your Hypocrisy; I could wish it possible that in any Person of some other Quality, you might hear the Echoes of your unperfect and weak Answers, and thereupon judge more indifferently and evenly of the true state of the Cause than you have done hitherto; being distracted with Fear, or forestall'd by Prejudice, or, to borrow your own Phrase, which is more proper to the Point than any I can use, oppressed *tanta nube testium*, with so thick a Cloud of Witnesses, as concur with one Voice, Heart and Spirit, for the Confusion of your Audacity.

I confess that never any Man in your State gave less hold or advantage to Examiners, than you have done in the whole course of Proceeding to us that were in Commission; sometime by forswearing, as upon the Confession of *Hall* your Fellow; sometime by dissembling, as about the places of your Rendezvous, which was the Lapwing's Nest; sometimes by earnest Expostulation; sometime by artificial Equivocation; sometime by sophisticating true Substances; sometime by adding false Qualities: yet *sat superest*, as may appear, to the defeat of your Inventions, and the defence of the King's Majesty; *quia magna est veritas, & praevalet*.

Your Parts by Nature simply considered, and in another Person, would rather move Compassion, than exasperate Humanity; for whom would not the Ruin of such a Person touch, as is in Appearance temperate, and in Understanding ripe? But our End at this time is the same with *Decius* in *Livy*, *ut quem vos obrutum reliquistis ignem*, &c. that we may quench that Fire by prevention, which you have only raked up in Ashes; *ut novum daret incendium*, that it might cause a new Combustion so soon as it might hit upon matter that were fit and suitable. Wherefore I must rather draw your Answers to the true touch for discharge of Rumors, than *verberare aërem*, beat the Air: For the substance of all your Evasions and sly Shifts, is as the Inn-keeper of *Chalcus* confessed of his Dishes to his Guests, admiring *tantam ferculorum diversitatem*, that they were only compounded of Pork, howsoever your fine Cookery may vary them.

The two Bulls that in the late Queen's time entred the Land (with a purpose by their loud Lowing to call all their Calves together, for the making of a strong Party, at the shutting up of the Evening, against your dread Sovereign) were grazed in your Pastures, Mr. *Garnet*; or to speak more properly (because they durst neither endure the Light, nor admit the Air) they were stall-fed at your Crib, as your self confess; and therefore, *Serve nequam, ex ore tuo te judico*. And what answer make you to this? marry that the Purpose was imparted to very few; so much the worse: For out of Publication grows Discovery; and yet Experience hath justified, that those very few were the very Souls and Spirits of that pack of Conspirators, and such as for want of Patience and Temperance to tarry the time, when the Game had been brought to bearing, should have played the chiefest parts in the late smocking Tragedy. You say the Bulls were after sacrificed in the Fire by your self: But not before the King's good Angel had cut their Throats, and the best part of their Proof were past, and

your

your Hopes dead of that good which in likelihood they should have brought with them. For to what use could these dumb Beasts serve, in seeking to prevent that lawful and undoubted Right, which Heaven had now proclaimed, and Earth acknowledged? But let the proof be what it will, I look into the Root. I wonder, Mr. Garnet, what Apostles warrants you in undertaking wicked Plots, in hope that good may follow; neglecting what all Laws (and the Laws of *England* above all) what all States and Nations conclude of Men, that slyly practise and combine for Anticipation of the future Rights of lawful Successors.

In excuse of Letters written with your own Hand by *Thomas Winter* to Father *Creswell*, when he was employed about the procurement of an Army to invade with supplies of Treasure proportionable for the quicker Execution of so desperate an Enterprize; you answer, that the Persons were commended in your Letters, not the Plot: *spectatum admitti, risum teneatis amici?* as tho' the Minister had any other Errand or Instruction, than the main Plot it self: as tho' you, Mr. Garnet, being then *Magister in Israel* and *Rektor Chori*, could or would be ignorant of their prefixed End; as tho' so grave a Person as your self, were likely to set his hand to Banks like a Baby, and to leave the rest to the disposition of a Man wholly transported with fiery Humours: Or, as tho' in this very point other Mens Confessions in particular, beside your own in generality, had not left us Marks and Traces evident and plain enough to descry doubleness with diversity. You confess privacy to a Practice, but not for an Army; Foreknowledge of a Course for getting Treasure, but with a purpose, as you conceived, to employ it wholly for the relief of Catholics. So as the reason of the reservedness of *Catesby*, *Winter*, and the rest toward you, must be undoubtedly their Suspicion of your over-great Affection and Duty to the Queen: For otherwise it is certain they would have trusted you as well with their Intention, as with their Means; with their Hopes, as with their Instruments; especially considering how hard it was for them to compass their own vast Desires, without help both of your Credit, and of your Industry.

Wright was in like manner, and with like expedition, commended by you afterward for the quickening of *Winter's* Project, if any Life were in it, upon the slackening of the Passions of *Spain*, with the Propositions of Peace, that no Time might be lost, no Stone left unremoved that might give a knock to the Peace of our Policy; your Head wrought upon all Offers, your Head walked in all Regions, your Spirit steered all Attempts and Undertakings: and yet if Protestations, qualified and protected by Equivocations, may carry weight, all this while your Mind was, as good Pastors ought to be, patient, your Thoughts were obedient, and your Counsels innocent. But now to search your Cunning somewhat nearer to the quick, we must observe, that when your Hopes of Invasion began to cool by likelihood of Peace, your Desires of Supplies by the cold Answers that came from *Spain*, your Expectation of new Mischiefs, to be wrought at home without Complots abroad; when Malice it self was cast into so desperate a Swoon, as neither *Rosalis* when *Spain* relented, nor *Isobab* when *Tyrone* submitted, nor Dissension within the Kingdom when Discontentments ended, could put it by any fresh adventure into Life; when you for your own part,

Mr. Garnet, having been once washed and regenerated in the Fountain of the King's free Pardon, from the leprous Spots of former Treasons, were determined to begin upon another Stock, and return as a Dog to the Vomit: tho' washing can avail no Man (as the Preacher warns) that *iterum tangit mortuum*, toucheth the dead the second or third time after he hath been made clean; for secretly *Catesby* resorts to you, as *Mahomet* might to *Sergius*, (for now I speak according to the Matter, and not the Men) to enquire whether it were lawful, considering the necessity of the time, to undertake an Enterprize for the advancement of the Catholick Religion, tho' it were likely that among many that were Nocent, some should perish that were Innocent. A Man that is religious in any kind, or but morally honest in his own kind, would expect that a Priest, a Jesuit, (which Title doth imply Salvation, and not Destruction; nay, the Superior of *English* Jesuits) upon this rash demand, should have resorted for a safe Resolution to God's own Book; where he should have found that God was pleased to withdraw his wrathful Hand from *Sodom*, so as there had been only *decem justi*, ten just Men within that Town, and for their sakes; that the wise Householder in *St. Matthew*, marking how hard it would be before the Corn was ripe to make Separation, gave Order to his Servants to abstain from plucking up the Tares, *ne simul eradicarent triticum*, lest withal they plucked up the Wheat by the Roots. Ye should have found in the Stories of the Church, that the godly Bishops in the first Spring of Religion, suspended process against the *Priscillian* Hereticks, *ne Catholici cum illis perirent*, lest the Catholics might also perish with them. And the Church of *Milan* taxed *Theodosius* the Emperor, *quod insontes una cum fontibus trucidasset*, that he had proceeded both against the Guilty and the Guiltless with one Stroke, and in one measure of Severity. But far beside the warrant either of Holy Writ, or Holy Precedents, your Answer, Mr. Garnet, was such, as I both abhor to think, and quake to utter; that if any great advantage were to grow to the Church this way, they might destroy them all.

Tantane animis celestibus ira? O Mr. Garnet, be not offended tho' I ask of you, as a worthy Emperor did once of a Traitor in a Cafe by many degrees inferior to this, *Quid facit in pectore humano lupi feritas, canis rabies, serpentis venenum?* But that which ought most to torture and afflict the Spirit (if you be the Child of him whose Name and Badge you bear) is, that your Doctrine was confidently delivered, and so speedily digested, and converted to Nutriment from such a Mouth as yours, considering that (according to the Prophet) Knowledge should depend upon the Lips of a Priest, as *Rookwood*, *Bates*, and others, that did shrink at the horror of the Project when it was first laid down, received Satisfaction upon the very sound of your Assent, tho' masked with the Title of a Man, as grave and learned as any in the Land. And *Catesby* doubting of the fickleness of Men's Affections, in Cases that concern the Soul, used your admittance as a Charm or Spell, to keep quick Spirits within the Circle of combined Faith; which otherwise perhaps, when Hell brake loose, would have fought Liberty. Your Charter only (whereupon I beseech you for your own Soul's Health, to meditate for the time you tarry in this World) for the Base whereon some grounded their bad Conscience in proceeding with this Plot, not only to the Destruction

Deſtruction of their Bodies, but to the Peril of their Souls, without ſound and true Repentance, which by the merit of Chriſt's Paſſion will ſerve in *quacunq; hora peccator ingemuerit*. For tho' Chriſt were joyful that he had not loſt one of thoſe whom his Father gave him in charge, and came to ſave and not to deſtroy; yet your Advice was to deſtroy them all: Such was your burning Charity!

Some Man ſurprized with a Queſtion upon the ſudden, might answer ſharply and ſhreudly at ſome time, I confeſs, without thinking or intending ill: But this Man, Mr. Garnet, cannot be you, that have confeſſed clearly under your own Hand, your ſuſpicion and fear of ſome Miſchief purpoſed and intended in their Hearts, by this quick Queſtion of Nocents and Innocents: and therefore *quod dubitas ne feceris*. It ſeems the Heart of *Cateſby* was a fertile Soil for ſprouting of ſtinking Weeds haſtily, into which the Seed of your ſecuring Confidence was caſt. For the Powder-Plot, which in *January* was barely *embryo*, became *formatus ſetus* in the *March* next following; it quickened the next *December*, when the Pioneers began to dig in the thick Wall: *Cateſby* not long after imparted his Conceit ſecretly to you of the great likelihood he foreſaw of a lucky time of Birth; and thereupon was *Guy Fawkes* ſent over by your Knowledge and Encouragement, to deal with Sir *William Stanley*, about the drawing down of Forces ſomewhat nearer to the Sea-side for ſpeedy Transport, which if need were, might carry Torches at the Solemnity. But what is your answer to this Employment of *Guy Fawkes*? Forſooth, that your purpoſe was only to commend him as a Soldier, but not as a Conſpirator. O unlucky Treason, that comes to be excuſed by ſo poor an Advocate! when *Fawkes* himſelf meant nothing leſs than to be a Soldier, having ſo ſtrange a part to play ſoon after in the Powder Train, but uſed this Retreat as a Colour to diſguiſe the ſecret Purpoſe that did only tarry time, and to eſchew thoſe watchful Eyes, that nearer hand would have obſerved both his Inlets and his Outlets in that place more narrowly. The Point is clear, the Confeſſions are direct, the purpoſe is palpable. All the Loins of your Level are drawn to the Center of the Powder-Mine. All Letters are either drawn or interlined *manu Scorpionis*, to uſe the word of *Hierome*; and yet under pain of Cenſure we muſt believe, That all this while you were in Charity, becauſe all this while (which it grieves me to remember) you were not afraid to communicate.

But now to weigh your Answers that concern the Powder-Plot it ſelf; which is *paramount* in reſpect of the Longitude and Latitude to all that have been, or ever ſhall be: Your ſelf cannot deny, Mr. Garnet, that *Greenwell's* Overture, as you ſay in Confeſſion, coming after the notice which you took of *Cateſby's* Queſtion about Innocents, was but a Fruit of your own Doctrine, an Effect of your own Inſtruction, and a Concluſion drawn wholly out of your own Propoſitions and Principles. Now when we preſs to know what Reaſon drew you to the concealment of a Project ſo pernicious both to Prince and State, without revealing it either to the King himſelf, *tanquam præcellenti*, to uſe St. *Peter's* Term, or to his Miniſters ſubordinate; you ſtart to the ſhift of Confeſſion for a formal help, which comes too ſhort in reſpect of *Cateſby's* firſt Diſcovery, which your own words aver plainly to have wrought with you. I will not argue in this place what Courſe a Confeſſor ſhould take, or

how far he ought to ſtrain for the ſecuring of a Prince's Life, that otherwiſe is ſure to periſh by the Rage and Ignorance invincible of a baſe Villain, (whoſe Life answers not in value the leaſt hair of a Prince's Head) becauſe time ſuffers not: But I am ſure that for a matter of leſs weight than this, and a Crime of leſs importance than the Life both of Prince and State; Confeſſion received a deep wound for a long time, more than a thouſand Years paſt, in the Church of *Conſtantinople*. For God forbid that matters of ſuch weight, ſhould hang by ſuch feeble Threds. But to this excuſe of tenderneſs in the point of Confeſſion, I would answer, by making a great doubt, Whether this courſe of Conference were a Confeſſion or not; for againſt your bare words, which Equivocation ſupports, I object ſome likelihood, That ſince you kneeled ſometimes, and ſometimes walked up and down; ſince matter of Conſpiracy were interlaced with matter of Confeſſion, not for eaſe of Conſcience as ſhould appear, but for advice in Execution; ſince *Greenwell* was abſolved inſtantly, which excludes the ſhift of Reference: and *Greenwell* ſhould be found to lye to the Holy Ghoſt in caſe this were a true Confeſſion: in promiſing (Mr. Garnet) as you ſay, to diſſuade the Project which he proſecuted even to the laſt Point, as is evident, and after the Powder Camp brake up: I conclude that tho' this diſcovery were by Confeſſion, yet it was no *Superſedeas* to your former knowledge from *Cateſby* your truſty Friend; and if it were none, then it can be no Protection for Faith putrified. What need we ſeek Light thro' Cobweb-Lawns, when the drift of your whole Device in ſeeking to conclude from one, what you learned of another, and from all what you affected and abetted in your Heart, doth evidently prove your Counſels to have been carried along with ſuch a temper of reſervedneſs, as whenſoever Miſchief ſhould be brought to light, the World might rather wonder at your Caution, than commend your Fidelity?

By ſhaping ſuch weak Answers to Demonſtrations ſo manifeſt, you muſt either work by the Ring of *Gyges*, in making your Audacity and Preſumption inviſible, or hold a very weak Conceit of our Capacities, in ſuppoſing that they can be either dazzled or deluded by ſuch poor Sophiſtry. For tho' you pretend to have received a deep Wound in Conſcience at the firſt revealing of the Plot, to have loſt your Sleep with vexation of Spirit, to have offered and prayed to God for his preventing Grace, to have required *Greenwell's* help and furtherance in croſſing and diverting the deſign; yet all this while you ſuffered the Project to proceed, you helped and aſſiſted their Endeavours that were Labourers, you wrote earneſt Letters both to *Baldwin* and to *Crefwell* for their furtherance of ordinary Means; you gave order for a Prayer to be ſaid by Catholicks for their proſperous Succeſs; you kept meaſure with the two firſt Dimensions of *Fryar Bacon's* Brazen-head; Time is, Time was, till (thanks be to God) the third Time was paſt: you had ever an Ear open to liſten for the Crack, and were in the ſame Agony for the Powder-Plot, that *Charles V.* was for the Pope's Dureſs, giving order in all his Dominions, that Prayers ſhould be made for his releaſe, when in the mean time he kept and held him in his own hand Priſoner. The leaſt Word of your Mouth, or Labour of your Pen, might have ſecured both Prince and State, while you pretend to have broken both your Sleeps and your Brains, and that with a greater advantage to the

the Cause which you would advance, than can ever grow by Combustion and Conspiracy. But your Tenderneſs herein was ſuitable with another dutiful deſire of yours to diſſuade *Cateſby* from the Plot, at his coming into *Warwickſhire*, who never meant to come thither, but as to the Rendezvous, when the Parliament had been blown up, and the Storm had been blown over. It may be that your Mind was perplexed and diſquieted upon the meditation of ſtrange Events; for ſo was the Mind of *Cain*, *Achitophel*, and *Judas* that betrayed his Maſter; the Reaſon is very pregnant in the Word of God it ſelf, That *cum ſit timida nequitia dat teſtimonium condemnationis*, ſince Wickedneſs is cowardly and timorous, it gives Evidence of Condemnation againſt it ſelf; & *ſemper præſumit ſæva perturbata Conſcientia*: but Satan prevailing, his Angels execute.

I will now conclude this Addreſs to you, Mr. Garnet, by obſerving ſome ſpecial Points how ſtrangely and prepoſterouſly the Devil in his laſt Project of Powder hath altered his old Properties. For the Curſe that God laid upon the Serpent after the firſt Tranſgreſſion was, *ut gradiretur ſuper peſtus ſuum*, to creep upon his Breſt: but now we find him mounted upon the Wings of an *Eſprae* to the higheſt Region of the Air, and among the Fireworks. The other part of his Curſe was, that he ſhould eat *Pulverem*; that is, Duſt or Powder: but now ſince *Sodom* was deſtroyed by Sulphur, and the Wife of *Lot* tranſmuted into Salt, the proper Materials of that mean by which Satan wrought in this hot Fire; it appears that the Serpent from eating Powder (which was a plain device) fell, for a worſe purpoſe, to ſnuff Gunpowder. Then the Serpent did *inſidiari calcaneo*, now *capiti*, from which the Body draweth both Senſe and Influence. Then he began to *Eve*, with a modeſt queſtion, *Cur præcepit Deus?* why hath God commanded? now with a Reſolution, *Præcepit Deus*, God hath commanded. His words in thoſe carried a flouriſh of great Comfort, *Nequaquam moriemini*, but now Terror, *Moriemini*: For a great Advantage deſtroy them all. The Devil at that time did only nibble about the Text of Holy Writ, *tanquam mus ponticus*, as *Tertullian* terms *Marcion*: but now he draws the grounds of Equivocation concerning Princes Lives out of the very Scripture, and by ſchol-aſtical Authority. Satan tempted Chriſt with a fair offer, *dandi omnia*, of giving all upon the top of the Pinnacle: But now he ſets upon the great Lieutenant of God's Authority and Dignity, with an *auferam tibi omnia*, both Life and Crown, *ex penetralibus ubi Chriſtus non eſt*, as we are taught by his Evangelift. The Dragon's Ambition extended no further than the ſweeping away with his Tail of the third part of the Stars in the Firmament: But now the Plot of him and his Diſciples, was to ſweep away the Sun, the Moon, and the Stars, both out of Star-Chamber and Parliament, that no Light be given in this Kingdom to the beſt Labourers. In the time of *Saul*, the Devil was ſo modeſt, as to ſuſpend his Illuſions and Oracles till the Viſions of the Prophets began to ceaſe: But now tho' we have both *Moses* and the Prophets, & *firmiorem ſermonem propheticum*, yet he ruſtles among the Robes, & *inaudita fundit oracula*. In the beginning of the Chriſtian Church, the very Name of Chriſt was ſufficient to make Satan pack, and to quit the Poſſeſſion of tormented Men; but he hath learned a more cunning Trick of late, under the

Banner of Chriſt to fight againſt the Lieutenants of his Imperial Maſteſty. In one point I find no Change; that is, in labouring and working by all means to draw Men from their Truſt in God's Direction, to a tickle kind of Confidence in themſelves, and their own weak knowledge of Good and Ill. And as that Error was the Cauſe of *Adam's* Exile from *Paradiſe*, which was *hortus conclusus*; ſo had ſuch another almoſt divided us and our Heirs both from our Lives and Eſtates: *Et penitus toto diviſos orbe Britannos*.

I have ſtood the longer on this Point, to let you know how idly, and yet how wilfully you ſtrive both againſt the Providence of God, and the Juſtice of the Land, *Quæ tuo te jugulavit gladio*: The more you labour to get out of the Wood, having once loſt the right way, the further you creep in. For the Wiſdom of the World is Folly before God; and unpoſſible it is, that thoſe Counſels or Proceedings ſhould either have good Proof in this World, or Reward in the next, that are embued with Blood, and purſued with Tyranny. If then there be no other way to Heaven, than by the Deſtruction of God's Anointed and their Heirs, I will conclude with you Mr. Garnet, as *Constantius* did with *Aſceſius*, *Erigito tibi ſcalam, & in cælum ſolus aſcendito*; Set up a Ladder for your ſelf, and climb up to Heaven alone; for loyal Minds will not ſuit themſelves with ſuch bad Company. The worſt I wiſh to your Perſon, ſtanding now to be convicted at the Bar, is Remorſe and Repentance for the ſafeguard of your Soul; and for the reſt, *Fiat juſtitia, currat lex, & vincat veritas*.

Hereunto Garnet ſaid, That he had done more than he could excuſe, and he had dealt plainly with them, but he was bound to keep the Secrets of Confession, and to diſcloſe nothing that he heard in Sacramental Confession.

Whereupon the Earl of *Nottingham* asked him, if one confeſſed this day to him, that to-morrow Morning he meant to kill the King with a Dagger, if he muſt conceal it?

Whereunto Garnet answered, that he muſt conceal it.

Then the Earl of *Salisbury* deſired Liberty of him to aſk him ſome queſtions of the nature of Confession.

Garnet ſaid, His Lordſhip might, and he would answer him as well as he could.

Why then (ſaid he) muſt there not be Confession and Contrition before Abſolution?

Yes (ſaid Garnet.)

Then he demanded, whether *Greenwell* were abſolved by him, or no?

Garnet ſaid, He was.

The Earl then asked him, What *Greenwell* had done, to ſhew that he was ſorry for it, and whether did he promiſe to deſiſt?

Garnet answered, that *Greenwell* ſaid, He would do his beſt.

To that the Earl replied, that it could not be ſo; for as ſoon as *Cateſby* and *Percy* were in Arms, *Greenwell* came to them from Garnet, and ſo went from them to *Hall* at Mr. *Abington's* Houſe, inviting them moſt earneſtly to come and aſſiſt thoſe Gentlemen in that Action. Hereby, ſaith he, it appears, that either *Greenwell* told you out of Confession, and then there needs no Secrecy; or if it were in Confession, he profeſſed no Penitency, and therefore you could not abſolve him. To which the

the Earl added, That this one Circumstance must still be remembred, and cannot be cleared; That when *Greenwell* told you what *Catesby* meant in particular, and you then called to mind also what *Catesby* had spoken to you in the general before, if you had not been so desirous to have the Plot take effect, you might have disclosed it out of your general knowledge from *Catesby*: but when *Catesby* offered to deliver you the particulars himself, as he had done to *Greenwell*, you refused to hear him, lest your Tongue should have betrayed your Heart.

To this *Garnet* weakly replied, That he did what he could to dissuade it, and went into *Warwickshire* with a purpose to dissuade Mr. *Catesby*, when he should have come down. And for Mr. *Greenwell*'s going to Father *Hall*, to persuade him to join, *Garnet* said he did very ill in so doing.

To that the Earl of *Salisbury* replied, That his first Answer was most absurd, seeing he knew *Catesby* would not come down till the sixth of *November*, which was the Day after the Blow should have been given, and *Garnet* went in the Country ten days before. And for the second, he said, That he was only glad, that the World might now see, that Jesuits were condemned by Jesuits; and Treason and Traitors laid naked by the Traitors themselves: yea, Jesuits by that Jesuit, that governs all Jesuits here, and without whom no Jesuit in *England* can do any thing.

Garnet (as it should seem) being here mightily touched with Remorse of his Offence, prayed God and the King, that other Catholicks might not fare the worse for his sake.

Then the Earl of *Salisbury* said, Mr. *Garnet*, is it not a lamentable thing, that if the Pope, or *Claudius Aquaviva*, or your self, command poor Catholicks any thing, that they must obey you, tho' it be to endanger both Body and Soul? And if you maintain such Doctrine among you, how can the King be safe? Is it not time therefore, the King and the State should look to you, that spend your time thus in his Kingdom?

Garnet said very passionately, My Lord, I would to God I had never known of the Powder-Treason.

L. C. J. *Garnet*, you are Superior of the Jesuits; and if you forbid, must not the rest obey? Was not *Greenwell* with you half an hour at Sir *Everard Digby*'s House, when you heard of the Discovery of your Treason? And did you not there confer and debate the Matter together? Did you not send him to *Hall*, to Mr. *Abington*'s House, to stir him up to go to the Rebels, and encourage them? yet you seek to colour all this; but that's but a mere shift in you. And notwithstanding all this, you said, No Man living, but one, did know that you were privy to it: then belike some that are dead did know it. *Catesby* was never from you (as the Gentlewoman that kept your House with you confessed) and by many apparent Proofs, and evident Presumptions, you were in every particular of this Action, and directed and commanded the Actors: nay, I think verily you were the chief that moved it.

Garnet said, No, my Lord, I did not.

Then it was exceedingly well urged by my Lord Chief Justice, how he writ his Letters for *Winter*, *Wright*, *Fawkes*, *Baynam*, and *Catesby*, principal Actors in this matchless Treason. Besides, his Lordship told him of his keeping the two Bulls to

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prejudice the King, and to do other mischief in the Realm; which, when he saw the King peaceably to come in, then being out of hope to do any good, he burnt them.

Here Mr. Attorney caused to be read the Confession of *Hall*, alias *Oldcorne*, the Jesuit, under his own hand (which he said was *Omni exceptione major*) against him; wherein he confessed, that *Humphry Littleton* told him, that *Catesby* and others were fore hurt with Powder, and said that he was exceeding sorry that things took no better effect; whereat *Hall* wished him not to be discouraged, nor to measure the Cause by the Event: For tho' the eleven Tribes of *Israel* went twice by the special Commandment of God against the Tribe of *Benjamin*, yet they both times received the Overthrow. So *Lewis* the French King, in his Voyage into the Holy Land against the Infidels, was overthrown, and his whole Army discomfited, tho' his Cause were good. And so likewise the Christians, when they defended *Rhodes* against the *Turks*, lost the City, and the *Turks* had the upper-hand. And this he confessed, and apply'd to the Fact of *Catesby* and others for the Powder-Treason; and said, It would have been commendable when it had been done, tho' not before.

After this, Mr. Attorney open'd, how *Francis Tresham*, a delinquent Romanist, even in articulo mortis (a fearful thing) took it upon his Salvation, That he had not seen *Garnet* in sixteen years before, when *Garnet* himself had confessed he had seen him often within that time; and likewise, that *Garnet* knew not of the Spanish Invasion, which *Garnet* himself confessed also, and which two things *Tresham* himself had formerly confessed to the Lords; yet for a Recantation of these two things upon his Death-bed, he commanded *Vavasor*, his Man, whom I think (said Mr. Attorney) deeply guilty in this Treason, to write a Letter to the Earl of *Salisbury*. And to shew this his desperate Recantation, Mr. *Tresham*'s Letter was offer'd to be read.

But before the reading thereof, my Lord of *Salisbury* said, because there was Matter incident to him, and to that which should be read, he thought fit to say something. To which purpose he said his Desire was, truly to lay open what cause there was for any faith to be given to these Men's Protestations; when they, to colour their own Impieties, and to slander the King's Justice, would go about to excuse all Jesuits, how foul soever, out of an Opinion that it is meritorious so to do, at such time as they had no hope of themselves. Such is it to be doubted, that Sir *Everard Digby*'s Protestations might be at the Bar, who sought to clear all Jesuits of those Practices which they themselves have now confessed *ex ore proprio*. That such was also *Tresham*'s Labour, who being visited with Sickness, and his Wife in Charity suffered to come to him, this Letter was hatch'd by them, and sign'd by himself some few hours before his death, wherein he taketh that upon his Salvation, which shall now by *Garnet* be disprov'd.

Then the Letter was read, being to this effect: That whereas since the King's time he had had his Pardon, and that to satisfy the Lords who heretofore examined him, he had accused *Garnet*; that now, he being weak, desired that his former Examinations might be called in, because they were not true; and set down upon his Salvation, that he had not seen *Garnet* in sixteen years before.

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Then my Lord of *Salisbury* shewed and said, it was a lamentable thing; for within three hours after he had done this, he died: and asked *Garnet* what Interpretation he made of this testamental Protestation?

Garnet answered, It may be, my Lord, he meant to equivocate. Here was the Examination and Confession of Mrs. *Anne Fawkes* offer'd to be read, also to confirm *Tresham's* Perjury, who confessed that she had seen Mr. *Tresham* with *Garnet* at her House three or four times since the King's coming in, and divers times before, and that he had dined with him; and that *Garnet* always gave him good Counsel, and would say sometimes to him, and others, Good Gentlemen, be quiet; for we must obtain that which you desire by Prayer. She confessed also, that they were at *Erith* together the last Summer.

After all this, *Garnet* being demanded if these Examinations were true, he affirmed they were. And then were his own Examinations likewise read to the same effect; wherein he both confessed the seeing of Mr. *Tresham*, and his sending into *Spain* about an Invasion.

Here my Lord of *Salisbury* concluded, That that which was said of Mr. *Tresham*, and others, was not done against Charity to the Dead, but upon inevitable necessity, to avoid all their slanderous Reports and Practices; for he said that even now there was current throughout the Town, a Report of a Retraction under *Bates's* hand, of his Accusation of *Greenwell*, which are strange and grievous Practices to think upon. But this Day shall witness to the World, that all is false, and your self condemned not by any but your self, your own Confessions and Actions. Alas! Mr. *Garnet*, why should we be troubled all this day with your poor Man, were it not to make the Cause appear as it deserveth? wherein God send you may be such an Example, as you may be the last Actor in this kind.

Hereupon my Lord Admiral said to *Garnet*, that he had done more good this day in that Pulpit which he stood in (for it was made like unto a Pulpit wherein he stood) than he had done all the days of his Life-time in any other Pulpit.

Then was another Examination of Mrs. *Anne Fawkes* read, wherein she confessed that Mr. *Garnet* and she were not long since with Mr. *Tresham*, at his House in *Northamptonshire*, and stayed there.

After this, my Lord of *Salisbury* said, Mr. *Garnet*, if you have not yet done, I would have you to understand, that the King hath commanded, that whatsoever made for you, or against you, all should be read, and so it is; and we take of you what you will. This Gentlewoman that seems to speak for you in her Confessions, I think would sacrifice her self for you to do you good, and you likewise for her: Therefore, good Mr. *Garnet*, whatsoever you have to say, say on in God's Name, and you shall be heard.

Then *Garnet* desired the Jury, that they would allow of, and believe those things he had denied and affirmed; and not to give credit unto those things whereof there was no direct Proof against him, nor to condemn him by Circumstances or Presumptions.

The Earl of *Salisbury* demanded of him, saying, Mr. *Garnet*, is this all you have to say? if it be not, take your time, no Man shall interrupt you.

To whom *Garnet* answer'd, Yea, my Lord.

Mr. Attorney humbly desired all the Lords Commissioners, that if he had forgotten to speak of any thing material, that their Lordships would be pleased to put him in mind of it; who was assured by my Lord of *Salisbury*, that he had done very well, painfully, and learnedly.

Then Mr. Attorney desired the Jury might go together, who upon his Motion going together forth of the Court, within less than a quarter of an hour return'd, and found *Henry Garnet* guilty.

Whereupon Mr. Serjeant *Crooke* pray'd Judgment.

Then Mr. *Waterhouse*, the Clerk of the Crown, demanding what he could say for himself, why Judgment should not be given against him?

Garnet made answer, that he could say nothing, but referred himself to the Mercy of the King, and God Almighty.

E. of North. **T**H O' some of *Plato's* Followers, and those not of the meanest Rank, have rather apprehended in Conceit, than demonstrated by streight Lines, that nothing is which hath not been before: If it were possible to take right Observations out of true Records, and that all Counsels and Attempts as well as Configurations and Aspects, return as it were *ex postliminio*, by Revolution to the Point from whence they first began: Yet if my *Ephimerides* fail me not in setting up the Figure of this late intended Plot, I may confidently pronounce with a grave Senator, *Repertum esse hodierno die facinus, quod nec Poeta fingere, nec Histrio sonare, nec Mimus imitari poterit*: So desperately malicious, and so unkindly and unseasonably fruitful is our Age in producing Monsters, when the force and heat of Charity decays, and so violent are the damned Spirits of Satan's black Guard now before the winding up of the last bottom of terrestrial Affairs, in spinning finer Threads of Practice and Conspiracy under the Mask of Piety and Zeal, which the Spirit of Truth termeth most significantly *Spiritualis nequitia in caelestibus*.

Upon this Ground I am moved at this Instant, Mr. *Garnet*, to address my Discourse to you, not so much in respect of your own Person, *aut quia te nostra sperem prece posse moveri* (tho' from my heart I pity the shameful Shipwreck of your Obedience and Conscience upon so false a Sand) as for their sakes that have not yet learned in our Saviour, that in one Element a Man cannot *duobus servire dominis*: and withal in the King our Sovereign's behalf, to exact at your hands (that hold the Hearts of many Followers by Lease for Life) a precise Account of the Lives of all those Castaways, *Quos vel apud te perditos invenit vel per te perdidit*. For either you that are an Object unto many watching Eyes, may be drawn by God's Grace working with my charitable Wishes, to lament, not the bad Success (for so do Men that are desperate) but the wicked purpose and intent of this crying Sin (which is proper only to the Penitent) or be brought so far at the least out of the black Deeps of Induration, with the Mother of *Petrus Lombardus*, as to be sorry that you cannot be sorry.

The streights of Time, the length of the Trial, and the weariness of the Auditors, may be and

** This Speech exceeds the Proportion wherein it was first uttered, and is inserted as it was afterwards amplified and enlarged by the Earl, when he delivered it to the Bookseller.

are great Discouragements to such a Discourse as craves Time, and were better not begun at all, than not perfected. But since the Law and Prophets in this Case in hand, stand chiefly as the Ground-work of deposing Kings, and absolving Subjects from the Right which they owe to their own natural and lawful Sovereigns by the Laws of God and Man; I shall be forced in discharge of my Duty at this Instant, to borrow so much Time of these attentive Hearers, as must be payed again forthwith to the Service of the State: for otherwise, *væ mihi*, as the Prophet threatens, *quia tacui*: and yet we may conclude with another of the same Rank, that *Etiam si ego tacuero, clamabunt lapides*.

But first I am to let both you and the whole World know, that you are not called this Day to the Bar for any Matter of your Conscience, as some perhaps may publish out of Rancour or Perversity of heart, to set a fairer gloss upon the ground of your Profession. Since the first time of your coming to the Council-board, you have not been so much as asked any Question about the places of your Resort, the supporters of your Employment, or the means of your Maintenance, before the Powder-Project, which hath no kind of Affinity with Religion or Caution, but with Fury and Implacability came to be resolved on by a Pack of *Bouteux*: tho' you cannot be ignorant what the Parliament hath decreed, and some Persons of your Society have suffer'd in the late Queen's time, for presuming to exercise a kind of Jurisdiction within this Realm, that neither Policy of State can admit, nor Allegiance can justify. I will add somewhat more for the greater Improvement of the King's Mercy, and the more just Aggravation of your Ingratitude: You are not pressed to any Peril of your Life, with publishing those Bulls, which in the Queen's time neither had (as by Confession appears) nor could have other End than the Forestalment of the King's lawful Claim, when the Fruit shall fall from the wasted Tree, and the fainting Sun (whose Beams about that time begun to wax both dim and waterish) must of necessity set in our Hemisphere.

The King's free Pardon (which, as the Times stood then, should have called for a *melius inquirendum*, before it had found passage without obstruction of any doubt) was applied by you, and other of your ghostly Complices, to many festered and filthy Ulcers of this kind.* By this free Pardon (so far as you have not since relapsed into worse Attempts) even your self Mr. Garnet, stand at this present, *rectus in Curia*: wherein tho' it become me not to descant about the measures and proportions of my Master's infinite Grace, yet I may tax you, for the bad Requital of so high a Benefit, and lament the King's Misfortune, that like an Eagle was in so great peril of receiving Wounds (almost to the Death) by the Quills of his own Clemency. These are not the true Grounds, nor proper Motives of your standing forth; but your Art in cherishing, your Malice in encouraging, your Impiety in strengthening a kind of Practice, never heard nor thought upon before in any Age, against the Life of the most gracious and just King, that ever reigned on either side of *Trent*; of a Queen renowned both for her own Worth, and for her happy Fruit; and of a Prince, whom without Ostentation I may be bold to call, the sweetest and the fairest Blossom that ever budded, either out of the white or the red Rosary.

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God's Law forbids a Man that would live long and see chearful days, to destroy *matrem cum filiis*, even in those Creatures that are not Images of the Deity: But you, Mr. Garnet, out of your anointed Influence of superabundant Grace, endeavoured your best and uttermost to bruise the very Nest-Egg of this royal and high-flying Airey, if it had been possible: Peers, Bishops, Knights, Burgeses, Judges, Serjeants, and all sorts of Officers were drawn in by a Writ of *Corpus cum causa* to this *feu de joy*, that it might blaze more gallantly. It is not the wearing of a Crucifix, which you compare to the sign of *Tau*, that could have secured any of your own Affection, if they had been left unwarned, tho' it had been hallowed at *Rome*. No Relique (instead of the red List that was a Token of Protection to *Rahab* and her Family) could have distinguished a Catholick from a Protestant, when *Guy Fawkes* had the Match in his hand. No kind of holy Grains could have added the weight of one Grain to the Reputation of any *Romanist*, after once the hand of *Greenwell* had written the Sense of the Hebrew word *Thekell* upon the Wall, (that is) *Appensi in statera, inventi sunt minus habentes*, being weighed in the Scales of your Schools, should have been found over-light in the Balance. Your end, as I imagine, was according to the Threats of the Stoicks to purge this World by Fire, or in some way with *Democritus*, to create a new World *ex atomis*: or because *Catesby* did set *Thomas Percy's* Offer light, which was *tollere unum*, your Desire was by this one Act *Tollere*, not the Man but Humanity, not *Unum* but Unity. The Plot whereof *Livy* speaks, of dispatching the whole Senate of *Rome* in an hour: the Device at *Carthage*, to cut off one whole Faction, by one Enterprize: the Conspiracy of *Brutus* and *Cassius* to kill *Cæsar* in the Senate: the Project of destroying one Conclave, the greatest part of the Cardinals: the *Sicilian* Even-song, and the *Parisian* Mattins: Nay, the Wish of *Nero*, that *Rome* had but one Head, which he might cut off at one Blow, came far short to the Milchief of this Invention, which spared neither Age, Sex, nor Degree. And therefore I confess, if *Catesby* your Disciple were alive, thus far he might vaunt, and without Exception, that he had surmounted and transcended *Catiline* in the Sphere of his own Treachery. But thus we learn by *Tertullian*, that *favos etiam vespe faciunt*, Wasps as well as Bees make Combs, tho' instead of Honey, we find Gunpowder.

Surely this was not the Fire that appeared unto *Moses* in the burning Bush: It was not the Fire that should purge the Sons of *Levi*, tho' your *Levites* conceived so: It was not that Fire which was cast into the World by Christ, with a Purpose that it might burn: It was not that, by which Men should be saved that build over weakly upon the true Foundation of Faith. But it resembles more lively that false Fire which began to glimmer, *Post commotionem, quando in commotione non erat Dominus*. It is like to that strange Fire which *Nadab* and *Abihu* would have offer'd upon God's Altar, with a Zeal that was preposterous: it hath the wasting quality of that Wildfire, which issuing *ex Rhamno*, out of the Bramble, would have destroyed the stately Cedars of *Libanus*. Nay, to speak properly, or draw nearest to the Nature of that quick dispatching Fire, which you and your Disciples, Mr. Garnet, utterly despairing to draw down from Heaven (because you know that such a like Demand received a Repulse, whilst Christ was

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conversant

conversant on Earth among your Betters) sought by a trick to obtain at the hand of Satan (the great Master of the Fire-works) and as the Poet writeth, *Flectere cum nequeas superos Acheronta movebas*. But God wrought so, that by this Fire (since, *per illum fides proborum collucet*) the Faith of Subjects that are dutiful doth shine more brightly, and the State wins Honour. Look not now therefore that the Ladies of *Israel* shall meet you with their Timbrels in the honour of this Attempt: for all Actions are not praise-worthy, which some Persons of your Profession study to enamel with pretence of Godliness. In thinking of *Telemachus*, we set little by *Astyanax*: Easily may Affections wander, where the Rules of Conscience do shift; and we find, that *umbra* is not ever *eo major quo serior*: But if bloody Passions can thus far prevail *in arido*, what hope is there of better Proof *in viridi*, which in comparison is but *linum fumigans*? You seek to raise your Glory out of your Sin, but *quæ est gratia*? What thank is it to you, according to the demand of an Apostle, if for your evil Deserts you suffer Stripes? for what the Jews objected to our Saviour (tho' impudently) we dare speak truly and confidently to all those that were privy to this Pack with you, that *Non de bono opere lapidantur, sed de blasphemia*. Saint *Augustine* speaketh of some hot-headed Fellows in his Time, that notwithstanding their Life led in this World, *more latronum*, yet in their Ends affected *cultum & honorem Martyrum*: among whom I shall ever rank (with just cause) these Powder-men. But if as Saint *Peter* saith, *Bene facientes patienter sustinetis*, (which is far from the Rage of your hot Spirits) *hæc est apud Deum gratia*, which your Projects merit not. These are perhaps the days which *Nabal* meant, complaining *hodie increbuisse servos qui fugiunt*, nay, which is worse, *qui persequuntur Dominos*: and therefore if you will not learn of *Balaam*, to beware of speaking more than that which God putteth into your Mouth; yet howsoever Passions may spur you forward, learn of *Balaam's* Ass to shrink when you find the Angel of God's Wrath opposed, lest as *Abigail* spake religiously and wisely to King *David*, *Cum mors advenerit*, when Death shall approach, who stands upon the Threshold and begins to knock at the Door of your Heart, *Sit tibi in singulum*, it cause you to sigh inwardly, not *quod effuderis, sed quod effundere volueris*, not for having shed, but because you would have shed Blood that is most innocent.

How well the Project of supplanting Princes, and subverting States, agrees either with the title of a Jesuit, or the duty of a Priest, who should rather temper Passion, than disclaim Charity; the Pharisees themselves express in teaching *non licere*, that it was not lawful for them to kill any Man; much less would they, as it is more than probable in the warp of Youth, when their Hair began to wax as white as Snow, have taken Eyes into their Heads like Burning-glasses to give fire to this Train: And yet Truth itself hath said (which both sides must believe) that unless our Righteousness exceeds theirs, we must not expect to be Heirs of Eternity. It will be long before some of you can protest with *Paul*, that you are *mundi*, clean and pure from all Men's Blood, or with *Gregory* to *Mauritius* the Emperor, that he would never *miscere se in cuiusquam mortem*, or call to mind either the Piety of that godly Bishop in a better time, that would not suffer those Hands to be imposed on his Head by Ordination, that were re-

persæ sanguine, or the mishap of *David* that might not rear the Temple, for the staining and embruing of his hands with Blood. Resort to the very Text it self, (or if it please you, to your own Canons) to enquire whether *Paul's* Restraint of intermeddling with secular Affairs were enjoined with a *non obstante*, so far only as concerned Projects and Plots for Gunpowder. Your safest Course, Mr. *Garnet*, as I suppose, is to stay your Judgment with that Staff of old *Jacob*, whereof mention is made in *Genesis*, in these break-neck Passages, that is, with that advised Sentence which he pronounc'd against *Levi* the Father of succeeding Priests, for killing the Sons of *Hemor* after Circumcision, the same being in that case as well a Bond of Promise, as a Seal of Faith; since I do verily believe that the Protestants accord with the Catholicks in more points of Faith and grounds of Doctrine at this day, than those of *Sichem* did with *Jacob* and his Family. By resolving this Passage into Parts, we shall find a great resemblance both in the point of Fact, and in the resolution of Right with this present Case, upon which we have reason to fix both our Eyes and Observation. For first, *Jacob* out of Conscience and Humanity resolves, *Non ituram animam suam in consilio Levi*, that his Soul should never march in the Council of *Levi*, *Nec in cætu illorum futuram gloriam*, nor his Honour shine in their Society: What is the reason? Because in their Rage they have slain a Man (much less then the destruction of a Prince with his Posterity and whole Estate) *Et in malitia suffoderunt murum*, and in their Malice digged down a Wall; which in my opinion either misleth hardly one Hair, or very narrowly your Project's Invention, in digging at the Wall of the Parliament. What is *Jacob's* Sentence upon the Fact? *Maledictus illorum furor quia pertinax, & indignatio quia dura*: which Curse in a more lively manner (if possible it be) than the very Fact it self, suits the Comparison. For who knoweth not, that when Malice taketh hold of Humour only, as Fire doth of Straw, tho' it cause a great blaze at the first kindling, yet it is quickly spent, and only the Smoke remains? but when it taketh hold of Conscience, as Fire doth of Steel, *Quod tardè acquisivit diu retinet*, then such Marks are Monuments. Touching the title which *Jacob* bestoweth for their Labours, calling them *Vasa iniquitatis bellantia*, I may protest that both you and *Greenwell*, and all they that were privy to this accursed Plot, deserve this style upon better ground than *Simeon* and *Levi*; by so much as your Indignation compared with theirs by due Circumstances, was by infinite degrees *durior*, more hard than theirs. For tho' the Feat (God's name be praised) were not fully wrought, yet you know, Mr. *Garnet*, who it is that compriseth our Consent both within the compass and the censure of a deadly Sin, and what Father saith that, *Quod deest operi inest voluntati*. The common Law would punish Treason in the very heart, if the eye of Inquisition could extend so far; and therefore the Providence of God in preventing by his Mercy this Destruction, is no discharge to your Intention in contriving it. By the course and recourse of Times and Accidents, wise Men observe, that very seldom hath any mischievous Attempt been undertaken for disturbance of a State, without the Counsel and Assistance of a Priest in the first, in the middle, or last Act of the Tragedy; and that all along with such a Chorus of Confederates to entertain the Stage, while the Lives and Fortunes of great Princes

Princes being set upon the Tenterhooks, have put all in hazard. For while *Moses* stood in conference with God upon the Mount, his Brother *Aaron* impatient (as for the most part Churchmen are in their Desires) of Pauses or Delays, fell instantly to mould and worship the golden Calf, to their Commander's Vexation and God's Dishonour. *Ablatbar* was condemned for complotting with the *Shunamite*, and *Joab* Lieutenant-General against his Sovereign. With what Distemper and Disorder some Priests have rock'd the Cradle of the Churches Infancy in raising Heresies (the Seeds of Factions) only to that end, no Man can be ignorant, that hath run over the Churches Histories.

Odo, Bishop of *Bayonne*, was imprison'd by his Brother the first *William*, as a stirrer of Sedition, and after conspired with *Robert* Earl of *Mortaigne*, to depose his Son, against whom also *Geffrey*, Bishop of *Constance*, fortify'd in actual Rebellion the Castle of *Bristol*. The Captivity of the Lion-hearted *Richard*, Champion of the holy Wars, was by the Practice of *Savaricus*, Bishop of *Bath*. *Gervas* the great Preacher enter'd with *Lewis* the French King's Son, purposing to root out the Race of our Kings, and to plant himself and his Progeny. Of the rebellious Army that usurped against *Henry III.* the Title of *Exercitum Dei* (alio' by the Pope's Legate, *reputati sunt filii Belial*) *Clerici fautores erant*, saith the Monk of *Chester*. For Conspiracy against the first *Edward* was the Archbishop of *Canterbury* exiled the Kingdom. And before that *Isabel*, the Wife of the second, durst undertake the Plot of Deposing her Husband by a damnable Device, for the raising of her Son, she sent in a Pack of Preachers, poisoned with Prejudice against the present State, to prepare the People's Minds by false Suggestions, to the Change which was intended to follow. And *Adam de Orleton*, Bishop of *Hereford*, that was the first Deviser, continued the chiefest Feeder of that Diffension between the Husband and the Wife, taking occasion in a Sermon preached at *Oxford*, in the presence of the Queen, and all the Rebels, upon that Text of the Scripture, *Caput meum doleo*, to express by Deprecation of his lawful Sovereign, how many Mischiefs grew to the Commonwealth by a corrupted Head that govern'd them. For aiding the Enemies of *Edward III.* was the Bishop of *Hereford* arraigned. And the Chaplain of *Wat Tyler*, that advised his Chieftain (as you Mr. *Garnet* did your Followers) to destroy all the Clergy and Nobility, was *Ball* a Mass-Priest. With *Glocester's* Duke against his Sovereign *Richard*, was *Oswald*, Bishop of *Galloway*, the chief Complotter. Priests and Friars they were that suborned a false *Richard* against the fourth *Henry*, whereof eight being *Minors*, were hanged at *Tyburn*: And *Maudelen* himself, that took upon him the Habit and Person of the King, was a Priest also, to keep them company. *Scroope*, the Archbishop of *York*, for complotting a Conspiracy with the Earl of *Northumberland* against the same King, lost his Head for his labour. *Beverly*, an anointed Priest, not to be behind some other of his Fellows in these seditious Attempts, conspired against the fifth *Henry*, with the Lord *Cobham*, Sir *John Oldcastle*.

I have seen the Copy of a learned and wise Letter, written by Bishop *Chicheley*, a Prelate of your own, Chancellor to that King, gravely advising him to beware of admitting a Legate Resident in the Realm, in respect of the sharp Effects by stirs that have been raised in former Times by

Persons of that Habit; pointing as it were to *Henry Beauford*, who afterward was both Author and Actor of more Mischief than almost could be expected or feared.

They were Priests and Friars that in the First of *Edward* the Fourth, conspired with *Jasper*, Earl of *Pembroke*, and were afterward attainted and executed by Act of Parliament.

Doctor *Shaw* was a Priest, whom *Richard III.* made the Trumpet at *Paul's* Cross of his wrongful Claim against the rightful Possession of his innocent Nephews.

That Impostor that suborned *Lambert*, to take upon him the Person, and usurp the Right of the Duke of *York*, against the blessed Union of the two Roses, was a Priest in *Ireland*. Wherein I note, that as a Priest would then have forestalled, so now two Priests, *Greenwell* and *Garnet*, would have cut off the Union. He was a Monk of *Henton* that inticed the Duke of *Buckingham* by seducing hopes, to the Ruin of as great a House as any Subject in *Europe* (bearing not the surname of a King) can demonstrate: whereof both I receive a wound, and all that descend of him.

I speak not of those Popes, that exercising more the Sword of *Paul* with Passion, than the Keys of *Peter* with Instruction, have been kindlers of great Broils: nor of the three powerful Cardinals, *York*, *Lorraine*, and *Arras* in our Age, that during their times were not much answerable for sloth or idleness, whatsoever they are otherwise for time ill employed, being Persons of great Spirit and too great Activity: nor of those Churchmen, that by their Doctrine in the Pulpit, and Subscription of Hands to traitorous Decrees, embased the two Daughters of King *Henry* the eighth, both before and after the Death of King *Edward* the sixth, for satisfaction to the Pride and Ambition of an aspiring Humour.

I pass over the brainfick opposition of *Knox* and *Goodman*, against the two Renowned *Marys*, both Queens of *Scotland*, Regent and Inheritrice in our days: nor of the fiery Triplicity of *Ballard*, *Clarke*, and *Watson*, of which number, the first practised the slaughter of the Queen deceased, the other two of the King our Sovereign. I rip not up the Complots of *Sergius* the Monk, to bring the *Turk* into the Empire of the East; nor of those false Prophets, that established the Race of *Xerif* in *Barbary*. My only drift and purpose is, to compare former Practices with the late Attempt, (tho' far exceeding and surmounting all that went before) to make true Subjects see for the better Trial and Examination of Spirits, that as well some Priests in Christendom, as those *Salii* that were Chaplains to *Mars* at *Rome* in the reign of Idolatry, took delight by fits in tossing Firebrands from Camp to Camp, for the Inflammation of evil Affections and worse Practices. But the Circle of a Crown Imperial cannot be foldered, if it once receive the smallest crack. Sinews that are cut in sunder, can never knit: neither is it possible that there should be *integralis unitas in solutione continui*. I will therefore conclude this Point with the grave and learned Judgment of *Sozomen*, an anti-ent Writer of the Church Primitive, *Universum accidere in sacerdotum diffidiis, ut respublica motibus & turbis agitetur*: that it happens generally in the Diffensions of Priests, that the Commonwealth it self is shaken with the Convulsions of Conspiracy.

It is very probable, Mr. *Garnet*, that the late Queen, in case the thread of her worn Life could have been spun further on toward these misty Days, (that have somewhat overcast the brightness of your enticing hopes upon the settling of this State in the succession of so rare a King) should have run some strange hazard both of her State and Person, among your Mines and Powder Trains (having indeed imbrued her Sword in the blood of some choice Persons of your Society by the warrant of her Laws;) since this sweet Prince our Sovereign, that before his coming always wrote his Laws in Milk, and ever since hath been very careful not to write in Blood, can thus hardly either by his own gracious Deserts, or his Council's incessant Care, be secured from the Shambles. I have not read, neither do I believe, that the Murder of any anointed King hath been accounted in any religious or just Age, either an Act of Prowess, or a Step to Martyrdom. I could not have thought, without this demonstration of Proof, that any Man had been left in the world, since the death of *George Buchanan*, to proclaim Prizes for the slaughter as well of Kings as of Tygers. But if it were not impossible (which now I find with grief of Heart) for any one spark of Loyalty to live in an Ocean of immoderate and exorbitant Affections; surely I should have expected from you and your friends, Mr. *Garnet*, effects of better inclinations toward so mild and gracious a Prince, as never searcheth Ulcers but with a shaking Hand, and in searching all, hath a more earnest desire, *non invenire quod querit, quam invenire quod puniat*. For, to speak truth without Flattery, (which I abhor as the Canker of all generous and worthy Minds) have not both you and yours received and enjoyed many favours from the King, which in all likelihood were not in the last time to be look'd for? Would the late Queen, think you, have bestowed honour, by laying the Sword of Knighthood upon the heads of so many *Catholicks*, as the King hath done since his entrance? Would the Queen have allowed unto all, or any of the *Recufants*, that free kind of access both to her Person, or to her Court, which the King hath done (not only upon just Occasions, but for their comfort) and in effect, at their pleasure, without making any separation between those, that before his coming saluted the fair promise of his hopeful day, and others that would have prevented it? Was not the gate of Justice opened *Trojano Tyrioque* to Protestants and *Catholicks* alike, with that indifferent and equal regard, that it hath been since to the shutting up of those Mouths that were most mutinous? Was the late Queen so confident in the fidelity of any *Catholicks*, as to employ them without distrust to foreign Princes in Embassy? Would the Queen have called the chief *Catholicks* to her Council-board, that upon the laying open of their just Complaints, they might have redress with favour? Might the *Recufants* of best Behaviour and Countenance in the late Queen's time, live in their own Countrys, dispose of their Estates and Tenants, and enjoy their Pleasures, without any other mulct than the former Laws had laid on them? Was it free for *Recufants* in those days, that had been cast behind in arrearages (for want of answering their Payments in due time to the Crown) to compound with a Commission directed only to that end, almost for what Term and at what Rates he might best satisfy? Did the Com-

passion of the late Queen extend so far in favour of *Recufants*, as to put them in possession of their whole Estates, drawn out of the Farmers hands upon due proof made of Spoil, without further demand of any other Contribution or Taxation than the Law limited? Was it any part of the late Queen's care, to give order for the chastisement of Informers and Messengers, that preyed upon the prostrate Fortunes of *Recufants* with harder measure than the Justice of the State warranted? Was it free for Subjects of all Affections and Religions (during the late Queen's Life) that delighted in the Wars, to serve what Prince or State it pleased them, without either Exception or Punishment? Did the late Time leave it to the choice of young Gentlemen that had Licence to travel, during the time of their abode in foreign Parts, to frequent what Places, Courts or Companies they would, without yielding an Account at their return of their Adventuring? Had it been possible to have drawn from the late Queen either Restitutions or Pensions for the Maintenance of *Recufants*, in respect of Service done to Antecessors or Ancestors? Was the late Queen as cautious and tender in forbearing to take the Lives of Priests and Jesuits upon the Point of *Summum Jus*, before she were made acquainted by the Judges thorowly with the state of their Evidence? Was any Magistrate ever called to his answer for proceeding in cold Blood against a Priest, that for want of means to procure a Pardon, had been kept in Prison since the time of the Queen deceased? Was the late Queen ever pleased, that in the Pardon general at the closing up of the Parliament, Priests and Jesuits should be comprised in the List, and among others you and *Greenwell*, that at the first opening of the Spring resorted thither with as violent a thirst as ever you did to *Jubilee*; and yet in recompense thereof since that time, have been well content that the distributor of so great a portion of Grace and Bounty, should be blown up by your *Boutefeux*? A Man would think in likelihood, that both you, and all they that were encouraged and warranted in this Attempt by you, having received at the hands of so gracious a King so many Talents in a Royal Kind of Trust, should rather have studied by your best endeavours to increase the Stock, than to lessen the Principal, by burying your Talent under Ground among the Powder-Works; especially considering that our King is not like the other mentioned in *St. Luke*, *homo austerus, qui tollit quod non posuit, et metit quod non seminat*: but rather desirous with *Moses* to be rased out of the Book of Life; with *Paul* to be made *Anathema* for the common good of those Subjects that live under him. Our royal Master travels not as the other did, *in longinquam regionem ut accipiat regnum*, into a foreign Region to obtain a Kingdom, but brought a Kingdom with him out of the next Region to ours, that hereafter we may live *unanimis*, that have been so long sever'd and divided in Fraternity. But such are the qualities of many Men, and especially of you and your Complices in this Complot, that as one saith, *Non tam agant gratias de Tribunatu, quam queruntur quod non sunt evelti in Consulatum*. But when you, or any Man of your Affection and Humour shall be able out of Quintessence of Wit, or Positions of State, or Grounds of common Sense, to prove, that a Prince as opposite to your Religion as you are to his, and that vows to set up his whole

Rest and Adventure not only of all his Crowns, but of his Life and Succession, upon those Principles of Faith (which he hath sucked from his Infancy with his Nurser's Milk) to take a milder course with the Catholics than he hath hitherto done, without offence or scandal to the tender Conscience of his own Church, which he doth chiefly regard, I will acknowledge that you had more Reason to bemoan your selves (which is the furthest Period of a Subject's Power) than (as your case is now) I can admit, looking into sundry Circumstances of Peril with a single Eye, which is neither dazzled with Self-love, nor distracted by slight Appearance. For tho' you may perhaps conceive, that there wanted somewhat to the full measure of your vast Desires; yet all Men know that you prevailed far above the likelihood of any reasonable Hope: which may move you to call to mind with more evenly poised Thoughts, that judgment of a wise Author, that *inter voluptates tam numeratur id quod habes, quam id quod speras*: a good Rule for a perverse Interpreter.

The Quicksand upon which you plant the great Artillery of your Sentences and Decrees against the States and Persons of all Princes that square not with your Rules, I take to be that idle Impression, rather than true Supposition of a certain kind of Prerogative, thought to be left by our Saviour to his Spouse the Church *in deposito*, for the deposing of Princes, upon conviction of Contumacy, from their Seat of Government. For as the great Philosophers conclude the whole World to be composed of three certain concurrent Principles, that is, Matter, Form, and Privation, holding the last of the three to be rather a Principle of Transmutation than of Establishment: So likewise the Schoolmen within these last six hundred Years, have dragged into the discipline a new kind of Privation also beside the Matter, (which is the Flock) and the Form which is the Government. And this Privation hath undoubtedly metamorphosed as many States and Policies as the other hath done Shapes and Figures, if either the Complaints of Majesty, or the Smart of Patience may be accounted of in our Audit. I confess with the Woman of Samaria, that this Well is not only deep, but that I want the Bucket, which from such a Well may be fit to draw: for every Plummet is not for every Sound, nor every Line for every Level; neither is it possible out of every Block to carve Mercury: but yet since it is confessed by Robert Winter, Rookwood, Guy Fawkes, and others, that their Error in believing this conclusion upon the Warrant of a learned Man (which as appeareth now, was your self) hath been the greatest Cause, and the strongest Motive of their fatal Fault; since in like sort, it agreeth fitly with my desire to reduce as many of those silly erring Sheep that followed Absalom, *sed corde simplice & penitus causam ignorantes*, as I can from your *acheldama*, or *ager sanguinis*, (considering how many Priests have practised in these late Years to sound Points of War) it were as meet that somewhat were set down for Confutation, as for Caution: and therefore I have been the more willing to engage my Zeal and Duty, tho' perhaps above the measure of my Strength, upon this Argument, *et quantum in me est*, to shake the whole foundation of future Conspiracys.

But before that I prepare my self to this Encounter, or that I enter into this narrow List,

(wherein I expect as many Adversaries as there be Men that have Humours to limit or to conquer Kings) I hold my self bound in Duty as well as drawn by Method, to wipe away that weak Excuse which you make of your disloyal Heart, in publishing this Doctrine of curbing, suspending, or deposing Princes of high Estate, upon this ground only, that in foreign Parts you found it neither severely taxed, nor capitally punished. To let go that Maxim which binds all sorts of Subjects to frame their Actions rather to the Law of the Country wherein they live, than wherein they wander; and likewise the great Improbability of so gross ignorance in your self, and your Friends, as not to take notice of a point of State so deeply riveted in all the Courts of Justice within the Realm; I must tell you further also, that Princes fear not those Fires which are kindled in foreign States, before that some spark light either upon their Neighbours Houses, or their own Palaces. Idle Lookers-on, and frank Adventurers have not an equal sense of the danger, which the Ships and Vessels richly freighted endure at the Sea, either by false Pirates, or foul Weather. *Qui sani sunt*, according to your Construction of *Sanitas*, M. Garnet, *nec medicis egent, nec metuunt medicinam*. Their Ears are very dull, and unapt to Musick, that cannot keep Time when Fortune plays, and all sorts of Instruments are set in one Key to make full Harmony. So long doth the great Brood-Hen cluck her Chickens, as she takes them to be hers; but if once they fly from the protection and safe defence of her Wings, she leaveth them as a Prey to the Puttock. I will search no further than our own time for satisfaction in this Point, how far Princes would be patient in case they were as violently pursued and plied as the King our Sovereign hath been; than by observing what kind of Obedience hath been performed by some of that Rank when they were shot with the same Arrow. For many Men are very slack in making a Hue-and-Cry after the Thief that stealeth their Neighbours Goods, which are very forward to fly with the wings of an Eagle, when they find themselves pressed in their own particular. *Et hic si fuerint sentient aliter*, and in like cases wise Men out of experience resort to like Remedies.

But if there be no Drugs in your Shop to purge that sharp Humour, that hath been the cause of so many burning Fevers, and Distempers in this State, than your Diacatholicon, I may tell you plainly, that it strives so much against the Stomach of the King, and worketh upon Nature with that violence and loathsomeness, as he doth rather chuse to feel the Pain, than take the Pill, and to endure the worst of the Disease, than to make the best use of that Remedy. In this case he will trust his own Receipts that are made familiar by time and use, leaving other Princes to their own free Choice, which may make all Drugs to taste in their mouths like Manna, that is agreeable to their own Appetite. Princes cannot be too suspicious, when their Lives are sought, and Subjects cannot be too curious when the State brandles. I remember that when Joshua took notice of a single Man that came from Jericho, standing with a Sword in his hand ready drawn, he asked instantly, *Noster es, an Adversariusum?* Art thou of our Side, or of our Adversaries? Directing us that are now in Commission, as it were by Line and Level, in what manner and with what caution we should examine you

you and *Hall*, (since *Greenwell* is out of our reach) for you draw not one Sword (as the other did) but two at once, that is, both the Spiritual and the Temporal, against our Sovereign, and to enquire withal at what time, and in what place, and upon what advantage you and your suborned Confederates intend to wound his Royal Majesty.

For since we find, that to secure litigious Possessions, that lie subject to Surprize, it is usual and ordinary, even among Persons merely private (so long as they live in fear) to found the Dispositions and Affections of their own Dependents, Followers and Tenants, upon suspicion of a false Trick: At a dead-lift, it much more becometh great Princes (upon whom whole States and Successions depend) to take the surest hold that is possible of their Subjects Affections and Hearts, lest if they should chance, in the Day of Trial, not to be *nostri sed adversariorum*, and thereby draw their Swords of another side, and deceive the Trust that is reposed in their Faith, we might with *Rachel*, *Plorare filios nostros quia non sunt*, and call for Help too late, when Destruction were in the Door of Desolation.

This Doctrine, Mr. *Garnet*, is not drawn out of the rusty Vessels, as some call them, nor from the Lees of the latter Times which you suspect: It carries not the least taste of Prejudice or fester'd Suspicion upon Particulars. It knew no difference either of Name or Reputation, between Catholick and Protestant, when it was first set on broach by those Princes, States, and Divines, which are accounted Catholicks, and some of them canonized for Saints in the Rubricks of your own Register. For proof whereof you shall find a Patent in the Records of *Rich. II.* granted to one *Waleton*, for the searching of all Ships and Vessels inward or outward-bound in the Port of *London*, and for the sifting of all Persons likewise, *qui bullas, vel alia Papalia instrumenta deferebant*. In the same Prince's Reign, Sir *William Brian* was sent to the *Tower*, only for procuring the Pope's Bull against certain Burglars that robbed his own House, *quamvis abundans cautela non noceat* by the civil Law, and the Bulls themselves were adjudged prejudicial to the King's Prerogative. With these I match *Stephanus de Malolacu*, sharply fined in the Reign of *Edward I.* for putting a Bull in execution against a certain Knight his Adversary, without acquainting first the King or the Counsellors. *Roger Sherbrook* was called in question for procuring Bulls from *Rome*, in contemptum Regis & Coronæ exheredandæ periculum, which was the best Construction that was then made of these Traverses. *Edward II.* sent a Commission, as appeareth by Records, to enquire of any Process or Sentence brought over from *Rome* into this Land *se inconsulto*, without his Privy. It appeareth again in the time of *Edward III.* all the Ports were laid for Interception of Bulls by the King's Order. To the Archbishop of *Ravenna* was granted a safe Conduct at his coming into *England*, by the same King, with this Proviso, that he should only report *Sanctas Papæ exhortationes*, but neither send out Process, nor give Sentence, *in Coronæ & Regni præjudicium*. It was not lawful in those days to bring in any Letters either from the Pope, or any foreign Prince, without imparting them first to the Chancellor, or the Warden of the *Quinque Portuum*, which in time of the best Correspondence, as it seems to me, implies weak Confidence. *Edward III.* gave Instructions to certain noble Men that were to treat of a Peace with

France, in the Presence of the Pope, to proceed with great caution, that is, not *tanquam coram Judice, sed coram privata persona*; and not as *in figura judicii, sed amicabilem*. When the *Scots* would have had all Differences between both Kingdoms refer'd to the Conscience and Discretion of the Pope, the Peers of *England* utterly refused to give their Assent, tho' the King's own Facility should incline so far, because their King, as they vouch'd, was not to make his Answers in matters of that quality before any Judge whatsoever, *vel Ecclesiastico vel Seculari*, either Ecclesiastical or Secular. To be short, these Sparks of Jealousy were so far kindled between the Church of *Rome* and our Ancestors in former Times, altho' they were no *Lutherans* nor *Hugenots*, (as our Countrymen are termed in these days) but Catholicks according to the *Roman* Catechism, that an Order was set down by the Wisdom of the State, that the Pope's Collector at his first Arrival on our Coast, should swear solemnly to be faithful to his Crown, to attempt nothing to the King's prejudice, or in disgrace of the Laws establish'd, to put none of the Pope's Orders in execution, to the weakening of the King's Prerogative; to deliver no Mandates or Letters from the Pope, before they had been viewed and allowed by the Council of the King; to write nothing to the Pope from hence, without the King's leave; to deal no further in the business of Benefices than the Privy-Council should allow; nor without the King's Privy-Seal to depart out of the Kingdom.

These Points are tender, and such as during Peace were never offer'd by the King's of *England* to the Ministers of any other foreign Prince; and yet we read of no such Invectives or Decrees against Prince and State, as in our days are ordinary. Other Princes in like manner stood upon their guard, and with like Circumspection, as is evident by *Philip le Beau* the *French* King; who being advertised of the Pope's peremptory Proceeding upon the committing of a Bishop for evil words against himself, inquired of all his Peers both Ecclesiastical and Temporal, at a publick Convention, how far he might rest assured of their Fidelity and Loyalty notwithstanding that Decree; who answered, *Unanimi consensu se illius tantummodo esse beneficiarios*; and that what Pope or Potentate soever durst adventure to put out his Horns, or to raise his Crest by opposition to his royal Prerogative, they would live and die with him.

If Princes that were absolutely Catholicks, according to the *Roman* List, that were directed by one Canon, tuned by one Wreft, obedient to the Voice of one high Shepherd, and between whom and the Pope there was but *cor unum & anima una*, found so just cause and so great reason (notwithstanding Union in points of Conscience, and Orders of Conformity) to be tender and suspicious of their temporal Prerogative, and to cast a watchful Eye upon the Pope's encroaching Steps, in quarters that pertained neither to the Churchyard, nor the Church: How much more jealous ought true Subjects and sworn Servants in our days to be of that Prince's State, who being, as the Case standeth now, sustained and fed by another Root, directed by the Voice of other Pastors, and as careful to reform, as his Antecessors to conform, while they failed by another Compass, and upon another Coast? And whosoever will not be instructed by the Records, let him search in the Vaults and the Powder-trains of the Parliament. If in the Time of *Henry II.*

ry II. (who, touching point of Conscience, was *obedientissimus ecclesie filius*) *Vivian*, the Pope's Legate, was precisely sifted and examined by the Bishops of *Ely* and *Winchester*, (that were of his own Profession, and wore the same Badge) by what warrant he durst presume to land without special Licence from the King; and therefore gave Oath *in verbo veritatis*, to do nothing against the King's Authority: How much more watchful and reserv'd ought this State to be, in admitting *Greenwell*, *Hall*, and *Garnet* with their Bulls or Censures, *in Regis & Coronae praejudicium*, without Inquisition or Search, since there end is not as before, *implere manum*, to fill the Hand, but to replenish the Church-yard, and to stir up all conceited or discontented Men, to the taking of Arms against their lawful and redoubted Sovereign King *James*? And tho' the Pope shewing himself (in this Point) more moderate and discreet than other of his Predecessors, hath not as yet cut off the King formally as a withered or unfruitful Branch; yet to their precipitate and brainick Giddiness it was thought sufficient, as *Guy Faux* and others did confess, that the Pope on *Maundy Thursday* censures *Schismatics* in general, (tho' the most judicious among the Schoolmen, Divines and Canonists, of their part, hold directly *ad oppositum*, and dare not warrant any Conscience according to the Rules of their own Discipline) by that Censure which we may probably conceive to be more narrative than active, in respect the Process follows not. This Record concerning *Henry II.* draws to my Memory a Message of the same effect, sent to a *Scotish* Legate by *Alexander* the King of *Scotland* after that time: For it is true, that Legate proposing to sels every Parish at four Marks of Silver, and every Monastery in that Kingdom at twenty times so much, for the supply of Maintenance to the Wars in the Holy Land, was commanded by King *Alexander*, *intra Regni fines consistere*, to stay upon the Border of the Realm, & *per literas mandata exponere*, and by Letter to deliver his Instructions; for neither *Scotland* could forbear or spare so great a Sum as the Legate would exact, neither (albeit the Realm could) yet his Meaning was, to send it by so unlucky a Messenger as the Legate was; complaining that he had been robbed of the Money gather'd in foreign States before, to the loss both of his own Labour, and of the Charities of other Catholics. In conclusion, a fair Offer was made of Men for increase of Strength, which was not the Legate's aim, but of no treasure to fill Coffers, which was the chiefest end; and a thousand Marks were sent to the Pope as a mere Benevolence, which sealed up the drift and purpose of this Embassy. This Answer was exceedingly commended by the King of *England*, *qui idem expertus sapiebat*; who having tasted of the same Cup, grew wise, as I find by *Heitor Boetius*, a Roman Catholic. I mean not in this place to insert or add the Judgment of a *Scotish* Bishop, that these kind of Exactions were Tyranny; advising further all that State in a full Convention, that the Legate might not only be sent away empty-handed, (and with like Success to those, which, as the Prophet says, *Dormierunt somnum suum, & nihil invenerunt viri divitiarum in manibus suis*) but further, that an Act might pass in that Assembly, to cut off all such Errands by provisional Accord, as might *in futuro* tend to the State's Impoverishment: which was universally agreed and determined.

VOL. I.

I did very well approve, and was glad to hear the distinction and difference which you made in one part of your Speech, between the King our Sovereign (that was never swathed in the Bands, nor danced in the Lap of the *Roman* Church) and other Princes Roman Catholics, that were first incorporated by Union, and after cast off for their Contumacy: For this is somewhat, tho' I hold it not to be sufficient. And beside that, every Grain in measure is well gotten at your hand, that held the Ballance so unevenly and unsteadily: that Passage also of *St. Paul*, prohibiting the Church, or at the least confessing himself prohibited to judge those *qui foris sunt*; as you repute the King inclined to that side, which your own admission and exposition doth bear. But as it is impossible for any Man that is not a perfect *Gileadite*, without lisping to pronounce *Shibboleth*, howsoever otherwise they drank *Water curvatis genibus*: so the mischief is, that you flee too suddenly from that foundation which your own hands had fastened; and upon the question asked, What you would think of any Sentence privative, proceeding from the Pope against our King, in case either this Man, or any Successor of his should hereafter take any Course differing from that Moderation which hath been used hitherto, your *Vocales* or Vowels were changed into Mutes, your Demonstrations into Doubts, and your Eloquence into so deep Silence, as the Passing-bell might have been tolled for a Man so quickly stricken speechless with one demand, to make your last Testament, *Ut unusquisque Theophrasti discipulum te posset agnoscere*.

It now remains, that in discharge of Promise, and for satisfaction to Curiosity, I make it clear by the fairest Evidence, the most pure and uncorrupted Witnesses, and with the shortest Cut that my Compass in so vast an Ocean will admit, that none of the Patriarchs before the Law, none of the Priests and Prophets under the Law, nor Christ or his Apostles at the last expiring of the old Law, nor any of the godly Bishops that govern'd the Church of God for the space of one Thousand Years *in auditu novo* by the new Law, did ever exercise, approve, or claim that kind of Jurisdiction or any Branch of it that is extended to deprivation of Right, suspension from Rule, or sequestration from Royalty. For this I take to be that Ball of Wildfire, which hath caused so great loss of Lives and States by combustion in Monarchies.

Before the Law, tho' it pleased God upon the breach of his Decree to drive *Adam* out of Paradise (the lively Figure of the Church) that *in pœnam culpæ*, he might work for that *sudore vultus*, which before sprung up naturally, *beneficio Creatoris*, yet he left him Monarch of the universal World; a Course far different from the manner of proceeding among many of those *Roman* Pastors, which claiming the Dispensation and Distribution of *St. Peter's* Keys, *καὶ ἐξουχίαν*, have only by the strength and virtue of that supposed Warrant, fought upon Displeasure, and sometimes *causa inaudita*, not only to expel great Princes out of the state of Grace, but very often also to strip them out of the Robes of Majesty.

In the Sequestration of ungodly *Cain*, *à Dei facie*, from the face or presence of God, (which is in effect the same Censure which the Church useth at this day, *tradendo Sathanae*, because these two Lords are in one Regiment incompatible) we read not that immediately upon the Sentence this grie-

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vous Sinner was set up for a reproachful Mark, whereat either Justice might shoot, or Error might aim, as the King our Sovereign, who hath been roaved and prick'd at of late: for so far was the Providence of God from arming any Creature in this World to the least harm, much less the Disinherison of *Cain*, as for so much as concerned Life, he set upon him his own mark of sure Defence, with a seven-fold Curse against any that should rid him out of the way; and beside, left him a large Scope wherein to walk upon his own ground almost all the world over. To these two I will only add a third, which is *Esau* the lost Child, whom (notwithstanding Deprivation of that heavenly Blessing, by which all Nations should by the Merit of the blessed Seed, and holy Covenant, in plenitudine temporis, prefixed by his Providence, be reconciled to himself) yet we find that he was enlarged in his temporal Possession, secured in his Person, and increased far and near in the wide spread of his Posterity. Nay, that which maketh more to the Blemish and Reproof of our rash *Empiricks*, that can hit upon no other way to cure Diseases than by letting blood, I infer, and that upon a sure Foundation, that *Jacob*, *Esau's* younger Brother, but yet by Mercy the true and lawful Heir to the Promise, and the chief Commander after *Esau's* Fall, among the Saints of God, did a long time after, not only call him *Dominum*, his Lord, which the Holy Ghost approveth, by the Title which is given by *Sarah* to her Husband, to be a word of Power; but falling prostrate in an humble manner at his feet, with words expressing as great Love as Reverence, did respectfully and truly honour him: for *nondum venit hora*, nor many thousand years after, wherein Persons excommunicated must *ex consequente* be deprived of Dominion, rather than left to God's Chastisement.

Between the Roots of *Judah* and of *Levi*, by the Law of *Moses*, the Separations and Distances are so wide, as neither need to cross another's Walk, to intermeddle with another's Office, or to eclipse another's Dignity. Beside, I observe, that among all the Conditions affirmative and negative, positive and privative, religious and politick, that are enjoined by the first Institution to Kings, this kind of Tenure holden of *Aaron* or his Successors *ad placitum*, is neither expressed in the Grant, embroidered on the Skirt, nor engraven in the Seat of his Office; unless some will argue that the Kings of *Judah* were as well bound to submit their Scepter to the Priest's Direction, as to receive the Book of the Law at their hands: tho' we find that it was entailed by strong words to the Tribe of *Judah*, without any Reservation of Superintendency. Beside, the Plague which God doth threaten with his own Mouth, to send Princes in his Anger, and Hypocrites *propter peccata populi* for the People's Sin, were merely idle, if it were free for us at all times, upon these Visitations and sharp Corrections, by the Pope's help, either to abate our Penance, or to end our Punishment. It is expressed and improved in the Scriptures, as a Portion of the divine Prerogative to chastise Kings; then belike no part of a Priest's Jurisdiction, that is consigned to another Element. *Per Deum regnant Reges*, by God they reign: then not at the Pope's pleasure. Of God only they hold their Crowns and Dignities; then not bound by divine Laws to yield up their Crowns *in manus Papales*, in fear of Process, as some more fearfully than royally have done in other Ages, when the Popes summoned them. From

his Mouth they receive their Charge; therefore to him only and no other, they are bound to yield a just Account of their Stewardship. It is said by holy *Job*, that God places Kings in their Thrones *in perpetuum*, then far from these weak Tenures by Copy of Court-Roll, at Will, or in Court-fie. But suppose they wax violent, and apt to quarrel upon the Pride of their own Strength, who shall censure them with any Prejudice to their Estates? not the Pastor by Commission, but God by Prerogative. It is the Property of God himself *Regna transferre, & constituere*, if we believe the Prophet *Daniel*; and of no Pastor upon Earth. And he will take it for as great Presumption in any mortal Man that carries *spiritum in naribus*, and is but Earth and Dust, to call his Vicegerents to account, as any earthly Prince would esteem in any ordinary Subject, to oppose or strive against his Deputies. God giveth no Commandment in his Law, for Observation whereof we need to ask leave of any Deputy subordinate; for then were Men more absolute in his Election, than God in his Ordinance. The reverend Regard which *Aaron* had of *Moses* in respect of the civil Stroke, may tender unto all the Sons of *Adam* (how high or how great soever) that live under Kings, a Scale whereby to take the true Latitude of a Pastor's Liberty, so far as concerns this Comparison. For no Man shall aver, that God did ever give a State to any Prince (so as the same were merely independent upon the Challenge of any superior Command) but he made him likewise free from Check in the scope of his Sovereignty. If then the Question be put in this sort, as it ought, (before it work that effect which you desire) whether the Crown of *England* remain free from dependency upon superior Command or not; if *Simanca*, *Navarre*, *Sylvester*, or any of the scholastical Divines will either examine our Records, or resort to our Parliament, where Matters of like quality ought to be argued and decided, (because according to the Rules of all Divines, Religion alters not the Forms of civil Governments) or search the Reports of the Pope's own Rolls; undoubtedly they would receive the same Answer which Popes in former times have had, and with the same quick dispatch that our Antecessors in this case have thought to be requisite.

By observing with careful heed the respective manner which was used to the Kings of *Israel* and *Judah*, by the legal Priests, upon their Transgression in those Matters and Degrees which are now drawn within the compass of the Censures of the Church, it will appear that within the five Books of *Moses*, and all the Stories of the Kings, no one Decree, Reason, or Example can be found to make good the formal Process which within some few hundreds of Years have been rashly put in practice against Kings and Emperors, upon supposition of Contumacy. For tho' I grant that many of them did err, and in the same degrees, yet not one Flower of their Crowns was blasted; nor not one Hair of their Heads ruffled, nor one Grain of their royal Dignity diminished. I doubt not, but if for many Priests that were deposed during the Practice of the legal Censures by anointed Kings, and those of the best kind also, as *David*, *Solomon*, *Joas*, *Ezechias*, and *Jesias*, there could be drawn but one Example of a King deposed by a *Levitical* anointed Priest, all the Schools and Pulpits of *Italy* would ring of it: but it falls out happily, *ut quod praecepto non jubetur, exemplo careat*.

It were hard to pick out any grievous Sin against the first Table of the Law, whereof *Saul* was not guilty in his declining days: for he despaired of God's Protection, he consulted with Satan's Instruments, he slew the Prophets; and yet it is clear, that *ex solo indelebili unctionis charactere*, only by the Character of regal Unction uncancellable, he was so far privileged and secured, as well against Lay-practices as Levitical Decrees, that *David* himself entitles him *Christum Domini*, God's anointed (which may seem strange, even after God had appointed *David* himself to be anointed in his place.) And the same King and Prophet likewise forbears at two sundry times to take those Advantages against him upon fit occasion, which the Laws of God and Man allow against an unlawful Usurper to a lawful Magistrate, without a *non obstante* from above to moderate.

But one Instance above all closeth up the Mouth of Contradiction it self, and unlooseth the hardest Knot, that the *Gordians* of our Age can devise to tie upon so smooth and plain a Thread: for God himself by his own Injunction, lays a heavy Charge upon his own Elect, without all shifts of Equivocation, or Opposition, during the time of their Distress, while they sit mourning by the Streams of *Babylon*, and hanged their Harps upon the Willows, that they should not only *querere pacem illius Civitatis*, seek the Peace of that State, which was the Seat of their Exile by divine Direction; but (which is much more pregnant to this purpose) that they should pray for it, *Et in pace illius civitatis suam stabilirent pacem*, and in the Peace of that State politick, enfold, settle, and establish their own Peace and Tranquillity. So hard it is for the Policies or Passions of Men either to work or to dispense against the Directions of God: and so far is the Purpose and Providence of God, from leaving the reins of Order loose in the neck of precipitate Audacity.

Now Mr. *Garnet*, whether your Scope and Drift hath been to pray for the Peace and Prosperity of the King's Estate, (which of necessity must enjoy the privilege of *Babylon*, if you will needs account it *Babylon*) I will not appeal to your own feared Conscience, but to that Hymn, *Gentem auferto perfidam*, foully wrested and abused by your wreckful Rage.

And touching the second Point, whether you have sought to enwrap the peace of your Profession in the peace of the State, or not, I will be tried by the Powder-works. But to be short, these Reasons and Examples drawn out of the Law of *Moses* maketh the Matter clear, how far the *Levites* might undertake to deal in censuring the Crimes of Kings, their Office consisting altogether in Humility and Piety. For tho' I grant, that Assaults were made in those days upon the Persons of some Kings, sometime by expresse direction from God (which ceaseth in our days) and sometimes by the practice and presumption of Traitors, which are no more to be justified, than the Robberies that are committed daily at *Stangate-hole*, or at *Shooters-bill*: yet for our Instruction it ought to suffice, that no such plain Songs are set out in the Books of divine Tablature, and therefore upon false Grounds no State ought to suffer, either any kind of new descant to make new Division in old Integrity, or such a conceited kind of Voluntary, as only serveth to please factious Humours. Sure I am, that tho' the Rod of *Moses* were once only turned into a Serpent to give Terror, yet the Rod

of *Aaron* was preserved ever, not in *campo Martio*, but in *Testimonii tabernaculo*, sprouting forth green Leaves and sweet Blossoms.

But now to draw nearer to the life of that Discipline, which among Christians ought rightly to be reputed Regular, to examine Principles, and enter into the School of Christ orderly; we must refresh your Memory, Mr. *Garnet*, in putting you in mind, that our Saviour himself (who ought to be the highest Object of your Imitation) lived obediently to the Laws of the State in which he was born, tho' perverted by Pharisaical Constructions and Glosses in *sensum reprobum*, and *ex diametro*, repugnant to that scope of Reformation which he only aimed at, without practising with discontented Persons against the *Roman Tyranny*, either to displace the Governors, or to change the Government. He commanded his Disciples to give unto *Cæsar* what is due to *Cæsar*, reserving unto God what of right belongs to him. Christ would not take upon him to divide a temporal Inheritance, tho' pressed earnestly by the Party that was in suit: much less is it possible that out of Passion he would have disturb'd Monarchies, or transform'd Monarchies.

To prove further that his Kingdom is not of this World, he reasons *à consequenti*, because his Followers did not put themselves in arms in his Defence, as otherwise undoubtedly (in case his Empire had been squared by the common rules of secular Affections and Devotions) they would have done; tho' in our days that Argument was easily discharged, and that Want powerfully supply'd by others of that Suit, that account it a Breach of the Church's liberty to dissolve or forbid Garisons. It is true that change of Accidents may breed a change of Temper, as well in Bodies Ecclesiastical as Natural; for the Church may be at one time more quiet, safe, and prosperous, as we may be better or worse disposed, more hot or cold, more sick or whole at one time than another. But as it were a strange kind of Fit that could transform a Man with *Apuleius* into an *As*; so were it as strange a Variation in the compass of the Church, to alter Patience into Power, the Spirit into the Flesh, and Humility into Cruelty. For Philosophy doth teach, that external Accidents change inward Qualities: but without an absolute Transmutation *ipsius speciei*, of the very kind itself, they change no Substances. Therefore I wonder how *Gregory VII.* and after him *Boniface VIII.* durst adventure to claim the Exercise of two Swords (like wary Fencers) in one Scabbard, out of a Text pitifully set upon the Rack for the Countenance of a two-fold Jurisdiction, the Pursuit whereof hath and will cost many Lives, *priusquam sententia Judicis* (touching that Particular) *in rem judicatam transeat*. Yet I am sure that Christ the Law-maker gives them over in the plain Field, when they fall to dealing Blows, and instead of sounding a Point of War, cries out to all his own Followers, *Cur non potius patimini?* Since it is certain, that *in patientia possidentur anime*, Souls are possessed in patience: A Maxim far more sound and honest, than that other of the School-men, *præcipitantur Principes*, by censuring and skirmishing. From the Consistory of our Saviour cometh a direct Prohibition, that his Disciples should not *dominari sicut Reges gentium*, domineer in that fashion or manner that the Kings of the *Gentiles* did: but if those Bishops (that derive their painted and pretended Right of Deposing Kings, from the Power of Christ) might be justified according to the nature of the Plea which

they put in, they should *dominari plusquam Reges*, more than Kings, both by setting themselves above all Kings in their temporal Estates, and presuming by Censure to deprive them of their Dominions; which (setting aside the due Homage by such Kings as owe Suit and Service to Superiors) none could expect, much less demand of other: nor did ever set their foot so hard in the necks of their Peers, as Pope *Alexander* did in the neck of *Frederick*. For, is it likely, that when Christ not only commanded *Peter* to put up his Sword, drawn with greater zeal in Passion, than judgment upon Deliberation, but added also to that Charge a Commination in generality, that whosoever drew the Sword, should perish by the Sword; his Purpose was to bind the Hands of his Apostles? but yet to leave the Passions of those that should succeed them, at full liberty. Christ paid tribute unto *Cæsar*, as appeareth, as well for *Peter* as for himself; thereby moulding the Measures and Proportions of the Churches Conformity. For strange it were, that *heres succedens in defuncti locum*, the Heir succeeding in the place of the Deceased, should by any Law be strengthen'd and enabled to do more than the Testator himself might have done; or the Party to whom Delegation is transmitted, than the Principal that did delegate. One Rule can never fail, That *discipulus* is not *supra Magistrum*, because he can never fail that gave out that Rule: and if a Man observe it well between the Function of Christ which was *Magisterium*, and the Scope now shot at which is *Imperium*, the difference is infinite. Our Saviour acknowledged to *Pilate*, that the Power which he both had and exercised over him, was not terrestrial, nor temporary, but it was from Above: to which Doctrine nothing can be more repugnant, than the Schoolmen's Dream, that our Princes having at this Day the like Jurisdiction with Piety, to that which *Cæsar* held with Pride, should be subject touching their Estates and Dignities, to the Censure of his Disciples, who in Person (whilst his Conversation was here on Earth) renounced that Prerogative out of disparity to the scope and end of his Office. For as our Saviour doth prove *à minori* in another place, that his Disciples ought in reason to wash one another's Feet, because he that was their Master had vouchsafed out of humility to wash theirs; by the same consequence I prove, that whosoever professeth to be *Imitator Petri*, (as *Peter* was *Imitator Christi*) ought to desist from forcible intrusion upon these undue Claims of more than Imperial Prerogatives, which were neither challeng'd by any Levitical Predecessor, nor possess'd by the Testator, nor conveyed by the Testament. For the Grant which was conveyed by God the Father to his Son, *omnis iudicii*, of universal Judgment both in Heaven and Earth, is absolute; whereas the Charter which the Church of Christ receiveth of her Spouse, is limited and tied to the validity of the Evidence, and the strength of Witnesses, with the Prescription of Antiquity. When Christ knew that some would even in Passion make him a King perforce, and maugre his Affection and Resolution, *fugit in montem solus*; whereas they themselves, as *Successores Christi*, & *heredes Apostolorum*, descend from the Mount of Contemplation into the Valleys of secular Agitation, to make a Party for their Advancement *ad regalia Christi*, made a difference between his Disciples (following a Master that had not so much as the Fox, a Hole wherein to put his Head) and those that dwell *in Regum domibus*; whereas now the difference (if there be

any) is on the other side. This orderly and modest manner of proceeding, recommended by the *Lycurgus* of the Gospel, which is Christ, was continued by the reverend Apostles during their time; and likewise by the godly Bishops that succeeded them, for the space of a thousand Years: for further than the Censure of esteeming those as Ethnicks and Publicans that wilfully refused to give ear to the Doctrine of the Church, I find not that the Church presumed, the Popes challenged, nor Princes acknowledged.

St. *Peter* (from whose Prerogative many seek to derive this Privilege of deposing Kings upon Conviction, or rather Supposition, as it happened for the most part of Contumacy) commands the Faithful to obey even that Prince that was a Butcher of the Flock, and a bloody Tyrant in his Time, (because he was Superexcellent) and all Magistrates that were subordinate in Charges and Employments under him. He forbiddeth all good Pastors also, which ought to be *forma gregis*, the Pattern of the Flock, *providere coactè*, to provide by compulsion, or *in Cleris dominari*, to domineer among the Clergy, (tho' that be within the compass of their own square) much less meant he to set them over Emperors and Kings, that are fixed in the highest Element; nay, which is more, he denies flatly (if we may give any Credit to that Author which bears the Title of Saint *Clement*) that any of his Successors were ordained by God, to be *cognitores negotiorum secularium*, Examiners or Judges of Causes that are secular, which is now become the chiefest Scope and Object of your Primacy.

Wherefore, if *Peter* were commanded to put up his Sword, when Christ was at his Elbow to heal (as he did) the greatest Wound that it could make; how much more ought his Successors to keep the Sword within the Scabbard, since it is soberly and orderly put up, and that they may do more hurt in their Passion, than they can help by their Privilege? St. *Paul*, his Fellow Martyr and Apostle, would never have subjected *omnem animam* every Soul, whether they were Bishops or Monks, Regular or Secular (as *Cbrysostom* notes) to superior Authority, in case he had been privy to an exemption of some Souls by express Warrant. The Quality of evil Princes ought not in reason to extenuate the force of the Inhibition, tending to the Peace and Order both of Church and State: for then St. *Peter* would not have commanded Servants to be subject to their Lords, *non solum bonis & modestis, sed etiam dyscolis*, not only to those that are good and modest, but also to those that are perverse: *Non propter metum, sed propter conscientiam*, not for Fear but for Conscience, saith God's Spirit. Neither would St. *Jude* have censured those Malecontents so sharply that do *spernere potestatem, blasphemare maiestatem*, not in respect of their Glory, but of their Lieutenancy. This is not the readiest and best Resolution, *manendi in vocatione*, of continuing in our Vocation without Impatience or Strife, to wind our Obedience out of that Obligation wherein the Gospel found us, and God hath elected us. The Servants of God had recourse in all times to lawful Remedies, upon the Offer of unlawful Wrongs: and tho' there could not be a worse Prince, or rather a more ugly Monster upon Earth, than he that held the place of *Cæsar* in the time of *Paul*; yet *Paulus appellavit Cæsarem*, and being taken at his word, was sent thither to be tried orderly. It was lawful for the Prophet *Nathan* to reprove *David* for his Sin, tho' he did not pluck him out of his Chair

Chair of State. Our Saviour describing *Herod's* Quality, in crafty Circumvention of God's Saints, did properly and aptly term him, *Vulpem*, a Fox, tho' he did not undertake to hunt him out of his Earth. And tho' to warn, admonish, and assure the *Tetrarch*, *non licere*, that it was not lawful for him to keep his Brother's Wife, were an Office fit for a *John Baptist*, and a worthy Pastor of a holy Church; yet he neither would nor durst adventure to release his Subjects of their Faith which they ought him by their Homage. *Polycarpus* the Disciple of St. *John*, as we find him reported by *Eusebius*, dispensed with no Breach of any Bond, tho' in cases that intend peril to Salvation, as Idolatry, and the like. The Christians of the first Age were neither *Albinians* nor *Nigrians*, sayeth *Tertullian*; that is, stained with no Faction either to those aspiring Parties, or Affections of the Time, but devoted to the Service of the Sovereign, *quomodo licuit & ipsis expedierit*, so far as it was lawful for the Person, and expedient for the Prince himself. How far is that? Even so far as they honour him, *ut hominem a Deo secundum, & solo Deo minorem*, as the next Person to God, and inferior to him alone, without making him (as some did) a Competitor with the Omnipotent.

Honest Men will start and shrink at those loud Alarms, when they read with how great Obedience and Humility that blessed Father *Atanasius* (upon whose Shoulders our aged Mother the Church of God leaned, in the time of sharpest Persecution, to take her rest) cleared himself of the false Suspicions and wrongful Aspersions, that were cast on him by device of speaking evil of *Constantius* the great Arian Emperor: his dutiful Respect was grounded upon that Warning of the Holy Ghost, not to curse the King in the secret of our Conscience, nor in the most private and inward Corner of our Cabinet to wish evil to him. St. *Hilary* would not so much as moderate or stint himself, but leaves it wholly to the discretion of a wicked Emperor, *quatenus & quomodo eum loqui jubeat*, how and how far he would bid him speak. St. *Ambrose* acknowledgeth no Weapons of Defence to be so proper to the Priest, as Tears and Prayers: for I can pray, saith he, I can sigh and weep, but I cannot resist any other way. And therefore St. *Jerome* to *Heliodorus* saith, a King ruleth Men whether they will or no; a Bishop those that are willing. *Ille terrore subjecit, hic servituti donatur*.

To that Question moved by *Donatus* out of Faction and Scorn, *Quid Imperatori cum Ecclesia?* What hath the Emperor to deal or intermeddle with the Church? *Optatus* a learned Father, answers tunably to the Note and Ditty of *Tertullian* that is mentioned before, that (since God only is above the Sovereign) *Donatus* in extolling himself above the Emperor (as Antichrist out of Pride shall above all that is called God) *jam hominum excessit metas*, hath now transcended the bounds of humanity. The Patience and Piety of thirty Popes, laying down their Heads upon the Block successively, (at the first planting of the Church) to seal the Bond of Conscience with the Blood of Innocency, may teach those that come after, as well to follow their Example, as to claim their Primacy. For tho' *Liberius*, a Pastor of that Rank, was unjustly banished and exiled from his Church; yet he never sought to right himself by the bloody Sword, but rather by that golden rule of Obedience, and Patience, which our Saviour left to his Disciples *sub sigillo*, and they to the Church in

deposito. *Simancha* with his Fellows may perhaps answer to these Passages, that the Church was swathed all this while in the bands of Weakness, that the Sickle carried not at that time an edge sharp enough for those stubborn Weeds, and that the faithful had not as yet raised themselves to that height of Credit, that might give life to their Execution. But if the constancy of Obedience had been squared by the liberty of Men's Election, and this had been the Latitude of Loyalty in those well disposed Times, when Bishops only sought God's Honour, not their own Prerogatives; surely the Church of Christ had wanted a great part of those Martyrs and Confessors, which are ranked at this day in the Roman Calander. They that take this scope, may conceive and publish when it pleaseth them, that Lay Subjects in like manner are no longer bound to Obedience and Loyalty, than they find themselves over-weak to make powerful Opposition to ungodly Magistrates; and so confound all Laws of Justice in the State, and all degrees of Subjects that in private are bound to live orderly. *Tertullian* doth notably convince this Paradox, as well of Falshood as Levity, by making a clear Demonstration of the Strength and Potency of godly Christians in his own time, (which was among the first) in case they would have put their Forces to the strongest Proof, since all publick places, as Courts, Consistories, Camps, and Forts, were stored and furnished with Men of that Profession and Quality.

The Legions that were entertained by faithless Princes in pay, and prospered in the greatest Actions they undertook, might have purchased a far better Fortune at an easier rate, in case they could have satisfied their own Consciences, by opposing against Order. If the godly Christians that lived under *Constantius* an Arian, would have sought their ease, by stepping over to the service of *Constance* and *Gratian* that were Religious; they might have caused their own Sovereign to shrink at their Transport, that before made advantage of their Humility. If any Man will take upon him more in these days, saith *Chrysostome*, than was granted heretofore to Subjects that were under Infidels, *Quod majora sibi concedita esse dixerint*, because they say that more is committed unto them; they must be taught, *non nunc honoris sui tempus esse*, that it is not the time and place of their Preferment, since they are as Pilgrims in this World, but they shall in another shew appear more bright and glorious to all Men, *quando Christus apparuerit, & tunc cum Christo comparebunt in gloria*, when Christ appears, and they with him then shall appear in Glory. Tho' St. *Gregory* confesseth himself to have been so powerful in *Italy*, that he needed not to have left among the *Lombards* either Duke or Count, in case he would have opposed confidently his Endeavour against their Rage; yet finding *Theodolinda* the Queen to have been seduced slyly by some Serpent of that sort from the sincerity of her Profession, and dangerously withdrawn from God to *Belial*, from Piety to Heresy; o'ok no harder course, than by forewarning her with a fatherly Affection, and in humble Terms to take heed in time, that she tainted not the sweet Bread of many moral Virtues (worthy to be served in the Supper of the Lamb) with the Leaven of the Falshood and Impiety of those misbelieving Teachers that abused her Credulity.

It had not been hard for *Chrysostome* (in respect of the tender Love which was borne him by his Flock,

Flock, not *ad aras* only, but *ultra aras*, if his Patience had been pliant to their Desires) to have wearied that ungodly Princess *Eudoxia*, that would never give him rest nor breath in the crooked ways of her own Wickedness. But if the Doctrine of some Schoolmen in this Age be found to differ so much from the former Demonstrations of Obedience and Truth, why should I not complain, That *nunc definit esse remedio locus, ubi quæ fuerant olim vitia, nunc mores sunt*? It is true that long after this, the Officers of the French King, *Philip* the Fair, complained, and upon just Cause, *augenda sacerdotum jura, jura Regia minui*, that the King's Rights or Liberties were appaired by raising the Rights and Privileges of the Priests. It may be likewise true that is written by a Countryman of ours, that *Gregory* the seventh confessed on his Death-bed, (but with what Remorse or touch of Conscience God knows) *Ex minutione laicorum se sacerdotum promovisse gloriam*, which in divers words is of one effect: but yet all Bishops were not of that mind, but keeping fast in Memory that Observation of the Prophet *David*, That to drink of Waters drawn from the Springs of *Bethel*, with peril and hazard of Men's Lives, was *sanguinem bibere*, to drink Blood, were as cautious in quenching sparks of Dissension and Strife by Charity, as others were to kindle them out of Ambition and Vain-glory. For in cases of this nature, *Non est opus sævientis animæ, sed medentis studio*: for Charity is patient and courteous, *Nec inflatur nec est ambitiosa*. *Peter* hath two Keys, one of Knowledge, another of Power: these are prepared and fitted also to two Locks, that is, Induration and Ignorance: and hardly shall we find, that without both, and a sure Use of both, any strong Locks of Opposition or Obstruction, have been opened. Wherefore no Man need to doubt, but that among so many godly, grave, and learned Bishops, (as will ever rank themselves, *tanquam in acie ordinata*, to discourage and affright the forlorn Hopes of *Simancha's* School) these Positions will sink: and some that have been loth to yield out of Humour, yet will be forced to faint out of Cowardice.

The godly Learned never once vouchsafed to lend their Ears to the deceitful Tunes of bewitching Charms; rather grounding their Opinions upon the fourth Council of *Toledo*, by which all sorts of Persons are condemned without Distinction or Exception, *Qui fidem regibus suis Sacramento promissum observare contemnerent*, that contemned or scorned to keep the Faith which they promised by Oath to their Sovereign: taking by this first part, all perfidious Traitors in general.

But that which follows, pincheth *Navarre* and his Disciples at the very Heart: *Ut ore simularent juramenti professionem, cum mente retinerent perfidiæ impietatem*, and with their Mouth dissembled a Profession by Oath, when in their Minds (or mentally, to use the very word of our School-men at this day) they retained still the wicked purpose of Treason. Indeed *Pythagoras* imprinted nothing in the Minds of his Scholars more deeply, than that profane Verse,

Jura, perjura, secretum prodere noli.

The Epicure on the other side was satisfied *modo mentem injuratam gereret, etiamsi lingua juraret*. And you, *M. Garnet*, (to make up such a Triangle as can never be reduced to a Cube, that is, a perfect Square) divulge and publish to your Auditory

(which those blind Philosophers durst not profess beyond the compass of their Schools) that it is lawful to draw Words to the Sense of Thoughts, to cast a mist of Error before an eye of single Trust, and to deceive your Brother for your own Security. I am very sure the learned Fathers neither knew the Way, nor had the Will to escape by such a kind of *deceptio visus*, as directly tends *ad destructionem animæ*. For when *Athanasius* was overtaken by a Pursuivant, and asked *Quantum inde abesset Athanasius*? how far *Athanasius* was from thence? tho' it stood upon his Life in a time (as you make of this) of Persecution, and he a Person far more choice and dainty for the defence of God's own Quarrel, (as appear'd by his quick and sharp Encounters with the professed Enemies of Truth in that holy *Nicene* Council) than you are in this Kingdom for the Justification of those bad Attempts and impious Actions, which you take in hand, yet he answer'd as freely without Fraud as Fear, *non longè abesse Athanasium*: which was very true, because he was the Man for whom the Party fought, and cared little, as appears, how soon they met him. A Man of weak Conceit may apprehend how far our Saviour himself was from these chymical Constructions, and Evasions sophistical, by that universal Proposition, *Quicumque me negaverit*, whosoever denied him before Men, should be denied by him before his Father, &c. For to put out cautious Equivocators from all hope of Succour in this Streight by their distinction of verbal and mental Negatives, I urge the precedent Warning in that very Text before, *Non timere eos qui occidunt corpus, & animam non possunt occidere*; not to fear those which have power only to kill the Body, and not the Soul. For if our Saviour had left his Disciples such a strength of Surety for retreat upon Pursuit, as verbal Flourishes, (whatsoever were conceived or resolved in the Mind) he needed not so carefully to arm them with encouragement and hope against Assaults of Cruelty.

The Passages which both you and other of your Complices wrest from the Mouth of Christ himself for a fair countenance of Cozenage in this Labyrinth, would rather *commovere nauseam quàm bilem*: tho', I must tell you, that singular Examples drawn from our Saviour, that was both God and Man, (and not only knew by his eternal Wisdom, but was also by his matchless Power to rectify whatsoever seemed to our dull Conceits obscure) are neither Rules of our Encouragement, nor Warrants for our Imitation. I make no doubt for my part, but these Eggs of Equivocation and mental Reservation (never engendered nor covered by fairer Birds in better Times) were hatch'd (as the Poets feign) of Osprays with a Thunderclap. For among the Martyrs and Pastors primitive, their Praises were re-sounded with the loudest and sweetest Cries, that were most resolute (without Evasions or Tricks) to lay down a transitory Life in a Moment, to the Purchase of a better in Eternity; so far they were from forcing Wit, or straining Craft to secure Cowardice. But to pass over this just Motive of Digression, I will conclude the chief Point, which is the Care best Men have ever had, to prefer Obedience before Security, Loyalty before Life, with a discreet Answer of a Pope to a King of ours, which may serve you for a better Precedent in the Course of Patience, than that either of *Gregory VII.* *Boniface VIII.* or *Alexander VI.* in their Practices of Extremity,

if

if it so stand with your pleasure. *Richard* the holy Warrior, having committed a *Norman* Bishop Prisoner, whom he took in field against him with his Coat-armour upon his back, received within a-while after an urgent request (if not a powerful instance) from the Pope, at the earnest desire of other Bishops, for the Prisoner's enlargement; whom it pleased his Fatherhood in the Letter, by a word of Indulgency (but yet without that ground of equity which moved the Apostle *obsecrare pro filio suo, quem genuit in vinculis*, to press *Philemon* for his son *Onesimus*, whom he begat to Christ and his Church in duress) to call his Son. The King wittily alluding by his answer to that place in *Genesis*, where *Joseph's* parti-coloured and pied Coat was offered to the aged Father stained and sprinkled with Blood, sent not the Prisoner who remained fast, but the Coat-armour (which was loose) to the Pope, inquiring à *beatissimo Patre* (by this mild Question) *an hæc esset filii sui tunica?* whether this were the Coat of his Son? The Pope surprized with a Demonstration, and observing heedfully the Marks which could not lye, returned a grave answer to the King, *Nec hanc esse filii sui tunicam*, That neither this was the Attire of his Son, nor he purposed so to acknowledge the Party that was taken in that Coat, and therefore left him wholly to civil Justice, and the King's gracious Pleasure. For it is true, that Ambition, which is most bold upon advantage, is most cowardly upon surprize: and howsoever Humours may sometimes urge Minds that are not evenly ballanced with Discretion and Conscience, to undertake Attempts ever above Duty, and oftentimes above their Strength; yet second Wits observe the Slips and Errors of the first, and thereupon concluding at more leisure out of judgment, that *vis expert consilii mole ruit sua*, they begin likewise to fear that vast Desires as well as Buildings, where Foundations are not firm, sink by their own Magnitude. It is not possible that Humours should be durable, (considering that *materia prima*, the first Matter, out of which they spring, like *Proteus*, is capable of as many Shifts and Forms as the World hath Variations and Accidents) wearing and consuming like a Garment with incessant use: but the moral Virtues which have their Root in the Deity itself, and derive their Influence from Grace, must of necessity be co-eternal with their Author, who doth not only plant, but water, and produce out of his own Goodness, correspondent Fruits that suit their original.

By these Demonstrations we learn what Laws were current, what Bounders kept, and what course and manner of proceeding was observed towards Princes by modest Bishops, which either lived very near, or imitated those that lived next to the Precedents of apostolick Humility. Now therefore it shall not be impertinent (the Subject moving in due place and with due circumstance) to descry (not by idle Imaginations, but by evident Impressions) how covertly, and as it were by stealth, Incroachments crept upon the Carpet, before they durst by any forcible attempt invade the Seat of Power: *et cum dormirent homines, venit homo inimicus*; and when Men were in sleep, the Devil came, & *superseminavit zizania*. It is confessed indifferently by all Persons of all sorts, that are either judicious or sensitive, that those *Maxims* which pierce to the Center, and touch the very life of Conscience, ought rather to be fixed upon the Poles of Constancy, than carried

upon the Wheels of Change; and that not *Israel* alone, but all moral and indifferent Affections ought to answer *Amen* to the Curse which God pronounced with his own Mouth against all Men of whatsoever quality, that dare presume to remove or put aside Land-marks, or Bounders of Jurisdiction, which preserve Peace: and yet by tract of time and long experience, we see that *ab illo motu trepidationis*, ever since that trepidation or quivering (as it is termed by *Astrologers*) which prevailed in the minds of fearful Princes, under powerful strains, there have been many variations of Degrees and Distances in the conclusions of Church-government, especially within these last six hundred Years; which moves wise Men to resort to the judgment of a grave Philosopher, (discouraging of diversity of Times and Persons that did sway those Times, either by Predominance or Art) *quo minus ab ortu aberant*, the less distant they were from the first Original, the more perfectly they discerned Truth: and of the same mind is *Tertullian*, *perfectiora prima*, the nearer the Spring-head, the purer Streams: which is the Scope of our Industry.

To rip up matters therefore from the very Root, without obstruction or passion, we may observe, that so long as the Plough of Persecution did not only make deep Furrows on the backs of godly Bishops by Torture, (which the Prophet by the Text in the Psalm, *Super dorsum meum fabricaverunt peccatores*, seemeth to touch) but by Vexation and Anguish also in their very Souls, which those humble Spirits feel that are most sensitive of the least scratch given to Loyalty; it rent up by the roots all those Weeds of Ambition and Emulation which in calm seasons are apt to spring out of the rank grounds of original Infirmity: For till the blessed Reign of *Constantine*, wherein the rage of Persecution began to cease, I find almost universally no other kind of strife among the godly Fathers, than whose counsel or endeavour, by a religious and modest kind of emulation, might be of best use to the propagation of the Church's limits, and of God's Glory. The Church itself (which is the Body mystical of Christ) might by Analogy be properly resembled to the Stomach of a Body natural, which though it receive much, yet makes equal distribution, by dividing and dispersing that which it receives, to the use and sustenance of all the other parts, which would otherwise decay, and by degrees waste and perish.

If all this while a Tribune had stood up to complain against the Church of *Rome*, as *Menenius Agrippa* did against the Senate, comparing it to the Belly, (which devoured all, and did no good) the poorest and the weakest Member would have utterly disclaimed and disavowed the least sense of such a wrong: But if the Belly afterward by caring only how to feed itself, did pine the other Parts, (as the Populards did then suggest) and by transforming the orderly and well compacted Body of the State politick into a Monster, by so great disproportion of nourishment, did violate the Laws of Nature, and dissolve the Bonds of Union, we must confess, that both *Menenius* with them, and (if the case be like) all faithful Patriots and Members among us, have reason to require remedy.

It is certain, that the end of these first Bishops was then to feed the Flock, not to fill the Pail; to spread the Faith, not to extend the Line; to draw Kings to perfection, not to depose them from

from their States; to settle Peace, not to raise Diffension; to prepare the Subjects hearts to Obedience, not to inflame it with Prejudice; to be at peace with all the World, holding peace of Conscience to be all in all, so they might gain to Christ, and in no case to shew themselves *percussores*, or *violentes*, which the Canons of the Church (beside the Prohibition of *Paul* himself) will not suffer.

Some of the latter (but best learned) Writers, finding by the curious Examination of sundry Passages, and infinite Interpreters, how hard, or rather how impossible it is to prove their Title to this high Prerogative of deposing Kings, by direct Evidence out of the Word of God, and such Witnesses of Record as are above exception; resort to prove by Charter, Grant, and Privilege from Princes Pieties: As for example, from *Constantine* the first and best, *Phocas* the first and worst, *Ina* King of the West Saxons that was religious, and King *John* that was impious, as well *sans foye*, as his Title was *sans terre*. In which Crew, some intending serious Devotion, others pretending feigned Satisfaction to other Ends; and all, as the Times then taught, that no Seeds spring up more speedily than those which are sworn in *area Dominica*, for redemption of Souls, left them better earnest of their Hopes by Gift, than our Saviour did in his Testament by Legacy. Against the pretended Charter or Donation, which some of the Canonists more zealous than judicious seek to derive from *Constantine* to *Sylvester*, tho' I need say little, because the best grounded Judgments and most modest Spirits of that sort, have torn away the painted Vizard from that warped Face; yet because in matters of this moment too much cannot be said, I mean, more succinctly than the nature of that Subject (being once undertaken) doth permit, to press some short Arguments. First, how unlike it is that *Sylvester* (the next Bishop but one to that worthy and renowned Rank of Martyrs that lost their Lives for the Profession of *Christ*) should upon the first pause of Respiration to take breath, (after so many manful Combats against God's Enemies) abuse the favour of so gracious a time; by hunting after the vain Tenures of Principality. The Bishops that have kept themselves above Water all this while, by the strength and favour of that powerful Hand, which supported *Peter* on the Seas when he was at the point to sink, by learning now to swim suddenly with the Bladders of the World's Ambition, might have cast themselves into greater danger of drowning in the Rivers of *Damascus*, than in the *Red-Sea* that the Saints passed over.

Platina reports out of the Pope's own Records, that *Sylvester* refused at the hand of *Constantine* *diadema gemmis distinctum*, a Crown or Diadem set with precious Stones, as an Ornament not convenient nor agreeable to a Pastor in his place. Tho' godly *Nestor* calls it only *signum superbiæ*, a sign or badge of Pride; *Sylvester* should have been found guilty not of a Sign, but of Pride it self, and that in the highest kind, by the grand Jury of all his Predecessors Saints in Heaven, in case he had accepted what these Men certify to have been offered. Among the Fathers and Histories of the Church (how copious and large soever in expressing the great Favours which the Spouse of Christ received by the Piety and Bounty of this Emperor in other kinds) appears no scrip of Evidence to make good this Grant; which were an

Argument of great ingratitude, if they had either heard of any Disposition in the Prince to give it, or in the Pope to accept it. Neither is it like that so religious a Prince would have left that to his Son, that he gave to the Church, nor from thence his godly Successors, as *Theodosius*, would have detained it. Besides, all Writers prove how powerful the Lieutenants of the *Greekish* Empire, whom they called *Exarchs*, were long after the date of this Pretence, which could not stand with the strength wherein hereby they strive to plant the Papacy. I find by direct acknowledgement, *venisse proventus*, &c. that Revenues came from certain places for the maintenance of the Church of *St. Paul*, erected at the humble suit of *Sylvester* by *Constantine*; and from *Sardinia*, by the Report of some, to that Church which his holy Mother built. Again, that the Tributes were conferred on the Churches, which some Cities payed into the Exchequer in former times: and these I take to be the Shadows and Colours of this idle Dream. For of the Charter it self, (which exceedeth ten times in value all that is recorded touching Churches in particular, and in respect of a greater Eminency and Prerogative, should have carried a far greater Reputation, and made a fairer shew) there is not so much as a mark whereby they may take their Aim that are most ambitious. How little credit, strength or honour any Church can gain by deriving Charters from *Phocas*, a lascivious faithless Tyrant, wickedly embued with the slaughter of *Mauritius* his Master, Wife, and Heirs, and usurping that Estate unjustly, (by the Countenance whereof he was bold to give more than either of Right he ought or could) I leave to their Opinions that love to measure Claims and Titles rather by the line of Equity, than by the last of Ambition. But yet to make more of a Tyrant by vouchsafing a short answer to his Shadow, than in Conscience is requisite; I first infer, that such Charters granted chiefly upon ground of Cunning, and with a purpose to maintain the Plot by Party, which was undertaken and begun by Fraud, might either have been afterward revoked by himself, or annulled and repealed by his Successors: And further say, by judgment of the best Civilians, that no Prince's Act is warrantable, without the publick Assent, according to that Maxim, *Quod omnes tangit, ab omnibus approbari debet*, that tendeth to the State's prejudice.

Last of all, I prove that our Country in particular could take no Copper by this Transposition, admitting it to have been sound and absolute, because we were excluded from the Care, Protection and Providence of the *Roman* Empire, very near two hundred Years before that *Phocas* with his bloody Hand began to steer that Monarchy. For after that *Ætius*, Lieutenant for the *Roman* Emperor in the parts of *France*, did only send Instructions and Orders to the wasted *Britons* how to range their Battles, and dispose their Fights, with a careful, and yet a final Answer, not to look for any more Supplies or Aids for that Estate, which then fell into Faction, and was no longer able to support it self; the *Britons* holding themselves abandoned, (in which case all Laws free them both of Duty, and Dependency) after many bloody Battles under their own Kings against the *Scots* and *Picts*, fell into the *Saxons* hands, who like a *Pharaoh* that never knew *Joseph* or his Father's House, erected a brave Monarchy (tho' sometimes quartered and divided into many Parts among themselves) and

and maintained it in absolute Authority, without acknowledgment of any foreign or superior Command, till by a second or third Relapse, it became a Prey to the Norman Conquest. Wherefore *Phocas* having neither Possession nor Right in this State (left by Negligence, or abandoned by Necessity so many Years before,) could convey no more to the Church, than he either had, or ought to have, which was *accidens sine subjecto*, *Individuum vagum*, and a *nihil indeclinabile*. The Contribution of *Peter-Pence to Rome* by *Ina*, being called in the Saxon Histories the King's *Almshouse*, in the Laws of *Canutus*, *Larga Regis benignitas*, and in that Abstract which is left of the Confessor's and Conqueror's Decrees, *Regis elemosyna*, proceeded (as the words import) not of Duty but of Charity; and in respect of any temporal Prerogative (which is the Key of these aspiring Claims) doth rather prove the Pope then sitting to have been King *Ina's* Beadsmen, than King *Ina* then reigning, to have been the Pope's Homager.

I could alledge also an allowance of a special Mansion for *English* Pilgrims that were drawn to *Rome* about Affairs, bearing that Title to this day, in respect of the great Piety and Bounty of the Saxon Kings; which falling within the compass of that natural Contract *Do ut des*, copiously handled by the Civil Laws, and compared with the Contribution, may rather prove an Exchange than an Imposition.

To the colour of King *John's* Donation, who was as likely to have parted with his Soul as with his Crown, and upon the same Conditions, if Necessity had pressed him; I could give Satisfaction by that sound note of a Monk of *Saint Albans*, according tunably with that former concerning *Phocas* out of the Civil Laws, that, *Regis non est dare regnum, quod est respublica, sine assensu Baronum qui tenentur regnum defendere*: and therefore he cannot give away the Ports and Cities, which are Branches and Members of the Main. But I will take it up a freighter Link, and avow by *Matthew Paris*, that so far was the Parliament, which he termeth *Regni universitatem*, from assenting *detestandæ obligationi* to this detestable and hateful Band (as it is fitly called by the Monk of *Westminster*) that the Metropolitane himself, *pro universitate contradixit*, contradicted and withstood it in the behalf of the whole Parliament.

The Judgment of *Philip the French* King upon the Publication of this Charter is much commended by a Writer of that Age, for the defence of this Paradox, which he thought would prove *periculosum Regibus & Regnis exemplum*, a dangerous Example, and fearful Precedent both to Kings and Kingdoms. He would have Men resort to *Peter's* Successors about matters that concern the Soul, and not *de regnis, guerris, vel militia*, which do not belong to him. Last of all, the Saying which was luckily inserted in this Charter or Donation, namely, *Salvis nobis & heredibus nostris iustitiis, libertatibus & regalibus nostris*, makes it absolutely void and of no effect: the main Prerogative being safely preserved, by God's Providence, which the King would otherwise have let slip, by a circumvented and over-awed Facility. It is reported by the Monk of *Westminster*, a Witness (according to the State of those Times) of best Regard, that the Pope residing and abiding at *Lions*, this detestable Grant was burnt. The Author of *Eulogium* addeth further, that it was re-

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leased *cum omni fidelitate & homagio*, by the Pope's Direction to the *English* Parliament. And Sir *Thomas More*, that lost his Life in defence of the Pope's Primacy, deserves best of any to be credited in my Conceit, avowing, First a Weakness in the King seeking to subject his Crown to superior Commands; and next, in the Grant a Nullity. Besides, not only Sir *Thomas More* affirms, that the Pope's Imposition, with the King's Concession, was never paid; but it is further fortified by Addition out of the Rolls of Parliament, in the fiftieth Year of *Edward the Third*, that when the King was threatened with a Citation from *Rome* for detaining Dues upon this Grant, with large Arrearage, the whole Body Spiritual and Temporal of the Kingdom there assembled, after grave Deliberation and long Advise, *resisterent & contradicerent, avec toute leur puissance*; and upon these Grounds, that the Charter was against the King's Oath at his Coronation, and without the Voice of his Parliament.

Since therefore *Phocas*, *Ina*, *John*, nor *Constantine*, add any further Weight to the Pretence of a deposing Interest, than was in charge before; Discretion and Observation will judge whether the State of the *Roman* Bishops were not had in greater Reverence while they sought to win by Piety, than to strain in Passion, to bow than to break, and to temper than to exasperate. Religion and Humility then were the Corner-stones of that stately Front which the World so much at the first admired in the Church of *Rome*, tho' afterward by the change of Bishops in that See, and of Humours in those Bishops, so great alteration was found, as *Minerva* coming afterward to *Athens*, could hardly take notice of her own Ship, nor *Constantine* at *Rome* of his own Nurse; nor (as *St. Hierome* notes of painted Women, that cast up their Eyes to Heaven) if we consider how many false Colours have been set upon the Pillars of Church Government, hardly Christ of his own Creature in the time of Pope *Alexander* the VIth, if he had been put in mind to call on him. In the beginning it agreed with *Daniel's* Image in the Head of Gold for godly Government, in the Breast of Silver for unspotted Conscience, and in the Legs of Brass for incessant Industry. But afterward in succeeding Ages, the Heads of many Popes grew humorous, their Breast avaricious, and their Legs idle.

That holy *Nicene* Council (whereof I never speak without Reverence and due Regard) in that great Division which was made of the Patriarchal Jurisdictions according to the State of the Church in those days, for establishment of Discipline and preservation of Unity, speaks not one word of any Temporal Command, much less of any Right in suspending or deposing Kings, or absolving Subjects from their Oaths of Obedience and Loyalty, to be left in the Nature of an Heirloom to the *Roman* Bishops by primitive Acknowledgment. But as *Sallust*, very gravely and like a faithful Patriot, complains touching the State Politick of *Rome* in his own time, that *postquam divitiæ bonori esse capere, & eas gloria, imperium, potentia sequerentur*; Faction and Pride began to creep up to the Seats of Senators, and the publick Justice of the State to shake: So likewise in the Church we find, that upon like Corruption like Disorders grew, and many Weaknesses began daily more and more to disclose themselves in those bright Sun-shine days which the Saints enjoyed by the

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Bounty

Bounty of a better Prince (as Cockle starts up when Corn grows ripe) which before was either shadowed with Discouragement, or suppressed by Discipline. I speak not this, because some such kinds of Heats and quick Distempers have not sometimes happened, and may not by occasions fall out again between God's own Elect, as *Peter* and *Paul*, *Paul* and *Barnabas*, and the godly Bishops in this very Council, which I press (tho' with that Measure which becomes the Ministers of God and his Apostles Successors) because it pleaseth him sometimes out of our Error to raise his own Honour, and to make Virtue perfect and compleat by Infirmary: but to make it plain, that Plenty is the Daughter of Prosperity, Ambition of Plenty, and Corruption of Ambition. For after that Bishops were admitted to appeal from civil Courts by the Emperor himself, and their Sentences by Imperial Authority were made equal to his own; they began to raise their Crest, and within a while, as it is testified by one of the most antient approved Writers of the Church, *Episcopatus Romanus, non aliter quam Alexandrinus quasi extra sacerdotii fines egressus, ad secularem principatum jam ante delapsus est*: The See of *Rome*, in the same manner as that of *Alexandria*, as it were exceeding the Limits and Bounds of Priesthood, had slid into secular Principality; tho' the Bishops of neither of those Sees, as we may assure our selves, were ignorant of *Paul's* Prohibition to all degrees of Pastors, that they should not intermeddle with Secular Affairs, so far as concerns an over-dropping of the regal Plants, because a Bishop should no more live out of the Element of the Church, nor a Monk out of a Desert, than a Fish out of Water. For Christ fled into the Mountains when the People would have made him King: and Bishops ought with *Joseph* rather to leave their Cloaks behind them, than to consent to the Charms and vain Enticements of the World, which like the wanton Wife of *Potiphar* stretcheth forth her Arms, and (with the *Syrenes*) straineth her Voice to draw them within the compass of Tentation, and then taketh hold to drown them in Sensuality.

Now whereas it is said by *Socrates*, *Jam ante delapsus est*, that the See of *Rome* did slip before that time (whereof he speaks) into secular Principality, I am induced by the Report of *Ammianus Marcellinus*, a grave Writer, tho' no Christian, to take my Level somewhat higher for the finding of my Mark: for he living in that time about the Court (and observing as it were from the main top of the temporal Estate, what course was kept among all sorts and qualities of Persons in divers Elements) makes mention of a bloody Slaughter in a Church of *Rome*, where the Christians were wont to meet for the Celebration of their Mysteries, about the violent Competition and Contention between *Damasus* and *Ursicinus* for the Papacy; and taketh notice of one hundred and thirty-seven Carcases drawn out of that Church where they met about Election: and further writeth, that *Vivianus* then Lieutenant to the Emperor, was glad to make Retreat into the Suburbs, till the Rage were tempered, or the Strife ended. After this, as a Man partial to neither Part, and therefore in all likelihood the more indifferent and just in deeming rightly of the true state of the Cause, he gathers the chiefest motive of Contention and Emulation about the means of compassing this Height, to proceed from the great Ease, Wealth and Honour that prevailed

and were surely settled and established in that Dignity. His Reasons are, for that *Matronarum oblationibus ditabantur*, they were enriched with the offerings of Matrons or great Ladies: they rode in Coaches publickly; they were choicely suited in their Apparel; their Diet dainty, and sometimes above the rate and use of Princes in the times of their Banqueting. That *Damasus* a Competitor was one of these, *Ammianus* doth not affirm, much less do I believe, finding with what Respect and Reverence *St. Hierom* that had been himself a Priest of *Rome* doth speak of him: yet the manner of his climbing and aspiring to the Seat was scandalous, not only unto such as were religiously devout, but even to *Ammianus Marcellinus* that was but morally precise; as doth appear by that grave Judgment which he gives of the blessed State, which as he thinks the Bishops of *Rome* might enjoy, in case they lived in that sober manner, with that bare Diet, mean Apparel, and humble Looks cast to the ground, which other Bishops in the Country did, neither tasting nor esteeming those choice Pleasures and Delights which the delicacy and great abundance of that Place afforded them.

This passion of a Writer whom we account prophane, in respect he was unregenerate to Christ, nor nursed by the breast of his Spouse the Church, puts me in mind of a zealous Passion in *Hector Boetius*, a great *Roman* Catholick, upon this very Subject in the *Scotish* History, *Hujusmodi antistites quam sunt illorum dissimiles, quia diversa ingrediuntur via cum locum illorum occupent, &c.* He wonders at the Difference between those Bishops, and others at this day, which succeeding in their Places, take another Course: they glistered not in Gold, they were not resiant in Princes Courts, they were not attended by Guards, nor skilful in the Art of dissembling, more gainful by many degrees than that of Poetry, which the Universities use to crown with Laurel. This moved *Boniface* (I mean the Martyr, not the Challenger) to prefer the Devotion of the golden Bishops, that in the Church's Poverty administered with greater fervency in wooden Chalice, before the vanity of many blockish Bishops that in a richer State, with more Solemnity and less Zeal, administer in Chalices of Gold; because, as *Hierom* notes, external Riches add not to the worth of him, *qui corpus Domini in canistro vimineo, sanguinem in vitro portat*; that carries the Body of our Lord in a wicker Basket, and his Blood in a Glass. I would not be conceived by this Speech, to favour their ridiculous Conceits, that labour to draw the substance or the value of those Vessels in which Sacraments are administered, to the first Simplicity: for, the reason of *David's* judging it indecent for him to lodge *in domo cedrina cum arca Dei esset sub pellibus*, draws me to a greater estimation of Vessels appertaining to so high a Mystery. For sure I am, that the Value of the Content, doth infinitely surmount the Continent; and *in adiaphoris*, that is, things indifferent, we are left to the rule of Decency.

My only purpose is but to observe and tax the declination of Piety, together almost at one instant with multiplication of Metals and Minerals, the labour which is made for Charges and Employments for Commodity alone without Conscience; and to limit those excessive Grants *in manu viva*, which our Antecessors did *in manu mortua*, and the ranging of internal Piety to external Pomp, tho' of both it were better, that we wanted means

means that are superfluous, than the moderation that is necessary. For *Chrysostom* notes two great Absurdities in cramming Churches till Satiety constrain them to regorge; the one, that Laymen are deprived of occasion to shew Charity; the other, that the Pastors themselves often neglect their Duties, to become Collectors. This is no ground for gleaning from the Church, which at this day doth rather need *Largitore hilari, quàm interprete maledico*: but to prove that Arguments against Excess and Height, are the surest Tenures, and the strongest Pillars of Stability; for *in se magna ruunt, summisque negatum est stare diu*. In defence of *Ammianus Marcellinus* from exception either of partiality or ignorance in that which he speaketh of the Matrons, I vouch a manifest Decree set forth, (not by the Leeches and Blood-suckers of the Church, but by *Valentinian* and *Gratian*, religious and worthy Princes) against any gain to be made by the Priests of the Church by Ladies Offerings; and this Decree was published by *Damasus* himself, according to direction of State: which proves that *Ammianus* in the judgment which he gave touching the motives of Disfension, and Opposition, spake not idly.

To make the Case more plain, Whosoever raiseth any further doubt, may learn of *St. Hierom*, That some such excess (or at the least oversight) was censured about that time: where he seems not to be so much grieved and perplexed with the publishing of such a Law lighting upon just desert, as with the motive of that Law, which was greediness. Therefore our *English* Bishops in the time of *Edward III.* assented (tho' unwillingly) to the limiting of Church Revenues, when the State's Necessity put in a Caveat. And the Pope himself pretended neither Quarrel nor Unkindness to *St. Lewis* of France, for inhibiting the Grant of any more Lands or Revenues, than had been converted in former times to Churches without his privacy.

The ground of this respective Caution and Moderation, I take to be derived from the Course which *Moses* held, being a Person as well publicly Wise, as spiritually Devout, in commanding all the Peoples Offerings of Benevolence and Piety to cease, after he had drawn in that proportion which was sufficient for the Furniture of the Tabernacle, where God was to be served and honoured. For the least Excess in things (which with moderation are laudable) doth easily degenerate into Vice, and all turns to humour that transcends the due proportion of Nourishment. We may soon be taught in *Genesis*, That they which could be satisfied with no moderate degrees of Altitude, in seeking to build Castles in the Air, before their Spires and Battlements might touch the Clouds, were confounded in their own idleness.

You have heard how the Churches of *Rome* and *Alexandria* were ingulfed in the Depths of secular Principality to the wound of Monarchy, altho' *Spiritualis potestas non ideo præsudet, ut terrenæ in suo jure præjudicium faciat*, saith a learned Schoolman. But how hardly in the mean time the Civil State did brook these Slips, let us learn (if we deal indifferently) of *Orestes*, who was then Lieutenant for the Emperor, and complaineth bitterly of some Bishops, *Quod per eos non nihil de auctoritate eorum detractum esset, qui ad magistratus gerendos designati essent*, that they drew much from the Authority of those Persons, which were appointed to bear Office. This gallant Gentleman began

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very early to discover (and by the break of day) by what degrees the Mystery of Ambition began to mine into the strength of Monarchy: he feared (and not without great likelihood) lest Princes seeking to resume their Rights, might in time be dealt withal, as the Badger was by the Hedgehog: For being wounded with the Prickles of his offensive Guest, whom at the first he welcomed and entertained in his Cabin as an inward Friend, he mannerly desired him to depart in Kindness as he came, but yet could receive no other Satisfaction to his just Expostulation, than, That he for his own part found himself to be very well at ease, and they that were not, had reason to seek out another Seat that might like them better. He foresaw by this forerunning Light, That Mistletoe and Ivy sucking by their strait Embraces, the very Sap that only giveth Vegetation from the Roots of the Oak and Hawthorn, must bloom and flourish of necessity, when the Trees should wither.

I know that Civil Jurisdiction in that good measure which is compatible with a Pastor's Charge, is so far from that inconvenience of hindering the growth of Piety (as some conceive) as it rather ripens the Fruits which in a further distance from the Sun, are either nipped by the Frost, or blasted by some bitter Wind: So as according to that of *Nabum*, *Risiduum locustæ Brucus devoret*. I tax those only that presume by forged Evidence to contend and strive with mighty Princes for their Seats, or attempt to set them besides their Thrones, which the blessed Virgin makes a Portion of God's own Prerogative. Otherwise I say with *Paul* of all the faithful, *Si in illis mundus judicabitur, indigni sunt qui de minimis judicent*? If the World shall be judged by them, are they unworthy to decide matters of least Account? And again, *Si Angelos judicent, quanto magis secularia*? And therefore *Epiphanius* the Bishop of *Cyprus* is highly commended in the Stories of the Church, for the discreet Temper and decent Order he held in managing Affairs both Ecclesiastical and Temporal. The Council of *Carthage* understood very perfectly the way to moderate between both Extremes, and in fanning away the smoke of Pride, to preserve the gloss of unsoiled Modesty. But the Patriarch of *Constantinople* finding by careful observation of Times and Accidents, what strange Effects the Church of *Rome* had wrought in raising Patriarchal Jurisdiction as high as the jealousy of Government and incompatibility of Imperial Prerogative would endure, adventured upon the wings of Pride, to mount so far above the pitch of his other Partners, as if *St. Gregory* himself had not abated this presumption more by the strength of Arguments than the edge of Power, it is not unlike but he would have made himself in the end by faction of Adherents *similem altissimo*.

Thus easy it is for many grains of Sand by *Nephtune's* Blessing to make a Shelf; for many *Peter* Pence by *Ina's* Bounty to make a Bank; and by gathering a great heap of Sticks together by *Minerva's* Providence, to make a Nest high and wide enough for long winged Hawks to breed in the proportion of their own earnestly affected, and long labour'd Sublimity. Such were the Drifts and Devices for the space of many Years of certain *Roman* Bishops, often straining, but never reaching to their End, which was, to make a Rise so high, as might carry them over the Heads of Emperors, till more than three hundred Years

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after the Secession of *Constantine* and his Successors into the East; their Lieutenants wanting now that *Gorgon's* Head of universal Regiment and united Strength, whereof they had disposed formerly; till that unlucky division of one Eagle's Neck into two, which made the fairest Bird a Monster, as according to that one noted Maxim of our Saviour, *Omne regnum in se divisum desolabitur*, gave way, tho' much against their Wills, to that improvement of the Jurisdiction of *Peter's* Keys, which hath not since that time been less feared, than at the first it was favoured. The first motive of the translating of the Western Empire into the East, as *Socrates* reports, was chiefly to this end, *ut vulnera quæ erant à tyrannis inflata, illis jam sublati tollerentur*, for the Cure of those Wounds which were given by Tyrants, now that they were rid out of the way. Men liked of this, and commended the Discourse that urged it, till Experience, together with their own Disasters, made them find, that, of both Extremes, it is better to admit an outward Distemper, than an inward Combustion. The Ebb hath not been greater by the waning of the Empire, than the Flood hath been *ex consequente* by the waxing of the Church: which finding that the Beams are brightest, and her Glory greatest while the Sun is under our Horizon, from whence she borrows and derives her Light, hath sought ever since with her best Diligence to quit her self to those Rays Imperial which by Vicinity may weaken, or by Conjunction may darken her. It is true that *Constantine* upon the Change did at the first exempt Bishops only, but not Priests from Convention in Civil Courts; the first step to that Greatness (which was *in obsequio*) to the Papacy. *Gratian* in the Year three Hundred and eighty, and *Honorius* in the Year four Hundred and six, confirmed it, *Theodosius* and *Valentinian* were pleased for increase of Favour, that Priests also in lieu of Civil Judges, might take their Trial before Bishops, if the Parties interested in the Cause could be satisfied. *Justinian* more reservedly than his Antecessors, expounds the meaning of the grant of matters only appertaining to the Church, not otherwise, and for his Labour receiveth a wipe at the hands of *Bellarmino*. *Heraclius* exempteth Bishops and Priests absolutely from all Courts, excepting only that of Delegates from the Emperor. But *Guicciardine*, no *Lutheran* or *Zuinglian*, as many term Persons of a diverse Judgment in our days, but a Roman Catholick; no *German* or *Helvetian*, but an *Italian*; no Simplest, but a Man as deeply Learned, as discreetly Judicious, observeth, That tho' some dark Cloud had overcast a Portion of the Beams Imperial in the highest Sphere, yet till this time of the Translation of the Seat to *Constantinople*, and a good space after, many Tokens both of humble Reverence, and respective Regard to the Civil State, were evident. For the Popes without admittance either of the Emperors themselves, or of their Lieutenants called *Exarchs*, ascend not to the Throne. The Popes in all their Grants and publick Dispatches, set down the Date by these words, *Regnante domino nostro*, such or such an Emperor. Tho' by variation of Times (which breeds a Change in all Bodies, States or Governments beneath the Moon) this good manner began to be first abated, and in time determined. After this unlucky Separation of the Greek Head from the Latin Body, first, it fell into a kind of Giddiness; after, into Imbecil-

lity, the cause of dangerous Convulsions in those Estates; and like top Branches that are not duly fed and nourished with the lively Sap of their own native Root, they fell afterward to warp and wither both in Beauty and Glory. The Princes grew daily more and more into Contempt, either out of want of Desire, or Ability, or both, to defend *caput Imperii* from incursions of Infidels, oppressions of Usurpers, and attempts of Conspirators. Then fell the Grands of *Italy* to renounce all Duty, Contributions, or Reliefs to the far distant Parallel; from which as from a Gulf they found no relax. They drew back Obedience from Lieutenant-Governors, who gasping (almost at the very last point) for Breath, could light upon no true Cordial to comfort them; Posts could not ply so fast between *Rome* and *Constantinople*, as occasion of State did urge; and beside, which is the most desperate effect of a declining Fortune, Messengers were employed oftentimes with Intercession, but returned ever without Remedy; Disputations were lame, Expectations idle, Affections mutinous. And tho' I find by the best Writers, that during this time of staggering, so long as any spark of hope could live, either of secure Defence, or timely and sufficient Supplies, the Bishops endeavoured their best to preserve the Life of Loyalty in the Breast of Fear; yet at the last the Civil State declining, the Church fainting, and all Hope languishing, when both Peers and Bishops wasted like Images of Wax à petit feu, felt the Fury as well of the domestical as the foreign Sword, and waxed weary of the fruitless Comforts that were sent out of the East; they resolved jointly to call in their next Neighbours the *French* for Protection, who were able to defend them with a stronger Arm, a quicker Dispatch, and a better Purse than this sunk Estate surrounded with an Ocean of incurable Extremities. That there wanted in the Pope both then and ever since, Affection, Invention, or Expedition, to raise *Rome* once again, tho' in another Element, *ex Albe ruinis*, to draw their Generation of Greatness out of the Corruption of Power, and to make their best advantage of their Errors that were wont to give them a commanding check, they may believe that find no grounds of Judgment, of Experience and Truth to conceive otherwise. For being put into possession, by this long desired and lately planted Emperor, of a satisfaction, both for Profit and for Power, proportionable to the pains which they had taken, *Cum sudore vultus & tremore cordis*, about the new Establishment, they found other means to multiply their Strength and Credit every day, by taking sure hold of opportunity, which being lost with idleness, returns no more to Expectation. They began then to establish their Estates in that height of Security, from the Frowns of predominant Commands, which many of their Predecessors had eagerly apprehended, *Tanquam spado mulierem amplexans, & suspirans*, (as the Prophet speaks significantly in another point) but yet failed of the final Scope and Reward of their Industry.

The strongest Adamant that drew Reverence and Love to the Church of *Rome*, in the first spring of Religion, was the Constancy of so many godly Bishops, as with the streams of their Blood watered the Plants of their Profession, desiring rather to die with Honour, than to deny with Infamy. Besides, it is certain, that during the short time of their sitting in that Seat, their chiefest End was to

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bind Subjects to Superiors with so great Obedience, and Superiors to Subjects with so great Conscience, as those Men were esteemed both most godly and most happy, that were either inspir'd with their Pity, or grounded upon their Principles. St. Peter's Galley might very well hold on a constant and happy course for a-while after the main stroke of Oars did cease, that was set out at the first with the Force and Industry of so many worthy Mariners, as made for no other Port than Heaven: which Observation cannot be thought strange, by Men that understand how hard, or almost impossible it is for one Prince that is humorous, succeeding many that were godly and judicious, to work upon the sudden any dangerous Effect, by Countermotion or Opposition to the Spheres of the former Government.

For to the raising of this height upon the Foundation of Religion and Integrity, some brought Stone, some Timber, some Lime, some Sand, and some gave their own Labour and Direction *gratis*; every one affording supplies and helps according to the measure of their Strength, or the proportion of his Ability. But after that the Bishops began to find the strength of their own Estates by removes of Emperors, and that instead of little ease, they got Elbow-room; it was a means to make them stretch their Arms, and extend their Forces into Elements, which like *Terra Incognita*, were before unknown to them.

Some of the most artificially and refinedly ambitious, finding by the *Roman* Histories (as it is probable) that *Cæsar* was never absolute in Power, *Priusquam protestatem pontificiam cum Cæsarea potentia conjunxisset*, hold it as sound a course for them, seeking the like in another Climate, *Cæsaream cum pontificia conjungere*: making no doubt but as in *Abstracto* they had been regarded with Reverence; so in *Concreto*, they might be feared with Observation. The necessity which inforced all *Italians* after the departure of *Charlemaine*, to rely upon the Pope's Aid for common Defence: the Bond of Conscience, which moved the greater part of the World in those days to resort to *Rome*, either for satisfaction to Souls, or for preservation of Unity: the confidence of Emperors and Kings in compromising Causes of Unkindness or Dissensions to such a Bishop, as professing like a Father equal Affection and Tenderness, was not suspected of halting on either side: the Strife and Emulation of mighty Potentates to assure themselves of the Love and Friendship of that Party, whom the greater number regarded as a Judge, and few or none for many Years suspected as an opposite: the Fear and Peril into which some Emperors were drawn of hazarding their own Fortunes, by disputing his Prerogative: the Contribution of all States, Qualities and Degrees of Christians (according to the Custom and Manner of those Times) to the Maintenance of St. Peter's Successor: the secret Interest which the Pope had in many Kingdoms, by the Merit of his Predecessors, that did first send learned Pastors and Doctors to preach unto them Redemption by Christ Crucified: the exercise of St. Peter's Keys, by binding and loosing Sins in a kind of Excellency, and Supereminency above other Bishops in all parts of Christendom: the Conceit which was holden of a Bishop's Conscience, whom the Canons will not suffer to be *Solicitus de iis quæ sunt mundi*, in comparison of any Secular Authority, whose only Object is the seal of Longitude and Latitude: the danger of

offending one, whom the greatest part endeavoured with studious Affections to please: the subtle Union of St. Peter's Keys with St. Paul's Sword to this end, that while the one did open Locks, the others (like that of *Nebemias*) might cut off Impediments: the great Revenue and Demain, which was annexed to St. Peter's Chair, first by the Charter of *Charlemaine*, and then by the great Countess *Maude's* Legacy: the Pope's art in contriving the manner of the Choice of Emperors by the Co-ruesters of *Germany*, rather than by Occasion of making their Returns to *Rome*, their Teeth might be set on edge with a fresh Appetite, to taste of the forbidden Fruit which grows in *Horti medio*, and thereby compassing the Tree of the Knowledge of Good and Evil, covered with the Leaves of Limitation for so many Years, to make their Estates once again Absolute: the Pope's Caution in reserving to Himself as it were in *deposito*, a special Interest (only for pretence) of Crowning and Confirming Emperors at *Rome*, even after they had been Elected and Crowned in *Germany*, tho' when they fought it, they seldom compassed it: the Pope's Eye to the retaining of those Rights and Royalties in the Princes Electors hands, which were mortgaged by precedent Emperors, left the bruised Feathers of the Eagle, impeded once with these hard Quills, might again be able to carry her up to the Spire of the Capitol: the long lasting, and strongly working Faction in *Italy* of the *Guelphes* and *Gibellines*, Imperial and Pontifical: the fast League between the Pope and the *French* Kings, ever labouring to maintain the strength of the holy Arms, against all violent and sturdy Storms, as a Plant of his own Policy: the Rule which hath been ever providently observed and kept by the Popes, in eschewing Quarrel or Contention with any powerful Prince in *Europe*, before he make himself sure of a Party opposite in the same degree, and likely so far as the Wit or Aim of any mortal Creature is able to extend to make the match too hard for him: the sure hold which the Pope hath of the Hearts and Services of all the Clergies, in as many Kingdoms as are Romanly Catholique, by exercising the Interest either of Investing or Confirming *Metropolitans*, that have the highest Charge in the Church, and draw the Consciences and Devotions of Lay Souls after them, by direct Dependency: the Pope's Custom of sorting Cardinals and Officers for the Church out of such powerful and worthy Families, as may make both them and all their Allies and Friends to be in their Devotion and Gratitude more fast to them: the reservation of certain Cases, wherein the Pope only will give himself Commission of Oyer and Terminer, thereby pressing the greatest Bell-weather of the Flock, without an express Relaxation, *ab ipso ore apostolico*, to appear personally: the device of sending Princes to the Holy-Land, so soon as ever they began either to pick Quarrels with the Church of *Rome*, or might be made by their Absence of better use to it: the Local Interdictions of Priests by Warrant from the Pope, to celebrate for the satisfaction of Souls, which (so far as I have read) was first set on broach about our *English* Bishops by *Alexander* the third, about the Year 1170, but not very luckily to those that by observing them with a stricter kind of Obedience and Awe, than the Laws of the Realm would admit, were in great peril of their own Possessions, with loss of Liberties.

Last of all, the Garisons and Forts which have been erected and maintained in Defence of St. *Peter's* Patrimony, were high Steps to carry and convey the Pope to that height of crushing Princes in their own Element, which many quarrel, some tolerate; but in very truth (if the Case once come to be their own) none favour. So long (saith a grave and learned Writer, and a Roman Catholick) as the Popes attended those Charges only that concerned the Soul, their chiefest Care, Desire, and Study was to be protected under the Wings of the Secular Estate: but the State of the Emperors declining faster than they rose, the Popes began to neglect both their Arms and Amity; then fell they to defend by Writing and Discourse, that it belonged rather to the Church to give Laws to the Empire, than to receive from the Emperor; pressing forward still without looking back, for fear perhaps of being transformed with the Wife of *Lot*, in *statuam salis*, and abhorring nothing more than the very sound of a Remitter to the creeping State of their first simplicity, the wrested Censures of the Church, either to the Passions of Humour, or proportion of State: they studied more industriously the ways of making Wars and heaping Treasure, than of steering *Peter's* Ship, or instructing Souls; they sought more slyly than sincerely to make their Consistory strong by the support of Tyrants and Usurpers, which having cast off *Cæsar's* Yoke with Contempt of disarmed Ostentation, found no means so proper as the Countenance of the Church of *Rome*, for their Establishment both in Dignity of Security. For proof whereof, I wish it may be tried by Inquisition, whether *Robert Guiscard* having filched *Puglie* from the sacred Empire, that is a fair Feather from a feeble Bird, fought not after that to hold it of the Pope in Fee; and whether *Roger King of Sicily* in the Year 1130, possessed not himself of that Kingdom by such a trick of Legerdemain, (for all was Fish that came to *Peter's* Net about that time) and many his Successors in that Corruption both of Conscience and Conversation, became now rather *Piscatores imperiorum quam hominum*; tho' the Censure of St. *Paul* extended only *ad interitum carnis*, but not *posteritatis vel diadematis*.

After this some of them mounted to that Point of Challenge, as they were not ashamed to take upon them the Prerogative of deposing Emperors. For *Boniface* the 8th after he had presented himself (as the *German Catholiques* report) to the Eye of the World in his Habit merely Secular, that is with a Crown on his Head, a Sword girt by his side, and with Profession that he was as well a *Cæsar* as a Pope, at the next Leap gave a greater strain, claiming Precedency of *Philip* the *French King*, *Tam in spiritualibus quam in temporalibus*, tho' some of the most learned among the Schoolmen oppose absolutely to this Paradox; and might as fitly wonder at this armed Pope, as the Prior of *Duresme* did of his Earled Bishop, *O quam manifeste jam exorbitat noster Episcopus transformatus a vestigiis sancti Cuthberti!* *Urban* withdrew not only the Persons, but bona the Goods of the Clergy from the Trials of Civil Courts. In case of Treason the Popes would oftentimes have exempted Bishops from the Bar, tho' Princes Absolute would never yield to this Demand as a right by Acknowledgment: howsoever at the *Pope's* Request some of them have been pleased to remit Wrongs out of Indulgency. Let *Platina* give Evidence con-

cerning strange Devices vented, and Plots undertaken, to bring all the Princes of the World to hold their Crowns *ad placitum*, and in effect at the will of *Peter's* Successor: Some being called in question for personal Transgressions, some for idle Words, some for taking part with Princes whom Popes hated, some for refusing to participate in Actions which the Pope favoured; some that the Pope might prefer his own Friends to their Seats, some for standing stiffly against Humours out of Suspicion, some to make the Pope himself more strong, some to make his Enemies more weak. And sure I am by Confession of those that in Religion were ever consonant to the *Roman Canons*, that after once the Rule of *Gregory* was riveted into the Conscience of Christians (which in those days were more fearful to offend, than studious to learn) *Sententiam judicis quamvis injustam timendam esse*, that the Sentence of a Judge is to be feared, tho' unjust: howsoever all the Laws of *Europe* in this Case by the grounds of Nature grant Appeals, what Quarrel soever it pleased the Pope out of Displeasure, just or unjust, to pretend, himself being ever (for the most part) both Judge and Party, that must be satisfied to the full, tho' it cost an Emperor his Crown.

And because *Homo spiritualis judicatur à nemine*, some of the Canonists proceeded so far in flattery after these Encouragements, as to exempt the *Pope's* censure from examination, tho' they carry with them heaps of Souls to Hell: which tho' the wiser and the better sort reject, as a Doctrine fitter for the School of *Mahomet* than a Scholar of the Church; yet it will be ever reckoned and reputed probably as well *error prædicationis*, as *conversationalis*, so long as it shall pass the print without reproof; and to use the phrase of St. *Hierom* upon like occasions, *priusquam Asterisco juguletur*. *Emmanuel* the *Greek Emperor* craving earnestly of *Alexander III.* that both Empires of the East and West might be re-united for a greater strength and a more assured support against the Enemies of the Faith, his answer was, *Se nolle id unire quod majores sui de industria disjunctissent*; that he would not unite that which his Predecessors had of set purpose sever'd; tho' in very truth it may be proved a worse part in those that laid their Heads, and set their Hands together, being as they were, but Men *ad illud separandum quod Deus conjunxit*, to make a separation in that which God had conjoined and fastened. Tho' *Alexander* the Pope had modestly forborn to answer the Request of *Emmanuel* in so plain language as might move the World to say to him as the Maid did to St. *Peter* in the Palace of the High-Priest, *Verè tu ex illis es, nam & loquela tua te manifestum facit*: yet by the course which this *Pope's* Predecessors took in planting *Sedem Imperii*, the Seat of the Empire rather among the *Germans*, where by larger distance he might less offend, than in *Romana Metropoli*, than in *Rome* itself, where he might eclipse the Glory of the Pope, we might easily have apprehended both what was the Object, and where would be the end of that Policy. Hereunto I add an Indenture made by another of that rank, with *Charles Duke of Anjou* before his establishment in the Kingdom of *Sicily*, That neither he during his own time, nor any of his Heirs and Successors after him, should accept of any offer which the *German Princes* might be drawn to make to him of the Empire; much less that he or they should hunt after it: his fear was (after an experiment)

riment) by the long bustling between the Pope and *Frederick*, (who was by right both Emperor and King of *Sicily*) that the Vicinity and Neighbourhood of so great a State as that Kingdom to *Rome*, in case it fell into the hand of an evil Neighbour, (with the least colour or advantage of a Title) might stir up easily in the disposition of a Prince that were courageous, an earnest desire of a discontinued Estate: because howsoever Questions be over-ruled among private Persons upon the ground of Prescription in point of Law, yet where the Sword must flourish for the Master's Prize, *Præscriptio nulla, quantumvis diuturni temporis, occurrit Cæsari*. I need not at this present to name that provident and discreet Cardinal, who in one of the late Conclaves, put in a timely Caution to the rest of his Fellows at the choice of a Pope, to beware of too servile a regard of the Partialities and Passions of potent Princes, that *Sede vacante* recommended their chiefest Favourites to *St. Peter's* Chair, to no other end than that they might again, by Quintessence of Craft, reduce the modern Majesty of the Church of *Rome* to that bare *Jus patronatus*, wherein it stood during the Reigns of domineering Emperors; and while they were able to free themselves of that servile Yoke, which by the loss of many Lives, by the waste of great Treasure, and the highest Improvement of their Predecessors Art, (that set their own Lives light in respect of the Churches liberty) was cast off. These are the steps by which so far as I can gather, either by observing the Current of Time, the Reports of Histories, or the deep Impressions of Experience, the Popes have ascended sometime warily, sometime confidently, but almost ever (after the translation of the Empire into the East) powerfully to this height of Prerogative, which have made them sufficiently strong, as it is said of *David* in the Scripture, *Cum leonibus tanquam cum agnis ludere*, and to tread upon the *Asp* and the *Basilisk*. What *Soto*, *Sylvester*, *Simancha*, *Navarre*, or *Bellarmino*, either think or publish in their chymical Distinctions of *directè* and *indirectè*, *proprie* and *improprie*, *simpliciter* and *secundum quid*, *absolutè* and *tantummodo in ordine ad spiritualia*, it much matters not; because in this point they do merely transgress *mandata Dei propter traditionem suam*, leaping like Sheep that are frighted with their own shadow, over Hedges one in the neck of another, without fore-thinking of the Ditch on the other side, vouching no one Tittle rightly to this purpose out of the Word of God, regarding nothing that is ancient, nor adding any reason of Importance that is new; filling the Schools with Clamours, the Church with Errors, and all christian Estates with Tragedies. Yet in disproof of their Distinctions, which are only circles and sharp angles of scholastical Conceits; beside the grounds of sober Judgment formerly set down, I will produce a learned Jury of those Bishops whom these School-men repute firmly and completely Catholic, (whom they emblazon by descent of Pedegree the only true and lawful Heirs of *Christ*, and whom they reverence as his Apostles Successors) that did absolutely refuse in the most servile times to subscribe the Pope's privative and peremptory Censures against their own Sovereigns. They did observe their Oaths of Loyalty out of the Bond of Conscience, without regard of canonical Absolution; and never shrunk upon Threats or Terrors that thundred at *Rome*, from the positive Laws and Duties of their own Countries. They

were not ignorant that the High-Priest in the Law was *circundatus infirmitate*, and bound by the Law to offer Sacrifice as well for his own private Sins as for the Sins of the Multitude. They had read that *St. Peter* the first Founder of the Church of *Rome* was called *Sathan*, for giving counsel (that was not found) to our Saviour, after the bestowing of those Titles of Prerogative which many urge. They find him pinched not behind his back, but reproved to his face by *St. Paul*, for that he did not hold a strait course for the Propagation of the Faith. They learned of an Apostle, so far only to follow others, as they were found to follow Christ. They heard that many Popes had revoked their first Censures upon better information: that *Alexander III.* gave free liberty to the Archbishop of *Ravenna* of abstinence from satisfaction to his own Directions, so as withal he gave the reason which moved him to abstain; and that *Adrian* himself enforceth not Obedience *manente dubio*, so long as the Point was in question, or traversed. They were greatly moved with the Precedents of those religious and faithful Auditors at *Thessalonica*, that examined the passages of holy Writ alledged by *St. Paul*, for the better trial of the Doctrine *an ita se haberent*, whether they were vouched in a right and proper Sense or no. Last of all, because they found the Privilege of not Erring in the Pope to be limited by the Schoolmen themselves to matter of Faith, not of Policy, and to be rather Cathedral than Personal; it was a course familiar and usual among many grave Bishops of that Age, to examine papal Censures as well by the Standard of God's Word, as by the Weights of the Consistory; and so far only to give way to insurgent Jurisdiction, as it might not at the issue of their Lives unhappily fall out to them *in singultum cordis*, that they had run counter. If they have either Cause or Colour to challenge any one or more of this Jury that is impanelled, *ex hominibus legalibus*, for Trial of this Point in question, as prejudicial either to the Cause, or to the Church, I will undertake to set him *rectum* upright, *in ipsa Curia Romana*, by the Warrant of their own Records, tho' that be greater pain than I need against any of the Schoolmen, that mould daily new Distinctions out of the Quintessence of their own conceited and self-pleasing Wits, without the right Stamp of Antiquity.

I have touched by discourse precedent, how far *Philip* the French King, surnamed for his Personage *Le Beau*, was secur'd by the whole Clergy of his Realm, so far as concerned the Bond of their Allegiance and Loyalty, *non obstante* the rash Proceeding and peremptory Censures of Pope *Boniface*. To this I add the Answer which was made by *Hincmar*, Archbishop of *Rhemes*, to Pope *Adrian*, (forbidding him under pain of Censure to yield either Reverence or Service to the King, as to his lawful Sovereign) that Persons of all Qualities, as well Ecclesiastical as Secular within the Realm of *France* (assembled upon the Publication of the Pope's Censure) had set down this Conclusion with a kind of Astonishment, *nunquam ulli prædecessorum suorum*, that no such Injunction was ever sent to any of their Predecessors before that time. A strong Evidence in my Conceit, as well of Novelty as of Injury.

By another grave Report touching the Kingdom of *Sicily*, I find in an Epistle of the Archbishop of *Panormum*, how strange the Bishops of that State held an Oath of Obedience to the See of

Rome, tender'd by the Pope's Nuncio to one of them at the receiving of the Pall, and with this strong Exception, *Non inveniri de hujusmodi juramento statuta in Conciliis*, that in the Councils no Canon could be found, whereby to press the taking of such an Oath by an Archbishop. Yet can I not deny, that *Sicily* did more depend upon the Directions of the Pope, by the Condition of some former Contract between that Kingdom and the Church of *Rome*, than many other Provinces.

When *Gregory IV.* had a purpose in his head peremptorily to proceed against *Lewis le Debonaire*, the *French* Bishops in flat Terms answer'd, *Se nolle*, &c. that they would not submit their Judgments to that Offer; but the Ground thereof being both weak and unjust, he should well know, that *Si excommunicatus veniret excommunicatus discederet*: If he came with a Purpose to excommunicate, he should depart excommunicated. Add unto this out of a *French* Record, an Instance of one *John Tanquerell*, condemned by the Divines of *Paris*, for labouring to defend that the Pope in some Cases might depose the King. So strange was the Doctrine of deposing Princes, and transposing Crowns, esteem'd ever in those very Times which are thought to carry the strongest Tincture of Affection, which many call Servitude. But if Heresy and Infidelity were the proper Causes, as they are made the ordinary Motives of these brave attempting and undertaking Censures against crown'd Potentates, there might be some better Colour of Excuse, tho' no better Ground of Justification (because neither we have any such Custom, nor the Church of God:) But we know that Prerogative is the *Magna Charta* which they study that pursue this Point; and let the Prince (against whom the Pope intends or pretends a Quarrel) be as Catholic in all Points of Profession as the Pope himself, yet he cannot save his Stake in seeking to save his Soul; for the Challenge being once on foot, until the Supposition be acknowledged, the Censure qualified, or the Pope satisfy'd, there shall be no other ground nor object of the Process than Heresy. This moved many Bishops (notwithstanding their Obedience to the High-Priest) yet to examine the Condition, and whether the Direction were *ab initio secundum legem Dei*, as *Moses* limited. The best learned among the Schoolmen make not Obedience either an Abstract in the Clouds, or an *Individuum vagum*, or (as some do the Prerogative of Princes) a *nemo scit*, but they conceive it as a Duty ranged by Prescription *ad leges Evangelicas*.

Upon this ground of Reason, Equity and Conscience, *Gerbertus* Archbishop of *Rhemes* was drawn to an absolute Renunciation of any Grant that can be made to any mortal Man in particular, of so large Capacity, *ut quicquid libet liceat*; lest that Person being forestalled, corrupted, or seduced by Fear, Gain, or Ignorance, might put all Courses out of frame: with this further Advice, that in Limitation of Power, the holy Gospels, the Prophets and Apostles, and the Canons of the Church indited by God's Spirit, and observed in all Ages by those Pastors whom the Holy Ghost appointed to direct and govern the Church of God, might be *Lex communis Ecclesie Catholicae*. This Rule gives a round *supersedeas* to Mr. Garnet, and his Schoolmasters: and further we find *Ino*, the learned Bishop of *Chartres*, so far a Friend (how hardly soever the *French* King dealt with him in respect of his Absence from that Convention, wherein the Pope's Proceedings against the King were

sharply censured by all the States) as to deny the Subjection or Subordination of a King to any Superior in his temporal Estate. And tho' the King should refuse out of Contumacy to give ear to the Counsel of the godly Bishops, (which was the Case as he conceived at that time, being infinitely addicted to the Pope) *Divino tamen judicio relinquendum esse*, yet he must be left only to the divine Chastisement. And as *Bracton* saith, *Sufficit ei ad penam quod Deum expellat ultorem*. How confidently and how often the Synods, Parliaments, and Schools of *France* have run upon the Pikes of papal Censures, in defence of the King's Estate *paramounte*, sometime by their Decrees provincial, sometime by their Sanctions pragmatical, and sometime by Prohibitions, which cut the Sinews of all superlative Commands with so sharp an Edge, as after that they were never able either to march or move, I need not amplify, but only point with my Finger to the Coronation of the King now regnant at his first Entrance, by Bishops, *Roman* Catholics, (without either awe of Superior, or fear of Censure, or conceit of Irregularity) while he stood within the danger of the Curse; and conclude this Point with one Example very pregnant, as I imagine, of *St. Lewis*, inserted by the Pope himself into the List of holy Confessors and Saints in the *Roman* Calendar, notwithstanding his severe Decree, that no kind of Levies or Taxations should be made in *France* by the Pope's Instruments, without the knowledge of his Privy-Council or himself; nor then also, but in Cases of evident Necessity.

But now left Mr. Garnet or his Complices should except against the State of *France*, as over-tickle in the Seat of Satisfaction, when the Scope of the Church is Gain; tho' we must add some greater weight of Credit to these Courses, in respect the Bishops were both Orthodox and Canonical that assented to their Publication with the other Peers: I will prove further, that in Tendernefs of Care to preserve the Prerogative of Monarchy within the Bounds and Limits of itself, the Kings of *England* have neither been inferior, nor least sensitive. May it therefore please Mr. Garnet, and so many other of that Suit as hold the Subject bound to follow whatsoever is decreed at *Rome* upon supposition of Heresy, or suggested Shews of Infidelity against their Sovereign, to take notice of the Titles, Names, and Judgments of these Persons which I shall present to their Consideration; not from the Presbyteries, which may distaste their Relish, but out of the List of *English* Authors, limned among Catholics with golden Characters.

I will begin with the first of our Kings *post Conquestum*, and proceeded to others as they fall into the Circle of exception in their Courses, and proceeding orderly. *Quid Papæ cum Imperii vel regni libertate?* What hath the Pope to do with the Liberty of an Empire or Kingdom (saith *William* the Conqueror) to whom it rather belongeth to take care of Souls, and of the Church's Security? Afterwards, in that quick Contention that fell out between *William II.* and *Anselme* the Archbishop about the Pope, (tho' I will never avow this King to have been an holy Confessor, nor all his Expostulations to have been regular Demands) yet they must give me leave to note with what Affection and Resolution, notwithstanding the Pope's intercoming to make himself a Party in the Quarrel, the Bishops did adhere to their own Sovereign. *Notum habeat sanctitas vestra*, Your Holiness, saith *Henry I.* must understand, that by God's help the

Dignities and Liberties of this Kingdom shall receive no wipe of Abatement during my Reign: for tho' I had an Humour of embasing my self so much, as to shrink upon so sure a Ground; *tamen optimates mei, imò totius Angliæ populi id nullo modo paterentur*; yet my Peers, nay, all the Commons of my Realm would never suffer it. And after this, the Bishop of Exeter sent to Rome, received a very gracious and mild Answer of the Pope, touching the Kingdom's Liberties. Henry II. would admit no Legate from thence, nor Repair of any his Subjects to that See, before they gave Security, *quòd malum suum vel regno suo non quærent*.

The Suffragan of Canterbury in very modest and humble manner advised Thomas, his Archbishop, rather to appease the King's Wrath by a submissive Letter, which had ever been the course of Proceedings among the Pastors primitive, than by heaping Coals to inflame his Passions, in so violent and desperate a kind, as might perhaps cause a Revolt from the Roman Hierarchy.

Nubrigensis, another Countryman of ours, compareth the Archbishop's Opposition at that time to the King, to St. Peter's Zeal, in the Question between him and St. Paul. For tho' no Man denies, saith he, that the Archbishop in this Particular was *zelo fervidus*; yet *an plenè & secundum justitiam, Deus novit*, whether sufficiently, and according to the Right, God knoweth; since it is written in the Proverbs, That *prudens in tempore tacebit, quia tempus malum*; A wise Man will hold his peace in time, because the Time is evil, as he thought that to be. The Speech is modest, and yet declareth, that even in those Times Men that were void of Passion, tho' of one and the same Profession, coming to scan the Point of Conscience, judged indifferently, without either smart to the Subject, or wrong to the Sovereign: which makes me the more to praise the Wisdom of that Canon of the Church, which (with great reason) dissuades over-rough searching of Sores deeply fester'd, or over-quickly proceeding in a time when Censures are set light; for Experience hath taught, that this were but to cast Pearls before Swine, and to give that which is *sanctum, canibus*.

The whole Reign of King John, being in effect nothing but a Tragedy acted in the Eye, and to the Scorn of England over all the World, between the Pope and him, our Bishops skirmishing sometimes (out of Conscience) on the King's side against the Pope in this Fraction of the politick Estate, and sometimes (out of Faction) on the Pope's side against the King; yet the greatest part of them at Windsor, as one of our Authors writes, *Non obstante sententiâ quâ Rex erat innodatus*, did communicate and religiously receive with him.

Henry III. suspecting some hard measure (as it seems upon the smart and horror of Examples past) expected a formal Oath of his Bishops that repaired to the Council of Lions before their setting forth, that they should assent to nothing there debated, or to be decreed to his or his Crown's prejudice. At the same Council the King complained (not by the Virtue of his Letters, but by the Voice of his Bishops) of a wrongful Claim pretended by the Pope of an Imposition, under the mask and colour of Episcopal Assent; which in the behalf of all the rest, was roundly contradicted by the Metropolitan. Upon notice taken of this Complaint, the Pope alluding to the Spleen of Frederick the Emperor against his Predecessor, said that the King of England began to *Frederize*: but it skills not

much, said he; for, *babet Rex Angliæ suum concilium, & ego meum*; as he might very well, and yet be no Gainer.

Edward I. sent Sir John Lexington to all the Bishops as they were assembled in the House of Convocation, with an express *Caveat*, that they should in no ways yield to the Pope's earnest Instance for satisfaction in a Demand: To which Prohibition, as my Author writes, *& ipsi paruerunt*, they obeyed accordingly.

Edward II. stood resolutely upon the Maintenance of his Gift of the Treasurership of York against the Pope's Breves, striving forcibly by the Colour of a former Grant, to prefer a Nephew of his own; and upon what Ground? Because (saith the King) the Peers of this Kingdom are bound by their Oath of Homage, to maintain the Rights and Liberties of this State, whereof Collation of Dignities hath ever been reputed a special Branch, and therefore cannot *salvâ conscientiâ*, admit or endure the least Blemish of an invested Honour. For if it were not lawful for the Bishops of those Ages, as appeareth by Record, *Feodum Laicum Romanæ Ecclesiæ obligare*, to tie a Lay-fee upon the Church of Rome; how much less is it reasonable, lawful or convenient at this day, to engage either the Prince's Right, or the Subjects Loyalty?

To these I add a very earnest Letter written to the Pope by the same Prince, in such a Style, and with Ink tempered with so sharp Ingredients, as *ex unguibus leonem*: for he doth there protest, and that with some Fervency, *Se jus regni sui contra papam, & omnes defensurum*; that he would defend the Right and Title of his Crown against all Persons whatsoever, without Distinction or Diversity. I note by this Occasion the Temperance of the Pope at that time, who neither replies with Passion, nor thunders in Heat. For tho' it be true that England by Position and Sight hath a great Advantage of many other States and Kingdoms of Europe, that are neither so well fenced, nor so compleatly compassed by Sea, proposing to stand resolutely in defence of itself, tho' the Cause were good, and the Prince martial; yet it appeareth, that the Pope for his part also was more patient than some of his Successors (impeached by more Difficulties and stronger Impediments) have been since that time; or else considering the Claim which he pretended to Collations and Investitures in many other Estates, where he found Princes more afraid, he might at the least have made an Offer (tho' to small effect) of his virulent Exceptions, which being used without Discretion, are indeed but the Vessels of an undiscerning Pastor, to take the Words of Zachary.

Neither Law nor Nature do allow to any Agent, *potestatem operandi*, for the Maintenance of it self, *sine præparatione mediorum*, without the preparation of Means proportionable to that Faculty which it affords: and therefore in this Case we must infer, that either the Pope wanted Passion or Power, or Instruments to further his Ends (according to the scope of his Desire) powerfully. The Abbot of Tavestock was fined at five hundred Marks, for receiving a Bull from Rome, wherein there were but *aliqua verba regi, & coronæ sue præjudicialia*. The whole Court of Parliament, wherein the Party of the Bishops and Abbots among the Lay-Peers, for the number was not weak, gave their Promise to King Richard II. with Protestation to defend his regal Rights and Immunities against all Opposition, tho' it were made by the

Pope himself. And herewithal I note the Reason in the Record, suitable to the Resolution (which was spoken of before) left the Crown of *England*, which had been ever free from the Restraint of any superior Command, might on a sudden slip unawares into the Snare of Servitude; and therefore the main Article in Parliament enforced for the Deprivation of *Richard II.* was, That he had by admitting Bulls from *Rome*, intralled the Crown of *England*, which was free from the Pope and all other foreign Power.

The Pope's ignorance in the state of *English* Affairs, was the Motive by which the Wisdom of the State was drawn during the Reign of the same Prince and all that succeeded, to condemn, disable, and reject all Bulls or Breves of Direction from *Rome*, that stood upon no Warrant of Certificate from some Bishop in the Land to guide his Aim; and those Bishops (as we find by the Reports of History and Record) were ever the worse esteem'd, and the less regarded by their own Prince and Country, that posted over to seek foreign Aid, when they might have found greater Ease, by resorting to their home-bred Oracles, and *non ad transmarina judicia*; which they ought to do by the Council of *Carthage*.

They that desire to be more particularly informed of the prosperous Success of some Bishops, that were forward in execution of the Pope's Orders without Licence from the King, may find a Seizure made upon all the Temporalities of those Bishops of *Ely* and *Norwich*, for the Publication of a Bull against *Hugh* Earl of *Chester*: and further observe also, that the Bishop of *Ely* was condemned of Felony by a Jury at the King's Bench, notwithstanding his bold Challenge to be *unetus Domini & frater Papæ*, the Pope's Brother; but a younger it seems, by bearing his Dignity with so great a Difference. The Bishop of *Carlisle* in like manner (notwithstanding the Privilege of Unction) was condemned of High-Treason at the Bar, (tho' not in the Pope's Cause) in the Time of *Henry IV.* and that worthily. For tho' *Solomon* spared the Life of *Abiathar* out of a special Favour, and a kind of Reverence to Religion, *Quia portavit arcam Domini*, because he had once carried the Ark of God; yet by that he calls him *virum mortis*, I may lawfully conclude, what in Justice he might have done concerning Life: but of his Deprivation the Text itself gives clear Evidence.

I add to this Example the learned Judgment of *Baptista Baiardus*, a profound Civilian, That a Bishop offending in case of Treason, cannot be exempted by his Function from Trial before a Judge merely Secular: and for Proof hereof no Man can witness better than *Philip de Comines*, what slight answer was given by the *French* King his Master, to the Pope's incessant Suit by the *Nuncio*, for the Release of a Cardinal, whose Place and Dignity was more eminent.

In *Spain* itself, which seems in this Age to be most precise and tender of that Point which is termed the Church's Liberty, (tho' neither circumscribed within any certain Limits of Admittance, nor defined till this day by any Doctor of either Law) their own Writers avow, That the Bishop of *Coimbra* was constrained by the State to recall a Sentence against the King, which the Pope himself hath both encouraged and justified. *Don Pedro* King of *Arragon*, in scorn of the Pope's Charge, under pain of Censure not to take upon

him any longer the Title of that Crown; which, out of his own particular Affection he had settled before upon another Prince's Head, intitled himself *Imperatorem maris, & regnorum dominum*; meaning rather to advance than dismiss his Style by the Pope's Ladder.

Many of their Kings, as I could express at better Leisure, have withstood peremptory Censures of the Church of *Rome*, almost *ad deliquium animæ*: sometime upon Supposition of Incontinency; sometime upon the stay of the main stroke of that Oar in their Estate; sometime about Collations, Transpositions, Investitures, without any inward Gall or Vexation of Conscience, for exasperating a Pope's Humour in defence of their own Prerogative. Let the Walls and Battlements of the Castle *Saint Angelo* in *Rome*, bear record of the Piety, Patience and Humility of *Charles* the Fifth, Grandfather to the King of *Spain* now regnant, when the Pope in Passion, overstrained both the Duty of a Child, and the Patience of so great a Potentate. I think Mr. *Garnet* will admit, that these thousand Years there was not a more obedient Daughter to the Church of *Rome* than *Queen Mary*, that could never rest in quiet, till she had reduced the straying Sheep of her Dominions, as she conceived, to *St. Peter's* Fold: and yet without regard or awe of the Pope's sharp Censures against the King her Husband, she never gave over aiding him with Money, and assisting him with Force, till he was perfectly reconciled to the Church, and the Strife determined. For as by the Law of God she found herself precisely bound in cleaving to her Husband, with whom by Union she became *una caro*, to forsake all the World: so in the same Law she finds in point of fact no straighter Bond, nor stronger Warrant of Obedience to the Sentence of the Priest, than she observes the Priest to ground himself upon the Law of God; that is, *quem ipse secundum Legem docuerit*: which Rest is indeed that *Lapis Lydius* to which we ought all to resort for the Trial of all Coins that are current among Christians, whose Image or Stamp soever they seem to bear, in case we find them oftentimes embased by an Alloy, and apt to mine into the Foundations of Equity and Piety. For till I see it clear either by Doctrine or Experience, that God created all Men Stoicks, or rather as void of Sense as Stocks, and instituted Popes not only *dispensatores mysteriorum*, Distributors of his Mysteries, but *tanquam angelos lucis*, as Angels of Light, or more than Angels of Light, because in those, as *Job* records, *invenit pravitatem*; I must borrow leave in discerning matters of this Quality, to make use of the little Reason, and the great Respect I have: leaving those that are of another Mind, to borrow such Discretion by Observation, which in this World all Persons at all times neither ever had, nor can ever have.

By these Precedents and many more, which time serves not to dilate or to enlarge, I hold it very clear, that both Princes and their Bishops have obeyed these Papal Censures in matters touching their Prerogative and State, neither longer nor oftner than Debility or Necessity enforced them to abate their Sails, in a storm of Distress: Tho' Decrees privative have been often squared by Laws positive; and that albeit many Kings have made a shew to be mild Spectators of their Neighbours Harms, yet if the case came once to touch either their own Affection or their Right, they were content

tent to read without the ordinary Consonants of the Roman Alphabet. If then the Weapons with which our Antecessors fought against Ambition and Wrong, have been eaten into by the Cankers of superstitious Fears, or overawed by retchless Sloth; let us scour them with the Powder of Experience, (since these hot Alarms begin to found) before we be surprized in over-great Security; and by resorting often to the rule of God's direction, which is *verus Judex & sui & obliqui*, we shall the better understand, according to the Quality of superior Commands, either to lay down our Lives, or submit our Conformity. It was in my conceit a Pain well taken of late Years to reduce the Feast of our Saviour's Nativity as near to the right Term or Period, as Art and Industry could devise, by taking up the loose Minutes which by tract of Time and multiplication of Degrees had drawn out a wider Distance by certain Days, than was consonant to the first Calendar: and therefore the like Labour in another kind might worthily reduce the Challenge which Popes have pretended in some cases above Kings, to the same proportion which it held under Gregory the First, Leo, and all other Bishops of that See before that Date, by cutting off Encroachments, which by fractions of Time have brought the Church into Scandal, and the greatest part of Princes into Jealousy: For all this while Boldness undertakes, Wit contrives, Assistance furthers, Conscience prepares, Scrupulosity consents, Strength prevails, and Majesty suffers.

Now must I begin either by Mr. Garnet's Leave or against his Leave, to rip up the false Stitches of the Canon, *Nos sanctorum predecessorum*, confidently vouched at his first approach to the Council-board, after justified before the Lords in Commission, and at this instant stood upon (as our own Ears can witness) in defence of that supposed Interest of deposing or dispatching lawful Kings, which is the binding Knot of the late *Gordian* Conspiracy. For tho' wise Men that either follow learned Conscience, or any certainty of Direction or Rule, will tax Mr. Garnet's haste in presupposing Censures, which the Pope did never yet pronounce, in dealing worse with his own Sovereign, than any other Prince in his Condition, running without an Errand, and rebelling without a Colour; yet I will take this Canon for the time *de bene esse* as it lies, *ut concusso fundamento arx ipsa concidat*. This only Principle (if I err not) hath more afflicted, discredited, and disabled the Pope's Means and Instruments, in working his own Ends, than all the Batteries that have been bent against the Vatican for the space of five hundred Years. For what Prince under Heaven can repute his State secure, so long as every small distaste to the Pope's desire may ground a Challenge, the Challenge may procure a Citation, the Citation may produce a Sentence, the Sentence either neglected or not satisfied, infers Contumacy, and Contumacy deprives the supposed Delinquent of that Honour which Nature gives, Conscience avows, and Consent fortifies? so as in this Case either Gregory the Seventh in respect of his ill hap, or no other Person upon Earth, hath reason to acknowledge that Rule of the Holy Ghost, that *in quo peccamus, in eodem plectimur*. The words of the Canon strongly bent against the Crown Imperial of Henry IV. are not many, but yet heavy, and in *English* thus: *We observing the Statutes of our holy Predecessors, do*

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Persons excommunicated, from their Oaths, and do forbid them to observe or keep their Fealty toward them, quousque ipsi ad satisfactionem veniant, till they come to yield Satisfaction.

Thus far the Text of the Canon *expressis verbis*: but since this is that *pillula aurea* (or rather *deaurata*) that Pill not of Gold but Guilt, which is preserved in the Cabinet of the Church of Rome to purge Princes of their Choler *in morbis acutis*, in hot Fevers; that is, whensoever they begin to square with the Pope about any point of Ecclesiastical Prerogative: and since Mr. Garnet for his own part likes the Composition so well, as that he shrinks not in defence thereof to hazard the Life and State of his matchless Sovereign, and his Royal Issue, supposing them to be more sick (God be thanked) than they find themselves; it behoveth me out of Affection and Duty to my dear Sovereign (tho' otherwise unworthy so much as to gather *herbas agrestes* with that Child of the Prophet, *in die critico*, upon this day critical) to examine the first *recipe* as I find it formally subscribed by the Pope's own Hand, that by more heedful looking into the quality of particular Ingredients, I may the better understand, by Understanding judge, and out of Judgment resolve how well it agrees with the Precepts *melioris avi*, both in Proportion and Property.

The first Ingredient (of observing Statutes) I confess to be of great effect in working the Cure of any Grievance to the Church or Commonwealth: but yet I find it not of use among the Canonists, that exempt the Pope from the regular Observation of any Law or Statute, that out of his own Election he likes not to follow. But to the matter, I would learn whose Statutes they are, or by whom enacted, or in what Parliament, that Gregory VII. intending to depose an Emperor, (established by the Providence of God, and taking God's own Office into his hand, by making himself in this point *Similem Altissimo*) will observe thus tenderly. Surely the Prophet David was never in the number of those Predecessors that promulged any such Decree, condemning Persons with all kinds of Presumption or Discontent, that shall induce a Subject to lift up his Hand *contra Unctum Domini*. Our Saviour was none of them, commanding his Disciples to give unto *Cæsar* what is *Cæsar's*, and rather to endure, than offer violence to any Man, much less to Magistrates. St. Peter, that ought to be the first in respect of the Descent which the Popes derive, gave never any Voice to any such Decree: for he enjoins Obedience even to Tyrants, whose Authority was absolute. Saint Paul was none: for he commandeth Prayers to be made by the Faithful, *pro regibus, & omnibus qui in sublimitate constituti sunt*, for Kings, and all those that are placed in Sublimity, as at that instant Nero the Tyrant was; and to what end? that under them the Christians might peaceably live.

Out of the rank of these Predecessors, he must exclude Pope *Xistus*, who touching the Rule of Conscience, resolved rather to obey God than Man: but touching the point of Obedience, made no kind of resistance nor opposition to Tyranny. And Origen's Opinion was, That *omnia crimina quæ vindicari vult Deus, non per Antistites, & Principes Ecclesiarum, sed per mundi Judices voluit vindicari*. He must exclude Marcellinus, that offended no Magistrate any further, than to make the Church of God know that *Cæsar's* Decrees were no lawful Warrants, as some taught, for Idolatry.

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He must exclude *Cornelius*, who being charged with a Course of entertaining Intelligence by Letter with *St. Cyprian* the Bishop of *Carthage* (at that time) protested at his Death, that the contents of those Letters had no other end or drift, than preservation of Souls. So far were they from derogation of Obedience to Authority, as *St. Gregory* had never read this Statute: for unless they will avow that *Servus* may be *supra Dominum*, which Christ denies, they must confess that *Gregory* acknowledging himself a Servant to *Mauritius*, he could neither overtop him, nor reign over him.

Neither is it probable that Pope *Anastasia* to an Emperor of that Name would have written, That the breast of his Clemency was the shrine of publick Happiness, and that his height carried the place of that Lieutenantcy, which God commanded to rule and govern upon Earth, if he had held him a Tenant of his Crown to the See Apostolick; and therefore with our venerable Countryman I must conclude, that the Master-rule of our Life, is *Ecclesiæ primitivæ actus imitari*, to imitate the Examples of the Church Primitive.

But if (notwithstanding this Obedience) they will enforce a Man to reign, who with his own Mouth doth profess the contrary, which is to serve; let them call to mind that Observation of the wisest King that ever was, That one of the chief Instruments, *Per quæ movetur terra*, by which the Earth is shaken, is *Servus cum regnaverit*. I know not what Pope can pretend a better Title to the Prerogative of making Laws and Statutes, than all or some of these which had their Course, and held that Chair; and yet we find not that all this while the Case was put (much less ruled) by such Laws or Statutes, as might either countenance the Pope's Challenge, or excuse his Intrusion. But why should we thus puzzle or afflict our Spirits in turning over both the Testaments, in ransacking the Volumes of the Councils, or in founding the Judgment of the learned Fathers about the Names of those holy Predecessors which are only recorded in their Library? In singling some of the Principals from the body of the Herd, and hearing them express their own Conceits in their own Words, it may perhaps be found that their Reputations in this point have been further charged, than they can be blemished: bare Words are not to be recorded without demonstrations of Right, or impressions of Acknowledgment. But in the course of my own reading (which were sufficient to find out a black Swan if any were, tho' not so well able to resolve a Doubt as many are) I may protest that I could never light upon a Precedent of any Pope before *Gregory VII.* that took notice of any Statute, much more enacted or approved any for the maintenance of this deposing Challenge; altho' in case there had been such, I would hardly have preferred the Practice of any Sinner that may swerve, before the Precepts of a Saviour that derives Doctrine from Deity.

The Civil Laws decree, That *Si princeps causam inter partes audierit & sententiam dixerit, est lex in omnibus similibus*: If a Prince have heard a Cause among the Parties and pronounced Sentence, in all like Cases it shall stand for Law; much more in Cases of Obedience and Sufferance, which *Rex Regum*, the King of all Kings hath both heard and determined. For if the Schoolmen have resolved truly and advisedly, that the Pope cannot remit Sins without Sacramental Ministration, nor alter

Forms essential, nor *ad placitum* release Vows; because this absolute Prerogative only appertains to the Key of him which opens and no Man shuts; much less can any Pope out of the strength of Passion (tho' warped and involved within many folds of fair Appearances) deprive Magistrates.

Whether the Chair of *Gregory VII.* brake or not (as one Writer notes) at the pronouncing of the Sentence (because the Pope or the Sentence, or both Pope and Sentence were too heavy for a Chair that had not been so far pressed or surcharged for the space of a thousand Years) it is not my purpose at this present to dispute; but I am very sure, that the Policy, the Discipline, and Order of the Church received a great Crack, when the force of the Spirit was perverted and abused to the satisfaction of inordinate Desires, which Mortification should rather suppress, than Ambition execute. For *St. Bernard* writeth with great Judgment to Pope *Eugenius*, that *Episcopi & ministri Ecclesiæ cum tractant politica*, when Bishops and Pastors of the Church intermeddle with Civil Policy, (I mean so far as may put Princes to their plunge) they invade the Limits, they disturb the Functions, and thrust their Sickle into the Harvest of other Men. If none of the Predecessors of *Gregory VII.* (in which many were Religious, regarding more internal Piety, than external Pomp) were privy to the Reason or Promulgation of such a Law, but *Gregory* himself first undertook the Exercise *duorum gladiatorum*, of two Swords upon a weak Text in *St. Luke*, (which is not taken in that Sense by any of those Fathers whom *Thomas Aquinas* voucheth in *catena aurea*;) Is it not then more than probable, that this Law was both enacted and proclaimed in one day, without any former Precedent or Record, either in *albo Prætorum*, or in *rubrica Martyrum*?

Tribemius a grave and learned Writer, living in the Year 1005, who was about the time wherein the Pope was put into this Heat, affirms, That this Question was then argued, but not determined: and where? not *inter Episcopos*, but *inter Scholasticos*, among the Schoolmen, Whether it belonged to the spiritual Jurisdiction of the Pope, to depose an Emperor from Sovereign Dignity.

The Church of *Liege* in like manner in the same Quarrel, and soon after the same time, avow by Letter to Pope *Paschal*, that none of those holy Predecessors of which *Gregory VII.* speaks, ever drew the Sword against any Emperor, before himself, commanding that great Lady the Countess *Maud* (that in her Life depended wholly upon his Direction, and on her Death-bed left a rich Legacy to the Church) and that *in remissionem peccatorum*, to persecute this Prince: whereas Christ himself, whom *Gregory* should imitate upon the same Condition *peccatorum remissionis*, that is, as we forgive the Trespases, enjoineeth his Disciples to forgive their Enemies, and that not seven times only (which agrees well with the number of *septimus Gregorius*) but seventy times seven, using the number of finite for infinite, which agrees better with the Duty of *Gregorius Episcopus*.

Otho Frisingensis, another Author of those times, concurring formally with the two precedent Witnesses, affirms, that *legendo & relegendo*, in reading and reading over again the Lives and Actions of Emperors, he could not hit upon any one in that Rank, that before *Henry IV.* was expelled or deposed by the Papacy. Wherefore the Proof

standing.

standing very clear and pregnant, as I take it on this side, as well *Quia probatur manifestum*, as *Quia non probatur contrarium*; that this Act of Gregory found no Right antecedent whereupon to ground a reasonable Consequent; I would gladly learn for my own Instruction of any Writer, modern or ancient, whether it were a just part in a Judge to condemn an Emperor, *causâ inauditâ*, or a wise part in an Emperor, to put his Crown in *manus Papales*, into the Pope's hands without furer hold; or a religious part in a Pope, to vouch such Records as are not any where set down, if they be not in Tables of Ice, *Idque flantibus auris*, the Winds blowing Southerly. But it may be I have mistaken by Error, or overshot with Haste, or omitted by Prejudice some such Predecessor to Gregory, as was Author of some such Act, without any kind of Exception made in the behalf of the Prince, either of Invalidity of the Sentence, or of Peril in the Precedent. For this Pope voucheth Zachary, a Predecessor of his own, that deposed Childerick the King of France; tho', as Gelasius reports to Anastasius, this heavy Sentence fell not on him, so much for any Crime committed by himself, as because he was reputed *Inutilis*, unprofitable, or of no use to so great a Monarchy.

I would be loth that any Man should hold me so presumptuous or undiscree, as to carry over a Question of this Importance, with a peremptory Strain, as if no Author had reported this Suppression of Childerick to have been in very deed the powerful Act and Execution of Zachary. For I acknowledge that some such there are (tho' earnestly transported with a desire to raise and improve the Reputation of Rome, by an effect of so forcible Authority.) My desire is therefore only to be heard in a word or two, and so far to be credited, as the weight of Reasons may demonstrate, that only the Peers of France deprived Childerick by uniform Consent, howsoever they were providently careful afterward, that their Proceeding upon tickle Terms, might pass more currently the Voice and Censure of the World, by Approbation of so grave an Oracle. But herein first I note, That Gregory gives Evidence with his own Mouth in *causa propria*, in a Cause that concerns himself, which Isaiah did not, appealing *ad Legem & testimonium*; nor our Saviour, excluding any Man's Report, *Qui de seipso perhibet testimonium*; nor St. Peter upon Advantage *Sermonis prophetici*. The Civilians allow not this Prerogative to Caesar, nor the Bishops of Africa to Zozimus, nor Johannes de Parisiis to any Pope, *nisi scripturæ fulciatur autoritate*, unless he be supported by the Warrant of Holy Writ; nor the Canons themselves to any mortal Man that may be subject to Affections. But I will let this Advantage pass, tho' it may seem strange, that whereas the Figure of St. Peter's Person was sufficient whilst he conversed upon Earth, to cure private Men of their Infirmities, it happens after his Translocation into the Mount, that the shadow of his Function should prevail so far as to the suppression of Monarchies.

First therefore, in disproof of Absolution from Oath, and Deprivation of regal Jurisdiction ascribed to this Pope, I take hold of the Gloss it self, expounding this word *deposuit*, for *deponentibus consensit*: For hereby it appears, that this honest Man being far from their Ambition and Presumption, that hold it a great Honour for a Pope

to depose a King, sought carefully and modestly to acquit that Chair of an imputed Crime, (or Error at the least) applying the Text of his own Record to the Testimony of the best Histories. For in a Story found in the Library of the Abbey of Fulda among the Germans it is plain, and by the Report of a French Writer very antient, that King Pepin of France was surrogated into the place of Childerick by the whole Nation of the Franks, *relatione tantummodo missâ ad sedem Apostolicam*, report being only made to the See Apostolick.

It is likewise evident by the same Author, that before any Ambassador was sent to Rome from France, this silly Cypher of a King, *non re sed nomine tantummodo regnabat*, was a King in Title, not in Truth, and did only fill the place of Royalty upon the Stage of Scorn: and therefore when the Reals were all converted into Nominals, let no Man wonder at the Voice of Ratification, but rather note the Reproof of Imbecillity. The whole sway and stroke of Affairs in the State rested at that time in the hand of one Person only, that was *Maire du Palais*, his sole Act was authentic, his Word was Law; to him they resorted for Resolution; to him they gave Thanks for Satisfaction: and therefore if it be true that *privatio præsupponit habitum*, it must likewise be true that Childerick could not be deprived of a State whereof he was not possessed at that instant, without new Grounds of Philosophy. Another Author writes, *misisse Barones ad Zachariam Papam*, that the Barons of France sent to Pope Zachary as it were to consult, whether *ignavum pecus* a Drone that devours, or a Bee that labours, were more sufficient to command so great a State; and that Zachary, not unlike in this to Alexander the Great, bestowed his Voice of Approbation on him that should be reputed *dignissimus*. Gagwin makes a Question to be moved to Pope Zachary from the whole Estate of France, by this kind of Comparison, Whether of these two Persons, *data electione*, free Choice being given, were more capable of Government, he that spends his time at Home *nihil agens* idly, or he that bending his whole endeavour to Affairs *industriâ virtuteque publica negotia moderaretur*. But the Pope's answer being (by the Report of this Author) as was testified before, *hoc adducti responso Proceres sibi Regem delegerunt*, the Peers induced by the same, chose Pepin King. But as we know, that a Question in point of Fact, submits no Claim of Right, so the Pope's Answer out of Discretion, implies no Bond or Obligation of Necessity. With this Opinion concurs another Writer of that State, proving by an exprefs Deduction of the whole Cause, that the Choice of Pepin proceeded originally from the free Consent of the French Peers; tho' for prevention of all Doubts and Scruples, lest Malecontents might ascribe the Process rather to respective Faction than to single Faith, there was great use of the Pope's Authority *disponentis in dubio Procerum*, resolving the Doubt which caused the Peers to stagger. This would have been the end, whatsoever Clouds were cast, or the Pope had said: but *abundans cautela non nocet*, and the Persons that either are not at all, or very little interested by their own particular in the Point in question, are presumed by the Law to regard the Matters with Eyes of greatest Equity. This manner of proceeding is not strange; for Joab fearing at the height of his Fortune the shot of Envy, pressed David with a powerful Argument, to come in Person,

Person, and receive the Honour of giving up of the Fort of *Rabbat*, that by his Industry was brought to the last pinch, left his own Glory in the World might swell too much by the fortunate Addition of so prosperous an Accident. We count that Doctor happy, that resorts to the sick Patient in *declinatione morbi*: and it hath ever been accounted an effect of Skill, to wind in the Conscience of an upright Judge for the Countenance of a Cause humorously undertaken by the first Author, that works under the Reputation of unsuspected Truth. Wherefore tho' this *Major du Palais*, or Superintendent-General over all the French Affairs, held in his best Course to mask Religion with the Veil of Holiness; tho' *Zachary* were not unwilling in the End to take hold of this offer for the grounding of a Precedent of Challenge, and Advantage in like Causes at another time; tho' the Peers were willing to leave *Speciem* to *Zachary*, reserving *Vim* the Strength and Execution only to themselves, let this be neither Rule nor Instrument of curbing Princes of better Understanding, or emboldening Popes of stronger Minds. For as well might the poor Fly sitting on the Cart-wheel while it was in moving, wonder at the great Cloud of Dust which she raised in the beaten way, as *Gregory* or *Zachary* draw Counsel to Power, or make that Act their own, which was hammered in the Forge of Ambition, countenanced with a Colour of Necessity, and executed by a Minister, that being weary of Subordination, resolved by this Trick, when the Means were fitted and prepared to the Plot, to make himself absolute. The Case of Kings were pitiful, if *ex factis singularibus* out of special Facts and Practices, as the Chapter of *Liege* writeth gravely to Pope *Paschal*, it were lawful to draw leaden Rules in their disgrace. For some Men undertake too much out of Presumption; some yield too much out of Cowardice; the greater part strain farther than they ought of Right; and those weak Rules lighting by mishap into the Hand of Power, not tempered with Conscience, are sometime forced by Affection, sometime bent with Corruption, and for the greatest part applied with Subtilty. It seemeth not (by the report of *Paulus Æmilius*) that this manner of proceeding against Princes by the chief Pastors of the Church (tho' without Passion, and at the Request of publick States) was usual or ordinary in those Days; much less humorous, violent, or voluntary Decrees. For *Zachary* himself was at the first so moderate and mannerly, *ut non auderet tam magni momenti cogitationem suscipere*, so much as apprehend a Conceit or Thought of so great a Business. And therefore tho' we should dispense with *Gregory VII.* in vouching this Predecessor in the point; yet the Predecessor himself by Daintiness, doth in a sort disclaim the Charter which he should pretend, without either enforcing or urging (in so plain a Sphere) any external Traverse of Obliviousness.

By this Author it is manifest, with what Tenderness, Advice, and Caution the Pope opened a Vein that is apt to bleed above the Measure which the Doctor's Art prescribes: For finding by Equity, that *Childerick* was the last Branch (tho' sear and withered) of *Clouis* the first Christian Prince among the French, that he was *sine liberis, sine ingenio*, without either Issue or Discretion, (the strongest Sinews both of Succession and Government) that he was so benumbed with Sloth

and Sensuality, that he could not feel the taking off his Crown from his Head, that his Suppression was not only fought by France, but applauded by the World: the Pope proceeded, having perhaps in his Eye the Bond whereby he might engage the Kindness of King *Pepin* to the Church of Rome, against the Greekish Emperors, (transported with Jealously.) This makes *Kranzius* in his History of *Saxe* to wonder at the fastness between the French Kings and the Popes (like hands that wash and help one another by mutual Support) in attaining those high Objects which both aimed at. *Antoninus* joins with others in expressing the Demand Comparative between a Prince of Judgment, and a *fais-neant*, an Image, and a Man; between a King indeed, and one *qui solo nomine regio tegeretur*, that was only masked with the Name and Title of a King; adding, that the States assembled upon the first return of the Pope's Answer, suppressed *Childerick*, and raised his Competitor. *Zachary* was so far from levelling at the Person or the Crown of *Childerick* in hypothesis, (if we give credit to our own Countryman *Polychronicon*) as he only meant in *thesi* to set down his Judgment of the difference which a wise State ought to make between two Princes qualified, not only in a kind of Disproportion, but of a direct Opposition of Gifts and Properties. *Gotsfridus Viterbiensis*, striking rather at the Root, than at the Branches of this Enterprize, affirms not *Francos Zacharie paruisse decreto, sed acquievisse consilio*: tho' the Difference be as great as between an absolute Injunction and a politick Advice. *Sabellicus*, without so much as dreaming of a Donative, avows a Counsel by these words, *consulio prius pontifice*. *Nauclere* yet more roundly if it be possible, that after the Peers had first elected, the Pope ratified: And with him agrees *Blondus* in one Tune, without either rest of Violence, or inducement of Affection.

Out of *Aventine I* draw two Reasons of Conclusion against the Jurisdiction of Pope *Zachary*. The first, That being moved by the French Peers as before, he takes his ground of Answer from the revolt of the ten Tribes, (tho' as aptly as a Man might avow the rising of *Jack Cade* against his anointed Sovereign.) For, the Sins of that ungodly Race, the Curses that were pronounced against the Rebels themselves, and the Censures of God's Prophets, evidently prove, that the Fact was exorbitant. The same Reason may be drawn from *Zachary's* own Paradox at the same Return, defending, that since Princes hold their Crowns and Governments of the Peoples Choice, in whom it resteth absolutely *constituere & destituere*, to constitute and desert; tho' the Doctrine be as dangerous as it is damnable, yet hereby it is evident (for me) that the Right of Deposition (being as the Pope himself avows, invested in the People) was not in himself, and by Consequent, that he was a Counsellor, but no Commander; an Assistant, not a Judge; and that he did only approve by Admittance, not enjoin by Prerogative.

I know that M. Garnet and the rest will as unwillingly admit the Judgment of the Centuries in this Circumstance concerning *Childerick*, (as other would Barons of another side) further than the Warrant of their Proof makes way; which moves me with a better Will to let them pass, and leave the Judgment of this Point upon the Credit of such Authors as had no reason to speak more than

than Truth for Advantage of either part, because in those days not the Manner, but the Matter; not the Circumstance, but the Substance; not *quo jure*, but *ad quem finem*, came to be decided between the Pope and the Parliament.

But touching the Pope's Process against Henry, the Chapter of the Church of *Liege* doth unfeignedly protest, that in their exact Perusal of both Testaments, they could find no Precedent *hujusmodi precepti Apostolici*, of any such Injunction or Writ Apostolick. A good caution to make us tender in misdeeming of their Reports and Testimonies, which (living in the time of this Distemper void of Passion, and qualify'd with Modesty, being learned both in the Scriptures and the Civil Laws, and regarding more the Peace and Quiet of the Church, than the Partialities or Humours of either side) affirms soundly out of Knowledge, and confidently upon their Credit, that this Gregory VII. was the first Pope that deposed any Prince by the Warrant of St. Peter's Keys; or, to use their own Phrase, that ever lifted up the priestly Launce against *Cæsar's* Sword, not dreaming of any formal Process sent out by Pope Zachary against King Childerick.

The very Circle of a Crown Imperial (so far as any State or Fortune beneath the Moon can reach) implies a Perpetuity of Motion: for according to that Principle of the Mathematicks, as it begins from all parts alike, so *in seipsa definit*, and ends absolutely in it self, without any other Point or Scope objectual to move unto. That the Pope hath sometimes set the Crown Imperial upon *Cæsar's* Head, since the crowning of King *Pepin*, (whom I take to be the first) ought to be no reason of his tossing Crowns from head to head like Tennis-balls; for this were the way by Signs to destroy Substances, and to oppose Formality to Necessity, and Occasion to Institution. The Metropolitan of every Kingdom, may do as much in form, *Non conferendo jus, sed implendo justitiam*, not conferring Right, but doing what is just and right, as it is aptly said by one of their own Partners. For tho' the Pope reserve unto himself this final Interest of crowning an elected Emperor at *Rome*, and some Flatterers would derive a kind of Necessity for Consummation and Establishment from thence; yet many Emperors of an elder Date, and *Charles V.* in our Time, have been ready with their Swords in their Hands to prove (notwithstanding filial regard and reverence to the Mother-Church) that the stroke of Power is absolute without relative Formality. I conclude this Question concerning Childerick, with an Argument inevitable either by Invention or Sophistry, not disabling the Witnesses. For *Soto*, both a Frier and a learned Schoolman, holds, That *extra causas fidei ipsi Pontifices nunquam ausi sunt Reges deponere*: The Popes themselves durst never depose any King without the compass of such Matters as concern Faith. But Childerick was deposed not for any Point of Faith, but as Pope *Gelasius* writes to *Anastasius*, because he was of no use to the Commonwealth; therefore it is not possible that Childerick should be deposed by Pope Zachary. What Hue-and-Cry hath been made in former Times against uncivil Claims, varnish'd with religious Pretences, nothing proves more plainly than the strong Opposition which was made at the *Holy-Land* to *Pelagius* the Pope's Legate, for seeking to draw in all parts to the Share of the Church, at the taking the rich City *Damiata*, not unlike to the

Partition which was made by the Lion to other Beasts that hunted in his Company: For it is true that at the first they wonder'd, and after complain'd, that the Minister of him, whose Office was to strengthen by Advice, should discourage by too much Greediness.

To that Example which is given by Gregory VII. of Alexander I. another supposed Predecessor, absolving Christians from Oaths, it were Idleness to shape any formal Answer; since it hath neither Likelihood in common Sense, nor Ground of Antiquity: For, in a thousand Years after Alexander I. this kind of releasing Oaths was not hatched, much less practised. It is not probable that a discreet Pope, void of Humours, (as in that first Spring of Piety all were) would have sought to range a faithless Prince to formal Discipline, since Paul himself refuseth to judge those that were no Sheep of the Fold, but *foris*, that is, without. And as unprobable it is, that when the Bishops of *Rome* intended most the winning of Souls by Obedience, that should give so great cause of Distaste to those Princes, that by the strength of their own Laws were most absolute in Authority. It may be that Alexander I. might comfort and secure the Conscience of some Christians, that were over-scrupulous and precise in observing wicked and unlawful Oaths, which are *ipso jure nulla*, (tho' the Pope should not dispense) and therefore broken with a better Conscience towards God, than kept. But how proves that the Breach of lawful Oaths to Princes that are rightly seated in their State, (tho' perhaps not ever good) which the Church condemns, and no Law justifies? I hold it most absurd, that the Church of *Rome* for Greatness, or the Church universal for Instruction, would not have kept Record of such a Fact, if any such had been: but it is not hard to prove *quidlibet ex quolibet*, where Men may devise to join their own Positions, without care either to answer for Presumption, or to account for Ignorance, and then to grace them with Professions of Piety.

The Caution which St. Peter is said to give at the Ordination of St. Clement, that no Man should be favour'd or kindly entertain'd by the true Professors of Religion, against whom his Successors should conceive Offence, may be admitted without prejudice to this Point; if we speak of such just Offences as God's Law punisheth. There are Cases wherein a Man, that doth but in a word salute and give a God-speed to a grievous Sinner, is said *Communicare operibus ipsius malignis*: but this is not ever; when St. Clement's Successors censure more out of Passion, than out of Reason. Christian Princes were not so much as thought upon when this Course was set, and therefore far out of Pope Alexander's Aim, that is, made to wound a King standing so far off, with a headless Arrow. Reason satisfies thus far, that the Pastors of the Church (excluding us out of the Fold) can bereave us only of those things which they give us at our coming in; that is, the Kingdom of Heaven, more in value than ten Millions of Worlds, but no Kingdom upon Earth; Co-inheritance with Saints, not with Sinners; eternal Blessings, not temporal Benefits. It appears the Wardrobe is very beggarly (as one of Mr. Garnet's Fellows wrote over in such another Case) that affords nothing but Rags instead of Robes; and the Stock goes low, that would pay Counters for *Portagues*.

These are all the Predecessors which Gregory VII. presents as it were in a Mummery, to cast Dice for

a Prince's Crown, as the Soldiers did for the seamless Coat of Christ: for they come, and go out again, without either speaking any Word, or giving other Notice, than by Signs, which is nothing in effect: their End should rather give Evidence, than make Appearance, dispute, than dally. It is hard that the Pope should flourish in this shameless manner, about the Heads of anointed Majesty with a rusty Sword, which since the time that St. Peter was commanded to put it into the Scabbard, was never drawn, nor by the Rule of Christ ought to be.

King *Edgar* in an excellent Oration, persuading the *Saxon* Bishops that had the Sword of *Peter*, to join Hands with him that had the Sword of *Constantine* for the cleansing of the Church, meant nothing less, than that it could be in a Bishop's power against himself, to make use of the material Sword, which was assigned to his Custody. He tells *Dunstan* in the same Speech afterward, That it was he that committed this Trust to the Bishop's Care, that should chastise Offenders indeed: But how? *Episcopali censura, & autoritate Regia*, by the episcopal Censure, and the King's Authority. *Gregory VII.* was not yet awake, who putting two Swords into one Sheath, intends nothing more, than to drive Princes out of the Field with their own Weapons.

But howsoever some weak Sovereigns, that received their Authority from God for term of Life, have notwithstanding been content to hold it of the Pope at will; this bars not others of a quicker Spirit, to examine Evidence concerning the point of Right, before they suffer themselves to be concluded in the Court of Equity. Subjects that are dutiful, and not apt to be transported from their Faith with every Blast of ambitious Spleen, cleave fast to the Foundation which is the Band of Obedience, not voidable by strong Intruders, nor partial Interpreters. I confess, that a godly Pastor ought chiefly to provide, that Christ's humble Sheep should be folded in due Season, and safely guarded from the Persecution of Wolves: but the Sheep, for their part also, ought to be as cautious, that a Wolf be not the Bellweather; which hath happen'd as often in many Churches, as the Bishops out of their Affections and wreakful Passions have been Authors of a far greater Effusion of Blood, than Hereticks or Infidels out of their Malignity. Further, if we may give credit to that strange Vision which *Sozomen* in his History reports, there arose a Question not only among Doctors upon Earth, but even among Saints in Heaven, what Course was best to be taken with *Julian* the Renegade, notwithstanding his Apostacy, in respect of Place: and yet of both, I presume, that Mr. *Garnet* held him a Man of worse Condition and Affection towards God and godly Men than *Henry IV.* whom without the least gall of Conscience, or supposition of Doubt, the Pope deprived thus unworthily.

Touching the Quality of this afflicted and tormented Emperor, and the true state of his Cause, which was the Ground and Motive of the Pope's sharp Choler, I need not at this time say much, when much cannot be said for want of time; but will leave him with his Opposite to their final Trial by Grand-Jury at the dreadful Bar, where the Books of all Accounts and Evidences shall be laid open, and Sentence shall be rather grounded upon just Desert, than partial Desire: And where no Man shall be either charged out of the Envy of *Crassus*, or defended by the Eloquence of *Anthony*.

I am not ignorant of that which Writers on both sides (Imperial and Pontifical, *Guelphes* and *Gibelines*) have set down touching Pope and Emperor, according to that Humour which Infection and Distraction of Parts envenom'd their Pens. I know that a Man may err easily, bending too much out of Partiality or Prejudice to the Byass of either side: and I want that just measure of Discretion and Distinction which should level Grounds, that are made unequal and uneven by distemper'd Conceits. But whether the Pope were vexed and disquieted with *Henry's* Challenge of Investiture of Bishops *per baculum & annulum*, and Collation of Church-Preferments, as some think, (tho' many Kings, and ours especially, have had, and ever challenged the like Prerogative in their own Estates) or with the Instigation of *Sigisfred* the Archbishop of *Mentz*, to withdraw Subjects over-hastily from their ordinary Resort to *Rome*, as others write, (tho' this hath been the Case of some other Princes in like sort that escaped Thunder-claps) or whether *Henry's* mean Account of the Pope's Admonitions, or his Preparation to withstand Force with Force, put the Pope into Choler, as other Emperors have done often times, both before and since, with more easy Penance for supposed Pertinacy: Whether all these or any one of these Occasions gave fire to the Train, tho' I presume not to resolve, yet I may be bold to conceive in my own Opinion, that the Medicine was over-sharp and violent for the Malady. True it is, that the Grudge of *Gregory* to this Emperor began first to fester in his Heart a good space before, in respect of the Countenance and Aid which *Henry* gave to *Gibert*, Bishop of *Parma*, chosen Pope by the Cardinals on that side of the *Alps*, with Opposition unto *Alexander*, whom *Gregory* that was then but an Arch-deacon, highly favour'd.

But supposing all were true that either colourably or justly hath been given out in this Cause for Truth, I desire to learn of some grave Doctor, whether these poor Motives were proportionable to the Pope's glowing Indignation, which shutting his Gate against the Emperor, (I will not say uncivilly, but uncharitably, that came barefoot in a bitter Frost to witness true Contrition of heart, for satisfaction to Wrath) set up a Competitor against him in *Germany*, while he was labouring by this painful Pilgrimage to *Rome*, to work a perfect Reconcilement with the Pope; and to write to the Party opposite (lest they might shrink upon those Shews of Friendship, likely to ensue between the Emperor and him) that he would fend him back, as he would use the Matter, *culpabiliorem* more culpable, and by consequence more subject to their violent Advantages.

Nay, which is worst of all, after Peace and Friendship, and absolute forgiveness of Offences sworn, and the Sacrament received by the Emperor, (for the better assurance of the League intended at the Pope's own Hand) to arm his Son against him in the Field, under the pretence and mask of Zeal, *ut nomen Augusti ab heresi vindicaret*, that he might redeem the Title of *Augustus* from the blot of Heresy; for to this Center all the Lines of the Pope's disguised Exceptions may be drawn, and in this Gulf they vanish: as if no Man could embrace a sound Belief, unless he had a servile Heart, as if all that oppose against Intruders were Hereticks; as if it were not lawful for the Emperor to set up a Traverse in the Church, so long as he resolved to exclude the Pope from Competition to the

the Chair of State: or as if the supposition of Heresy at large without Conviction of any Point heretical, against the Canons of the Church by Proof, were a common Jail, wherein the Pope's Custom is to lodge all Christian Princes, that by contradiction to partial demands upon just grounds, are condemned as his Cast-aways.

Last of all, I would know where the Pope learned to forgive *culpam*, but not *pœnam*, to a Prince, that in the end was more willing to sollicite Union, than to rankle Hate; or where he learned to distinguish between Restitution to Grace and Majesty, by suspending that part of his Favour that might put him into possession of his own lawful Interest. I find by *Sigibert* the Abbot of *Gemelack*, that in his time it was holden *heresis nondum in mundum emersa*, that the Chaplains of that powerful God, that oftentimes makes Hypocrites to reign *propter peccata populi*, should cast the Rod into the Fire, before that Faults were chastised according to Deserts; or by their absolute Commands, displace those Instruments, that, as powerful Executioners of heavenly Judgment, are to discharge the Duty which is laid upon them.

But howsoever *Gregory* might in those Dog-days scorch an Emperor by the Combustion of Beams that *ex diametro* were opposite, by the strength of a Party raised by Advantage of the Time; yet by succeeding Tokens I observe, that God was just, tho' Popes were humorous. For one of those Arch-traitors whom the Pope erected out of Passion, and supported out of Pride, was slain afterward at the winning of a Town; another in the Field, tho' (as one writes) not impenitent for his Treachery. The Pope himself, worn as it seems with Vexation and Strife, lived not many Years; and having left his Point in this Prince, was never able to any great purpose to sting afterwards. The mutinous and rebellious Bishops (that had oppressed and resisted by the Pope's Direction) never held up their Heads after the fatal Blow which they received at the Synods of *Mentz* and *Wormes*, but were either slain by their own Sheep, or perished in the Mountains by a most hard Destiny.

Walran Bishop of *Megburghe* writing to a *German* Count, gives a very just Cause of this Concurrence in Malignity of sharp Accidents: For since by resisting Power (saith the Bishop) they resisted God, it was not possible for the Success to be better. *Platina* reports, that in the very interim, while the Pope was as yet advising and consulting about the best Course to be taken with this discontented Prince, some wiser than the rest were of the mind, *Regem non ita cito anathematizandum*, that a Prince was not to be accursed in such post-haste. But Oppositions were idle, the Pope's Heart being wholly set upon Revenge, and supporting this whole Process with the Commission which Christ gave to *St. Peter* to feed his Sheep, that is, to teach and instruct the Flock: for I make as great difference between Instruction and Destruction, as between feeding and strangling, tho' by the very form of the Sentence, (as it is set down against this Emperor) it be manifest that *Gregory* commandeth *St. Peter* and *St. Paul*, as if they were his Bailiffs-errant, to execute the Writs of his pontifical and privative Authority.

Touching the Charge of absolving Subjects from their Oaths, which is the chiefest Instrument by which the Canon *Nos Sanctorum* works, in seeking to subvert the Seats of Kings, upon such

grounds of Quarrel and Exceptions as may be made, I will chiefly note, That *Gregory* doth in this Case assume more to his Dignity by Deputation, than God himself doth to his Deity by Prerogative. For admitting Oaths to be lawful, voluntary and without derogation from Right, (as those are which we make to Princes as becomes) he concludes all their Ministers, that dare presume to violate Faith engaged upon those due Respects, within the compass of Perjury. The Promise which God makes to Man in swearing by himself, he will not (tho' it tend to the quicker and the juster punishment of Sin) release unto himself; and yet shall we think that the Promise which was made by a Sinner to him, can be released without him? *Frater non redimet, redimet homo? non dabit Deo placationem suam & pretium redemptionis animæ suæ*, as we may conclude in this case with the Prophet. Tho' God were so justly moved with displeasure against Man, as he seemed to repent his own Free-Grace in planting an ingrateful Stock in a barren Soil; & *præcavens in futurum*, & *tactus dolore cordis intrinsecus*, which inward Wound might very far provoke the Wrath of God against his Creature: yet in respect of his Word engaged, from the beginning of the World, That the blessed Seed of a Woman (whom all Generations call blessed) should bruise the Serpent's Head; which Mystery was to be wrought with effect *plenitudine temporis*; he would not dispense with his own Promise, but suffered the purpose of Free-grace to be carried upon the Wheels of eternal Providence, to the prefixed Period of his own Benignity. The grievous Sins of the Prophet *David* and of his Offspring, provoked God's Wrath justly to wipe both the Blossoms and the Root, out of all Grace and Mercy: and yet in respect of an Oath taken long before, that an Heir of his Line should never want, to keep his Throne, it pleased him for the making good of his own Promise, to remit his Displeasures.

The greatest hope of Encouragement that God's People could draw from the Prophet *Samuel*, when they implored his Assistance in Distress, was this, That God having by a solemn Oath selected and in a sort impropriated that Nation as a choice People to himself, would neither exclude them out of Protection, nor leave them to Fury.

The Rule of God's own Direction is very strict, That if any Man hath made a Vow to God, & *se jramento constrinxerit*, and bound himself by Oath to keep the same, it shall no longer be in his own Election to make it void, but he shall perform precisely what was deliberately promised. It is not known to any Man of Understanding, what the Law sets down concerning the Redemption of Vows upon just Cause in the presence of the Priest, and at such a rate as the Votary, according to the measure and proportion of his Means, is able (without undoing) to afford. Again, all Men understand that unlawful Vows and Oaths (as that of *Jephtha*, *Herod*, and many other rash Protesters of like sort) force not the Point of Conscience in the least degree: But when we take an Oath advisedly and freely, according to the Measures and Conditions limited and expressed in the Law of God, that is, according to Judgment, Righteousness, and Truth; yea, tho' it be by Duty to a wicked Prince, *Ezekiel* will teach us by the warrant of the Holy Spirit, that God himself will nail upon the Head of the Perjuror, the Oath which he hath set light, and the Covenant which he hath perfidiously broken.

By the reason which Pope Gregory makes his warrant of releasing the Subjects Oaths to Henry the Fourth, the Prophet *Hananiah* one of the High Priests for the time, might as well have dispensed with the Oaths of God's People to *Nebuchodonosor* an Infidel, and an Idolater. But God himself condemneth all Priests and Prophets that by false hopes went about to ease the People's Burden before the time prefixed for their Penance by his Imposition: and the Days of *Hananiah* the false Prophet were cut off for his flattery. Wherefore as the Boldness and Presumption is very great in any mortal Man to dive so deeply into the secret Mysteries of Providence, as to judge at what Time, in what Person, upon what Condition, or by what Warrant one Sinner may release another of his Oath: so likewise the Charter which the School-men in the Pope's behalf pretend upon this Claim, must undoubtedly be very weak, whensoever they shall undertake without Assurance of God's certainly revealed Will, to discharge the Conscience of Man engaged by Election, and obliged with Solemnity. The School-men shall never be able to make clear Proof by any ground out of either Testament, by any Canon of the Councils Primitive, nor any of the Fathers living in a purer Air than ours, (howsoever they devise Distinction upon Distinction, rather to entangle than to settle Faith) that this Doctrine of accursing Princes upon light occasions, of releasing Oaths, of deposing Magistrates, is consonant to those Principles of Obedience and Patience which our Saviour left to his Apostles, and they like Heirlooms to their Successors. If it be clear by St. Matthew, that our Peace shall return unto our selves, when they to whom we wish the Peace, declare themselves unworthy of our wish; undoubtedly as true it is, that our Curses shall recoil upon our own Heads, (and that worthily) when they that are within the Bosom of the Church, (which is the House of God) declare themselves unworthy of the Curses which without Desert we cast upon them. For as it is a Question well moved in this Case of *Balaam*, *quomodo maledicat ei, cui non maledixit Dominus?* so is it as discreetly noted by St. Gregory, that *ligandi & solvendi potestate se privat, qui eam injuste exercet*: he deprives himself of the Power of binding and loosing Sins, that seeks to practise without Grounds that may be justified. Origen writes excellently, that where the Motives of sharp Sentences are unjust, and not able to endure the touch of due Regard, he that is cast out, goes not, *sed qui manet intus, excluditur*.

It was not in the power of the Priest by the Law of *Moses*, to make him a Leper that was clean, but to judge (by search) whether he were clean or not: and therefore St. Augustine may more confidently deliver his own Conclusion, That rash Judgment hurts not the Person *de qua temere judicatur*, *sed ei qui temere judicat*. The Reason may be drawn out of another of the same suit, *quia dum volumus per iram aliena coercere, graviora committimus*: in seeking to correct the Faults of other Men in Passion, our selves commit Faults that are greater, for want of Charity.

Therefore I conclude, and that *magistraliter*, as the School-men speak, out of the very Canons themselves, *manere Petri privilegium, ubicunque fertur ex ipsius equitate judicium*: that *Peter's* Privilege doth continue so long as the Sentence is pronounced out of *Peter's* Equity, and not otherwise. To that Caution put in by St. Gregory out of scrupulosity of Conscience, *Vel iniquam judicis sententiam timendam*, that the Sentence of a lawful Judge ought to be feared, (yea, tho' it be unjust) we may give a reasonable Answer, by restraining that fear to such a kind of Modesty and Tendernefs as being ever apt to suspect Frailty in it self, shall offend less by searching Sin with too deep, than too short an Instrument; and by supposing out of the Sense of an humble Spirit, that all Men are more apt to flatter themselves in the ways of their own Errors, than a learned, discreet and religious Judge to censure without a just Occasion.

A wise Man that desires to preserve his Health, receiving Pills from the Hand of his Physician, who understandeth the State of his Body out of Knowledge and Experience, much better than himself, presumeth at the first impression, that some Humour may offend either in quantity or quality which deserveth Correction, tho' he know it not: but after calling to mind upon advised Observation, that his Appetite is ordinary, his Temper perfect, his Digestion strong, and all those other Circumstances, which the learned in that Faculty regard, suitable to a perfect Constitution and State of Health, he begins to apprehend (by opposing the Sense of his own Parts to his Doctor's Aim) that Men, tho' grave and learned otherwise, may err either by mistaking Principles, or giving too light ear to false Informations, which are rightly termed the Spectacles of Error. For God doth only search the Hearts and Reins, and therefore only knows truly with what Ignorance or Skill the Plaster is applied to the part either festered indeed, or for want of a sound Judgment (in those that take upon them as his Vicegerents to discern) so deemed of. God hath pronounced in his Word, that *spiritus hominis tantummodo*, the Spirit of Man only knows those things which are in Man, and the Spirit of God alone those things which belong to God: and therefore *de occultis vel de male intellectis*, that Spirit which only breathes in the Nostrils of mortal Men, can neither discern nor judge infallibly. But if any Man object, that Popes proceeding against Princes, arm themselves with sufficiency of Proof, before they come to resolve to the Defendant's Prejudice: I answer, that Presumptions too far carried in the scope of Passion, have caused many Popes to err against Emperors in the Act of Process. And lest we stray too far in seeking an Example, even this Gregory the VII. condemned Henry, *Causa inaudita*, before the Cause was heard, as some Writers of that Age testify. That Rule of Equity which warrants orderly Appeals from Judges ill informed, to Judges grounding Sentence upon Proof above Exception, in matters of less weight than this, hath been current in all Policies and Times: for, *Lex justo non est posita*. And howsoever for the maintenance of Order, outward Forms are to be kept with Moderation and Reverence; yet to the Soul of Man, the Conscience standeth for a thousand Witnesses, and is in very deed the truest touch. And therefore for my own part I shall never tax that Patient, that privily, and without disgrace to the Doctor, throws the Pills out of the Window which are sent, if from certain and undoubted Knowledge of his own inward State, he be sure, that for the Reparation of Health, or for the Cure of a supposed Sickness, his Body hath no need of them.

I stand the longer upon satisfaction to this Place of Gregory, because it is opposed in Defence of all erring

erring Judges, to the snaring (or at the least to the frightening) of those Souls that are oftentimes most timorous, because they are most innocent. But in the mean time, note that this godly Father released no Subject of his Oath in point of Duty; he accursed no Prince in the Chair of Royalty; he confounded no State by extent of Primacy; but knew very well how easily a Judge may err by strong Imagination, with *Gad* in the Book of Judges, mistaking *capita hominum pro umbris montium*, the Heads of Men for the Shadows of Hills; & *hoc errore decipi*, and by this Error be deluded and dazzled.

The Chapter of *Liege* utterly rejecting this Release of Oaths and Fealty, might be moved with many Grounds. First, because the Breach of a lawful Oath (as hath been justified before) falls into the compass of a mortal Sin. Again, because many of their Predecessors were departed to God in peace of Conscience, that till the last point of Life observed their Oath; whose Example they had small reason to under-value. Furthermore, they alledged, and not without just cause, that supposing this Emperor as impious as the Sentence did import, yet it became them no more than *Zedekiah* (till the Fire of Correction had eaten out the Rust of Sin) to withdraw their Necks presumptuously from the Yoke of *Nebuchadnezzar*. I conclude this Point with a fit Example of the Wisdom of our Kings in former times, drawn out of the Cabinet of most antient Records: For nothing could give them Satisfaction touching the Loyalty and Fidelity of their own Prelates, till they had inserted into the Oath of Homage these words, *In verbo veritatis*, (which binds Conscience) in place of former words of an elder date, *Salvo ordine*, which left Churchmen in effect to their own Liberty. For it is free, saith an old *Roman* Catholick, *Jobanes de Parisiis*, for any lawful Prince to repel the Violence of the spiritual Sword by the best means he can, finding that it tendeth to the Disturbance of the civil State, *cujus cura incumbit Regi*, the Care whereof belongeth to the King; or else he should bear the Sword idly.

But now to make the best use that the fitness of this Occasion offers upon the worst Motive that ever was heard of among Men before this Accident; and to make all Men see that have either Eyes of Understanding in their Heads, or the Fear of God's Judgments in their Hearts, how rashly our late Undertakers (who steer *Peter's* Ship in our narrow Seas, Mr. *Garnet* being one of the chief Pilots) have run her upon the Rock of Rebellion, neither looking to the Card of Conscience, nor regarding the Compass of Faith: I desire that certain Observations may be kept in memory, as certain Monuments of God's powerful Works were in *Israel*, *tanquam signa prædicantia*; that is, forewarning Signs and Cautions for Abstinence to giddy Malecontents in future times: which otherwise, upon the Motives of like Mischief, may be metamorphosed into Figures of like Inhumanity; for an Angel said to *Tobit*, That to publish and reveal the Works of God, is laudable.

I know that strange things happen oftentimes by Accident, (so far as the weakness of our Sense is able to apprehend) tho' Truth assures us, that without the Providence of God no Sparrow lights upon the Ground: And *Pericles* justly maketh Fortune to be nothing else but *veræ causæ ignoracionem*, our Ignorance of the proper and true Causes of all things. But yet where a wild Boar by rooting in

the Ground doth not accidentally express one *A*, but adds to that so many Letters in due Course as presents this whole word *Agamemnon* to the Reader's Eye; where a Man doth not cast three quaters upon three Dice, but three thousand quaters upon three thousand: and where Order, which proceeds from Reason and Election, is kept in coherent Forms, Chance hath no stroke of Predominance by the right grounds of Philosophy. Wherefore no Man can tell whether some of those Confederates alive, (because I dare not say that there are none) looking back as it were from the Shore upon the Rocks and Quicksands which they escaped in this Storm, (calling to account the bad Success, not of one or two, but of all their many Counsels, Labours and Events in this luckless Action, keeping in mind that Observation among the *Galenists*, that where all Simples work against their kind or Property, the Cure is desperate) finding our *Jerusalem* to be built as a City, *Cujus participatio in idipsum*; marking that our gracious, our just, and best deserving King (supported by God's Angels, which are *Spiritus administratorii in ministerium missi propter eos qui capiunt hereditatem salutis*) doth dwell in *adjutorio Altissimi*; and that it is in vain to work upon a Monarchy, *cujus cor est unum & anima una*, whose Heart and Soul in the point of Obedience is one and the same: will return to the Resolution wherein they stand engaged by the Laws of God, and of their own native Soil; give ear to the Voice of their own Shepherd, and acknowledge humbly with *Jacob*, that *Dominus erat in loco isto*, & *ipsi nesciebant*: God with the mighty Protection of his powerful Hand was in the Place, altho' they knew it not.

First therefore I observe, that when you, Master *Garnet*, and your practising Disciples, laid a Pack together for a Project of Invasion against the late Queen, and in her later days, with hope to put out a Flush of Princes with a Prime of Jacks, which will never stand in this State, I trust, with our right Game of *primus ero*: God took away this Lady in her ripe and mellow Years, when her Head was white with the Blossoms of the Almond-Tree, as he did *Josias*, *Ne videret mala quæ eventura erant*, lest she should see the Mischief which was likely to ensue; and had followed undoubtedly, (as Men were restrained from the certain Knowledge of the only rightful Successor) if the *bonus genius* of our dear Sovereign had not, thro' the Preparation of ordinary Means and Instruments, by supernatural Grace established this State in the full Fruition of their long lasting Security.

The Bulls which by the Practice of you and your *Catiline*, the lively Image of your Heart, should (by loud lowing) have called all his Calves together with a Preparation to band against our Sovereign, at the first Break-of-day, and to have cropped those sweet Olive-Buds that environ the regal Seat, did more good than hurt, as it happened, by calling in a third Bull, which was *Bull* the Hangman, to make a speedy Riddance and Dispatch of this forlorn Fellowship.

In the time of *Henry VI.* *Humphrey* Duke of *Glocester*, finding certain Bulls that came from *Rome* to be very prejudicial to the King's Estate, without asking leave of any Man, cast them roundly into a Bonfire. The late Queen of happy Memory entertaining the Bull which *Felton* set upon the Bishop of *London's* Gate, with the same or greater Distaste, because the Drift was to embase her Title, and transport her Crown, gave it as

quick Dispatch by like Destiny: And Master Garnet thought his Bulls as worthy to be sacrificed in a quick Fire as any of the rest, for their Idleness and Weakness in effecting what was wished, and expected by the Friends that invited them. These Bulls Master Garnet were *Cornupetæ*: you were warned by the State to shut them up, in respect of the Mischief that they meant; you regarded not the Prohibitions of Law, but gave them Scope of grazing in certain Grounds, where the Marks of their Impressions are visible. If this be denied, *Catesby* your apt Scholar and choice Friend shall charge your Conscience, who drew from the Direction of these Bulls that shroud Argument, That if it were lawful to keep a right Heir from his Kingdom, in respect of Conscience, before Establishment, it was as lawful to remove him after he were established. The Wisdom of the Holy Ghost ordaineth, That *vos lapidibus obruetur si occidetur dominus*: tho' we leave all to the Law's Ordinance, and his Majesty's good Pleasure. But whatsoever happeneth in the Process, I must confess that Bulls have little reason to require a *Mittimus* into these Parts, since neither their Access is acceptable, nor their Success fortunate. The Point whereat I wonder most, (in revolving these strange Events) is, That the Bulls which were consumed into Ashes at *White Webbs*, should be brought forth this day to be baited at the *Guildhall*.

At the King's first entrance into this happy State, with as great Security and Ease, as if he had removed after an ordinary fashion from *London* to *Greenwich*, and from *Greenwich* to *Hampton-Court*, the most expedient Device for the Disturbance of the general Applause (which entertained *nostrum Salomonem pacificum* with a kind of Joy and Cheerfulness unspeakable) as was conceived by the Brotherhood, was to awake the purpose of Invasion, that slept in foreign Parts, by a set Messenger employed. But tho' *Venus* had commended this Petition by Letter of Request to *Mars*, it would not have been heard, God having then prepared and disposed the Minds of Princes on both sides to such a Peace, as could admit neither secret Operation, nor open Execution of Hypocrisy. This was not by the Method of Divine Process, *eligere infirma ut confundat fortia*: But this was rather by the Spirit of *Achitophel's* Suggestion, *abuti fortibus ut confunderentur omnia*. But Thanks be to God, the Lion is alive, out of whose Mouth you must have drawn your dropping Honey-Comb, before your Riddle could have had either the Grace or the Success which you desire among our conspiring *Philistines*: So that we only find your fixed Trust in Tumult and Vexation, (as the Prophet speaketh) instead of that Hope and Silence which should have been your Sheet-Anchor.

Your End was by possessing Princes with the Motives of your Malice to stir Compassion; because it happeneth often that Exhalations drawn up to the highest Region by the Beams of the Sun, are there inflamed and sent back again with a fiery Effect: But *multi committunt eadem diverso crimina fato*. A great Philosopher observeth to the same Effect, that *Prosperum scelus virtus vocatur*: And tunably to this Consort another, that tho' the Fact and Intent were one in both, yet *Ille crucem sceleris pretium tulit, hic diadema*. But in this Case by the Goodness of God it fell out quite contrary; for the Princes being as weary of War,

as you were of Peace, desiring as much to spare Blood, as you to let it out; and regarding more the Grounds of their own Discretion than the Storms of your Passion, sent away your second *Mercury* with a Flea in his Ear, and instead of procuring Treasure and Supplies, were content to learn, (by the Scope of this Employment) that some Professors of the Catholick Religion had other Views wherein to exercise their Inventions and Meditations beside the Repetition of the *Rosary*, which without so manifest a Proof, perhaps they would either not at all, or not so easily have credited.

The Conspirators could not devise a more likely Motive of Attraction whereby to draw *Malecontents* and *Boutefeux* into the Mischief which their Malice did intend, than by whispering into the Ears of ignorant and ill-advised Catholicks, that his Majesty had violated a former Promise made to some of them before, of Toleration in point of Conscience: For Ears that itch after light Reports, and Minds that interpret common Fears in that Sense which tends to their private Harm and Prejudice, (converting for the most part to rank Poison whatsoever is prepared by the best Affections to kindle Nutriment) take hold of the first Overture. But for prevention of this Peril, God so wrought, by disposing Times and Accidents to best Effects, as before the Poison could pierce to the secret of Men's Thoughts, *Watson* the Priest had confessed to my self (sent from his Majesty to the Jail at *Winchester*, for the finding out of the first Author of this leud Report) not past one day or two before his Death, (at which time no Man is presumed by the Civil Laws to lye) that he never could receive any spark of Comfort touching Ease of Conscience to Catholicks from his Majesty, how unjustly soever the World had made him Author of that Scandal; tho' withal he added how unwilling he had been to utter the King's Answer to the Catholicks at his return in his own Words, and with those incurable Obstructions, (which appeared by the manner) for fear lest over-great Discouragement might make them desperate, and drive them to seek other Helps, as some did, which this Action makes evident.

Besides, there are in *England* some Recufants at this day, that for a Need both could and would avow the like Report of *Percy* after his Returns out of *Scotland*, both before and after the Queen's Death; advising no Man to depend upon the least Conceit or Apprehension of Hope from thence, but make the best shift they could devise for themselves; for in the point of Conscience he found the King's Intent and final Purpose to be peremptory. By this plain Dealing many were deprived of their best Advantage of improving this shroud Circumstance, both as a Colour of Exception and a Mask of Conspiracy.

The Practice was begun with auricular Confession, as the safest Lock to which Men durst adventure to commit a Secret of this weight; for, who could hope to draw that from a Confident or a Confessor in respect of Safety, (besides Censures of the Church) the Peril reaching and extending to the Loss of Life? But by the Streams of *Jordan* running backwards to the drowning of the worst disposed part, it came to pass that by the words which passed between *Greenwell* and *Bates* (*Catesby's* Servant) in Confession upon the horror of his Conscience against so foul a Fact, those Circumstances happily fell out, which being brought

brought to light, made a fair Introduction into that full Discovery which the Lords laboured. It may be thought that God himself abhorring the falshood of a Priest, (that under the Colour of the Keys, abusing both his Person and his Power, is not ashamed to contrive Conspiracies so much more perilous and pestilent, as they are countenanced with a more holy shew) hath set a Mark of his own Wrath both upon the Matter and the Minister. For the Patients are oftentimes beguiled in judging by Taste the Quality of the Simples, and Ingredients which they receive, *decepto sensu cum judicio*, the Judgment of the Senses being first deceived, & *corruptis organis*.

It is clear, that for the secreting and concealing of this Purpose (till by Progression it might be ripened for the desired End) the Seal of the Sacrament of Union was set to this Contract of Blood; as if God would be put in Trust with the keeping of these prophane Bands and Obligations of Conscience, against the Rule and Canon of his own written Law, *que versatur tantummodo in bonæ fidei Judiciis*. But we that know what desperate Effects unworthy eating of the Sacrament, and the Presumption of bearing the Standard of our Saviour in open Field against himself, have wrought in Minds polluted with Impressions of Sins, that are voluntary and premeditate, will not greatly wonder at the bad Success of this Conjunction, calling to mind that the first Work of Judas after the receiving of the Sop, was to betray his Master, and the next to hang himself; and in such a manner, *ut creparet medias & effunderentur ejus viscera*, that he brake in the middle, and his Entrails came out of him.

The purpose of these Gallants in binding Faith and Promise one to another by solemn Oath, (tho' *Demens est qui fidem præstat errori*) stood upon the Distrust that one reposed in another's Love and moveless Constancy, holding themselves as sure after such Seal of the Contract, as *Seleucus* did himself in the Speculation of a City to be built in the Air above the reach of the Capacity or Wit of Man; but yet Experience reveals, that the Hands of *Madian* have fought against themselves, the Voices of *Babel* have confounded their own Plots, and these forlorn Hopes like the Knights of *Cadmus* (as appeareth by the Scope of their own Confessions) *mutuis conciderunt vulneribus*, have been wounded to death one by another.

The Course of Mining into the strong Wall of the Parliament, was in very deed more laborious and slow, but yet more sure and secret than the latter by the Vault, in case the Pioneers had proceeded resolutely according to the Plot of the first Device: For prevention of which almost inevitable Stroke, the Cellar was set open even in the very heat of their endeavour, as it were by the handy-work of God himself; and not only set open, but almost miraculously put into their hands by a faithful Servant of the King's, whose ordinary Caution could not possibly have been so far over-shot, without an inward working and contriving Favour from above, which took hold of the Feet of Sinners in that very Snare that they had prepared and set for those that were most innocent. They flatter'd their own Conceits so idly (but yet so far with the facility of working upon this unexpected Overture) as if it had been the Will of God, that to them, as to *Jacob* hunting for his Prey, *occurreret quod volebant*: But on the other side we may observe with Joy and Comfort, That

tho' they watched eagerly with *Esau* for those Days of Mourning, wherein the Death of *Isaac* might prepare a way for their most bloody and most violent Revenge, like Rats between the Hanging and the Wall *suo perierunt judicio*, they were first betrayed, and afterward perished by their own Discovery.

Their Spleen was even *severe in Saxa*, bent against the Walls and House of Parliament, as an instrumental Cause for producing many sharp Laws, for the space of more than forty Years, against the Religion, which their own disguised Affections did eagerly embrace, with a purpose to convert *Hierusalem in acervum lapidum*, into a heap of Stones. Thus *Polymnestor* stricken blind (out of Rage against *Hecuba*) sought to murder all the Women he could meet. Thus *Fulvia* by thrusting Needles into the Tongue of *Cicero* (after he was dead) sought Revenge of his sharp Invectives against *Anthony*: And thus *Anthony* himself warred against the Walls of the Senate-house at *Rome* after *Cæsar's* Death; but yet the Place is as it was, the Benches stand as they did, and they that sat on them have the same Affections which before they had; enforced perhaps by this late more than *Neonian* attempt of endangering both their Souls and Bodies at one Blast (for want of time to call for Grace) to strike a deeper Wound than any of their Ancestors had done before into the Cause which the Scope and Drift of these Undertakers pretended by their Inventions to rectify. The *Roman* Southsayers had reason to divine, that when Bulls, Bandogs and Asses (which are Beasts created for Obedience and Use) grew mad upon a sudden, and without a certain Cause, *Bellum servile imminerebat*; and of this Composition was the late pack of Rebels, that with the same barbarous inhumanity, which was well observed at the Ruin of *Saguntum*, *nihil reliqui fecerunt ut non ipsis elementis fieret injuria*; left nothing undone for their parts to wrong the very Elements. I grant that they might learn their Art of building muddy Walls of the Swallow, which are but Summer Birds; and their Skill in weaving Cobwebs of the Spinners, whom *Minerva* hated; chiefly, because their Works were more laborious than durable, and most commonly swept away before they came to finishing. But this Trick of subverting and demolishing, they could not learn better than of the *Montanists*, *Qui non laborabant* (as *Tertullian* reports) *ut ædificarent sua, quàm ut destruerent aliena*, to build their own as to destroy other Men's; *Hæc genus invisum superis!*

The Train of Powder was laid only for true Men by wicked Traitors; to this end chiefly, that after Innocency had endured, Malice might insult, that *cùm scelera profunt, peccat qui rectè facit*; and conclude with the rankest *Atheists* of our Time, a Prejudice of God's Anger against faithful Subjects, out of the barbarous effects of their own Villany: For this Argument is used in defence of the Slaughter of the last *French* King. But as we find just cause to rejoice thus far with *Shadrach*, *Meshech* and *Abednego*, *Nihil potestatis in nostra corpora habuisse ignem*; That the rage of the Fire had no force or strength against our Bodies, God's Angels coming down of purpose both to disperse the Flame, and to infuse in lieu thereof *ventum roris flantem*, a cool Wind of mild Air breathing, to slack wasting Heat, *Ut neque eos contristaret ignis, nec quicquam molestiæ inferret*; as it could neither make them sad, nor offend them

them any way : So on the other side, God wrought so powerfully in this particular, (to give a Taste and a Feeling to some of the chief Traitors of those endless Flames, that in another World shall never ease, without Contrition and Confession in this) as in the chiefest Puzzle and Perplexity of their ill thriving Practices, they were blasted by the Rage of their own Gunpowder.

Thus *Alexander VI.* and his Darling, *Borgia*, the only Monster of that Age, were poisoned by error of the Cupboard-keeper, out of the Bottles that were kept in store (and by *Cæsar's* own appointment) against Supper, for the destruction of certain Cardinals. And thus it happens many times (God's Justice far surmounting Man's Capacity) that those Instruments which we select for execution of Malice, serve for the protection of Innocents, *Et sæpe faciundo mala, in majora incurrimus.*

These *Catilines* in the raging distemper of their Passion, (which meeteth their own wants & *commoda aliena pari dolore*) were so desirous to draw Blood even *ad animæ deliquium*, of the noblest, the truest and best Subjects of the State in all Degrees, that had not one drop of attainted or infected Blood in any Vein ; and to make sure Work, that there might be spare of none, like the *Roman Triumviri*, they held it safest to let out their own, without distinction of Kinsmen, Allies or Friends ; leaving no one Man of Mark out of the List, which was agreed upon by the Conspirators. But mark the Proof : for (as *Leo* writeth to *Mauritius*) in *victoria veritatis, sola veritatis inimici perierant*, none but the Enemies of Truth did perish in Truth's Victory. For whosoever loves to dive into the waters of Contradiction, whose Property is, as a learned Father notes, rather *volare* than *portare* ; may be sure to expect in vain, that the Hand of Christ which assisted *Peter* in his Faith, should support them in their Fraud : for between Truth and Falshood, as well the differences as the degrees are infinite.

It was holden a safe course and of great use for advancement of this bloody Project, that a Faculty might be granted to some Persons (which in that rank were reputed choice for their excess in Cruelty, and barbarous Inhumanity above all the rest) for the calling in of such other Assistants and Confederates, as *Non propter eximias virtutes*, but such as *pares negotiis erant nec supererant*, and that when the Stock grew poor, might be best able to defray Expences, to ease Burthens, and advance Desires. But it fell not out that any good grew to the Cause by any Person let in at this Loop, howsoever their Affections were bent : for *Francis Tresham* the last above, intended much, but effected little by Relief ; only this I note, that by his Passions and Words in his first answer at the Council-board before the Lords, he left so deep Impressions both of his Fore-feet and his Hinder-feet, as tho' we could not evidently descry the Hare, yet we easily discerned what course she took, and thereupon the better with a full Cry upon to hot a Scent, pursued the Game that halted to get over.

No Man can deny but it was in *Robin Catesby* the trick of a crafty Pate, enrounding violently the ruin of our Sovereign, and his Royal Progeny, to engage the fortunes of his dear Friends, *Rookwood, Grant, &c.* to his hungry Creditors, in deep Bonds, before he would impart to them the Secret of his Plot, supposing certainly, that in respect of

their own danger by his fall, they would be more apt to undergo the hazard of all events, and rather chuse to die with him, (tho' the worst should chance) than to beg after him ; having in the mean time in their Eye so bright an Object of enticing Hopes, That *summa scelera incipiuntur cum periculo, peraguntur cum præmio*. But as the greatness and inwardness between wicked Men (according to the grounds of moral Wisdom) is accounted rather Conspiracy than Amity, (having but *metum & noxam conscientie pro fœdere* ;) so likewise in this Case, the Success was suitable, for one led another by the Links of Combination to the reward of Cozenage. Trust was the Trap, false Hopes the Baits ; and all the Fruit they could expect by Tricks, was of the same quality with the Grapes and Pomegranates that grew in *Sodom*, after the Ruin of the Town, as we read in *Origen*, (that is) smelling of Sulphur, tho' delightful to the Eye. And even as those upon the first touch were apt to dissolve into Powder, so were these upon proof to run into Gunpowder.

The scope of some chief Actor in this Tragedy (more sensitive in that point of Compassion, as it seems, than the rest) was, to advise a Noble Gentleman (whom in respect of his approved Love and Loyalty to the King his Sovereign, he durst not trust) by an obscure Letter (more resembling the Riddle of an *Oedipus* than the Counsel of a Friend) that he should abstain from the Place prefixed at the Time determined. The dark figure of the Writing, the strange manner of delivering, the small likelihood of any Cloud at that time gathering, might have moved many Men rather to have neglected, than apprehended so blind a figure of Discovery. But this discreet and worthy Gentleman, conceiving that Men experienced in Mysteries of State were better able than himself, both to discern of Spirits, and unloose hard Knots ; imparted this Occurrent to certain of the Privy Council, and they to the King, who by that Spirit of true Divination, which is infused into the Lips of the King by God, (as the Proverbs say) never gave over mining into the purpose of this Admonition, with due regarding Circumstances and Presumptions, according to the nature of the Motion, till the Barrels were brought into Light, and order was taken to drive the Devils out of their Den, the Materials out of their Opportunities, and the Pioneers from all possibility of effecting the Powder-works.

The purpose of these Gallants *qui pascuntur scelere*, was to feast their Eyes with the sight of our dead Carcases ; for since they were no Doves, but Ravens, the less wonder that they did *sequi cadavera* : But now by God's Providence it comes to pass, that their Limbs feed the Fowls of the Air ; unless, the curse of God, the putrefaction of Sin, and horror of the Fact, move all the Creatures of God to loath and abhor to look upon them.

The same sly Serpent that seduced *Eve* (by the deceitful bait of understanding Good and Evil) to transgress, induced some of these (I doubt not) to undertake more gallantly, upon hope to be reputed holy Angels in this Life (in case their Enterprize succeeded happily) or Martyrs in the next, if it fell out otherwise. But by evident Confession it appears, that the very Night wherein the Powder should have wrought the desperate Effect, either the Light of Reason, the Horror of Vexation, or the Power of Revelation, presented,

sented to *Robert Winter* in a Dream, the faces of his chief Friends, and the highest Traitors that should have acted Execution upon the bloody Stage, in such a ghastly and ugly Figure, more like to that *malus Genius* which appeared unto *Brutus* the Night before his Death, or the Face of *Hector* that appeared unto *Andromache*, or the Countenance which they themselves held afterward upon the Pinacles of the Parliament, than to that Figure of Beatitude, by which their own fantastical Conceits and alluding Apprehensions were too much flattered. For, it is not only true that God, as *Job* says, *terret per somnia*, affrights by Dreams, & *per visiones horrorem concutit*, and by Visions shakes the Mind with Horror: but beside, this ground out of the Book of Wisdom can never fail, as I said before, that *cum timida sit nequitia, dat testimonium condemnationis*: Wickedness gives evidence of Condemnation, because it is timorous, *Et semper presumit seculi perturbata conscientia*.

While the wisest in this wicked Pack (upon the Discovery made by that worthy Lord of whom I spake before) began to lay their Heads together, and in a Staggering with great uncertainty what Course to take, stood with the King of *Babylon*, as the Poet says, *in bivio quærentes divinationem*; some doubting, some securing, some hoping, some despairing, and all setting the Cause in such a Course, as in case *Percy* their Explorator (that was let out like a Raven, and sent as a Spy to descry by the best Inducements he could find, whether the State took hold of their Discoveries or not) brought back ill news, a Ship might be prepared on the sudden for the transport of this his Pack. God dazzled their Eyes with so dark a mist of Error and Perplexity, as they could not find the right way to get out of the Wood; and their Prophet *Percy* by securing doubts at his return, inspired new Life into dead Hopes, that the Project for speedy rigging of a Ship was carelessly cast off, and Error left to make full Satisfaction by Suffering. For God, that caused the first Vessel to be built by *Noah* for the saving of those eight faithful, pure and selected Souls, that should with Time renew the World which Sin had drowned in the depths of Despair, would not permit that any other of that Mould or Fabrick, should preserve these eight unfaithful, unpure and detested Souls, whose End was to destroy this *μικρόκοσμος* of our *English* Orb, which hath been so strongly, so often, and so powerfully protected under the Wings of his Tendernefs.

As *Joab* kissed *Abner* when he gave him the Stab, *Jezabel* proclaimed a Fast when she cut *Naboth's* Throat, and *Judas* kissed our Saviour when his End was only to betray him to the *Pharisees*: So *Percy*, the right Limb of *Lucifer*, pretended with a Colour of Devotion to kiss the Image of the blessed Virgin, after he had plighted Faith and Promise to his Complices, by blowing up the Body of the State, to destroy the King, who is indeed the sacred Image of the eternal Son. But God, whose holy purpose was to publish to the World how far his Blessed Mother is from countenancing and protecting Traitors, that by opposing to his Deputy revolt from him, branded this Act of Hypocrisy with so palpable a Mark for an Admonition everlasting to well-meaning Souls, that are oftentimes surprized in their Weakness, by false seeming shews of Piety, when the Practices are foul, as on that very Feast of the Blessed

Virgin, (whose Picture *Percy* did so embrace) which shall set forth to the World's End the Memory of Christ's Incarnation, whom the Traitors would have wounded thro' the Side of his Lieutenant in the Seat of Majesty, an Act did pass in Parliament, for the blowing up of these Monsters and their Hopes, that by an Act which never had the Voice of any Member of the Parliament, would have blown up both Houses.

To your own drift and purpose, Master *Garnet*, in recommending that antient Hymn, used on the Day of all Saints,

*Gentem auferte perfidam
Credentium de finibus;*

for a speedy Dispatch of many Innocents, that God, which converts both the Labours and the Prayers of the Wicked into Sin, and reflecteth Execrations of Infidelity upon the Heads of those that execrate and curse without just ground, gave Satisfaction, tho' in a contrary Element; purging the present State of *Catesby*, *Percy*, and their Complices, which may truly be reckoned, and reputed above all Men that ever were, *Gens perfidissima*, transcending all Proportions either of precedent or future Immanity. As for your Fervency in swearing and forswearing manifest Untruths, and such as you were forced afterwards to confess with a blushing Countenance, it proceeded as I think from a reverent Regard to shadow great Faults, which breaking out of *Chaos* into Light, might cast Scandal as you thought upon your whole Society. And this I gather evidently, as well out of your own Speeches, as out of your Request; that the Censure of your Weakness might determine personally, within the Compass of your Fault. But we receive a farther Benefit thereby in distinguishing between the Protestations of plain Dealers, and of those that are taught to equivocate; to mark those that pronounce verbally, when they renounce mentally, and those that in point of Fact are not ranged unto the Rules of Faith; and the Civil Laws have resolved, both justly and judiciously, that Construction ought ever to be made against the Party that comes masked to the Bar, and speaks ambiguously upon Advantage, when he should speak plainly for Satisfaction.

I dare undertake, it was certainly conceived by you Mr. *Garnet*, and by Mr. *Hall* your Fellow-Prisoner both in Profession and Bands, that if by any Accident you might confer but half an Hour after you had passed the File of their Examinations, that had both you and your Cause in hand, the Lips of Scandal would have been sealed and shut up so close, as nothing might evaporate to emblemish Oaths, since the Lords of the Commission forbearing Torture, dealt so tenderly; and thereupon you found a second vent of Whispering between two Doors, but with no better Proof by this Adventure than by the rest. For your former Reservedness, being now encouraged and urged by the Spur of Opportunity, became so confident in running beyond it self thro' the chief Points whereof the State was most eager and desirous to take certain Notice at that time, as they that could not reap, might glean, and many Shifts and subtil Traverses were over-wrought by this Occasion, which could not be extracted out of your Breast either by Intreaty or Industry.

By writing to the Pope in a Christian and humble manner for the tempering and cooling of hot Humours

Humours of some giddy-headed Catholicks by his Apostolick Authority, lest they might cause Distemper in the State, carried in appearance a great likelihood of that Obedience and Patience which the Word of God enjoins, and was accordingly divulged both by you Mr. Garnet, and many others of your Suit, for the Satisfaction of their Conceits that were suspicious of your plain Faith: But many grew to Fear by the Forewarnings which *Watson* left before his Death, that this was but a Visard of Invention to dazzle Trust: And most grew suspicious of a Mischief imminent, tho' they knew not what it was: The World heard Rumours of a Feat to be wrought for the Catholicks in Parliament, tho' they could not understand the Mean, and Experience hath taught the Ground of this submissive Letter to the Pope, after the bestowing of all the Barrels among the Piles of Wood, to have only proceeded out of Fear, that such another hot Alarm as arose in *Wales* about the giddy Mutinies of some light Catholicks might awake those Eyes of *Argos* that were brought into so sweet a Slumber by the Pipe of *Mercury*, and put all Vises and Devices out of Frame, that were to work with Leisure, Silence, and Repose in the great hellish Enterprize.

Thus God intended mercifully the prosperous and happy Defeat of *Achitophel's* Device, was content that the first Contrivers should put it to the highest Proof, that upon Discovery the Practice might be more clear, the State more secure, and the Fault more inexcusable. For *homo inimicus* the envious Man sows his Tares so sily and secretly at the first, as the Eye of Observation cannot reach to the depth of Fraud; but like Bastard-slips, the higher they grow, the more evidently they discover the true Parent's Impiety.

Greenwell desiring more the good Success of this Invention, than the planting of the Roman Faith, enjoined *Bates* in the Secret of Confession to reveal the Purpose to no Priest; so jealous and suspicious he was (in respect of the Main) both of Weakness and Error in his own Comfort: and you Mr. Garnet, no less provident in those Things which concerned your own Safety or Reputation, or as it is said by one spiteful alike with you,

Subsedit dubius totam dum colligit iram;

forbad *Greenwell* to give the least inkling to *Catesby* of your Privy to the Proceeding, tho' you were made acquainted with the matter in generality. And more, when you were assured of a likelihood of good Success by *Catesby's* own Encouragement, (so much wiser are the Children of this World, that do rather *sapere quæ sunt carnis*, than *sentire quæ sunt spiritus*, as *Paul* forewarns, than the Children of Light, but this is only in their own Generation) you were so careful out of fear to be surpris'd with a Lye, (as the wicked Judges were by *Daniel* upon the Question *sub qua arbore*, under what Tree) and that your Confessions might be consonant, that the Quintessence of Wit sublimed to the highest Point, could not work more precisely and more punctually for prevention of Discovery by orderly Digestion of all Occasions or Directions, than you did by this Preparative. But against the stroke of Providence all Counter-practices are vain: for *dies diei eruat verbum, & nox nocti indicat scientiam*, as may appear by that *nubes testium*, that Cloud of Witnesses, which turning to a *Scotish* Mist, hath not only

wet both your self and your Fellows to the Skin, but beside, made all their shameful Parts so manifest, (even to vulgar Eyes, that were to act upon the bloody Stage) as the Priests themselves appeaching one another, and falling out to be *suorum flagitiorum proditores*, were as much deceived in the theorick of Trust, as the Lay Disciples were in the practick of Conspiracy.

For it is no less strange than true, that the powerful God (which by his Word assureth us that the Birds of Heaven shall bring those Projects and Inventions to Light, that are contrived in the secret Thought, or privy Cabinet of any wicked and false-hearted Subject against the King) hath so fitted and prepared Instruments of Overtures, as the Mysteries which passed in Confession between the Priests themselves (revealed by themselves) come this Day and in this renowned Place to be scanned and censured.

I will now shut up this Audit of Demonstrations which we descry God's Anger (working almost miraculously in the Transmutation of Substances and Change of Properties for accomplishment of his own just Ends) with the highest Object of your wicked Aim, which was the destruction of the most just, learned, bountiful, temperate, and tender-hearted King, (I may speak it on my Conscience without base Flattery) that ever was ranked either in the *English* or the *Scotish* Register: his Right, his Heart, his Tongue, hath wished Happiness, and brought Security to this State; which if you and your Confederates disdain or wilfully reject, his own good Wishes shall return to himself, and the Dust of those harmless Feet, that never were *veloces ad effundendum sanguinem*, swift or hasty to shed Blood, shall raise a Cloud between you and that eternal Judge in the dreadful Day, to plague your Ingratitude. For what is the Fault (in the Name of God) that can offend the most precise and captious Conceits (excepting Conscience, for which he must neither account to *Bruno* or *Ignatius*, but to God alone) wherein the King may be said to have cast Dust in their Eyes, that were most violent and diligent in preparing Fuel, and making Fire for the sacrificing of a Lamb, whose innocent Blood, like that of *Abel*, would have cried for Vengeance in the Ear of God, against the cursed Crew of all the Conspirators, if their Success had been fortunate?

By the way, I cannot cease to wonder at the Providence and Piety of this thrice happy King, this *Pacator Orbis*, (the real Attribute of *Constantine*) who seeketh to establish the Throne of his Dominion and Power, neither with the three Feet of *Apollo's* Stool at *Delphos*, which his own Interpreters have understood of Nimbleness, Observation and Subtilty; nor only with the Lions and Lions Whelps, that garnished the six Steps ascending to the Chair of *Solomon*, to stir up Magnanimity, both in young and old, but according to the Rules and antient Prescripts of our *English* Government, with the three Piles of Conscience, Honour, and the People's Love; and that so steadfastly, as the Sons of *Belial* have neither Hope nor Possibility of compassing their own Desires, without cutting off these Three, that is Bishops, Peers, and Commons at one Blow, *ut cespes unus & Regem nostrum, & Rempub. tegeret*. Therefore hold not the Peril strange wherein you stand at this present, of another kind of Triplicity specified by *Solomon*, for proportionable Punishment of your barbarous affection in Working (by the Quintessence

Quintessence of Inhumanity) the Ruin both of Prince and State, for *Funiculus triplex non facile rumpitur*. For to Men of uncertain Wits and Aims, it happens often in Experience, That by the least swerving either of the Eye of Judgment, or of the Hand of Use, instead of the White of Ambition, they hit point-blank the Mark of Execution: Therefore no Man shall be able to avow either in the present or the future Time, that they which sit as Judges in this Case of execrable Treason, wash their Hands with *Pilate* in Hypocrisy, when you and your Confederates that stand forth to be tried, cannot wash your own Hands with the Prophet *David*, *inter Innocentes*, among those that are innocent.

Princes use not to taste Offers without Assays: We cannot admit your Obstinacy in refusing to pledge the Health of this whole Estate; and no Man knows better (Mr. Garnet) than your self, by what Writ true Men are warranted in *poculo quod nobis miscuistis, miscere vobis duplum*, to give you double Measure of the Draught which you had prepared for the State's Destruction; when your Purpose was (if Courses had suited to your wish) that it should begin from them. By this it appears, That *virtutis cursus* (if that were in you which the World did imagine) was *celerior quam atatis*, that your Life hath overrun your Loyalty.

It is hard for a Man so many ways engaged to a Prince, and for so many Favours as my self, to cut evenly between Affection and Truth, or to provide so tenderly by Preoccupation, as no Spider may suck Poison out of a Rose: but *jacta est alea*, and therefore since it is neither my delight to sow soft Pillows under Princes Elbows, nor the King's desire that his trusty Servants and true Counsellors should with the glossing Prophets in the Days of *Micah* utter *placencia potius quam solida*, I would only crave that Liberty which is afforded in Case of private Persons to Affections that are most indifferent, which is to present his Picture to the Eye of Observation in true Colours and Proportions, without swerving too far on either hand, (because he must ever be *iniquus dignitatis Judex, qui aut invidet aut nimium favet*) and to wipe away the Wrong which hath been done to him, (and hereafter may by false Aspersions, from the Pencils of prejudicate Conceit) awake my Spirits in discharge of Duty, beside Obligations of Grace, to raise my Compa's thus high at the least, and to lend my strongest Arms and best Endeavours to the just Defence of a most just and worthy King, furiously and unjustly set upon. What Spirit moved you and yours (Mr. Garnet) to dissolve the Quiet of a State, that never conceived you in her Womb, with a purpose that (like the brood of Vipers) you should make your Issue into Life by eating out the Bowels of the Dam that gave you both Creation and Nourishment? for it could not be, but the Commonwealth in *ipsa vindicta libertatis*, as yours termed it, *esset peritura*, when *Catesby* and his desperate Rout meant not *subigere nostram urbem*, as the *Athenian* Orator saith of *Philip*, *sed funditus evertere*; well knowing that those that escaped, to be Slaves *neque voluerunt esse, neque potuerunt*. What ailed you to mine into the strongest Fort of your dear Countrymen, who living by the Temper of the King's Affections under *Libra*, that is as much as under the Golden-Line of Justice, Moderation, and Grace, can hardly judge out of their own Affection, whether

the Nights or the Days pass over their Heads more happily. For neither is it possible at this Day for *Virgo*, that barren Sign, to endanger us by Orbity or Age, nor for *Taurus* the Bull to goar our Sides with Anticipation, nor for *Scorpio* to sting us in the Heart, nor for *Sagittarius* to wound us in the Reins, nor *Aries* the Roman Engine to butt with his offensive Head at the Walls of our High-Court of Parliament: *Tempestas abiit, & ecce nova facta sunt omnia*.

At his Majesty's first Entrance he found us embroiled and greatly weakened by the deeply festered long running Ulcer of a lasting War; what was the Cure? A beam of Wisdom seasonably derived from the Practice and Experience of the wisest King that ever was, to conclude a Peace *cum omnibus Nationibus in circuitu*, that every faithful Subject might enjoy the shade of his own Fig-tree, and the Fruit of his own Vine from *Dan* to *Beersheba*. I do easily believe, Mr. Garnet, that this Course was nothing agreeable to your Affections and Ends, that sought a greater Gain by fishing in Streams that were more troubled; and sitting on a bare Bough, like the Raven when the Lion and the Leopard came forth to fight, began bravely to sound a Point of War, in hope that whether of both those had the worst, one should serve for a Prey for him to feed upon. And with the wicked Crew in *Lucan* your Prayer was,

Non pacem petimus Superi date gentibus iras;

but were of another Mind and Hope to make you pine a good while longer at the Calms of our Repose, before you put us into these Distempers, that have made your own best Friends, and fairest Fortunes absolutely desperate; to whom so far as in Modesty you could ask, I may say with *Paterculus*, *quod tumultuando adipisci petiistis, quiete obtulisset Respublica*. Peace is the Mark whereat the Holy Ghost would have all religious Affections to aim: It is the Razor that cuts the Throat of crying Sins; it is the good Angel that drives Horror out of the Conscience of every Christian, when Death threatens to arrest; it is the chiefest Badge by which our Saviour would have his true Disciples known from Hypocrites; and it is both the richest and the last Jewel which departing hence to his Father, he left to his Spouse the Church for a Legacy. And therefore our Prayer by opposition to your Exorcism must be thus,

Nulla salus bello, pacem te poscimus omnes.

But how long is it, I pray you, Mr. Garnet, since the Heart of every faithful Subject in this Kingdom was ready to break with a fearful Contemplation of those Rocks, upon which the Vessels of all Fortunes both publick and particular were likely to have run, at what time soever *Deborah* was to walk the ways of all Flesh, and to be laid up to rest in the Grave of her Ancestors, for want of a certainly designed Successor, upon whom *Israel* might only fix their Eyes, both for Satisfaction in Conscience, and infallible Direction to Loyalty? In those Days the State was charged by all your Pens and Pamphlets with an uncivil, or rather an unchristian Facility in flattering the present time, with Peril to the time to come, in preferring Humours personal before real Plagues, and in settling the whole weight of this State upon

the Staff of Age, with no less Confidence than if it had been a Pole of Eternity. You could then insinuate for the kindling of undutiful Affections at home, how deeply both the Queen should be charged in another Day for setting the Kingdom's Rest upon the weak Cards of her own particular Respects; and others for inclining so much out of awe to the Predominance of Time; as without the Work of God's powerful Hand, their Fear might have been the Cause of the State's Overthrow. Nothing was then more rife in the Mouths of many Catholicks, than the Wrong that was done to the true and lawful Issue of that worthy Queen, who (instead of digging up a Turf according to the manner) made her Grave an Entry in her Son's behalf to the Title of these Crowns; as if she should have said with the Conqueror when he took a fall at his first Landing, *Terram capio*: by laying down her Life, she took a formal Livery and Seisin for her Son, her Life I say, more precious than either my Mind is able to apprehend, or my Pen to deliver.

Give me leave therefore to enquire of you in the Phrase of *Paul*, and rather with true Zeal than detracting Spleen, *O insensati Galatæ, quis vos suscitavit non obedire veritati?* O ye senseless Galatians, who hath (since that) stirred up your Passions against Obedience to Truth, and moved you in this manner to abhor the most cordial Receipts for Cure of inveterate Infirmities, as if they were compounded of *Coloquintida*, which in hatred of Time past you only fought, as your only Restoratives? For tho' every Man that had in his head either half a Drachm of Discretion, or the least Scruple of common Sense, knew very well what should become of those which in the Day of Demonstration durst protest with *Sheba* the Son of *Belial* by Sound of Trumpet, *nullam sibi esse partem in David, neque hereditatem in filio Jesse*; that since they had neither part in *David*, nor inheritance in the Son of *Jesse*, it were free to *Israel* to return to their Pavilions: Yet I must confess that the wiser sort in *omnem eventum* (to make the Foundation more sure) would have purchased the publick Satisfaction in this Degree at an excessive Rate, which was suppressed by the Strength of Law, and overcast with a Cloud of Suspicion. We are not ignorant in those Days, Mr. Garnet, how many did expect with *Esau*, *diem iustus* for opportunity of Revenge. We knew both in what manner, and by what means some heavy Bodies, and more heavy Spirits were in hope to raise themselves like Bustards in fallow Fields *vi turbinis*, by the strength of a Whirlwind, to that height which Ambition (void of due Consideration) did foolishly affect.

It is evident that *Issmael* would have been *Isaac's* Play-fellow; and every day more Arguments were brought to light of a strong Desire in many Minds, That *Eteocles* and *Polynices* might make partition of their Inheritance *acuto ferro*, with a sharp cutting Sword: But as *Paterculus* reports of the Security of the *Roman Empire*, otherwise than was expected, after the Death of *Augustus*, we felt not so much as a quivering of that Commonwealth, of whose Ruin we stood in so great Fear, *tanta fuit unius viri Majestas, ut nec bonis, neque contra malos opus armis foret*; For so great was the Majesty of one Man, that not so much as those that were dutiful, needed Weapons against those that were traitorous; for whatsoever he pro-

tested was safe, and whatsoever he rejected did only perish.

And thanks be given to God, we are now so safe and thorowly secured from foreign Groans and pining Fears by these sweet Olive-buds which environed the Mercy-Seat, as *Doleman* may indeed *dolere*, that by no kind of Instrument he can *dolare*, that is, boar or wimble into this glorious and graceful Stock, wherein he would inoculate the Grievs of his stinging Grievances.

Again, it cannot be denied, That the State of this strong Inland, if it be considered by Integrity and Union of Parts, was in a manner paralytical (so long as *Scotland* was divided from this Realm of *England* as it were in half) by Privation as well of Motion, as of Sense: And by reason of Obstructions in divided Heads (that stop the free Course and Passage of the Spirits thro' all and every part and Member of the Main from Preservation of Health and Strength) it was like to fall by the least Distemper symptomatical into a dead Apoplexy. It was a Work of Mercy in our Saviour to cure *manum aridam*, I mean *aridam* in respect of the small use to us, tho' active, strong and powerful for it self. It was an Act of Policy in *Cæsar* to shut up the back Door that let in the *Germans* to the disturbance and disquiet of those Parts in *Gaul*. And great Wisdom it was once in *Severus*, to part those from us with a Wall of Hostility, whom since a more divine Hand hath happily fastened to us in eternal Fraternity: For the Holy Ghost accounteth it a Curse to stand alone, because he cannot be sure of his next Neighbour to take him up: The Branch bears Fruit no longer than it continues in the natural and proper Vine, fed with the same Sap, strengthened from the same Root, cut and pruned by the same Vinetor. Thus *England* and *Scotland* are the Twins of *Hypocrates*, that must ever laugh and weep together; they are the *Castor* and *Pollux* that must ever rise and set together; they are the two Hands of one Body Natural and Politick, that ought both to wash one another's Spots, and supply Weaknesses: To conclude, they are that *cor* and *cerebrum*, that Heart and Brain, so fastened and knit together in Harmony and Correspondencies, that without a perfect Union of both, it is not possible for the Isle of *Britain* to move with Power, to feel with Tenderness, or to breathe in Security.

Our Ancestors desired to have seen this happy Day, (I will not say as *Abraham* desired the Days of Christ, lest the Comparison might perhaps seem over-bold, but yet as they that live under the Pole desire to see the Sun which is familiar,) as may appear by Treaties between Princes in the Times of some of our wisest Kings, as the Third and Seventh *Henries*: And again, by the Continuance of that earnest Instance of the Eighth, for a Match between the young Queen *Mary* and Prince *Edward* his eldest Son, upon easy Conditions. The Letts in former Times proceeded in part from the practice of foreign Potentates, envying the Greatness of united Crowns; and in part from the Flaws of Domestick Factions within the Bodies of both Kingdoms, neglecting the Benefit of Opportunity thus offered upon the light Impressions of private Fears. God himself bestowed this Union between the Realms of *Israel* and *Judah* (sever'd much after the same Measure and Proportion that ours have been so long) as the strongest Pledge of Favour, and the richest Blessing of eternal

nal Bounty that his loving Kindness could confer upon both States, *ut esset Rex unus omnibus imperans, ut non essent ultra due gentes, nec dividerentur amplius in duo regna*: that there might be but one King to reign indifferently over all, that they might no longer be reputed two Nations; and with a further Condition, That from that time forward, they should be no more divided into two Monarchies.

Many Motives of Encouragement have been propounded, many Satisfactions to Jealousy have been tendered, many Instruments of excellent Advantage have been set on work in former Times, but to small Effect, so long as Wisdom rather debated, than Right determined; and besides, for that *nondum tempus a somno surgere*: but our Age is that *plenitudo temporis*, that full Period of Time wherein so many working Causes and Inducements draw to one Conclusion of Equality in Happiness in both Estates, as unless we will embale what our Ancestors with less Advantage did improve, disable what they did admire, reject what they did recommend, and in a sort repel the Grace of God which knocketh at our Door, we must acknowledge, *Non fecisse Deum taliter omninationi*, That God hath not dealt thus with every Nation. For our *Rex pacificus*, our *Delicie Britannæ gentis*, our *Leo Rubens*, (which according to Merlin's Prediction, was to hold in one Paw the Battlements of New Troy, in another *Sylvam Caledoniam*, which can level in common Sense at no other Prince that wielded the Scepter of this State before) hath by God's blessed Providence as well united the Parts of *England, Scotland and Ireland*, in one Body of Dominion, as the Lines of *Edgar, Fergus the Conqueror, Mac Morragh, and Cadwallader* in one Center of Conjunction, and thereby compounded out of many Waters, that *Margaritam pretiosam*, for the compassing whereof rather than it should escape our Hands, we ought to purchase it at as high a Rate, as the wise Merchant did that other in *St. Luke, qui, inventa una pretiosa Margarita, abiit, & vendidit omnia quæ habuit, ut emeret eam*: having found one precious Pearl among the rest, went and sold all that he possessed in the World beside, to purchase it.

I resemble the rare Object of the King our Master's aim, (in seeking to unite and knit together all his Subjects Affections, Scopes and Endeavours, *Nodo indissolubili*, to this End chiefly, that it may not rest hereafter in the power of Flesh to sever what hath been conjoined by the Hand of Grace) rather *Margaretæ* than to any other Jewel of great Price, because her Name was *Margaret*, by whom his Majesty derives his lineal Descent by just Title of the *Saxon Kings*. Her Name was *Margaret*, that being eldest Daughter to King *Henry VII.* invested in the Blood of our dear Sovereign King *James*, the most absolutely and radically united Interest of the two renowned Families of *York and Lancaster*: wherein we are to note *ex abundante*, that at the Point prefixed of one hundred Years, in which this worthy Princess was conveyed, by a lucky Match for this renowned Island, to her Husband *James IV.* her Royal Offspring *James VI.* our matchless Sovereign, made his happy Entrance into the possession of all these Crowns with a chearful Jubilee. I would be glad for my private Comfort, and in grateful Duty to the gracious Bounty of this blessed Line, (if it be lawful to intermingle *corpus opacum* with so many glorious Aspects) in a light touch to record and

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view the Revolutions and Fortunes of my own Family. For as the Duke of *Norfolk* was a forward Minister in attending this great Princess (by the wise King's Direction) to the full accomplishing of the nuptial Solemnity; so his Heir in the third Degree, by Misconstruction of humble Thoughts, and witty Workmanship upon weak Suspicion, was drawn into the Loss both of Life and State, for gazing too much upon the gleams of this rising Glory; and our Royal Sovereign (the true and lawful Heir of that peerless *Margaret*, on whom the Service did attend) reserved by Destiny to restore the Honour of that fading House, which was overcast with a Cloud of Scorn, and as it were to lay new Earth to the Root of that sapless Tree whose Leaves were fallen, and the fairest Branches withered. Of my self, on whom it hath pleased my most gracious Master and dear Sovereign, to cast more Favour than either *sub spe* I could merit, or *in re* I can utter, this only shall be said in acknowledgement of Favour and Admiration of Grace,

Ultimus hic ego sum qui quam benè, quam malè, nolo Dicere, qui de me judicet, alter erit.

The Name of the late old Countess of *Lenox* was also *Margaret*, by whom as Daughter to the Queen of *Scotland*, by an Earl of *Angus* in a second Match, the younger Branch of that Princely Line was thorowly incorporate into the Person of the King on his Father's side, for a stronger Union, if it were possible, both of Blood and Interest, and for a double Ornament of his Royal Progeny. She was no *Margaret* I confess, but a worthy *Mary*, that in the last Descent covered *fermentum acceptum*, the Leaven which she had received by Descent into Three Kingdoms, as the discreet Woman in the Gospel did her own into three Lumps of Dough, till by her blessed Issue, Founder of our perpetual Quiet, they might be all thorowly and compleatly leavened.

Now to draw to the Conclusion, which is the Knot of these united Ends, that is that worthy Sovereign, to whom

De nostris annis sibi Jupiter augeat annos.

That you and your Disciples, Mr. *Garnet*, in reward of so great Merit of this Island, were so hasty to blow up by your Powder-Plots into a higher Region, than that wherein his Throne was by God established, together with those very Walls, which as I find by antient Record, were first by the Holy Confessor *St. Edward* raised, of whose Family his Majesty descends, that one King might be buried, and the chief of his Race destroyed within the Compass of one Monument. But howsoever Mr. *Garnet* was willing to forget that this Place was once sanctified for a Refuge and Retreat to all sorts of Persons in Distress, by his own Canons; yet God that would not destroy *Judab* for his Servant *David's* sake, his Providence in like sort purposing to continue the Piety of that blessed King in this fairest Branch of his Descent; the Justice of that Divine Majesty holding it an Act of Atheism to cast *tot Margaritas porcis*, so many Pearls to Swine, or *Sanctum canibus*, that which is Holy to Dogs, bounded the Malice of these graceless Imps within so narrow Streights, as it rested not in their power by the Murder of our King to stain the Confessor's Walls with his

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own Blood, or under the Vizard of St. *Edward's* Profession, to extirp the Roots of St. *Edward's* Posterity. For in the Proverbs we are certainly assured, that *domus justorum permanebit*, the House or Generation of the Just shall continue: But it falls out in a better Consequence, That the Skull of faithless *Percy* should stand Centinel where he was once Captain Pioneer; and *Lambeth* should now be *Catesby's* Horizon, that was his Arsenal: And their giddy Pates are left *tanquam malus navis*, like the Mast of a Ship, to use the Prophet's Phrase, to warn Passengers by what just Disaster these roving Pirates came to their unhappy End; especially for seeking the Golden-Fleece, not by *Jason's* Merit, but by *Medea's* Sorcery.

To conclude, we may learn of the wise Man, That there can be neither Wisdom, nor Counsel, against God. The Ribs of a crazed Vessel are too weak to bruise the Rock which they rush upon. We spur Asses to no purpose, when God's Angel is *ad oppositum*. *Jacob* having shrunk a Sinew, halted all the days of his Life, after he wrestled so long and to so little purpose with God Omnipotent. Men are sure to gain no more than their own Smart, that kick against the Thorn: In such Attempts it is neither in him that wills, nor in him that runs, but in God that shews Mercy to those that direct themselves according to Discipline: for *Sortes mittuntur in Sinum*, the Lots are cast into the Lap, but it is God that disposeth the Lottery. Tho' your purpose were all one with *Abab* and *Jezabel*, in seeking to cut the Throat of *Naboth* for his Ground: Tho' you gave out your Hymn before this holy Act, as they proclaimed a religious Fast: Tho' you made your selves sick (as *Abab* did) with Anguish and Vexation, because you could not have your Wills; yet since you could neither *occidere* nor *possidere*, your Luck was worse than theirs: For by God's powerful and preventing Grace, you were thrust as well from all the Means and Advantages of killing whom you hated, as of possessing what you coveted. It were good therefore that (upon so many plain Experiments) you would confess with certain Wanderers in the Book of Wisdom, *Lassatos esse vos*, that you are wearied and over-laboured in these crooked ways, and have been ever since you leaped out of *Via regia*, the King's High-way, which neither leads to Dishonour, nor ends in Misery. Nothing is more proper *Materiae*, to Matter, than to flow (say the Philosophers) *nisi à forma sistitur*, unless it be stayed and fixed by the Form; nor any thing more proper to Humanity, (according to the Rule of Truth) than to err, if Grace direct it not. *Mahomet* confesseth in his Alcoran, That the Throne of Christ was raised by Patience, his by Revenge; that by Miracles, his by Tyranny. The Modesty and Piety of Christians afflicted for the Point of Conscience in the Time of *Tertullian*, appears by the Reason which he gives of their Abstinence *à suffocato & sanguine*, that is, *ne quo sanguine contaminarentur, vel intra viscera sepulto*; that they might admit no Pollution by Blood, tho' it were buried within their Bowels.

Pardon me, Mr. *Garnet*, tho' I doubt whether in the Point of Conscience alone, you would voluntarily and resolutely abide the Saw of *Esay*, the Bolts of *Jeremy*, the Gibbet of *Peter*, the Sword of *James*, or the stoning of St. *Stephen*, much less make a Gathering among those of your Profession, toward the preparing of an humble Sacri-

fice for the Life of *Nebuchadnezzar* (as you esteem the King) that with the Rage of a Tiger fought his Life, and waxed thus impatient of that soft and easy Hand, which it pleased him in his gracious Compassion and Tendernefs, before the late intended Tragedy, to hold over you; so that with *Seneca* you might justly say, *Nil felicitati meae deerat, nisi moderatio ejus*. Those golden Comforts of the Prophets to contrite Offenders, ought at this time to be of greater Estimation and Value in your Thoughts, than all the Treasures of the *Vatican*. You cannot steer the Ship of your crazed Conscience more safely in this sharp Storm (which hath been raised by your selves) than by the Council of *Laëtantius*, which doth warrant, That to Minds truly penitent, *Optimus portus est mutatio consilii*, Change of Resolution is the best Haven and safest Harbour. After an humble acknowledgment of a grievous Sin *in fratres vestros*, against your Brethren, with the Sons of *Jacob*, and withal, that for this Cause chiefly Tribulation hath taken hold of your highest Top: First, yield unfeigned Thanks to Almighty God for preventing this destructive Project, that would have cast so great a weight of Judgment upon your Soul, and for turning your ill Purpose to his Honour: Then thank your merciful and tender-hearted King, who seeks not to surprize you suddenly, as *Levi* did *Sichem*, *Quando dolor vulnerum erat gravissimus*; as you would have dealt with him; and to assault you in the greatest Horror and the sharpest Torture of your crying Sin; but by imitation of that eternal Object whose Person he represents, whose Example he regards, agreeably to that Record in the Book of Wisdom, *Dat tempus ad locum per quæ potestis mutari à malitia*, gives Time and Place by which you may be changed from your Malice: Crave Pardon of the World, for leaving such a Precedent to future Times, of a possibility to atchieve so desperate an Act, which may perchance, according to the Dispositions and Humours of Men diversly affected, as well *admonere* as *prohibere*, that is, put the World in mind that such a matter may be, as forbid that it be not.

Remember the difference which *Theodoret* doth discreetly put, between Suffering and the Cause of Suffering, between Torture to force Conscience, and legal Punishments to chastise Faults. To conclude my last Caution with your last Occasion,

Discite justitiam moniti, & non temnere Divos:

Because, *Hæc vos sapere vel mori jubent*; and withal (as *Martial* did for *Trajan*) with to the best of Majesty, to whom you meant the worst of Malice,

*Dii tibi dent quicquid, princeps Auguste, mereris,
Et rata perpetuo, quæ tribuere, velint.*

Then the Lord Chief Justice making a pithy Preamble of all the apparent Proofs and Presumptions of his Guiltiness, gave Judgment, that he should be drawn, hanged, and quartered.

And my Lord of *Salisbury* demanded, if *Garnet* would say any thing else?

Garnet answered, No, my Lord, but I humbly desire your Lordships all to commend my Life to the King's Majesty; saying, That at his pleasure he was ready either to die or live, and do him Service.

And so the Court arose.

ON the 3d of May, Garnet, according to his Judgment, was executed upon a Scaffold, set up for that Purpose at the West End of St. Paul's Church. At his arise up the Scaffold, he stood much amaz'd, Fear and Guiltiness appearing in his Face. The Deans of Paul's and Winchester being present, very gravely and christianly exhorted him to a true and lively Faith to Godward, a free and plain Acknowledgement to the World of his Offence; and if any further Treason lay in his Knowledge, to unburden his Conscience, and shew a Sorrow and Detestation of it: But Garnet, impatient of Persuasions, and ill-pleased to be exhorted by them, desir'd them not to trouble him, he came prepar'd, and was resolv'd. Then the Recorder of London (who was by his Majesty appointed to be there) ask'd Garnet if he had any thing to say unto the People before he died: It was no time to dissemble, and now his Treasons were too manifest to be dissimble; therefore, if he would, the World should witness what at last he censur'd of himself, and of his Fact; it should be free to him to speak what he list'd. But Garnet, unwilling to take the Offer, said, His Voice was low, his Strength gone, the People could not hear him, tho' he spake to them; but to those about him on the Scaffold, he said, The Intention was wicked, and the Fact would have been cruel, and from his Soul he should have abhorred it, had it been effected: But he said, He had only a general Knowledge of it by Mr. Catesby, which in that he disclosed not, nor used Means to prevent it, herein he had offended; what he knew in Particulars was in Confession, as he said. But the Recorder wished him to be remembred, that the King's Majesty had under his Hand-writing these four Points amongst others.

1. That Greenway told him of this, not as a Fault, but as a thing which he had Intelligence of, and told it him by way of Consultation.

2. That Catesby and Greenway came together to him to be resolv'd.

3. That Mr. Tesmond and he had Conference of the Particulars of the Powder-Treason in Essex long after.

4. Greenway had ask'd him who should be the Protector? but Garnet said, That was to be referred till the Blow was past.

These prove your Privy besides Confession, and these are extant under your Hand. Garnet answer'd, Whatsoever was under his Hand was true. And for that he disclosed not to his Majesty the things he knew, he confessed himself justly condemn'd; and for this did ask Forgiveness of his Majesty. Hereupon the Recorder led him to the Scaffold to make his Confession publick.

Then Garnet said, Good Countrymen, I am come hither this blessed Day of *The Invention of the holy Cross*, to end all my Crosses in this Life: The Cause of my Suffering is not unknown to you; I confess I have offended the King, and am sorry for it, so far as I was guilty, which was in concealing it; and for that I ask Pardon of his Majesty. The Treason intended against the King and State was bloody, my self should have detested it, had

it taken effect. And I am heartily sorry that any Catholicks ever had so cruel a Design. Then turning himself from the People to them about him, he made an Apology for Mrs. Anne Vaux, saying, There is such an honourable Gentlewoman who hath been much wronged in Report: For it is suspected and said, that I should be married to her, or worse. But I protest the contrary: She is a virtuous Gentlewoman, and for me a perfect pure Virgin. For the Pope's Breves, Sir Edmund Baynam's going over Seas, and the Matter of the Powder-Treason, he referred himself to his Arraignment, and his Confessions: For whatsoever is under my Hand in any of my Confessions, said he, is true.

Then addressing himself to Execution, he knelt at the Ladder-foot, and asked if he might have time to pray, and how long. It was answer'd, He should limit himself, none should interrupt him. It appear'd he could not constantly or devoutly pray; Fear of Death, or Hope of Pardon, even then so distracted him: For oft in those Prayers he would break off, turn and look about him, and answer to what he over-heard, while he seem'd to be praying. When he stood up, the Recorder finding in his Behaviour as it were an Expectation of a Pardon, wished him not to deceive himself, nor beguile his own Soul; he was come to die, and must die; requiring him not to equivocate with his last Breath; if he knew any thing that might be Danger to the King or State, he should now utter it. Garnet said, It is no time now to equivocate; how it was lawful, and when, he had shew'd his Mind elsewhere: But, faith he, I do not now equivocate, and more than I have confessed I do not know. At his ascending up the Ladder he desired to have Warning before he was turned off. But it was told him, he must look for no other Turn but Death. Being upon the Gibbet, he used these Words: *I commend me to all good Catholicks, and I pray God preserve his Majesty, the Queen, and all their Posterity, and my Lords of the Privy Council, to whom I remember my humble Duty, and I am sorry that I did dissemble with them: But I did not think they had had such Proof against me, till it was shew'd me; but when that was proved, I held it more Honour for me at that time to confess, than before to have accused. And for my Brother Greenway, I would the Truth were known; for the false Reports that are, make him more faulty than he is. I should not have charged him, but that I thought he had been safe. I pray God the Catholicks may not fare the worse for my Sake; and I exhort them all to take heed they enter not into any Treasons, Rebelions, or Insurrections against the King. And with this ended speaking, and fell to praying; and crossing himself, said, In nomine Patris & Filii, & Spiritus Sancti; and prayed, Maria mater gratiæ, Maria mater misericordiæ, tu me à malo protege, & horâ mortis suscipe. Then, In manus tuas, Domine, commendo Spiritum meum: Then, Per Crucis hoc Signum (crossing himself) fugiat procul omne malignum. Infige Crucem tuam in corde meo, Domine; Let me always remember the Cross: and so returned again to Maria mater gratiæ, and then was turned off, and bung till he was dead.*



XXI. *The Trial of GEORGE SPROT in Scotland, for High-Treason, in conspiring with John Earl of Gowrie to murder King James I. 12 Aug. 1608. 6 Jac. I.*

GEORGE SPROT, a Notary*, inhabiting at *Aymouth*, having given cause of Suspicion by some Words which fell from him, and afterwards by some Papers found upon him, that he was privy to, and acquainted with the † Plotting of the late Earl of *Gowrie* and *Robert Logane*, for the cruel murdering of King *James*, was seized and committed to Prison; and after divers Examinations, being moved with remorse of Conscience for the long concealing his Fore-knowledge of this Conspiracy, confesseth, declareth, and deponeth, That he knew perfectly, that *Robert Logane*, late of *Restalrig*, was privy, and upon the Fore-knowledge of *Gowrie's* treasonable Conspiracy. And for the greater Assurance of his Knowledge, deponeeth, That he knew that there were divers Letters interchanged betwixt them, anent the treasonable Purpose aforesaid, in the beginning of the Month of *July* 1600. Which Letters, *James Bour*, called *Laird Bour*, Servitor to *Restalrig*, (who was employed Mediator betwixt them, and privy to all that Errand) had in keeping, and shewed the same to *Sprot* in the Place of *Fast-Castle*. The first of *Gowrie's* Letters, containing in effect, as followeth:

‘**G**OOD Laird of *Restalrig*, you understand what Conditions should have been betwixt us, of before. Indeed I purposed to have come by your House, but understanding of your Absence in *Lotbiane*, I came not. Always I wish you either your self to come West, or else to send some sure Messenger, who may confer with me anent the Purpose you know. But rather would I wish your self to come, not only for that Errand, but for some other thing that I have to advise with you.’

To the which Letter *Restalrig* wrote an Answer, and sent the same to the Earl of *Gowrie*, by the said *James Bour*, of the Tenure following:

‘**M**Y Lord, my most humble Duty and Service heartily remembred. At the Receipt of your Lordship's Letter I am so comforted, that I can neither utter my Joy, nor find my self sufficiently able to requite your Lordship with due Thanks. And persuade your Lordship in that Matter, I shall be as forward for your Lordship's Honour, as if it were my own Cause. And I think there is no living Christian that would not be content to revenge that *Machiavellian* Maf-sacring of our dear Friends; yea howbeit it should be, to venture and hazard Life, Lands, and all other things else. My Heart can bind

me to take part in that Matter, as your Lordship shall find better Proof thereof. But one thing would be done, namely, That your Lordship should be circumspect and earnest with your Brother, that he be not rash in any Speeches touching the Purpose of *Padua*. My Lord, you may easily understand, that such a Purpose as your Lordship intendeth, cannot be done rashly, but with Deliberation. And I think, for my self that it were most meet to have the Men your Lordship spake of, ready in a Boat or Bark, and address them as if they were taking Pastime on the Sea, in such fair Summer-time. And if your Lordship could think good, either your self to come to my House of *Fast-Castle* by Sea, or to send your Brother, I should have the Place very quiet and well provided after your Lordship's Advancement, where we should have no scant of the best Venison can be had in *England*: And no others should have Access to haunt the Place, during your Lordship's being here, but all things very quiet. And if your Lordship doubt of safe landing, I shall provide all such Necessaries as may serve for your Lordship's Arrival, within a Flight-shot of the House. And persuade your Lordship you shall be as sure and quiet here, while we have settled our Plot, as if you were in your own Chamber: for I trust and am assur'd we shall hear Word within few days from them your Lordship knoweth of; for I have care to see what Ships comes home by. Your Lordship knoweth I have kept the Lord *Bothwell* quietly in this House in his greatest Extremity, say both King and Council what they liked. I hope (if all things come to pass, as I trust they shall) to have both your Lordship and his Lordship at one good Dinner afore I die. *Hæc jocosè*, to animate your Lordship: I doubt not, my Lord, but all things shall be well. And I am resolved, whereof your Lordship shall not doubt, of any thing on my part, yea to peril Life, Land, Honour and Goods; yea, the Hazard of Hell shall not affray me from that, yea altho' the Scaffold were already set up. The sooner the Matter were done, it were the better, for the King's Buck-hunting will be shortly; and I hope it shall prepare some dainty Cheer for us to dine against the next Year. I remember well, my Lord, and I will never forget, so long as I live, that merry Sport which your Lordship's Brother told me of a Nobleman at *Padua*; for I think that a *Parasceve* to this purpose. My Lord, think nothing that I commit the Secrecy hereof, and Credit to this Bearer; for I dare not only venture my Life, Lands, and all other things I have else, on

* Spotswood's *History of the Church of Scotland*, p. 509.

† *Ibid.* p. 459. See *State-Trials*, vol. VII. p. 33, and 78.

his

his Credit, but I durst hazard my Soul in his keeping, if it were possibly in earthly Men; for I am so persuaded of his Truth and Fidelity. And I trow (as your Lordship may ask him if it be true) he would go to Hell-Gates for me; and he is not beguiled of my Part to him. And therefore I doubt not but this will persuade your Lordship to give him Trust in this Matter, as to my self. But I pray your Lordship direct him home with all possible haste, and give him strait Command, that he take not a Wink sleep, while he see me again, after he come from your Lordship. And as your Lordship desireth in your Letter to me, either rive or burn, or else send back again with the Bearer; for so is the Fashion, I grant.

Which Letter written every word with *Restalrig's* own Hand, was subscribed by him after his accustomed manner, *Restalrig*, and was sent to the Earl *Gowrie* by the said *James Bour*. After whose Return, within five days, with a new Letter from *Gowrie*, he staid all night with *Restalrig* in ** Gunnes-Green*; and *Restalrig* rode to *Lothiane* the Morn thereafter, where he staid five or six days. Then after his returning, past to *Fast-Castle*, where he remained a certain short Space.

And farther deponeth, that he saw and heard *Restalrig* read the last Letter, which *Bour* brought back to him from *Gowrie*, and their Conference there-ament. And heard *Bour* say; Sir, if ye think to make any Commodity by this Dealing, lay your Hand to your Heart. And *Restalrig* answer'd, that he would do as he thought best. And farther said to *Bour*, Howbeit he should sell all his own Land that he had in the World, he would pass thorow with the Earl of *Gowrie*, for that Matter would give him greater Contentment, nor if he had the whole Kingdom: and rather or he should falsify his Promise, and recall his Vow that he had vowed to the Earl of *Gowrie*, he should spend all that he had in the World, and hazard his Life with his Lordship. To whom *Bour* answer'd: You may do as you please, Sir, but it is not my Counsel, that you should be so sudden in that other Matter. But for the Condition of *Dirlton*, I would like very well of it. To whom *Restalrig* answer'd, Content your self, I am at my Wit's-end.

And farther, *Sprot* deponeth, that he enter'd himself thereafter in Conference with *Bour*, and demanded what was done betwixt the Laird and the Earl of *Gowrie*. And *Bour* answer'd, that he believ'd that the Laird should get *Dirlton* without either Gold or Silver, but feared that it should be as dear unto him. And *Sprot* inquiring how that could be; *Bour* said they had another Pie in hand, nor the felling of any Land: but prayed *Sprot*, for God's sake, that he would let be, and not trouble himself with the Laird's Business; for he feared, within few days, the Laird would be either Land-less or Life-less.

And the said *George Sprot* being demanded if this his Deposition was true, as he would answer upon the Salvation and Condemnation of his Soul; and if he will go to death with it, seeing he knoweth the time and hour of his Death to approach very near; deponeth for Answer, That he hath not a Desire to live, and that he knows the Time to be short, having care of no earthly Thing, but only for clearing of his Conscience in the Truth of all

these Things, to his own Shame before the World, and to the Honour of God, and Safety of his own Soul; that all the former Points and Circumstances contained in this his Deposition, with the Deposition made by him the 5th Day of *July* last, and the whole remanent Depositions made by him sen that Day are true, which he will take on his Conscience, and as he hopeth to be saved of God, and that he would seal the same with his Blood.

And farther, being demanded where this above-written Letter, written by *Restalrig* to the Earl of *Gowrie*, which was return'd again by *James Bour*, is now; deponeth that he abstracted it quietly from *Bour*, in looking over and reading *Bour's* Letters, which he had in keeping of *Restalrig's*; and that he left the above-written Letter in his Chest among his Writings, when he was taken and brought away, and that it is closed and folded within a piece of Paper.

This aforesaid Deposition was made by him the tenth of *August* 1608, written by *James Primerose*, Clerk of his Majesty's Privy-Council, and subscribed with the said *George Sprot's* own Hand, in the Presence of

The Earl of <i>Dunbar</i> ,	Sir <i>Will. Hart</i> , his Ma-
The Earl of <i>Lothiane</i> ,	jefty's Justice,
The Bishop of <i>Rosse</i> ,	Mr. <i>John Hall</i> ,
The Lord <i>Schune</i> ,	Mr. <i>Patrick Galoway</i> ,
The Lord <i>Halyrudehouse</i> ,	Mr. <i>Peter Hewart</i> , Mi-
The Lord <i>Blantyre</i> ,	nisters of the Kirks of
	<i>Edinburgh</i> .

Subscribed with all their Hands.

And also the 11th Day of the aforesaid Month and Year, the said *George Sprot* being re-examin'd, in the Presence of a Number of the Council and Ministers aforesaid, and it being declar'd to him, that the time of his Death now very near approach'd, and that therefore they desir'd him to clear his Conscience with an upright declaration of the Truth; and that he would not abuse the holy Name of God, to make him, as it were, a Witness to Untruths; and especially being desired that he would not take upon him the innocent Blood of any Person dead or quick, by making and forging Lyes and Untruths against them:

Deponeth, that he acknowledgeth his grievous Offences to God (who hath made him a reasonable Creature) in abusing his holy Name with many Untruths, sen the beginning of this Procefs: but now being resolv'd to die, and attending the hour and time when it shall please God to call him, he deponeth with many Attestations, and as he wisheth to be participant of the Kingdom of Heaven, where he may be countable and answerable, upon the Salvation and Condemnation of his Soul, for all his Doings and Speeches in this Earth, that all that he hath deponed sen the fifth Day of *July* last, in all his several Depositions, were true in every Point and Circumstance of the same; and that there is no Untruth in any Point thereof.

And having desired Mr. *Patricke Galoway* to make a Prayer, whereby he might be comforted now in his Trouble; which was done:

The said Deponer, with many Tears after the Prayer, affirmed this his Deposition to be true; and for the Confirmation thereof, declared, that he would seal the same with his Blood.

* A House of *Restalrig's*.

And the next Day thereafter, being the 12th of the aforesaid Month of *August*, upon the aforesaid Confession, the said *George* was brought forth and presented in Judgment upon Panel, within the Tollbooth of *Edinburgh*, before Sir *William Hart* of *Preston*, his Majesty's Justice, and there in a fenced Court holden by him that Day, assisted by the honourable Persons following, his Assessors in that Errand: They are to say,

Alexander Earl of *Dumfermling*, Lord Chancellor,

George Earl of *Dunbar*, Treasurer,

John Archbishop of *Glasgow*,

David Bishop of *Rosse*,

Gawin Bishop of *Galloway*,

Andrew Bishop of *Brechin*,

David Earl of *Crawford*,

Mark Earl of *Lothbiane*,

John Lord *Abirnetky* of *Saltoun*,

James Lord of *Balmerinoth*, Secretary,

Walter Lord *Blantyre*,

John Lord *Halyrudehouse*,

Michael Lord *Burley*,

Sir *Richard* *Cokburne* of *Clarkintoun*, Knight,

Mr. *John* *Preston* of *Fenton Barnes*, Collector-General,

Sir *John* *Skeyne* of *Currbil*, Knight, Clerk of Register:)

was delated, accused, and pursued by Sir *Thomas Hamilton* of *Binning*, Knight, Advocate to our Sovereign Lord for his Highness's Entries, of the Crimes contained in his Indictment, produced by the said Advocate; whereof the Tenure followeth:

G *George Sprot*, Notary in *Ayemouth*, You are indicted and accused, forsomuch as *John*, sometime Earl of *Gowrie*, having most cruelly, detestably, and treasonably conspired in the Month of *July*, the Year of God 1600 Years, to murder our dear and most gracious Sovereign the King's most excellent Majesty: And having imparted that devilish Purpose to *Robert Logane* of *Restalrig*, who allowed of the same, and most willingly and readily undertook to be Partaker thereof: The same coming to your Knowledge at the times and in the manner particularly after specified, you most unnaturally, maliciously, and treasonably concealed the same, and was art and part thereof in manner following. In the first, in the said Month of *July* sixteen hundred Years, after you had perceiv'd and known, that divers Letters and Messages had past betwixt the said sometime Earl of *Gowrie*, and the said *Robert Logane* of *Restalrig*, you being in the House of *Fast-Castle*, you saw and read a Letter written by the said *Robert Logane* of *Restalrig*, with his own Hand, to the said *John* sometime Earl of *Gowrie*, of the Tenure following:

MY Lord, my most humble Duty and Service heartily remember'd. At the Receipt of your Lordship's Letter I am so comforted, that I can neither utter my Joy, nor find my self sufficiently able to requite your Lordship with due Thanks. And persuade your Lordship in that Matter, I shall be as forward for your Lordship's Honour, as if it were mine own Cause. And I think there is no living Christian that would not be content to revenge that *Machiavellian* massacring of our dear Friends, yea, howbeit it should be, to venture and hazard Life, Lands and all other thing else. My

Heart can bind me to take part in that Matter, as your Lordship shall find better Proof thereof. But one thing would be done: namely, That your Lordship should be circumspect and earnest with your Brother, that he be not rash in any Speeches touching the Purpose of *Padua*.

And a certain Space after the execution of the aforesaid Treason, the said *Robert Logane* of *Restalrig*, having desired the Laird of *Bour* to deliver to him the aforesaid Letter, or else to burn it; and *Bour* having given to you all Tickets and Letters, which he then had either concerning *Restalrig*, or others; to see the same, because he could not read himself, you abstracted the above-written Letter, and retained the same in your own hands, and divers times read it, conteining farther in substance nor is formerly set down, according to the words following:

My Lord, you may easily understand, that such a Purpose as your Lordship intendeth, cannot be done rashly, but with Deliberation. And I think for my self, that it were most meet to have the Men your Lordship spake of, ready in a Boat or Bark, and address them as if they were taking Pastime on the Sea, in such fair Summer time. And if your Lordship could think good, either your self to come to my House of *Fast-Castle* by Sea, or to send your Brother, I should have the Place very quiet, and well provided after your Lordship's Advertisement, where we should have no scant of the best Venison can be had in *England*. And no others should have access to haunt the Place during your Lordship's being here, but all things very quiet. And if your Lordship doubt of safe landing, I shall provide all such Necessaries as may serve for your Lordship's Arrival, within a Flight-shot of the House. And persuade your Lordship you shall be as sure and quiet here, while we have settled our Plot, as if you were in your own Chamber: for I trust, and am assured, we shall have word within few Days from them your Lordship knoweth of; for I have care to see what Ships comes home by. Your Lordship knoweth I have kept the Lord *Botwell* quietly in this House in his greatest Extremity, say both King and Council what they liked. I hope (if all things come to pass, as I trust they shall) to have both your Lordship and his Lordship at one good Dinner afore I die. *Hæc jocosè*, to animate your Lordship: I doubt not my Lord but all things shall be well. And I am resolved, whereof your Lordship shall not doubt, of any thing on my part, yea, to peril Life, Land, Honour and Goods; yea, the Hazard of Hell shall not affray me from that, yea, altho' the Scaffold were already set up. The sooner the Matter were done, it were the better; for the King's Buck-hunting will be shortly; and I hope it shall prepare some dainty Cheer for us to dine against the next Year. I remember well, my Lord, and I will never forget, so long as I live, that merry Sport which your Lordship's Brother told me of a Nobleman at *Padua*: for I think that a *Parasceve* to this Purpose. My Lord, think nothing that I commit the Secrecy hereof and Credit to this Bearer; for I dare not only venture my Life, Lands, and all other things I have else, on his Credit, but I durst hazard my Soul in his keeping, if it were possible in earthly Men; for I am so persuaded of his Truth and Fidelity. And I trow (as your Lordship may ask him if it be true) he would go to Hell-gates for

for me; and he is not beguiled of my Part to him. And therefore, I doubt not but this will persuade your Lordship to give him Trust in this Matter, as to my self. But I pray your Lordship direct him home with all possible haste, and give him strait Command, that he take not a Wink sleep, while he see me again, after he come from your Lordship. And as your Lordship desireth in your Letter to me, either rive or burn, or else send back again with the Bearer; for so is the Fashion, I grant.

Which Letter written every word with the said *Robert Logane* his own Hand, was subscribed by him after his accustomed manner, with this Word, *Restalrig*.

And albeit by the Contents of the aforesaid Letter, you knew perfectly the Truth of the said most treasonable Conspiracy, and the said *Robert Logane* of *Restalrig*, his Foreknowledge, Allowance, and Guiltiness thereof; like as you were assured of the same by his receiving of divers Letters sent by *Gowrie* to him, and by his sending Letters to *Gowrie* for the same Purpose, and by sundry Conferences betwixt the said *Robert Logane* of *Restalrig*, and the said *James Bour*, in your Presence and Hearing concerning the said Treason, as well in the said Month of *July* immediately preceding the attempting of the said Treason, as at divers other times shortly thereafter, as likewise by the revealing thereof to you by the said *James Bour*, who was upon the Knowledge and Device of the said Treason, and was employed as ordinary Messenger by the said *Robert Logane* of *Restalrig*, to the said sometime Earl of *Gowrie*, in the Traffick of the said damnable Treason, whereby your Knowledge, Concealing and Guiltiness of the said Treason was undeniable: yet, for further Manifestation thereof, about *July* 1602 Years, the said *Robert Logane* of *Restalrig* shewed to you that *Bour* had told him, that he had been somewhat rash to let you see a Letter which came from the Earl of *Gowrie* to the said *Robert Logane* of *Restalrig*, who then urged you to tell what you understood by that Letter. To whom you answer'd, That you took the meaning of it to be, that he had been upon the Counsel and Purpose of *Gowrie*'s Conspiracy. And he answer'd you, whatever he had done, the worst was his own: But if you would swear to him, that you should never reveal any thing of that Matter to any Person, he should be the best Sight that ever you saw; and in token of farther Recompense he then gave you twelve pound of Silver. Nevertheless, albeit you knew perfectly the whole Practices and Progress of the said Treason, from the beginning thereof as said is, as well by the sight of the said Letters, as also by your Conferences with the said *James Bour*, called *Laird Bour*, and *Robert Logane* of *Restalrig*; yet during all the days of their Life-times, who lived till the Year of God 1606 Years, or thereby, and so by the space of six Years after that, you knew the guiltiness of the treasonable Conspiracy aforesaid, you most treasonably concealed the same; and so you was and is art and part of the said most heinous, detestable and treasonable Conspiracy, and of the Knowledge and Concealing thereof; and therefore you ought and should incur, underlie and suffer the Sentence and Pain of High-Treason. To the Token, that ye have not only by your Depositions subscribed with your Hand, and solemnly made in Presence of many of the Lords of his Majesty's Council, and of the Ministers of the Borough of *Edin-*

burgh, of the Dates, the 5th, 15th and 16th days of *July* last by-past, and 10th and 11th days of *August* Instant, confessed every Head, Point, and Article of the Indictment above written, but also by divers other your Depositions subscribed likewise with your Hand, you have ratify'd the same, and sworn constantly to abide thereat, and to seal the same with your Blood, which you cannot deny.

Which Indictment being read openly in Judgment to the said *George Sprot*, before he was put to the Knowledge of an Inquest, he confessed in the Presence of the said Lord Justice and whole Assessors above-named, the same and every Point thereof to be true and of Verity. And therefore the Justice ordained the same Indictment to be put to the Knowledge of a condign Inquest of the honest, famous and discreet Persons under-written. They are to say:

William Trumbill of *Ardre*.

William Fisher, Merchant, Burghs of *Edinburgh*.

Robert Stuart, there.

Edward Johnston, Merchant, Burghs there.

Harbert Maxwell of *Cavens*.

James Tennent of *Linhouse*.

William Trumbill, Burghs of *Edinburgh*.

George Brown in *Gorgymill*.

John Hucheson, Merchant, Burghs of *Edinburgh*.

John Leyis, Merchant, Burghs there.

James Somervell, Merchant, Burghs there.

William Simintoun, Burghs there.

John Cunnison in *Dirlton*.

Tho. Smith, Merchant, Burghs of *Edinburgh*.

And *John Cowtis*, Burghs there.

Which Persons of Inquest being chosen, sworn and admitted, after the Accusation of the said *George Sprot*, before them of the said treasonable, heinous, and detestable Crimes contained in the Indictment aforesaid, and reading of the said Indictment of new again in his and their Presence; the said *George Sprot* of new confessed in the Audience of the said Inquest the aforesaid Indictment and every Point thereof to be true and of Verity. Whereupon the said Sir *Thomas Hamilton* of *Binning* Knight, his Majesty's Advocate, as before, asked Act and Instrument: And in respect thereof protested, in case the said Inquest cleansed him of the said Crimes for wilful and manifest Error. And therefore the whole fornam'd Persons of Inquest remov'd all together forth of Court to the Inquest House, where they being inclosed, by Plurality of Votes elected and made choice of the said *Harbert Maxwell* of *Cavens* to be Chancellor, or Foreman. And having with great Deliberation gravely consider'd the Effect and whole Circumstances of the said Indictment, and constant judicial Confession made by the Party pannelled, as well before the said Lord Justice and his Assessors, as thereafter in Presence of the Inquest themselves, they all voted upon the whole Effect of the said Indictment. And being ripely and well advised therewith, re-enter'd again in Court, where they all in one Voice by the Mouth of the said Chancellor or Foreman, found, pronounced, and declar'd the said *George Sprot* (according to his own Confession judicially made in their Presence and Audience) to be guilty, culpable, filed and convict of art and part of the said most heinous, detestable and treasonable Conspiracy contained in his Indictment above-written, and of the Knowledge and Concealing thereof. For the which Cause the said Justice, by the Mouth of the Dempster of Court, by his Sentence and Doom decerned and ordained the said *George Sprot* to be taken to the Market Cross of

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Edinburgh,

Edinburgh, and there to be hanged upon a Gibbet till he be dead, and thereafter his Head to be stricken from his Body, and his Body to be quartered and demeaned as a Traitor, and his Head to be affixed and set up upon a Prick of Iron upon the highest part of the Tollbooth of *Edinburgh*, where the Traitor *Gowrie*, and others of the Conspirators Heads stand; and his whole Lands, Heritages, Tacks, Stedings, Rooms, Possessions, Goods and Geere to be forfeited and eschet to our Sovereign Lord his use, for his treasonable and detestable Crimes above specify'd. Which was pronounc'd for Doom.

Extractum de libro Actorum Adiornalis S. D. N. Regis per me D. Johannem Cobburne de Ormessoun militem, Clericum Justitiarie ejusdem generalis. Sub meis signo & subscriptione manualibus.

The Doom being pronounced, the said *George* was convoyed to a privy House, where he remain'd at his secret Meditation, and afterwards in Conference with the Ministers and others, unto the time all things was provided necessary for his Execution: and being brought to the Place where he was to die, he in publick Audience of the whole People, at the three sides of the Scaffold, ratify'd the former Depositions made by him concerning the treasonable Practices intended and devised betwixt *Gowrie* and *Restalrig*, for the murdering of our most gracious Sovereign, and bereaving his Highness of his Life, and his own Knowledge, and concealing of their Guiltiness. For the which he humbly craved God and his Majesty Forgiveness, being most sorry and grieved that he had offended God and the King's Majesty in concealing such a vile, detestable and unnatural Treason, enterprized by them against his gracious Sovereign, who hath been ever so good and gracious to his Subjects; protesting that if he had a thousand Lives to render, and were able to suffer ten thousand Deaths, it were not a sufficient Satisfaction and Recompense for his Offence. And that God had preserved him from many great Perils, when his Life was in extreme Danger, to bring him to this publick Declaration of that detestable and horrible Fact, in Presence of all the People, uttered by him in these words following: *To my own Shame, and to the Shame of the Devil, but to the Glory of God.* And for Satisfaction of the Consciences of all those that have or can make any doubt of the Truth of this so clear a Matter, he acknowledged that his haunting with *Restalrig*, who was a Man without Religion, and subject to many other Vices, as also his continual being in Company with the Laird of *Bour*, who likewise was irreligious and without fear of God, and his being ingyred by them into their Matters after his first sight of *Restalrig's* Letter written by him to *Gowrie*, brought him from one Sin to another, and consequently upon this grievous Crime, for the which most justly, worthily and willingly, he is now to render his Life. And thereupon he desired all the People there present to beware of evil Company, and namely of the Society of those who are void of Religion; saying to them, That this was the most glorious Day that ever his Eyes did see. In the midst almost of these Speeches, he had prostrate himself, and fell upon his Knees in Presence of the whole People, making a very pithy Prayer, in the Form following.

‘ O Father, how shall I call Thee Father, that am so unworthy to be called thy Son? I

‘ have wandered astray like a Lost-Sheep, and thou
‘ of thy Mercy hast brought me home unto Thee,
‘ and hast preserv'd my Life from many Dangers
‘ until this Day, that I might reveal these hidden
‘ and secret Mysteries to mine own Shame, and
‘ thy Glory. Thou hast promised, that whenso-
‘ ever a Sinner from his Heart will repent and call
‘ to Thee, that thou wilt hear him, and grant him
‘ Mercy.’


And thus he continued a good Space in a most fervent Prayer, to the great Admiration of all the Standers-by. And having ended the same, one of the Ministers prayed again, and the Prisoner joined with him, *That God would forgive his Sins, and receive his Soul to Mercy.* After which, *Sprot* standing up made divers Requests: First, that what he had deliver'd by his Confession on the Scaffold, might be put into his Process, that the World might take notice of it. Secondly, that such as were present (as they might have Opportunity) would be Suiters unto the King, that his Majesty would forgive him this Offence; for the which, he said, *He craved Pardon of God, of his Sovereign, and the World.* And thirdly, he desired those of the Ministry which were present, that wheresoever they came they would proclaim in the Pulpit his Confession of his Crime, his Sorrow for the same, and his full Hope that God would pardon him. And to the end that this might be perform'd, he took the Hands of such Ministers as stood near about him, so binding a Promise on them. And here, being told by the said Ministers and other Persons of Quality, that being so near his Departure out of the World, it concerned him to speak nothing but the Truth, and that upon the Peril of his Soul: he answer'd, That to the end they should know, that he had spoken nothing but the Verity, and that his Confession was true in every respect, he would (at the last Gasps) give them some apparent Token for the Confirmation of the same. Then fitting himself to the Ladder, the Executioner cometh to him, and, as the manner is, asking Forgiveness of him; *With all my Heart*, saith he, *for you do but your Office, and it is the thing I desire; because suffering in my Body, I shall in my Soul be joined to my Saviour.*

Afterward ganging up the Ladder with his Hands loose and untied, being on the upper Part thereof, he desired Liberty to sing the sixth Psalm, and requested the People to accompany him in the singing thereof. Which being granted, he took up the Psalm himself with a very loud and strong Voice, far by his accustomed Form, being before his coming to the Scaffold a weak spirited Man, of feeble Voice and Utterance; and was assisted with the Number of a Thousand Persons at the least, who accompany'd him in singing that Psalm. After the ending whereof he again openly repeated and ratified his said former Confession: and with that, recommending his Soul to God, he fastened a Cloth about his own Eyes, and was cast over the Ladder, so ending this mortal Life.

Before his last Breath, when he had hung a pretty Space, he lift up his Hands a good height, and clapped them together aloud, three several times, to the great Wonder and Admiration of all the Beholders. And very soon thereafter he yielded his Spirit.



XXII. *Proceedings between the Lady Frances Howard, Countess of Essex, and Robert Earl of Essex her Husband, before the King's Delegates, in a Cause of Divorce, 1613.* II Jac. I. *

PON the Petition of *Frances Countess of Essex*, complaining that the Earl her Husband was incapable of consummating their Marriage, and praying a Commission to examine, if her Complaint was well founded; the King granted her Request, and appointed the following Persons Commissioners;

<i>George Archbishop of Canterbury,</i>	<i>Sir Julius Caesar, LL.D.</i>
<i>John Bishop of London,</i>	<i>Sir Thomas Parry, LL.D.</i>
<i>Lancelot Bishop of Ely,</i>	<i>Sir Daniel Donne, LL.D.</i>
<i>Richard Bishop of Litchfield and Coventry,</i>	<i>Sir John Bennet, LL.D.</i>
<i>John Bishop of Rochester,</i>	<i>Dr. Francis James,</i>
	<i>and</i>
	<i>Dr. Thomas Edwards.</i>

The Libel contain'd the following Allegations.

I. That she, at the time of the Marriage, was thirteen years old, and is at this time twenty two or twenty three.

II. That she and *Robert Earl of Essex* were marry'd by publick Rites and Ceremonies of the Church in *January 1603.*

III. That the aforesaid *Robert*, at the time of the pretended Marriage, was about fourteen, and is about twenty two or twenty three at this time; and ever since, and at this present, is a Man (as far forth as a Man may judge) and hath been in good Health, and perfect Estate of Body, nor any way hinder'd by any Ague or Sicknefs, but that he might have carnal Copulation with a Woman.

IV. That since the pretended Marriage, at least by the space of whole and continue three years after the said *Robert* had fully attained the Age of eighteen Years, as Time and Place did serve, after the fashion of other married Folks, the said *Frances Howard* in hope of lawful Issue, and desirous to be made a Mother, liv'd together with the said *Robert*, at bed and board, and lay both naked and alone in the same Bed, as married Folks use: And desirous to be made a Mother, from time to time, again and again yielded her self to his power, and as much as lay in her, offer'd her self and her Body to be known; and earnestly desired Conjunction and Copulation.

V. And also the said Earl, in the same time very often, again and again, did try to have Copulation, as with his lawful Wife, which she refus'd not, but used the best means she could: notwithstanding all this, the said Earl could never carnally know her, nor have that Copulation in any sort which the married Bed alloweth.

VI. Yet before the said pretended Marriage, and since, the said Earl hath had, and hath Power and

Ability of Body to deal with other Women, and to know them carnally, and sometimes have felt the Motion and Pricks of the Flesh carnally, and tending to carnal Copulation, as he saith and believeth; and peradventure, by a perpetual and natural Impediment, hath been hindered all the former time, and is at this present, that he can have no Copulation with the said Lady *Frances*.

VII. Furthermore, the said Lady *Frances* hath been, and is fit and able to have Copulation with a Man, and such a one as may be carnally known; neither hath in this regard any Impediment.

VIII. Moreover, the said Lady *Frances* remaineth, and is at this present, a Virgin. Also at the time of the pretended Marriage, the said Lady *Frances* was unacquainted with the Earl's want of Ability and Impediment, formerly mention'd.

IX. And furthermore the said Earl, long before this Suit commenced, hath very often, and at sundry times confessed in good earnest, before Witnesses of good Credit, and his Friends and Kinsfolks, that altho' he did his best Endeavour, yet he never could, nor at this time can, have Copulation with the said Lady *Frances*, no not once.

X. And lastly, in regard of womanish Modesty, the Lady *Frances* hath conceal'd all the former Matters, and had a Purpose ever to conceal them, if she had not been forced, thro' false Rumours of Disobedience to the said Earl, to reveal them.

She requireth, since this pretended Matrimony is but a Fact, and not in Right, it may be pronounced, declared, and adjudged as none, and of none effect; and she may be quiet and free from all Knots and Bonds of the same, by your Sentence and Authority.

The Earl of Essex put in his Answer the 5th of July, 1614.

The first and second he answereth affirmatively.

To the third, he thinketh that at the Time of his Marriage, he was full fourteen Years, and is now twenty two and upwards; neither since hath had, or hath any Sicknefs or Impediment to hinder him, but that he might have had Copulation with a Woman, saving in the time of his Sicknefs of the Small-Pox, for two or three Years after his Marriage, which continued for a Month or six Weeks, and at another time, when he had a few Fits of an Ague.

To the fourth, he affirmeth, that for one Year he divers times attempted; that the two other Years, when he was willing, she shewed herself sometimes willing, but other times refused, and he

* Complete Hist. of England, Vol. III. pag. 686, 692. Edit. 1706. Bacon's Works, Vol. I. pag. 78.

lay in Bed most commonly with her, but felt no Motions or Provocations.

To the fifth, he answereth, that he never carnally knew her, but found not any defect in himself, yet was not able to penetrate into her Womb, nor enjoy her.

To the sixth, he believeth, that before and after the Marriage, he hath found an Ability of Body to know any other Woman, and hath oftentimes felt Motions and Provocations of the Flesh, tending to carnal Copulation; but for perpetual and natural Impediments, he knoweth not what the Words mean; but that he hath lain by the Lady Frances two or three Years last past, and had no Motion to know her, and he believes never shall.

To the seventh, he believeth not that the said Lady Frances is a Woman able and fit for carnal Copulation, because he hath not found it.

To the eighth and ninth, he believeth them both to be true, and thinketh that once before some Witnesses of Credit, he did speak to this purpose, *That he oftentimes had endeavoured carnally to know her, but that he did not, nor could not.*

Doubts conceived out of the Fact and Process in the Suit between the Lady Frances Howard, and the Earl of Essex.

1. Whether the Libel be defective, especially in the fourth Article, where it is said, that *Dominus Comes Essex pluribus & iteratis vicibus* (which may be verified and satisfied in two or three times) *dictam dominam Franciscam ejus uxorem prætersam cognoscere tentavit, &c.*

2. Whether the Answer of my Lord of Essex to the said fourth Article in that behalf, being but thus, *That he did divers times attempt, &c.* be full, certain and sufficient.

3. Whether in this case my Lord of Essex his Oath (*cum 7 manu propinquorum*) be not by Law requisite, as well as my Lady's.

4. Whether my Lord of Essex would be inspected by Physicians, to certify (so far as they can by Art) the true Cause and Nature of the Impediment.

5. Whether by triennial Cohabitation, there having been no carnal Copulation between them (*Impedimentum maleficii* being accidental) *præsumatur præcessisse vel potius subsequutum fuisse matrimonium contractum & solemnizatum.*

6. Whether they ought *post præceptum Judicis* (notwithstanding their triennial Cohabitation before the Suit begun) to cohabit together, *saltem per aliquod temporis spatium arbitrio Judicis moderandum*, for further Trial, &c.

DEPOSITIONS taken in the Case of the Earl of Essex, and the Lady Howard.

The Oath taken by the Lady Frances Howard.

THAT since the Earl of Essex was eighteen Years of Age, he and I have for the space of three Years diverse and sundry times lain together in naked Bed all Night. And at sundry of the said times the said Earl hath purposely endeavoured and attempted to consummate Marriage with me, and to have carnal Copulation with me for Procreation of Children: And I have at such times, as the said Earl hath attempted so to do, yielded myself willing to the same Purpose. All

which notwithstanding, I say and affirm upon my Oath, that the said Earl never had carnal Copulation with me,

Frances Howard.

Interrogatories administered to all Witnesses (excepting the Earl and Countess of Suffolk) produced, and examined on behalf of the Earl of Essex, and who had been produced against him on the part of the Lady Frances Howard, in a Suit brought by the said Lady against the Earl of Essex, for the Nullity of a pretended Marriage.

1. Let each Witness be interrogated, as to his Age, Birth, Condition and Place of Abode; and where he has chiefly resided for ten Years last past; and how long he has known the Parties contesting.

2. Whether he is a Relation or Kinsman of the Party on whose Behalf he is produced; and if so, in what degree of Consanguinity.

3. Which of the Parties, Plaintiff or Defendant, he most favours; with which of them he is most conversant, and to which he would confer the Better-of-the-day, if in his Power.

4. Whether he has communicated to any body, or any body has conferred with him concerning the Nature and Substance of his Deposition in this Cause: And if he answer in the Affirmative, then let him declare with whom he so conferred and what the Discourse that passed between them.

5. Whether he came of his own Accord, or by Compulsion, to give his Testimony in this Cause.

6. Let him depose what he knows of the Contents in the 4th Article of the Libel put in, in this Cause; or any Part thereof: And in what Month and Year the Earl of Essex attained to the full Age of eighteen Years; and in what Place and Places the Earl and the Plaintiff for the whole space of three Years after such time, had Society of Bed and Board, cohabited and lay together; and for how long together in each distinct Place.

7. Let him likewise depose what he can say to the Contents in the sixth Article of the aforesaid Libel; and whether he knows what perpetual and incurable Impediment the Earl did and does labour under; and let him express the Nature and Quality thereof, and when he knew it; and let him give the Causes of such his Knowledge in every Circumstance.

8. Let him depose likewise what he can say to the Contents in the 10th Article of the said Libel: And of the Time and Place, and how often and before whom the Earl confessed and acknowledged as in the said Article is contained and specified.

Depositions, upon the Articles of the Libel put in by the Lady Frances Howard, taken June 2, 1613.

Katherine Fines, Daughter of Thomas Lord Clinton, aged about 18 Years, deposeth, that she hath known the Lady Frances for about a Year and a half, and the Lord Essex for above a Year.

To the 1st, 2d, and 3d Article, cannot depose.

To the 4th Art. says, That from *Midsummer* last to *All-hollantide*, the Earl of Essex and Lady Frances remained and kept Company together as Man and Wife; first in the Countess of Leicester's House at Drayton in Warwickshire; and after at the Earl's own House at Chartley in Staffordshire: And that for two of the Nights they lodged at Drayton, being on a Sunday at Night and on a Monday at Night, they to her Knowledge lay together

gether in one Chamber; she seeing the Earl go into the said Chamber undressed and ready for Bed; and she verily believes they did lie together in the same Bed those two Nights, for that she knows there was but one Bed in the said Chamber. That before Christmas last the said Lady Frances lying at Salisbury-House in the Strand, the Earl came thither and went into the Chamber where Lady Frances was in Bed, and went to Bed to her, and there was no other Bed in that Chamber; and this Deponent heard the Earl and Lady Frances talking together a good part of that Night.

Her Depositions to the Interrogatories administered for the other Side.

To the 1st Art. Speaks as to her Birth and Abode.

2d Art. That she is Cousin-German to the Lady Frances.

3d Art. That as to this Cause she favours the Parties equally; that her Conversation is most with the Plaintiff; and that if it were in her Power, she would give the Decision according to Right.

4th Art. Answers in the Negative.

5th Art. That she was not compelled, but was made acquainted by some that she should be used as a Witness in this Cause, and had Notice given her when she should come.

The Deposition of Elizabeth Raye, the Daughter of William Raye, of Woodstock in Oxfordshire, Gent. taken to the Libel: Aged above 20 Years.

That she has known the Lady Frances for above two Years; and the Earl of Essex for the same time.

To the 4th Art. That she served the Lady Frances for above twelve Months, and that shortly after she came to serve her, my Lady went to my Lord Knowles's House at Caversham in Oxfordshire, where she staid about a Fortnight, and the Lord Essex came thither to her, and laid in naked Bed with the said Lady Frances divers Nights, as this Deponent hath heard them report that attended the Lady in her Chamber: That the Deponent herself at Drayton attending the said Lady in her Chamber, did see them in naked Bed together as Man and Wife for divers Nights; as they did likewise afterwards at Chartley, for above a Quarter of a Year, and at Michaelmas after that, at Durham-House at London.

Her Examination to the Interrogatories on the other Side.

To the 1st Art. Speaks as to her Abode at distinct Times.

2d Art. Answers in the Negative.

3d Art. That she favours both Parties equally; converses with neither of them; and if in her Power, would have Right take place.

4th Art. Answers Negatively.

5th Art. That she was requested to come to testify in this Cause, but was not compelled by any Process.

6th Art. Hath heard it reported that the Earl of Essex was 22 Years old in January last.

7th and 8th Art. No wife concern this Deponent.

The Deposition of Frances Britten, Widow, taken to the Libel.

That she is aged about 55 Years, and hath known both the Parties respectively from their Infancy.

To the 4th Art. That the Deponent having oftentimes occasion of Business with the Lady Frances, hath come to her since her Marriage to the Earl, and hath seen the Earl and she dine and sup together as Man and Wife: That between Michaelmas and All-hallowtide was three Years, this Deponent coming to Lady Frances's Lodging at Hampton-Court early in the Morning, she was brought into the Bed-Chamber, where she did see them in naked Bed together; as likewise she did at Lady Frances's Lodging at Whitehall: That perceiving them in Bed together, this Deponent stepped back, but the Lady Katherine Howard her Sister being there, called the Deponent in, and then Lady Frances stepped out of her Bed and left the Earl there: That this was on St. Valentine's-day, for that Lady Katherine told the Earl, that there was a Valentine for him. Cannot depose further, saving that when this Deponent was at Hampton-Court, as is before mentioned, after the Earl and Lady Frances were risen, the Lady missing a Pendant Ruby that usually hung at the Ring in her Ear, desired this Deponent to look for it in the Bed. That thereupon she and the Lady's Chamber-maid turned down the Bed-cloaths, and there they saw the Places where the Earl and Lady had lain, but that there was such a Distance between the two Places, and such a Hill between them, that this Deponent is persuaded they did not touch one another that Night.

Her Examination on the other Side.

To the 1st Art. Hath already spoken.

2d Art. Answers Negatively.

3d Art. That she favours both Parties equally, converses most with the Plaintiff, but would have Right take place in the Decision of the Cause, if in her Power.

4th Art. Speaks Negatively.

5th Art. Came at the Request of Lady Frances, but no ways compelled.

6th Art. Refers herself to her former Deposition.

7th and 8th Art. Do not concern her to answer.

The Deposition of Catherine Dandenell, one of the Lady Frances's domestick Servants; aged about 16 years.

Hath known the Lady Frances about four Years, and the Earl for about three.

To the 4th Art. That about this time three Years, Lady Frances went to the Lord Chamberlain, her Father's, at Awdley-end in Essex, and remained there all that Summer, whither the Earl came to her and staid sometimes a Week, sometimes a Fortnight, and they conversed together as Man and Wife, and lay together many Nights to this Deponent's knowledge, who hath seen them so over Night, and hath found them together in naked Bed in the Morning. As she likewise hath, at the Earl's House at Chartley; and at the Lady Walsingham's at the Tilt-yard; and the Countess of

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of Leicester's at Drayton; and at Salisbury-house, and Durham-house.

Her Examination to the Interrogatories on the other Side.

To the 1st Art. Hath already spoke.

2d Art. Answers Negatively.

3d Art. Most favoureth the Lady Frances, and is most in her Company, and wisheth the Victory to go where the Right is.

4th Art. Answers Negatively.

5th Art. That she comes at the Plaintiff's Request, no ways compelled.

6th Art. Refers herself to her former Deposition.

7th and 8th Art. Do not concern her to answer.

The Deposition of Anne Jaconim, one of the domestick Servants of Lady Frances; aged about 24 years.

Hath known the Parties in difference between three and four Years.

To the 4th Art. That for all such Time she hath attended on Lady Frances as her Chamber-Maid, and that all along until within these twelve Months last, the Earl hath cohabited at Bed and Board with the said Lady Frances, at *White-ball, Chertley, Tilt-yard*, and other Places: Hath often seen them lie together naked in one and the same Bed, and at *Salisbury-house* in the *Strand*, since *Christmas* last.

In her Examination on the opposite Side, deposed as the last Witness did.

The Deposition of Thomas Bamforde, Yeoman; aged about 40 years.

Hath known the Lady Frances by sight about five Years, and the Earl by sight about three Years.

To the 1st, 2d and 3d Art. Cannot depose.

4th Art. Deposeth, That in 1611, about the latter end of the Summer, the Earl of *Essex* and Lady Frances were at the Lady *Corbett's* House in *Derbyshire*, whom the Deponent then did and still doth serve; that they continued there about a Week, and dined or supped together in the said House, and lay together in one and the same naked Bed, as it was commonly thought amongst the Servants of the said House.

His Examination on the other Side.

To the first Art. Hath already spoken.

2d Art. Answers Negatively.

3d Art. That he favours both Sides equally, converses with neither, and wisheth the Victory in this Suit may go according as the Equity of the Cause requireth.

4th Art. Answers Negatively.

5th Art. Came on Request of Lady Frances, no ways compelled.

6th Art. Refers himself to his former Deposition.

7th and 8th Art. Not concerned to answer.

The Deposition of George Powell, Gent. aged about 36 Years.

Hath known the Parties in difference about three Years.

To the 1st, 2d and 3d Art. Cannot depose.

4th Art. Says, That he served the Earl and Lady Frances from May 1609, to this time, and still doth attend on Lady Frances. During all which time they did cohabit and keep Company together as Man and Wife, sometimes at *White-ball, Greenwich*, and in their Progress attending the King and Queen, at *Kensington*, all the Summer 1611, at *Chartley*, at *Durham-house, Awdley-end*, and other Places. That their Cohabitation together continued till the end of the Year 1612, and that it was commonly reported amongst the Servants of the House, that they did lie together in one and the same naked Bed. That this Deponent hath from time to time seen their Servants put them to Bed together; and that he hath come to their Chamber to know their Commands, and it was told him they were in Bed together. That in June or July 1609, this Deponent being called in to their Lodging-Chamber at *Greenwich*, in a Morning, saw them in naked Bed together.

His Examination on the other Side.

To the 1st Art. Hath spoken already.

2d Art. Answers Negatively.

3d Art. Favours both Parties equally, is most conversant with Lady Frances, his Employment being to wait on her, and wisheth that Right may take place.

4th Art. Answers Negatively.

5th Art. Comes on Request of Lady Frances to give his Testimony, and no ways compelled thereto.

6th Art. Refers to his former Deposition.

7th and 8th Art. Concern not this Deponent to answer.

The Deposition of William Power, of London Merchant; aged near 60 Years.

Hath known Lady Frances about ten Years, and the Earl of *Essex* for about seven.

To the 1st Art. Says, The Earl and Lady Frances were in *Christmas* time, either seven Years since last *Christmas*, or seven come *Christmas* again, to his knowledge married together in the Chapel at *White-ball*, for that this Deponent was present at the Marriage.

2d and 3d Art. Cannot depose any thing certainly.

4th Art. Says, That this time two Years they cohabited as Man and Wife, and kept House together at the Earl's House at *Chartley*. That this Deponent was there about four Months, and hath divers times been in their Lodging-Chamber in a Morning, and hath seen them in naked Bed together.

His Examination on the other Side.

To the 1st Art. Hath already spoken.

2d Art. Answers Negatively.

3d Art. Favoureth both the Parties in this Suit alike, is most in the Plaintiff's Company: And wisheth they were come to an Agreement.

4th Art. Answers Negatively.

5th Art. That he came on no Compulsion, but was requested by Sir *William Button*, on Behalf of the Lady Frances.

6th Art. Refers himself to his Depositions made to the 4th Art of the Libel.

7th and 8th Art. Not concerned to answer the same.

The.

The Deposition of Benjamin Orwell, one of the domestick Servants of the Lady Frances; aged above 17 Years.

Hath known the Parties in difference for seven Years.

To the 1st, 2d and 3d Art. Cannot depose.

4th Art. Saith, That for these two Years last past, the Deponent hath continually attended on Lady Frances at Kensington, Chertley, the Lady Corbett's, Countess of Leicester's, Lord Knowles's, and in all those Places the Earl and Lady Frances cohabited together as Man and Wife, and, as it was said by their Attendants, did commonly lie together in the same Bed naked. Hath seen the Earl come out of the Lady's Lodging-Chamber in his Pantables, having nothing on him but his Shirt: And verily believes he at such times came out of Bed from the said Lady Frances.

His Examination on the other Side.

To the 1st Art. Hath spoken already.

2d Art. Answers Negatively.

3d Art. That touching this Suit he favoureth the Parties alike, is most in Company with the Plaintiff; and if it were in him he would bestow the Victory where the most Right is.

4th Art. Answers Negatively.

5th Art. Answers, He was desired by Sir William Button, on the Plaintiff's Behalf, to come and testify in this Cause, and is not compelled.

6th Art. Refers to his former Deposition.

7th and 8th Art. Not concern'd to answer.

The Deposition of the Right Honourable Thomas Earl of Suffolk, Lord High Chamberlain of the Household, taken the 10th of June 1613; aged about 57 years.

To 1st Art. Says, It is true, for he was present at the Solemnization of the pretended Marriage.

2d Art. That Lady Frances was above thirteen Years of Age at the Time of the said Marriage, and is now above 22 Years old.

3d Art. That at the time of the Marriage the Earl was above 14 Years of Age, as the Deponent hath heard his Friends, who were likely to know his Age, report; and is now above 22 Years old. That to that Time and since the Earl was, in the Judgment of Men, of good Health and Strength of Body, except at two several Times, when he was sick of the Small-pox and an Ague; and was likely to be able to have the carnal Knowledge of a Woman, for any thing this Deponent could judge.

4th Art. Knows that after the Earl was come to the Age of 18 Years, he and Lady Frances kept Company, and lay together as Man and Wife, for three whole Years: Hath seen them in Bed together sometimes.

5th and 6th Art. That notwithstanding the Premises, the Earl never had any carnal Knowledge of Lady Frances, nor never could, as the Earl hath confessed to the Deponent.

7th, 8th and 9th Art. Believes these Articles to be true.

10th Art. That the Earl, in this Deponent's hearing, confessed divers times, in several Companies, that he hath done his Endeavour to have carnal Knowledge of Lady Frances, and yet never could.

11th Art. Believes this Article to be true.

12th, 13th, 14th and 15th Art. Refers himself to the Register of the Court of Delegates.

16th Art. Says his above Depositions are true.

The Deposition of the Right Honourable Katherine Countess of Suffolk; aged about 47 years.

To 1st, 2d, 3d Art. Deposes they are true.

4th, 5th, 6th, 7th Art. Believes to be true.

8th Art. Deposes to be true of her knowledge.

9th Art. Believes to be true.

10th Art. Hath heard it reported, and believes it to be true.

11th Art. Believes the same to be true.

4th Art. &c. Concludes as the Earl of Suffolk.

The Lord Archbishop of Canterbury's Reasons against the Nullity.

Inasmuch as we firmly believe, that the Scripture doth directly, or by consequence, contain in it sufficient matter to decide all Controversies, especially in things appertaining to the Church, as that Marriage among Christians can be no less accounted than a sacred Thing, as being instituted by God himself in Paradise, honoured by the Presence of our Saviour himself, declared by St. Paul to be a Sign of the spiritual Conjunctions between Christ and the Church:

I would be glad to know, and by what Text of Scripture, either by the Old or New Testament, a Man may have a Warrant to make a Nullity of a Marriage solemnly celebrated, *propter maleficium versus hanc*.

Which I do the rather ask, because I find warrant expressly in the Scriptures to make a Nullity of a Marriage *propter frigiditatem*, by the Words of our Saviour, *Mat. 19. 12. For there be some chaste, or Eunuchs, which are so born of their Mothers Belly, and there be some which are made chaste of Men, and there be some which have made themselves chaste for the Kingdom of Heaven.*

I would also know gladly what antient Father amongst the Greeks or Latins, by occasion of Interpretation of Scripture, or any Disputation, hath mentioned *maleficium versus hanc*.

The like I demand touching antient Councils, either General or Provincial, and concerning Stories Ecclesiastical, whether any such matter be to be found in them.

If for aught that appeareth never mention was made of this, till *Hircanus Rhemifis Episcopus*, who lived four hundred years after Christ; it may well be conceived that this was a Concomitant of Darkeness or Popish Superstition, which about that time grew to so great an height (God permitting them) that Punishment might fall upon the Children of Unbelief.

But since the Light of the Gospel is now in so great a measure broken forth again, why should not I hope that those, who have embraced the Gospel, should be free from this *Maleficium*; especially since amongst a Million of Men in our Age, there is but one found in all our Country, who is clearly and evidently known to be troubled with the same? And if there should be any which should seem to be molested, we are taught to use two Remedies, the one temporal Physick, the other eternal.

For the first, our Saviour said, *Hoc genus Dæmoniorum non ejicitur, nisi per orationem & jejunium:* and

and St. Peter speaking of the Devil, *Cui resistite firmè in fide*; and the Canonists themselves prescribe Alms, Fasting and Prayer to be used in this Case; but that they join Supplication and their Exorcisms thereunto, and for corporeal Medicine to be applied therewith as against a Disease: so is the Judgment of our late Divines, whether they speak of *Maleficium* or not.

Now admit the Earl of *Essex* might be imagined to be troubled with *Maleficium versus hanc*; I demand what Alms hath been given, what Fasting hath been used, and what Prayers have been poured forth to appease the Wrath of God towards him or his Wife; or what Physick hath been taken, or Medicine hath been applied for three Years together? Not one of these things: but the first hearing must be to pronounce a Nullity in the Marriage, of which Declaration we know the beginning, but no mortal Man's Wit can foresee the end, either in his Person, or in the Example.

Then the Archbishop for Confirmation of his Opinion shewed the Testimony of *Melancthon*, *Pezelius*, *Hemingius*, *Polanus*, *Arcularius*, *Beza*, *Zanchius*.

Judicium Philippi Melancthonis de divortio ex impotentia.

Personæ quæ non sunt idoneæ ad commixtionem conjugalem nequaquam fiunt conjuges, sed cum explorata est frigiditas, *Judex* pronunciet illas personas liberas esse. Nec fit tunc divortium, quia non erat conjugium, juxta dictum Mat. 19. sed fit declaratio, ut alii sciant, illam societatem non esse conjugium, & personæ quæ habet naturæ vires integras, concedi aliam feliciorum copulationem legitimam. Sed ad explorandam frigiditatem *Jura* tempus constituunt, si res dubia est, ne ante triennium fiat sejunctio. Eodem modo pronunciant de iis in quibus natura ita læsa est fascino aut veneficio, ut ope medica sanari non possit, si toto triennio frustra tentata est medicatio.

Tanta autem est virtus aliquarum mulierum, ut occultent imbecillitatem virorum, sicuti viri doctissimi *Simonis Grynei* soror narravit, se, mortua prima conjuge, duxisse viduam virginem, quæ undecim annos nupta fuerit viro frigido, nec unquam ulli, ante mortem viri, hanc rem patefecit. Hæc *Melancthon* in locis: Loco de conjugio, quæ *Christopherus Pezelius* suis in *Melancthonis* examen explicationibus inseruit, & eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentalis est. Naturalis, cum quis natura non est idoneus ad commixtionem conjugalem. Accidental, cum quis est castratus, aut veneficio corruptus. Rursus quæ ex veneficio accidit impotentia, aut curari potest medicamentis, aut est perpetua. Ex his distinctionibus sumitur explicatio quæstionis, an, & quomodo impotentia sit causa divortii. Nam inter impotentes, non potest constare conjugium, quia deest causa sufficiens & finalis. Primum, si persona illa quæ sana est, decepta fuit, & ignorans duxit impotentem, non igitur potuit esse consensus, qui est causa efficiens Matrimonii. Secundum, duplex est finis conjugii, unus est generatio sobolis, sicut dicitur, *Crescite & multiplicamini*: Alter finis est, Vitatio confusionis libidinum, juxta dictum; Vitandæ fornicationis causa unusquisque habeat uxorem. Hæc *Pezolius* 2 parte explicat. In *Examen Melancthon*.

In eadem Causa *Hemingii* Judicium.

Inhabilitas corporum ad usum matrimonii divortii causa est, & nonnunquam fascino & veneficio adeo inhabiles redduntur viri, ut nunquam sanari possint. Sed plura sunt judicii perpendenda, antequam divortii

sententiam ferat. Primum, an impotentia præcesserit Nuptias. Secundum, an sit subsecuta Nuptias. Tertium, an sit curabilis. Quartum, an ejus rei mulier conscia fuerit ante Nuptias. Si præcesserit Nuptias, potest liberari persona sana divortium petens, non enim fuit verum conjugium, siquidem non legitime consentiunt, cum unus fallit, alter errat, fallit impotens, errat potens. Cum ergo Deus nec fallaciam nec errorem probat, non est dicendus eos conjunxisse. Proinde *Judex*, si intellexerit ex probationibus incurabile esse vitium, mox declarabit suo testimonio, non fuisse Matrimonium; verum si spes sit curationis, triennium statuatur, in quo patienter expectetur curatio; quæ si frustra tentata fuerit, *Judex* pronuntiabit Conjugium nullum fuisse.

Si subsecutum est vitium post nuptias & complexum maritalem conjugum, nullo pacto permittendum est divortium: fortuna enim afflicta, si absit culpa, patienter in conjugio ferenda est. Si alter fuerit conscius infirmitatis alterius ante nuptias, cogantur simul habitare, & alia officia sibi mutuo præstare: Nam persona conscia vitii alterius absque dubio fraudem meditata est, quæ fraus non debet illi prodesse, si postea divortium petat. Hæc *Hemingius* libello de Conjugio, Repudio, & Divortio.

Polani professoris Theo. nuper in Academia Basiliensi Judicium.

Conjugium inire possunt, qui non sunt natura vel arte Spadones, aut quibus natura non est læsa fascino aut veneficio. Tales enim personæ nequaquam fiunt conjuges. Ideo etiam nuptiis celebratis, cum trienni spatio explorata est spadonis frigiditas, aut toto triennio tentata est naturæ læsæ medicatio, *Judex* pronunciare potest illas personas liberas esse. *Polanus* lib. 10. Syntag. cap. 53.

* Arcularii nuper professoris Theol. in Academia Marpurgensi Judicium. * Sive Treularii.

Inter personas quæ propter frigiditatem aliudve naturæ vitium ad usum conjugii sunt ineptæ, cum non sit conjugium, teste Christo Mat. 19. divortium hic locum habere poterit. Si quam igitur personam talem alteri jungi contingat, *Judex*, explorata frigiditate aut naturæ vitio, utramque personam liberam pronuntiabit. Porro ad explorandam frigiditatem *Jura* triennii tempus præscribunt, præsertim si res dubia sit. Idem judicium est de eis quorum natura vel fascino vel veneficio ita sit læsa, ut ad conjugii usum reddantur inepti; & omnem medicorum operam intra triennium inanem fuerint experti. Hæc *Arcularius* in arcu fœderis, cap. 28.

Theodori Bezæ Judicium.

Sponsalia cum personis paralyti immedicabili, quæ corpus prorsus enervavit, frigiditate insanabili, genitalium partium privatione, vel adeo insigni læsione, ut perpetua coitus impotentia necessario consequetur, affectis, contracta prorsus inutilia sunt, cum ad matrimonium a Deo vocati videri non possint, qui fidem in sponsalibus datam præstare, naturali objecto vitio nequeunt. Quod si sponsalibus factis, conjugio tamen nondum reipsa consummato, ejusmodi malum supervenerit, sentio ejusmodi sponsalia, veluti Deo ipso jubente, dirimenda; ut, quid objecto perpetuo impedimento, palam demonstret, sibi istiusmodi sponsalia non placere. *Beza* lib. de Divort. & Repud. pag. 91. Genev. 1591. impress.

Atque hanc suam doctrinam *Beza* multis ex sacræ scripturæ testimoniis probat: sed tantum pag. 94. ei duas cautiones adjecit. Primam, si frigidus postea convaleuit,

convuluit, repetere priorem uxorem, errore, viz. Separatam oportet, etiamsi alteri postea esset conjuncta: secundam cautionem, recte omnino in istiusmodi controversiis constitutum est, (ne quid videlicet fieret, quod postea mutari sine magno offendiculo non posset) ut triennium saltem ab ipso copulationis, i. e. ductæ uxoris die expectaretur, priusquam isti morbi insanabiles esse, & sponsalia conjugii dirimenda pronunciarentur. Hoc autem omnino de iis vitiis accipiendum est quæ per se non patent. Nam alioqui, ut in exectione, vel si quis naturæ vitio, testibus aut genitali membro careat, quorsum ullum temporis intervallum?

Zanchii Judicium.

Quemadmodum Beza, sic nec Zanchius impotentiam ex veneficio attiget, sed tantum docet, quosdam esse casus, quibus matrimonia in ipsa Ecclesia benedicta nulla sint, & subinde hæc exempla subjungit. Si cum eo contrahitur, qui vir non erat, sed spado, aut propter perpetuum ei insanabilem morbum, officium conjugis præstare nullo modo potest. Hæc Zanchius lib. 4. de op. Dei, cap. 3. sed illam nec scripturæ testimoniis nec rationibus confirmat.

To these Arguments of the Archbishop, the King vouchsafed to give an Answer himself, which was as follows.

The KING's Answer.

TO the First Article, that the Scripture doth directly or by consequence contain sufficient matter to decide all Controversies, especially in this appertaining to the Church: This in my Opinion is preposterous, and one of the Puritans Arguments, without a better Distinction or Explanation.

For the Orthodox Proposition is, That the Scripture doth directly, or by consequence, contain in it sufficient Matter to decide all Controversies in Points of Faith and Salvation, of which sort a Nullity of Marriage cannot be accounted for one; and therefore your Consequence upon the former Proposition must fail.

For further satisfaction of your following Question (I say) your second Question doth answer it: if there be warrant in Scripture for pronouncing a Nullity *propter frigiditatem*, then all the means which may make him *frigidus versus hanc*, must be comprehended therein; for why doth our Church justly condemn the Marriage of a Man with his Sister's Daughters, or the Marriage of two Sisters, but *ut paritate rationis*, for none of them are *in terminis* prohibited by the Scripture? only the Conclusion is gathered à *paritate rationis*. For if it be not lawful to marry the Father's Wife, because thereby you discover your Father's Shame; nor his Sister, because she is his Kinswoman; nor your own Sister, because thereby you discover your Father's and your Mother's Shame: it can no more be lawful to marry your Sister's Daughter, for thereby also you discover your own Shame; as also the same reason serves for ascending or descending in Points of *Consanguinity*, quia *par est ratio*.

The like is in this case; for altho' Christ spake only of three sorts of Eunuchs, yet *Ratio est quia non potest esse Copulatio inter Eunuchum & Mulierem*; and therefore St. Paul, 1 Cor. vii. telleth us clearly, that it is not *Conjugium sine Copulatione*. I conclude, therefore, a *paritate*

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rationis, that Christ did comprehend under these three sorts all Inability which doth perpetually hinder *Copulationem versus hanc*, whether it be natural or accidental; for what difference is there between cutting off the Hand, and being made impotent thereof? *Amputatio & Mutilatio membri*, is all one in the Civil Law; and that is a like defrauding of the Woman, when either he who is to be her Husband is gelded, or when the use of that Member towards her is by any unlawful means taken from him. Neither is it any way needful to crave the particular Warrant of Scripture for a Nullity, no more than of Warrant in this place for any Nullity at all; for Christ doth not directly say, that a Marriage so made shall be nullified, neither doth he teach us what form or process shall be used in that, neither makes he mention of the triennial Probation, no more than he forbiddeth Marriage within the fourth Degree, without leave obtained of the Bishop of the Diocese. It is then sufficient to all moderate Christians to be taught out of the Word of God, that Marriage is *nulla sine Copulatione*; and these words, *quos Deos conjunxit*, are never found in Scripture, where *& erunt ei* doth not proceed, viz. they two shall be one Flesh.

But whether the Impediment be universal, or *versus hanc* only; or whether the Fault thereof hath been born with him, or done to him by Violence, or fallen unto him by Disease, or Disproportion, or Inaptitude betwixt the Parties, or unnatural Practices, that is ever *par ratio*, he is *Eunuchus versus hanc & omnes alias*, seeing to him only was she married.

Then *Paritate rationis*, such Nullities are grounded upon the afore said warrant of Scripture, neither had Christ any occasion to speak of the Jews Marriage concerning *Maleficium versus hanc*: for tho' it be apparent that God made King *Abimelech* and his Servants unable to abuse *Sarah*, Abraham's Wife, and so was he made by God himself *Eunuchus versus hanc*, and that it be not improbable that the Devil being God's Ape, should imitate God's Works, by his filthy Witchcraft, by making such as God will permit him, unable *versus hanc*; howbeit, it is very probable that it was long after that time the Devil put that trick upon the Earth.

As for the third and fourth Questions, what mention the Fathers and Councils do make of *Maleficium versus hanc*, I answer, that it may be (if they were well searched) that either something to this purpose in them, or at the least *Aliquid analogum*, with a *paritate rationis*, or by consequence, may serve to decide the Question.

But leaving this to search, my main Answer is, That we must distinguish oft-times: for in all the first Ages, as long as Persecution lay heavy upon the Church, and before the Empire became Christian, the Church did not meddle with any thing, which drew a Consequence after it of Possessions, or Inheritance, as Marriage doth; nay, even divers hundred Years after the Conversion of the Emperors, the Judgment and Decision of all such Questions did still remain in *foro Civili*, till the Popedom began to wax great, and assume, or rather usurp to her self a supreme and independent *Judicatory* in all Ecclesiastical Causes: and therefore the Fathers and Councils had no occasion to make mention of that which was not *de præfori* at that time.

T t

And

‘ And besides, that is an evil Argument to say
 ‘ such a thing is not lawful, because the *Fathers*
 ‘ and *Councils* made no mention of it: for you
 ‘ know much better than I, divers and many Points
 ‘ betwixt the *Papists* and us are never mentioned
 ‘ by the *Fathers*, because they could never have
 ‘ dreamed that such Questions would arise; and
 ‘ therefore are the *Fathers* exact only in such Ques-
 ‘ tions as were agitated upon the State at that time,
 ‘ as *De Trinitate, de duabus in Christo Naturis*, and
 ‘ such like: and therefore ’tis sufficient that there
 ‘ can be nothing found which may justly be un-
 ‘ derstood to contradict this Opinion.

‘ And it is very probable (as I said before) that
 ‘ this trick of *Maleficium* had not then been put
 ‘ in practice in the World, and therefore not
 ‘ known or mentioned by them; for why may
 ‘ not the Devil as well find out new tricks of
 ‘ Witchcraft (when God will permit him) as he
 ‘ did daily new *Seets* of *Heresies*? for his Malice
 ‘ can never end until the end of Times.

‘ To the fifth Argument, my former Answer
 ‘ doth also serve; for till the 400th Year after
 ‘ Christ, it may be that devilish trick came never
 ‘ to be discovered. You know the old Proverb,
 ‘ *ex malis moribus bonæ leges*: and it is not unli-
 ‘ kely that the time of Darknes gave the Devil oc-
 ‘ casion to devise such new Tricks (look my
 ‘ *Dæmonology*) and yet was that Law for which
 ‘ you cite *Hircanus*, by *Charles the Great*, who in
 ‘ many great Points (as you know) had so great
 ‘ Light, as I do scarce term this Time a Time of
 ‘ Blindnes: but howsoever the Darknes was in
 ‘ points of Superstition, I will still maintain (as
 ‘ I have ever done) that for matters of Order and
 ‘ Policy, all the World shall never be able to find
 ‘ out any so good and so old an Order of Argu-
 ‘ ment to be put in the place of it: in sign where-
 ‘ of there is no well governed Commonwealth
 ‘ in the Christian World, wherein the Common-
 ‘ Law is not received to judge in Questions of
 ‘ that nature; and it is certain, that this Question
 ‘ now in hand, is only a Question of Order and
 ‘ Policy: for the ground of this Question, that the
 ‘ essential point of Matrimony cannot be accom-
 ‘ plished *sine copula*, is warranted by express Scrip-
 ‘ ture, and confessed by your self.

‘ To your sixth Argument (or rather Hope) I
 ‘ fear that Hope shall prove contrary to Faith;
 ‘ for as sure as God is, there be *Devils*, and some
 ‘ *Devils* must have some Power, and their Power
 ‘ is in this World, neither are the *Elect* exempted
 ‘ from this Power; *Job* was not, *Paul* was not:
 ‘ *Christ* said to all his Disciples, *Cribraverit vos*
 ‘ *Sathanas*; and if the Devil hath any Power, it
 ‘ is over the Flesh, rather over the filthiest and
 ‘ most sinful part thereof, whereunto original Sin
 ‘ is foldred; as God, before and under the Law,
 ‘ to shew *officalem* of purging Man’s original Sin,
 ‘ ordained the *Præputium* of the Foreskin: and to
 ‘ exempt this of our Profession from the Power of
 ‘ Witchcraft, is a Paradox never yet maintained
 ‘ by any learned or wise Man.

‘ That the Devil’s Power is not so universal a-
 ‘ gainst us, that I freely confess; but that it is
 ‘ utterly restrained *quoad nos*, how was then a
 ‘ Minister of *Geneva* bewitched to death, and
 ‘ were the Witches daily punished by our Law?
 ‘ If they can harm none but the *Papists*, we are
 ‘ too charitable for avenging of them only.

‘ *Satan* is permitted to punish Man, as well for
 ‘ his breach of the second as of the first Table,

‘ and thereof are we no less guilty than the *Papists*
 ‘ are; and if the Power of Witchcraft may reach
 ‘ to our Life, much more to a Member, not so
 ‘ governed by the Fancy, wherein the Devil hath
 ‘ his principal Operation; and he may so estrange
 ‘ the Husband’s Affection towards the Wife, as
 ‘ he cannot be able to perform that Duty to her;
 ‘ for that is a common thing in many Men’s Na-
 ‘ tures, that they cannot do that thing but where
 ‘ they love, nor fight but where they are angry.
 ‘ God keep us therefore from putting the Trial of
 ‘ our Profession upon Miracles; let the Miracle-
 ‘ mongers live by their own Trade.

‘ To the seventh Argument touching Remedies,
 ‘ what do you know, whether both Parties, or
 ‘ either of them hath used these means of Remedy
 ‘ or not? And that special Remedy should be used
 ‘ publicly, for there I can see no Necessity; for
 ‘ *Non interest Reipub. nec Eccles.* and private Per-
 ‘ sons are commanded to do their Fastings and
 ‘ Alms, secretly and in private: no such Cure also
 ‘ is likely to succeed well, except the Parties own
 ‘ Hearts and Desires be set thereupon.

‘ And as for your Conclusion upon your *Incom-
 modum*, whether upon his Person or the Example,
 ‘ I can see none in either, so as to the Couple, be-
 ‘ tween them Marriage was never accomplished
 ‘ truly; they will peradventure both of them by
 ‘ the Declaration of the Nullity be capable to ac-
 ‘ complish Marriage with others, which they could
 ‘ never do between themselves; wherein they may
 ‘ have the Satisfaction of their Hearts, and enjoy
 ‘ the Blessing of Procreation of Children.

‘ And as for the Example, the Law shall be ful-
 ‘ filled with due Administration of Justice, which
 ‘ cannot prove for an Example or Precedent of a
 ‘ counterfeit Nullity hereafter, *Authoritas facti*, or
 ‘ rather *non facti, sed luce clarior* in this case, be-
 ‘ sides the many Probations and Confessions of the
 ‘ Parties which have been taken in this Process:
 ‘ whereas by the contrary, they shall be forcibly
 ‘ kept together, but never their Persons or Af-
 ‘ fections, and they still be forced to live in per-
 ‘ petual Scandal, or Misery, or both; and what
 ‘ such a kind of forced Continency may avail, the
 ‘ Monks Continency may teach us: and for a Pre-
 ‘ cedent in time to come, that reacheth no fur-
 ‘ ther, than to open a way of lawful Relief, to any
 ‘ Person who shall chance to be distressed in that
 ‘ sort.

‘ And for legal Doubts, they concern none of
 ‘ your Calling; if your Conscience be resolved in
 ‘ points of Divinity, that is your part to give your
 ‘ consent to the Nullity, and let the Lawyers take
 ‘ the burden of making that firm; and as for the
 ‘ Triennial Probation, I hope no Man can be so
 ‘ blind as to make a doubt, whether that be taken
 ‘ before or after the Suit begun: and in conclu-
 ‘ sion of Divine Solution of this Question proved
 ‘ clearly, that this Resolution of this Doubt, how-
 ‘ soever it was in Blindnes as you think, that is
 ‘ now proved in the greatest time of Light and
 ‘ Purity of the Profession of the Gospel.

‘ And for your Extract upon the late Divines
 ‘ Opinions upon this Question, I cannot guess
 ‘ what your Intent was in sending them to me, for
 ‘ they all agree in Terms with my Opinion: but
 ‘ there is such a thing as *Maleficium, & Maleficiale*
 ‘ *versus hanc*; and your very interlude Passages
 ‘ prove that clearest; and for that Advice con-
 ‘ cerning the Remedies, that is but *Consilium non*
 ‘ *Decretum*, not imposing a Necessity; but is to
 ‘ be

'be used by Discretion, as occasion shall prove
'and require it.

'To conclude then, if this may satisfy your
'Doubts, I will end with our Saviour's Words
'to St. Peter, *Cum conversus fueris, confirma fra-*
'*tres tuos*; for on my Conscience, all the Doubts
'I have yet seen, are nothing but *nodos in scirpo*
'*querere*.'

Notwithstanding the Confessions in the Earl's
Answer, the Court thought it necessary to satisfy
themselves of the Truth by the Inspection of Mid-
wives and Matrons. Whereupon it was decreed
by the Court, that six Midwives of the best Note,
and ten other noble Matrons, out of which they
themselves would chuse two Midwives, and four
Matrons, should inspect the Countess, the Entry
whereof is as follows: *Tunc Domini, viz. Arch.*
Cant. Lond. Eliens. Covent. & Lichf. Cæsar,
Parry, Donne, Bennet, Edwards, habita inter eos
privata deliberatione, ex numero matronarum præ-
dict. elegerunt,

The Lady Mary Tirwhit, Wife of Sir Philip
Tirwhit Bart.

Lady Alice Carew, Wife of Sir Matthew Carew.

Lady Dalison, Wife of Sir Roger Dalison.

Lady Anne Waller, Widow.

& ex obstetricum numero, &c. Margaritam Mercer
& Christianam Chest. Et assignarunt Procurato-
rem dictæ domine Franciscæ ad sistendum bujusmodi
inspectrices coram Reverendo Patre Episc. London.
Cæsar, Donne, &c. inter ceteros nominat. isto die
inter horas quintam & sextam post meridiem, jura-
mentum in hac parte subituras, atque inspectione facta
fideliter relaturas earum judicium juxta earum scien-
tiam & experientiam, &c. coram dictis Dominis
Delegatis, sicut præfertur, assignatis quam cito fieri
possit ante horam quartam & sextam post meridiem
diei Jovis proxima, alioquin ad comparend. hoc in
loco, coram Commissariis dicto die Jovis inter horas
quartam & sextam post meridiem ejusdem diei, earum
judicium hanc in parte tunc relaturas, & ad interes-
sendum hora & loco respectivè prædictis, ad videndum
inspectrices prædictas juramento in hac parte onerari;
nec non quibuscunque aliis diebus hora & loco præ-
dictis Dominos Commissarios nominat. dictis inspectri-
cibus, ad referendum earum judicium assignat.

Accordingly between the Hours of that Day
aforesaid, were presented before the Delegates the
said Ladies, and sworn *ad inquirend. & inspiciend.*

1. Whether the Lady Frances were a Woman
fit and apt for carnal Copulation without any De-
fect, which might disable her for that purpose.

2. Whether she were a Virgin carnally unknown
by any Man.

Whereupon they went from the Presence of the
Commissioners into the next Room where the
Countess was, who was left alone with the said
Ladies*. After some convenient time they re-
turned, and delivered in their Report under their
Hands; all Persons being removed except the Re-
gister, that so the Ladies and Midwives might
more freely deliver their secret Reasons, &c.
which were not fit to be inserted into the Record;
and this is in sum their Report:

1. That they believe the Lady Frances fitted
with Abilities to have carnal Copulation, and apt
to have Children.

2. That she is a Virgin uncorrupted.

And to corroborate all this, the Countess in open
Court produced seven Women of her Consanguini-
ty, That inasmuch as the Truth was best known
to herself, she might by virtue of her Oath dis-
cover the same, and her Oath should be no farther
regarded than as it was confirmed by the Oath of
her Kinswomen. In order hereto the Countess took
an Oath, That since the Earl was eighteen Years
old, for three Years he and she had lain in Bed, &c.
as in the Libel. And then the seven Noble Wo-
men, viz.

Katharine Countess of Suffolk,
Frances Countess of Kildare,
Elizabeth Lady Walden,
Elizabeth Lady Knevet,
Lady Katharine Thynne,
Mrs. Katharine Fiennes,
Mrs. Dorothy Neale,

being sworn, deposed that they believed the same
was true; and in particular because,

1. That after they were both grown to Years of
Puberty, they both endeavour'd Copulation.

2. That notwithstanding, on her part, as ap-
pear'd by the Inspectors, she remain'd a Virgin
uncorrupted.

3. That the Earl had judicially sworn that he
never had, nor could, nor should ever know her
carnally.

Whereupon the Delegates declared the Law to
be, That *impotentia coeundi in viro* whatsoever,
whether by natural Defect, or accidental Means,
whether absolute towards all, or respective to his
Wife only, if it precede Matrimony, and be per-
petual (as by Law is presumed, when after three
Years Trial, after the Man is of the Age of eigh-
teen Years, there has been *nil ad copulam*, and the
Marriage not consummated) is a just Cause of Di-
vorce *a vinculo matrimonii*; and that the Proofs
produced in this Case were abundantly sufficient to
convince them of the Earl's Impotency; and there-
fore pronounced Sentence that they should be di-
vorced from each other, and be at Liberty to
marry again; which Sentence was as follows.

'That Robert Earl of Essex, and the Lady
'Frances Howard, contracted by shew of Mar-
'riage, did cohabit in one House, and lie toge-
'ther in one Bed; *Nudus cum nuda, & solus cum*
'*sola*; and that the said Lady Frances did shew
'her self prompt and ready to be known of him,
'and that the said Earl neither did nor could
'have Knowledge of her, altho' he did think
'himself able to have Knowledge of other Wo-
'men; and that the said Lady Frances by In-
'spection of her Body by Midwives, expert in
'matter of Marriage, was proved to be apt for
'carnal Copulation with Man, and yet a Virgin:
'Therefore we the said Judges deputed in the
'Cause, first invoking the Name of Christ, and
'setting God before our Eyes, do Pronounce,
'Decree, and Declare, That the Earl of Essex,
'for some secret, incurable, binding Impediment,
'did never carnally know, or was, or is able
'carnally to know the Lady Frances Howard:
'And therefore we do Pronounce, have Decreed,
'and do Declare, the pretended Marriage so con-

* Some Authors say, that the Countess under a pretence of Modesty, having obtain'd leave to put on a Veil, when she was inspected, caused a young Woman of her Age and Stature, dress'd in her Clothes, to stand the Search in her place.

'tracted and solemnized *de facto* between them,
'to have been, and to be utterly void and to no
'Effect, and that it did want, and ought to want
'the strength of the Law: And that the Lady
'*Frances* was, and is, and so ought to be free,
'and at liberty from any Bond of such pretended
'Marriage *de facto*, contracted and solemnized.
'And we do Pronounce, that she ought to be
'divorced, and so we do Free and Divorce her,
'leaving them as touching other Marriages to their
'Consciences in the Lord.

'Which our definitive Sentence and Decree we
'ratify and publish.'

Thomas Wint.

Lancel. Ely.

Rich. Coven. and Litchf.

John Roffen.

} Bishops.

Julius Caesar,

Thomas Parry,

Daniel Donne,

} Doctors.

The following Commissioners could not agree to
this Sentence, and therefore absented themselves.

George Cant.

John London.

} Bishops.

John Bennet,

Francis James,

Thomas Edwards,

} Doctors.

Dec. 5. Soon after this Sentence, the Countess
was married to the Viscount *Rochester*, lately made
Earl of *Somerfet*.



XXIII. *The Trial of RICHARD WESTON* * *at the Guild-*
Hall of London, for the Murder of Sir Thomas Overbury †,
19th of October, 1615. 13 Jac. I.

The COMMISSIONERS were,

The Lord Mayor.

The Lord Chief Justice of England.

Justice Crook.

Justice Doderidge.

Justice Haughton.

Serjeant Crew; and

Sir Henry Montague, Recorder.

Sir Edward
Coke.



HE Court being set, and
the King's special Com-
mission read, the Lord
* Chief Justice gave the
Charge; the Effect
whereof was,

First, To express the King's pious Inclinations
and Command unto just Proceedings against all
such as should be any way proved to be guilty of
the Murdering and Poisoning of *Sir Thomas Over-*
bury, his Majesty's Prisoner in the Tower.

Secondly, To aggravate the Manner and Qua-
lity of the Murdering, in shewing the Baseness
of Poisoning above all other Kinds of Murder,
declaring the Vengeance of God, and his Justness
in punishing Offenders: He alledged *9 Gen. 6.*
Quicumque effuderit humanum sanguinem, effundetur
sanguis illius; ad imaginem Dei quippe factus est homo.
He also took the Example of *Uriah* by *David*;
he therein observed how Adultery is most often
the Begetter of that Sin.

Then he declared, That of all Felonies, Murder
is the most horrible; of all Murders, Poisoning
the most detestable; and of all Poisoning, the
lingering Poisoning.

He shewed how that by an Act of Parliament
22 H. 8. cap. 9. it was made Treason, and that
wilful Poisoners should be boiled to death; re-
hearsing the Example of one *Richard Rowse*, that
had poisoned a Man and Woman, and was there-
fore scalded to death.

Then he laid open to the Jury the Baseness
and Cowardliness of Poisoners, who attempt that
secretly, against which there is no Means of Pre-
servation or Defence for a Man's Life; and how
rare it was to hear of poisoning in *England*, so
detestable it was to our Nation: But that since
the Devil had taught divers to be cunning in it,
so that they can poison in what Distance of Space
they please, by consuming the *Nativum Calidum* or
Humidum Radicale in one Month, two, or three,
or more, as they list; which they four manner
of Ways do execute, 1. *Gustu*, 2. *Hauftu*, 3.
Odore, 4. *Contactu*.

He finished his Charge with serious Exhorta-
tions to the Jury to do Justice in presenting the
Truth, notwithstanding the Greatness of any that
upon their Evidence should appear to be guilty
of the same Offence: comforting both Judges and
Jury with the Scripture, *Psal. 5. ver. ultimo, For*
thou,

* He had been an Apothecary's Man, but was now made Under-Keeper to the new Lieutenant of the Tower, *Sir Jervis Elvis*.

† He was Son to *Sir Nicholas Overbury* of *Burton-upon-the-Hill* in *Gloucestershire*, educated at *Queen's-College* in *Oxford*,
and at the *Middle-Temple*, of which his Father was a Benchers. See a full relation of the Manner of his Death, *Bacon's Works*,
vol. i. p. 77—79. and its Discovery, *ibid.* p. 80.

thou, Lord, wilt bless the Righteous; with Favour wilt thou compass them as with a Shield.

The Charge being ended, the Jury, consisting of fourteen Persons, did for the Space of an Hour depart the Court into a private Room, where they received their Evidence from Mr. *Fenshaw*, his Majesty's Coroner, and his Highness's Council prepared and instructed for that purpose, with the Examinations and Confessions as well of the Prisoner himself, as of divers other Witnesses, before that time taken by the Lord Chief Justice of England, and others the Lords of his Majesty's Council.

In the mean time, Mr. *William Goare*, Sheriff of London, was commanded to fetch his Prisoner, remaining at his House, to be ready in Court for his Arraignment.

So a certain Space after, the Grand Jury returned to the Bar, and delivered in their Bill of Indictment, signed *Billa Vera*. Whereupon the Prisoner was set up to the Bar, and the Indictment read by Mr. *Fenshaw*, which contained in effect as followeth.

The Indictment.

THAT *Richard Weston*, being about the Age of sixty Years, not having the Fear of God before his Eyes, but instigated and seduced by the Devil, devised and contrived not only to bring upon the Body of *Sir Thomas Overbury* Kt. great Sicknes and Diseases, but also to deprive him of his Life: And to bring the same to pass, 9 *Maii* 1613, 11 *Jacobi*, &c. at the Tower of London, in the Parish of *Alballowes Barking*, did obtain and get into his hands certain Poison of green and yellow Colour, called *Rosalgar*, (knowing the same to be deadly Poison) and the same did maliciously and feloniously mingle and compound in a kind of Broth poured out into a certain Dish; and the same Broth so infected and poisoned, did give and deliver to the said *Sir Thomas Overbury* as wholesome and good Broth, to the Intent therewith to kill and poison the said *Sir Thomas*, which Broth he took and did eat.

Also the said *Weston* upon the first of *July*, 11 *Jacobi*, as aforesaid, did in like manner get another Poison or Poisons compounded, called *White Arsenick*, and (knowing the same to be deadly Poison) did give unto the said *Sir Thomas Overbury*, as good and wholesome to eat, who took and did eat.

Also that *Weston*, upon the said 19th of *July* following, did get another Poison called *Mercury Sublimate*, (knowing the same to be mortal Poison) and put and mingled the same in Tarts and Jellies, and gave the same unto *Sir Thomas Overbury*, as good and wholesome to eat, which he in like manner took and did eat.

Also the said *Weston*, and another Man being an Apothecary, afterwards, upon the 14th of *September*, feloniously did get a Poison, called *Mercury Sublimate*, (knowing the same to be deadly Poison) and put the same into a Clyster mingled with the said Poison: and the said Clyster the said Apothecary, for the Reward of 20*l.* promised unto him, did put and minister (as good and wholesome) into the Guts of the said *Sir Thomas*; and that *Weston*

was present and aiding to the said Apothecary in ministring and infusing the said Clyster; and that immediately after, as well the taking of the said poisoned Meats, and ministring the said Clyster, the said *Sir Thomas* did languish, and fell into Diseases and Distempers; and from the aforesaid Times of taking and eating the said poisoned Meats, and ministring the said Clyster, he died: and so the Jury gave their Verdict, That *Weston* in this manner had killed, poisoned, and murdered the said *Sir Thomas*, against the King's Peace and Dignity.

Which Indictment being read, he was demanded if he were guilty of the Felony, Murdering, and Poisoning, as aforesaid, yea or no. To which he answered, doubling his Speech, *Lord have Mercy upon me! Lord have Mercy upon me!* But being again demanded, he answered, *Not Guilty*. And being then demanded how he would be tried, he answered, He referred himself to God, and would be tried by God; refusing to put himself and his Cause upon the Jury or Country, according to the Law or Custom.

Hereupon the Lord Chief Justice, and all other in their Order, spent the space of an Hour in persuading him to put himself upon the Trial of the Law; declaring unto him the Danger and Mischief he ran into by resisting his ordinary Course of Trial, being the Means ordained by God for his Deliverance, if he were innocent; and how by this means he would make himself the Author of his own Death, even as if he should with a Knife or Dagger kill or stab himself: exhorting him very earnestly either with Repentance to confess his Fault, or else with Humility and Duty to submit himself to his ordinary Trial. Whereupon he stubbornly answered, *Welcome by the Grace of God*; and he referred himself to God. And so when no Persuasions could prevail, the Lord Chief Justice plainly delivered his Opinion*, That he was persuaded that *Weston* had been dealt withal by some Great-Ones, guilty of the same Fact, as accessory, to stand mute, whereby they might escape their Punishment; and therefore he commanded (for Satisfaction of the World) that the Queen's Attorney there present should declare, and set forth the whole Evidence, without any Fear or Partiality: and yet notwithstanding, he once more used much Persuasion to the Prisoner to consider what Destruction he brought upon himself by his Contempt; and declaring unto him how his Offence of Contempt was, in refusing his Trial, and how the Laws of the Land had provided a sharper and more severe Punishment to such Offenders than unto those that were guilty of High Treason: and so he repeated the Form of Judgment given against such, the Extremity and Rigour whereof was expressed in these Words, *Onere, Frigore, & Fame*. For the first, he was to receive his Punishment by the Law, to be extended, and then to have Weights laid upon him, no more than he was able to bear, which were by little and little to be increased.

For the second, that he was to be exposed in an open Place, near to the Prison, in the open Air, being naked.

And lastly, That he was to be preserved with the coarsest Bread that could be got, and Water out

of

* The Chief Justice had Intelligence under-hand, that *Yelverton*, an obliged Servant to the House of the Howards, had advised this Counsel for *Weston*, in order to prevent the Prosecution from reaching any farther: *Yelverton* was at this time Solicitor-General, but does not appear to have had any share in any of the Trials for the Murder of *Sir Thomas Overbury*, tho' the Attorney and other Council of the King had their parts in them.

of the next Sink or Puddle to the Place of Execution, and that Day he had Water he should have no Bread, and that Day he had Bread he should have no Water; and in this Torment he was to linger as long as Nature could linger out, so that oftentimes Men lived in that Extremity eight or nine Days: Adding further, that as Life left him, so Judgment should find him. And therefore he required him, upon consideration of these Reasons, advise himself to plead to the Country; who notwithstanding absolutely refused.

Hereupon the Lord Chief Justice willed Sir *Lawrence Hyde*, the *Queen's Attorney*, and there of Council for the King, to manifest unto the Audience the Guiltiness of the said *Weston* by his own Confession, signed with his own Hand; and if in the Declaration thereof they may meet with any great Persons whatsoever, as certainly there were Great-Ones confederate in that Fact, he should boldly and faithfully open whatsoever was necessary, and he could prove against them. Whereupon Mr. *Attorney* began his Accusation:

First, he charged the Countess of *Somerset* and the Earl to be principal Movers unto this unhappy Conclusion, Mrs. *Turner* to be of the Confederacy, and the Pay-mistress of the Prisoner's Reward; in which the Attorney's Boldness was very observable, in terming the Countess a dead and rotten Branch, which being lopt off, the Noble Tree, meaning that Noble Family, would prosper the better.

Secondly, He proceeded to the Cause, which he affirmed to be the Malice of the Countess: And the Ground of this Malice he alledged, and by many Inducements he evidently affirmed, That Sir *Thomas Overbury* had dissuaded the Viscount *Rocheſter* from that adulterate Marriage with the Countess of *Somerset*, then Countess of *Essex*. And for this he alledged as followeth:

Sir *Thomas Overbury* having divers times dissuaded the Earl, then Viscount *Rocheſter*, from seeking by any means to procure Marriage with the Countess of *Essex*, to which he saw the Earl too much inclined; and having very earnest Conference with the Earl one Night in private in the Gallery at *White-Hall* concerning his Intendment, perceiving the Earl too much at that time to desire that unlawful Communication; in the Ardency of his fervent Affection unto the Earl, and great Prescience of the future Misery it would inevitably bring unto him, (his well-beloved Lord and Friend) used Speeches to this Effect:

Well, my Lord, if you do marry that filthy base Woman, you will utterly ruin your Honour and your self; you shall never do it by my Advice or Consent; and if you do, you had best look to stand fast.

My Lord replied, bewitched with the Love of the said Countess, moved with Sir *Thomas Overbury* for so slighting her, answered, *My own Legs are streight and strong enough to bear me up; but, in Faith, I will be even with you for this:* and so parted from him in a great Rage.

This Conference was over-heard by some in an adjoining Room, and their Depositions for the Truth thereof were read in Court.

Altho' this Conference moved the Earl to such a sudden Choler, yet it seemed Sir *Thomas Overbury* conceited it no otherwise than a sudden extreme Distemperature or Passion, and not a final Conclusion of their Bosom-Friend as before, in which the Earl seemed reciprocal; howsoever, in his Double-Dealing it seemed to be clearly otherwise.

For upon this the Earl moved the King to appoint Sir *Thomas Overbury* Ambassador for *Russia*. The King, willing to prefer Sir *Thomas Overbury*, as one whose Worth and Valour was not unknown to his Majesty, accordingly adjoined him that Service; the which Sir *Thomas* was most willing to accept of, as a gracious Aspect of the King towards him: which Willingness of his was proved by the Deposition of two or three several Witnesses read in Court, and by the Oath of Sir *Dudly Diggs*, who voluntarily, at the Arraignment in open Court, upon his Oath, witnessed how Sir *Thomas* had imparted to him his Readiness to be employed on an Embassy.

The Earl as well abusing the King's Favours, in moving to shew Favour where he meant the Party should take no Benefit, as bearing dishonest Friendship, in Conference with Sir *Thomas* concerning that Employment, persuaded him to refuse to serve Ambassador, where (quoth he) I shall not be able to perform such Kindness to your advantage, as having you with me; and (quoth he) if you be blamed or committed for it, care not, I will quickly free you from all harm. Sir *Thomas*, thus betrayed by a Friend, refused to serve in that nature; whereupon he was committed to the Tower.

Being thus committed, he was presently committed close Prisoner, and a Keeper he must have; and who must that be but this *Weston*, who was commended by the Countess of *Essex* to Sir *Thomas Monſon*, to be by him recommended over unto the Lieutenant of the Tower, to be Keeper to Sir *Thomas Overbury*. Sir *Thomas Monſon*, according to the Countess's Request, commended the said *Weston* to Sir *Jervis Elvis*; whereupon the said Lieutenant entertained the said *Weston*, and appointed him to keep Sir *Thomas Overbury*. The said *Weston*, upon his own Confession read in Court, signed with his Mark, had during the time that she was Countess of *Essex*, been a Procurer and Pander to the said Earl, then Viscount *Rocheſter*, and the Countess of *Essex*, for the conveying and effecting of their adulterate Desires, which they did divers times consummate, meeting in Mrs. *Turner's* House once between the Hours of Eleven and Twelve, and at *Hammerſmith*, and at divers times elsewhere, for that purpose; that now, by the Procurement of the Countess, (who hated Sir *Thomas Overbury*, for being a good Means to keep them from contaminating themselves with such lustful Embracements, and from the purposed Marriage they mutually laboured to compass) her Pander was become his Keeper, a fit Agent for Lust and Murder.

Weston now being become Sir *Thomas Overbury's* Keeper, kept him so close, that he scarce had the Comfort of the Day's Brightness; neither suffered he any one to visit him, Father, Brother, his best Friends, his nearest Kindred were Strangers to him from the beginning of his Imprisonment unto the end.

Mrs. *Turner*, upon the first day's keeping, promised to give him a contenting Reward, if he should administer such things to Sir *Thomas Overbury*, as should be sent unto him, thinking him a fit Instrument to compass black Murder, that was so well acquainted with foul Lust; and so indeed they found him, for he agreed and did promise to administer whatsoever she would send him. Mrs. *Turner*, upon this murderous Promise, the very same day that *Weston* became Sir *Thomas Overbury's* Keeper, being the 6th day of May 1613, sent unto

unto him the said *Weston* certain yellow Poison, called *Rosalgar*, in a Vial.

Weston having received that Poison, the aforesaid 6th of May at Night, bringing Sir *Thomas Overbury's* Supper in one hand, and the Vial of Poison in the other, meets with the Lieutenant, and asks him in these terms, *Sir, shall I give it him now?* Upon this word *Now*, the Lord Chief Justice demurs, to aggravate the Maliciousness; affirming that this Particle *Now*, shewed a Resolution to poison him. What shall you give him? replies the Lieutenant. *Weston* replies, As if you did not know, Sir. The Lieutenant blaming him, he carries the Poison into an inner Room, which *Weston*, the 9th of May, did administer to Sir *Thomas Overbury* in Broth. This was proved both by *Weston* and the Lieutenant's Confession.

Weston having giving this Poison, which wrought very vehemently with him by Vomits and extreme Purging, he presently demands his reward of Mrs. *Turner*, who replies, *That the Man is not yet dead, perfect your Work, and you shall have your Hire.* This was also confessed by *Weston* under his Marks.

Sir *Thomas Overbury*, by his close Imprisonment, growing sick, and daily languishing, after three or four Weeks space (considering he had not got his Freedom and Release, having no Friends suffered to come unto him, but only such as the Earl sent to comfort him, of his own Followers) writ to the Earl to remember his Imprisonment; who received answer, *The Time would not suffer, but so soon as possible might be, he would hasten his Delivery:* so indeed it seems he intended to do, but not so as Sir *Thomas Overbury* conceived, whose true Affection would not admit his Judgment to debate the strangeness of his Imprisonment, which he might well think the Earl might easily have relieved.

The 5th of June, Viscount *Rocheſter* sent a Letter to Sir *Thomas Overbury*; in the Letter he sent him a white Powder, willing Sir *Thomas* to take it: *It will* (quoth he) *make you more sick, but fear not, I will make this a means for your Delivery, and for the recovery of your Health.* Sir *Thomas Overbury* never dreaming of base Treachery, but conceiving it as a friendly Policy, received the said Powder, which wrought upon him more vehemently; whereupon his Sickneſs grew more vehement or violent, and his Languishment increased: which white Powder, upon *Weston's* Confession, was Poison.

Sir *Thomas Overbury's* Sickneſs increaſing, and with it his wondering that he could not in two Months space be releaſed, after his Phyſick taking, he thus writes to the Earl, lamenting his own Estate; for his Faith being thus ſhaken with the Earl's Unkindneſs, gave way for his Judgment to ſcan thoſe Actions, rather like an underſtanding Man, than like a loving Friend, as appeareth by his Letter ſent to Viſcount *Rocheſter*, the Effect whereof was thus, as it is averred by the Depoſition of Sir *Thomas Overbury's* Servants, who ſaw the Letter.

Sir Thomas Overbury's Letter to the Viſcount Rocheſter.

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I Wonder you have not yet found means to eſſect my Delivery, but I remember you ſaid, 'you would be even with me,' [not ſuſpecting, as it ſeemeth, any Poiſoning, but an unkind Forgetfulneſs of my Lord of *Rocheſter*] 'and ſo indeed you are; but aſſure yourſelf, my Lord, if you

'do not releaſe me, but ſuffer me thus to die, my Blood will be required at your hands.'

My Lord comforts him, and excuſes, that it cannot yet be compaſſed: Sir *Thomas*, after the Powder taken, languisheth deadly, and to comfort him, ſome Followers of my Lord of *Rocheſter's* are ſent to him daily, in the name of my Lord, by the appointment and procurement too of the Lady of *Effex* (as *Weston* confeſſed) to viſit and comfort him, and to intreat him if he deſired any Meat, that he ſhould ſpeak, and it might be better perhaps provided for him, than he ſhould have in the Tower: this was about three Months after his Imprisonment.

He (as Men ſick deſire luſcious Meats) deſired Tarts and Jellies, which were provided by Mrs. *Turner*, with the knowledge of the ſaid Counteſs, and ſent unto him, of which he did eat; the which Tarts were poiſoned with *Mercury Sublimate*, not being ſo well coloured as other Tarts are, and *Weston* confeſſed that he was ſtraitly charged not to taſte thereof.

Sir *Thomas* thus continuing languiſhing with the Extremity of Sickneſs, until the 6th of September, when the aforesaid Mrs. *Turner* did procure an Apothecary's Boy for twenty Pounds to poiſon a Clyſter, which was by the Boy and *Weston* afterwards adminiſtered as good Phyſick, upon the 7th day of October; after the Receipt of the Clyſter, he fell into a great Extremity of Vomiting, and other Purging, which left him not, till it cauſed his Soul to leave his poiſoned Body: this *Weston* confeſſed and ſigned.

Being thus dead, he was preſently and very unreverently buried in a Pit, digged in a very mean place; on his Body thus venomouſly infected, appeared divers Blains and Bliſters: whereupon they, to take away as well his good Name, as his Life, did ſlanderouſly report, that he died of the French Pox; but this Report was cleared in Court, by the Depoſitions of his Servants, and other Men of Worth there read.

That before his Imprisonment, he had a clean and ſound Body, only he had an Iſſue in his Left Arm, purpoſely made for the benefit of his Nature, for the avoiding of Rheum and ill Humours, which, with continual ſitting at his Study, he had ſubjected himſelf unto.

He further obſerved the Confession of the Lieutenant to be, that if any Priſoner died there, his Body was to be viewed, and Inquiſition to be taken by the Coroner.

But Sir *Thomas Overbury's* Friends and others, by no means might be ſuffered to ſee his Body; and altho' it was reported, that there was an Inquiſition taken, yet it could by no means be found.

After Mr. Attorney had ended his Speech, Mr. *Warr* alſo of Council for the King, declared to the Court what Familiarity he had with Sir *Thomas*, being both of the Temple together, much commending his ſingular, honeſt and virtuous Converſation; affirming, That he was addiſted to no diſhoneſt Actions: and from this he proceeded to urge his ſad Uſage in the Tower, where he might have no Company, but the Apothecary and the *Walloon*; and repeating the ſending of the Tarts and Jellies in my Lord of *Somerſet's* Name, he ended his Speech with this Saying, *Pereat unus, ne pereant omnes; pereat peccans, ne pereat Reſpub.* Then, by the Commandment of the Court, were read by Mr. *Fenſhaw* the Examinations of divers Witneſſes

Witnesses taken before my Lord Chief Justice and others, which in effect were as follows.

Laurence Davies, *Servant to Sir Thomas Overbury, examin'd the 15th of October, before the Lord Chief Justice.*

He saith, That he had served Sir *Thomas Overbury* eight or nine Years; in all which time he was very healthful, and never kept his Bed for any Sicknes, only he was sometimes troubled with the Spleen, for ease whereof, he had by the Advice of his Physician an Issue made in his Left Arm; but before his Imprisonment, he had no Sores, Blisters, or other Defects in all his Body.

Also he saith, Sir *Thomas* would have gone over upon the Embassage, but was dissuaded by *Somerset*, who promised to bear him out: he complained, he needed not to be Prisoner if *Somerset* would; and that if he died, his Blood would be required at his hands.

That *Somerset* was as good as his word, who told him at *Newmarket*, he would be even with Sir *Thomas Overbury*.

Henry Payton, *another Servant of Sir Thomas Overbury's, examined the 15th of October, 1615.*

He affirmeth, that Sir *Thomas* was of a very good Constitution of Body, that he used sometimes to run, to play at Foils, and such like; that he was of a moderate Diet, never had any Sores, saving the Issue in his Arm.

That Sir *Thomas* wrote Letters to *Somerset*, signifying, that he needed not to lie in Prison if *Somerset* would, and if he died, his Blood should be required at his hands.

That Sir *Thomas*, at one of the Clock at Night, meeting *Somerset* in the Gallery at *Whitehall*, had Speeches with him touching the Countess, whom he called base Woman, and told *Somerset*, he would overthrow all the King's Favours and Honours; and upon Displeasure between them at this Conference, Sir *Thomas Overbury* desired *Somerset* that he might have his Portion due, and he would shift for himself. Whereunto *Somerset* answer'd, And my Legs are straight enough to carry me; and so flung away in Anger. All which this Examinant heard, being in a Chamber next to the Gallery.

Sir *Dudley Diggs* being present in Court, and sworn, declared *viva voce*, that he was sent by a Privy Counsellor (a great Man) to Sir *Thomas Overbury*, to bring him to this great Man, which he did; and coming back together over the Water in a Boat, Sir *Thomas* was much discontented; the Reason whereof he said was, That he was persuaded by the great Man to withdraw himself from the Court for some Reasons which he disclosed not: And Sir *Dudley* afterwards being sent by the Lords, to know the Resolution of Sir *Thomas* touching the Embassage, he found him to rely upon the Lord of *Somerset*, saying, My precious Chief knows the King's Mind better than any, and I the Mind of my precious Chief.

Richard Weston *the Prisoner examined, the 6th of October, 1615. coram Coke & Crew.*

He affirmeth, That before Sir *Thomas Overbury* was in the Tower, he, this Examinant, carried three Letters to *Somerset*, from the Lady *Essex*, to *Royston*, *Newmarket*, and *Hampton-Court*, and he

delivered Answer to Mrs. *Turner*; and that upon the Letter to *Hampton-Court*, he had answer only by word of Mouth, That his Lordship would come: And that coming back, he met with the Countess and Mrs. *Turner* half way, in the Coach, whom he told, that the Lord only answered so; whereupon the Countess strook out of the way into a Farmer's House hard by, whither within a little space *Somerset* came, and that afterwards they met in the Night at Mrs. *Turner's* House in *Pater-noster-Row*. And he confesseth, that of a Year before Sir *Thomas's* Imprisonment, no Man carried Letters between them but he.

Sir *Thomas Monson examined the 5th of October, coram Coke & Crew.*

He saith, that he never knew *Weston* until Sir *Thomas Overbury* was Prisoner in the Tower; and that he preferred him to the Lieutenant, to be Keeper of Sir *Thomas Overbury*, at the Request of the Countess.

Anne Turner *Widow, examined the 11th of October, 1615. coram Coke & Crew.*

She saith, That *Weston* was an antient Servant, and her Husband's Bailiff in the Country: She denieth to have any thing to do in placing him in the Tower; but saith, that the Countess of *Essex* did effect it, and used the help of Sir *Thomas Monson* therein.

Sir *Jervis Elves examined the 3d of October, 1615, coram Coke & Crew.*

He saith, He had a Letter from Sir *Thomas Monson*, requesting him, that *Weston* might be Keeper of Sir *Thomas Overbury*, and that he did perform it; and afterwards having conference with Sir *Thomas Monson*, he told him, That his Keeper was not to suffer any Letters or Tokens, or any things to be delivered unto him.

Richard Weston *the Prisoner examined again.*

He confesseth, He shewed him the Glass that was delivered him by his Son from the Countess to the Lieutenant, and told him, that it came from the Countess of *Essex*, and that he persuaded him not to give it to Sir *Thomas*.

He saith, That he had divers Tarts from the Countess, to give to Sir *Thomas*, with Caveats that he himself should not taste of them; and confesseth, that he thought they were poisoned.

He saith Mrs. *Turner* appointed him to come to *White-hall*, and that she dealt with him to give Sir *Thomas Overbury* the Water, and told him, he should not drink thereof; and was promised a great Reward, and he suspected it was Poison. His Son afterwards delivered him the Glass, which he shewed to the Lieutenant, who rebuked him, and so he set the Glass in a Study near to Sir *Thomas's* Chamber, but gave it him not; altho' he told Mrs. *Turner*, the next day, he had given the Water, which made Sir *Thomas* to vomit often, and to be exceeding sick.

He saith, Mr. *James* and Mrs. *Rawlins*, Servants to the Countess, came often to know of the Examinant, how Sir *Thomas Overbury* did, and what he would eat; and they delivered him Jellies and Tarts, which he gave Sir *Thomas*, who did eat thereof.

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He saith, He demanded of Mrs. *Turner* his Reward, who answered, He was to have no Reward until Sir *Thomas* was dead, and he was promised a Pursuivant's Place; but confesseth, that afterwards, at two several times, he received secretly after the Death of Sir *Thomas*, for a Reward of Mrs. *Turner* from the Countess, 180 l.

William Weston, Son to the Prisoner, examined.

He confesseth, He received a Glas from the Countess, (by her Servant) two Inches long, being wrapped in Paper, which he delivered to his Father in the Tower.

Then was read the Confession of the Lieutenant to the King.

He saith, That *Weston* met him, carrying Sir *Thomas's* Supper in the one Hand, and the Glas in the other, and demanded of the Lieutenant this, *Sir, shall I give it him now?* Whereat the Lieutenant stepped to him, and asked him, What? to which *Weston* said, Why Sir, know you not what is to be done? And so the Lieutenant having made him to confess the Matter, dissuaded him, and he seemed to be resolved not to do it: and afterwards this *Weston* confessed, that an Apothecary had twenty Pounds for administering a Clyster to Sir *Thomas Overbury*.

Weston, the Prisoner, examined before the Lord Zouch and others.

Confesseth, That Sir *Thomas* had a Clyster which gave him sixty Stools and a Vomit; also being confronted, with the Writings of Sir *Jervis Elwes*, and charged therewith, he confesseth the same to be true.

Simon Marson, Musician, examined;

Saith, He served Sir *Thomas Monson* six Years, and is preferred by him to the King's Service, but waiteth sometimes upon Sir *Thomas Monson*; he saith, That he received divers Tarts and Jellies from the Countess of *Essex*, to be carried to the Lieutenant of the Tower for Sir *Thomas Overbury*.

Paul de la Bell, examined;

Saith, That on the 3d of July, he made Sir *Thomas Overbury* a Bath by Dr. *Micbam's* Advice, to cool his Body, and that he saw his Body very exceeding fair and clear; and again, he saw his Body (being dead) full of Blisters, and so consumed away, as he never saw the like Body.

George Rawlins, a Kinsman to Sir *Thomas Overbury*, examined;

Saith, That upon the Bruit of the Murder of Sir *Thomas*, he was taxed by some, why he made no Prosecution; he thereupon made a Petition, and delivered it to the King, that the Examination of the Cause might be referred to Law, and denieth that he was persuaded by any to the contrary: he saith, that he coming often to the Tower to see Sir *Thomas*, could not be suffered to see him so much as out at the Windows; and *Weston* told

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him, it was the Commandment of the Council, and of the Lieutenant.

The Lieutenant of the Tower examined, coram Coke & Crew.

He saith, That after the Death of Sir *Thomas, Weston* came to him, and told him he was much neglected and slighted by the Countess, and could receive no Reward; but afterwards he confessed he had received 100 l. and should receive more: and the Lieutenant also saith, that Sir *Thomas Overbury* was very angry with his Apothecary at certain Vomits which he had, and also at the Tarts and Jellies he had, which would be found within a day or two standing, ill-coloured, and that no body did eat thereof but Sir *Thomas*; and *Weston* confessed unto him, that the Apothecary had twenty Pounds for administering the Clyster.

These Examinations being read and applied to the purpose, the Lord Chief Justice said, he would discharge his Duty, first to God, in giving all Glory, for the bringing to light of so horrible and wicked a Fact; and next to the King, his great Master, who as in case of the like nature, as in the case of *Zanquer* and *Turner*, so especially in this, hath given straight charge of just and due Examination to be had, without any manner of Partiality or Fear in the World; to the intent, that as well the Innocent might be freed, as the Nocent and Guilty severally punished.

And for this purpose, his Majesty hath with his own Hand written two Sheets of Paper on both sides, concerning Justice to be administered to all Parties which were to be examined; which Writing, the Lord Chief Justice shewed to the Lord Mayor, and the rest of the Commissioners; and then he declared the King's Justice, who, albeit the many Favours and Honours which his Majesty had bestowed on the Lord *Somerset*, and his nearness to his Person, by reason of his Office, yet he had committed him Prisoner to the Dean of *Westminster's* House, under the Custody of Sir *Oliver St. John*, and also had committed his Lady. So having last of all (again) demanded of the Prisoner, if he would put himself to be try'd by the Country? which he refused;

The Court was adjourn'd until Monday following, at two of the Clock in the Afternoon.

On Monday the 23d of October, 1615. to which day the Court was adjourned by the said Commissioners, after Proclamation made, the Jury of Life and Death called, the Prisoner *Weston* was set to the Bar, and Mr. *Fenshaw* Clerk of the Crown declared unto him, that he had been formerly arraigned, and had pleaded Not Guilty; so he demanded of him, how he would be tried: whereupon the Prisoner answered, By God and his Country. And thereupon the Jury being sworn, and the Indictment being read as before, Sir *Lawrence Hyde* the Queen's Attorney being of Council with the King, having briefly rehearsed the Effect of the Indictment, shewed how that he must necessarily mention others that were guilty of the same Fact, wherein if any other Man or Woman were touched, the Cause it was, and not he that touched them.

And therefore *Weston* being but a Stranger to Sir *Thomas Overbury*, and one, who by himself could reap no benefit by his Death, it was against

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all reason that he would do it of himself, therefore (said he) I must needs open the whole Plot; and he first declared the Worth and Honesty of Sir *Thomas Overbury*, shewed his Familiarity with *Rocheſter*, and how often he willed him to forbear the Company of the Lady *Essex*, terming her a vile and base Woman, which stirred up the Anger and Malice of the Countess against him.

And that afterwards, the King intended, for the Honour and Preferment of Sir *Thomas Overbury*, to send him upon an Embassage; whereunto he was willing, but was dealt with and persuaded by the Lord *Rocheſter*, to disobey the King's Direction and Counsel, with Promises that he would bear him out; by which contempt Sir *Thomas* was committed to the Tower the 22d of April, 1613. Sir *William Wade* being Lieutenant of the Tower: the 6th of May following, Sir *William* was removed, and Sir *Jervis Elwes* put in his place.

And the next day after, *Weston*, by the procurement of the Countess, was preferred to the Service of the Lieutenant, and to be Keeper of Sir *Thomas*; which *Weston* had been Servant to Mrs. *Turner*, and the only Agent in conveying Letters and Messages between *Rocheſter* and the Countess: and he, whose Office should have been to save and keep, was now appointed to kill and murder him.

He shewed, how the very same day of his Entertainment at the Tower, he was sent for to the Countess, who persuaded him, that if he would give Sir *Thomas* a Water that should be delivered him, he should be well rewarded, and she bid him not taste of it himself.

And that the 9th of the same Month of May, the said Water was secretly sent from the Countess to *Weston* by his Son; and the same Night *Weston* meeting with the Lieutenant, and having Sir *Thomas's* Supper in one Hand, and the said Glass in the other, he demanded of the Lieutenant, Sir, shall I give it him now? Whereupon the Lieutenant took him aside, and dissuaded him so far forth, that he confessed, he thanked God upon his Knees, that he had met with him.

But Mr. Attorney observed this notwithstanding, that the Lieutenant did let him go away with the Poison; and albeit he now denieth he ever gave the Poison, yet said he deliver'd it: he confessed to Mrs. *Turner* he had done it, saying, It made him very sick; and to vomit often, demanding of her his Reward; to which she answered, He was not to have his Reward until Sir *Thomas* were dead. Then he shewed how the last of June following, a certain Powder was sent in a Letter to Sir *Thomas Overbury* from *Rocheſter*, persuading him not to fear, tho' it made him sick, for that should be his Reason to move the King for his Enlargement.

And that the 14th of September, *Weston* and the Apothecary ministred the Clyster to Sir *Thomas*, which gave him sixty Stools and Vomits, and that he died the next day; he remember'd the strangeness of the Botches and Blisters on his Body, being dead: he shewed how *Weston* came to Mrs. *Turner* for his Reward, which was deferred till his Death; and that he had received in secret from the Countess by Mrs. *Turner* at several times for his Reward 180*l.* and that the Apothecary had for his Reward 20*l.* All which *Weston* had confessed to be true.

Then remembring how ignominiously they buried him, not suffering any to see him, for fear he should be digged up again, and without any Co-

roner's Inquest that should be found; and thus he ended his Speech.

And to all this opened and set forth by Mr. Attorney, Mr. *Warr* only added thus much, which he desired the Jury to consider, That *Weston* was Servant to Mrs. *Turner*, when Sir *Thomas* was committed, and then he was entertained and made Keeper to Sir *Thomas Overbury*; and having dispatched his Business (Sir *Thomas* being dead and poisoned) he stay'd no longer at the Tower, but returns again to Mrs. *Turner*.

Then the Lord Chief Justice exhorted the Jury to take God before their Eyes, and with equal Balance to weigh as well the Answer of the Prisoner, as the Proofs and Examinations against him; declaring unto them how quietly and freely he had examined him from time to time, without menacing or rough Usage, which the Prisoner confessed: and my Lord, for matter of Law, satisfied the Jury, That albeit the Poisoning in the Indictment be said to be with *Rosalgar*, *White Arsenick*, and *Mercury Sublimate*, yet the Jury were not to expect precise Proof in that Point, shewing how impossible it were to convict a Poisoner, who useth not to take any Witnesses to the composing of his siber Sauces: wherefore he declared the Law in the like Case; As if a Man be indicted for murdering a Man with a Dagger, and it fall out upon Evidence to have been done with a Sword or with a Rapier, or with neither, but with a Staff; in this Case the Instrument skilleth not, so that the Jury find the Murder. And so in this Prisoner's Case, if they would be satisfied of the Poisoning, it skilleth not with what; therefore he requireth them to attend the Proof.

Then were read, first the Examinations of *Lawrence Davies*, as at the first Arraignment; then of *Henry Payton*, both Servants to Sir *Thomas Overbury*; then of *Weston* himself formerly read.

Then the Examination of Sir David Wood, taken the 21st of October, 1615. since the first Arraignment.

He saith, He had obtained the King's Consent to a Suit, for which he was a Petitioner, and that he was crossed by the Lord *Rocheſter* and Sir *Thomas Overbury*: that for certain Words he had received from Sir *Thomas Overbury*, he intended to bastinado him; that his Suit would have been worth 2200*l.* and that *Rocheſter* would not let it pass, unless he might have 1200*l.*

That the Lady *Essex* sent for this Examinant upon the day that the King and Queen went to *Rocheſter* with the Lady *Elizabeth*, and told him, she understood that he had received much Wrong from Sir *Thomas Overbury*, and that he was a Gentleman that could revenge himself; and that Sir *Thomas* had much wronged her: and Sir *David* answered, that Sir *Thomas* had refused him the Field; she persuaded him to kill him, and promised him 1000*l.* for his Reward, and Protection from his Enemies: which he refused, saying, He would be loth to hazard going to *Tyburn* upon a Woman's Word; but she still persuaded him he might easily do it, as he returned late home from Sir *Charles Wilmot's* in his Coach.

Then were read the Examinations of Sir Thomas Monson and Mrs. Turner, as at the first Arraignment.

Next, the Examination of *Weston* before the Lord *Zouch*, and Sir *Ralph Windwood*, Sir *Thomas Parry*,

Parry, and Sir Foulke Grevill, at the Ducky-house, the 29th of September, 1615. where Weston did confesse, that he was preferred to the keeping of Sir Thomas Overbury, by Mrs. Turner, upon the means and request of Sir Thomas Monson, to the Lieutenant; and that she told him, If he would give Sir Thomas Overbury a Water which the Countess would send him, he should be well rewarded; and being confronted with a Relation in Writing, which Sir Jervis Elves had made to the King, as touching Sir Thomas Overbury, he confessed the same to be all true.

The Examination of the Lieutenant, taken the 5th of October, 1615.

He saith, That having conferred with his Servants about the time of Weston's coming to the Tower, he found it to be the very next day after himself was made Lieutenant, and had the Possession of the Tower; and that he had Letters from Sir Thomas Monson, that Weston might be Keeper to Sir Thomas Overbury; which Letters he had lost. Sir Thomas Monson told him the chief Purpose of Weston's keeping of Sir Thomas Overbury, was, to suffer no Letters or other Messengers to pass to or from him, and to that purpose he advised the Lieutenant.

Weston's Examination the 5th of October, 1615.

He confesseth, That the next day he was preferred to the Tower, he had the keeping of Sir Thomas Overbury, and soon after he received the Glasse by his Son secretly from the Countess; and that the Lieutenant told him, all the Tarts came likewise from her: and he confesseth, the Countess willed him to give them to Sir Thomas, but not to taste of them himself.

Weston's Examination the 1st of October, 1615.

Confesseth, That Mrs. Turner appointed him to come to White-hall to the Countess, the next day that he was at the Tower; and that he went, and the Countess did request him to give to Sir Thomas Overbury a Water, which she would deliver him, but not to drink of it himself; she promised to give him a good Reward, and he suspected it was Poison: he received the Glasse by his Son, and told the Lieutenant of it, who did rebuke him, and he set the Glasse into a little Study. He confesseth, he told Mrs. Turner he had given it him, and demanded his Reward; that Mr. James and Mr. Rawlins, my Lord of Somerset's Men, came often to know of him what Tarts, Jellies, or Wine Sir Thomas would have, and that they brought divers times Tarts and Jellies, whereof he did eat.

He confesseth to have received of the Countess in Rewards, after Sir Thomas Overbury's Death, by Mrs. Turner secretly, in all 180*l.*

The Confession of the Lieutenant to his Majesty.

After Weston was placed in the Tower, he met with me with Sir Thomas's Supper, and the Glasse, and asked me, Sir, shall I give it him now? Wherein I protest unto your Majesty my Ignorance, as I would also be glad to protest the same to the World: so I privately conferred with Weston, and by this means made him assured unto me, and knew all, but dissuaded him; and Weston has,

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since the Death of Sir Thomas Overbury, confessed to me, that the Clyster was his Overthrow, and the Apothecary had 20*l.* for administering it.

Your Majesty's Servant,

Sir Jervis Elves.

Here the Lord Chief Justice observed by this Question of Weston to the Lieutenant, *Shall I give it him now?* that it was certainly agreed and plotted before what should be done, and that nothing more was doubted on but the time When it should be done.

The Testimony of Lawrence Davies, taken upon Oath before Coke and Crew.

He affirmeth, that Weston delivered him a Letter from Sir Thomas Overbury to Rochester, the Effect whereof was, that he would do his Endeavour in being a means of Friendship between Rochester and some others; but as touching the Marriage with the Countess of Essex, he would never give his consent: and also bringing a Letter from Rochester to Sir Thomas Overbury, he delivered it to Weston, and a Paper of white Powder fell out, which Rochester persuaded Sir Thomas to eat, and not to fear, tho' it made him sick, for that should be a means for his Enlargement; so they put the Powder into the Letter again. He saith, that he saw some part of the Powder in Weston's hands after the Death of Sir Thomas Overbury.

Then were read the Examinations of William Weston and Paul de la Bell, as at the first Arraignment.

The Examination of George Rawlins.

George Rawlins Esq; the 15th of October, 1615. saith, That upon the Bruit of poisoning of Sir Thomas Overbury, being taxed of divers, for that he stirred not in the Matter, Sir Thomas being his Kinsman and Means of his Preferment; he did of himself prefer a Petition to the King, that the Cause might be referred to the Judges of the Law, for ordinary Course of Justice, rather than to the Lords of the Council, by them to be examined; of which he had a gracious Answer: and saith, that of fourteen days before the death of Sir Thomas Overbury, he could never be suffered to see him, either in his Chamber, or at the Window; which, Weston said, was the Commandment of the Lords and the Lieutenant.

And here the Lord Chief Justice declared what a Scandal they put upon his Majesty and the State, that a Gentleman and a Freeman, being only committed upon Contempt, should be more streightly and closely kept than a Traitor or a Bond-Slave, so that neither his Father, Brother, nor Friend might possibly see him. And to that Point, Mr. Overbury, Father to Sir Thomas, swore, being present in Court; who said, That his Son being Prisoner in the Tower, and himself not being suffered to have Access unto him, found at last, that Rochester was the Man that withstood it.

The Lieutenant examined the 5th of October;

Saith, That after the Death of Sir Thomas Overbury, Weston told him, That he was neglected by the Countess, and demanded his Reward: Mrs.

U u 2

Turner

Turner told him, The Countess had not Money; but afterwards he confessed, he had received some, and should have more; and that Mr. James told him, my Lord of Somerset would reward him for the Pains he took with Sir Thomas Overbury. He saith, That the Tarts were sent from the Countess to Sir Thomas, which looked ill-favouredly, and that the Jellies, with a little standing, would be furred, and thinketh they were poisoned: also Weston told him, that the Apothecary had 20l. for giving the Clyster, and that he was poisoned with that Clyster.

Here was well observed by the Court, as by the Queen's Attorney, That Weston was not single in his Confession, but whensoever he had confessed any thing in any of his Examinations, it was likewise confirmed by the Examinations of others, as the Lieutenant, his Son, &c.

The Examination of William Goare, one of the Sheriffs of London;

Saith, Weston being in his Custody, he often persuaded him to put himself to be tried by his Country, telling him, he would first kill himself, and ask God Forgiveness afterwards: and Weston answered, He hoped he would not make a Net to catch little Birds, and let the great ones go.

Then Mr. Warr craving leave of the Court to speak, protested, in his Experience he never found a Business so prosecuted with degrees of Malice, which was the Ground of Sir Thomas Overbury's Overthrow: he urged the Evidence in the Examination of Sir David Wood, and shewed the Reasons of the Malice against him to be, for that he was so great an Impediment to Affections. Then he made the Dependency Mrs. Turner had to the Lady, and Weston to Mrs. Turner, and how they all concluded to kill Sir Thomas Overbury, the like whereof he said our Fathers never saw before us; and he lamented the Place from whence the Poison came, should be from the Court, the Place (said he) from whence all Men expect their Safeties and Protection.

Lastly, He observed the *Finger of God*, even in this, that the Poison had been scarcely suspected at all, or enquired after, had it not been for the extraordinary strange Things appearing after his Death, which was the first only cause of Suspicion and Muttering.

The Evidence being given, Weston was demanded what he could say for himself? Who, altho' he had before confessed all his Examinations to be true, yet he seemed to excuse himself in a kind of Ignorance or Unawares: he said, he received the said Glas, and thought it was not good, but denied the giving of it to Sir Thomas. Being demanded, Why he had formerly accused one Franklin, for delivering him the said Glas from the Countess? (from whom indeed it was sent;) He confessed it was to save his Child: and finally could say nothing that had any colour of material or substantial Point to excuse or argue Innocency in him. So the Court referred him to the Jury; who went together, and within a short Space returned, being agreed upon their Verdict, and there at the Bar gave in, that Weston was guilty of the felonious Murdering and Poisoning of Sir Thomas Overbury. And then the Clerk of the Crown demanded of Weston, What he could say for himself, why Judgment should not

be pronounced against him according to Law? To which he answered, He referred himself to my Lord, and to the Country. And then the Lord Chief Justice, before he pronounced Sentence of Death, spake to this effect, That for the Duty of the Place, he must say somewhat; and that to two several Persons:

First, To the Auditory: And,

Secondly, To the Prisoner.

And that which he spake to the Auditory, he divided into four Parts.

1st, The *Manifestation of the Glory of God, and Honour of the King.*

2^{dly}, The preventing of other damned Crimes of Poisoning.

3^{dly}, An Answer to certain Objections.

4^{thly}, That there is no Practice of Conspiracy in Prosecuting of the Business.

For the 1st, He observed the Finger of God in the Manifestation and bringing to light of this Matter, having slept two Years, being shadowed with Greatness, which cannot overcome the Cry of the People.

He observed also the Providence and Goodness of God, who put into the Hearts of himself and the rest of the Judges, the day of the Prisoner's last Arraignment, when he stood mute, not to give Judgment against him for that time, but defer it till now; and how in the mean time it pleased his Majesty out of his gracious Care and Pity, to send to the Prisoner, first the Bishop of London, next the Bishop of Ely, to admonish and persuade him for the saving of his Soul; who, after each of them had spent two Hours with him, it pleased God (when they had left him) to move his Heart, so that now he did put himself to be tried by the Country; by which means (using Weston's own Words) he said, *The great Flies shall not escape*, but receive their Punishment. For conclusion of his first Point he lastly observed, *Divinum quiddam in vulgi opinione*, that notwithstanding so many uncertain Rumours touching this Case, at last it proved to be true.

2^{dly}, He declared, how for prevention of this damned Crime of Poisoning, Justice was the golden Mean, and declared his Majesty's Resolution straightly to execute Justice for that Treason; and he used this Saying, *Nemo prudens, &c.* and desired God that this Precedent of Overbury might be an Example and Terror against this horrible Crime, and therefore it might be called, *The great Oyer of Poisoning.*

3^{dly}, He said, That at the Arraignment there were certain Criticks, who had given out, the Prisoner should deny his Examinations; and found much fault, for that the Examinations were read, the Prisoner standing mute. But for the first, how untrue it was, all the World saw, the Prisoner here confessing them all, being read and shewed unto him: and for the second, besides that it was exceeding discreet and convenient the World should receive some Satisfaction in a Cause of that nature, he cited and shewed, that by the Laws of the Land they ought and were bound to do so, notwithstanding the Greatness of any, who might thereby be impeached; of whom he said, altho' this was *unum crimen*, yet it was not *unicum crimen*.

4^{thly}, As touching the supposed Practice or Conspiracy, he solemnly protested to God, he knew of none, nor of any Semblance for Colour thereof;

thereof; and therefore he much inveighed against the Baseness and Unworthiness of such as went about so untruly and wickedly to slander the course of Justice. And so he came, last of all, to that which he had to speak of *Weston* the Prisoner.

First, Touching the Wickedness of his Fact, he very seriously exhorted him to an unfeigned Confession and Contrition for the same, declaring unto him, how that his Confession would be a Satisfaction to God and the World, and that by his Faith and true Repentance he would lay hold upon the Merits of his Saviour.

He persuaded him, that no vain Hope (which is a Witch) should keep him back from giving Satisfaction to the World, by discovering the Guiltiness of the Great-ones; assuring him, that after this Life, as Death left him, so Judgment should find him.

And lastly, taking occasion there to remember this Poisoning to have been a Popish Trick, which he instanced by Examples of one *Gurnandus de Birlanus*, mentioned 22 *Edw. I. Squier*, that attempted to poison Queen *Elizabeth's* Saddle; *Lopez*, and Mrs. *Turner*: he then proceeded to give Judgment, which was,

* Bacon's Works, Fol. Edit. Vol. I. p. 80—86. Vol. IV. p. 282.

That the Prisoner should be carried from thence to the Place from whence he came, and from thence to *Tyburn*, and there to be hanged by the Neck till he was dead.

Judgment being given, the Lord Chief Justice commanded, that the Prisoner might have convenient Respite, and the Company of some godly learned Men to instruct him for his Soul's health.


He was afterwards executed at *Tyburn*, pursuant to the Sentence. At the time of his Execution, Sir *John Hollis* (afterwards Earl of *Clare*) and Sir *John Wentworth*, out of Friendship to the Earl of *Somerset*, rode to *Tyburn*, and urged *Weston* to deny all that he had before confessed: But *Weston* being prepared for Death, resisted their Temptations, sealing penitently the Truth of his Confessions with his last Gasps; and Sir *John Hollis*, Sir *John Wentworth*, together with Mr. *Lumsden*, who had published a Relation of the Proceedings against *Weston* at his Arraignment, were afterwards prosecuted in the *Star-Chamber*, for traducing the King's Justice in those Proceedings*.



The PROCEEDINGS against Sir John Hollis, Sir John Wentworth, and Mr. Lumsden, in the Star-Chamber, for traducing the Publick Justice, November 10, 1615.
13 Jac. I.

In Camera Stellata decimo Novembris, 13^o Jacobi regis, 1615.

Present,

 HE Lord Chamberlain, Archbishop of *Canterbury*, Lord *Crew*, Lord Steward, Earl of *Pembroke*, Bishop of *London*, Bishop of *Winton*, Lord *Zouch*, Lord *Knowles*, Secretary *Winwood*, Chancellor of the Duchy, Sir *Thomas Lake*, the three Chief Justices.

Being sat,

There were brought to the Bar, Sir *John Hollis* (now Lord *Houghton*) Sir *John Wentworth*, and Mr. *Lumsden*, a *Scotish* Gentleman, as Offenders and Prisoners, committed by the Lords of the Council. Mr. Attorney-General* did inform against them

Ore tenus in this manner:

The Offence wherewith I shall charge the three Offenders at the Bar, is a Misdemeanor of a high Nature, tending to the Defacing and Scandal of Justice in a great Cause capital. The particular Charge is this:

The King, amongst many his Princely Virtues, is known to excel in that proper Virtue of the im-

perial Throne, which is Justice. It is a royal Virtue, which doth employ the other three cardinal Virtues in her Service. Wisdom to discover, and discern Nocent or Innocent: Fortitude to prosecute and execute: Temperance, so to carry Justice as it be not passionate in the Pursuit, nor confused in involving Persons upon light Suspicion, nor precipitate in time. For this his Majesty's Virtue of Justice God hath of late raised an Occasion, and erected as it were a Stage or Theatre much to his Honour for him to shew it, and act it in the Pursuit of the untimely Death of Sir *Thomas Overbury*, and therein cleansing the Land from Blood. For, my Lords, if Blood spilt pure doth cry to Heaven in God's Ears, much more Blood defiled with Poison.

This great Work of his Majesty's Justice, the more excellent it is, your Lordships will soon conclude the greater is the Offence of any that have sought to affront it, or traduce it. And therefore, before I descend unto the Charge of these Offenders, I will set before your Lordships the Weight of that which they have sought to impeach; speaking somewhat of the general Crime of Impoisonment, and then of the particular Circumstances of this Fact upon *Overbury*; and thirdly and chiefly, of the King's great and worthy Care and Carriage in this Business.

This

This Offence of Imposition is most truly figured in that Device or Description, which was made of the nature of one of the *Roman* Tyrants, that he was *lutum sanguine maceratum*, Mire mingled or cemented with Blood: for as it is one of the highest Offences in Guiltiness, so it is the basest of all others in the mind of the Offenders. Treasons, *magnum aliquid spectant*: They aim at great things; but this is vile and base. I tell your Lordships what I have noted, that in all God's Books, (both in the Old and New Testament) I find Examples of all other Offences and Offenders in the World, but not any one of an Imposition or an Imposer. I find mention of Fear of casual Imposition: when the wild Vine was shred into the Pot, they came complaining in a fearful manner; Master, *mors in olla*. And I find mention of Poisons of Beasts and Serpents; *the Poison of Aspes is under their lips*. But I find no Example in the Book of God of Imposition. I have sometime thought of the Words in the Psalm, *let their Table be made a Snare*. Which certainly is most true of Imposition; for the Table, the daily Bread, for which we pray, is turned to a deadly Snare: but I think rather that that was meant of the Treachery of Friends that were participant of the same Table.

But let us go on. It is an Offence, my Lords, that hath the two Spurs of offending; *spes perficiendi*, and *spes celandi*: It is easily committed, and easily concealed.

It is an Offence that is *tanquam sagitta nocte volans*; it is the Arrow that flies by Night. It discerns not whom it hits; for many times the Poison is laid for one, and the other takes it: as in *Sander's* Case, where the poisoned Apple was laid for the Mother and was taken up by the Child, and killed the Child: and so in that notorious Case, whereupon the Statute of 22 Hen. VIII. cap. 9. was made, where the Intent being to poison but one or two, Poison was put into a little Vessel of Barm that stood in the Kitchen of the Bishop of *Rockester's* House; of which Barm Pottage or Gruel was made, wherewith seventeen of the Bishop's Family were poisoned: nay, divers of the Poor that came to the Bishop's Gate, and had the broken Pottage in Alms, were likewise poisoned. And therefore, if any Man will comfort himself, or think with himself, here is great talk of Imposition, I hope I am safe; for I have no Enemies; nor I have nothing that any body should long for. Why? that is all one; for he may sit at table by one for whom Poison is prepared, and have a Drench of his Cup, or of his Pottage. And so, as the Poet saith, *concidit infelix alieno vulnere*; he may die another Man's Death. And therefore it was most gravely, and judiciously, and properly provided by that Statute, that Imposition should be High-Treason; because whatsoever Offence tendeth to the utter Subversion and Dissolution of human Society, is in the nature of High-Treason.

Lastly, It is an Offence that I may truly say of it, *non est nostri generis, nec sanguinis*. It is (thanks be to God) rare in the Isle of *Britain*: it is neither of our Country, nor of our Church; you may find it in *Rome* or *Italy*. There is a Region, or perhaps a Religion for it: and if it should come amongst us, certainly it were better living in a Wilderness than in a Court.

For in the particular Fact upon *Overbury*. First, for the Person of *Sir Thomas Overbury*: I knew the

Gentleman. It is true, his Mind was great, but it moved not in any good Order; yet certainly it did commonly fly at good things; and the greatest Fault that I ever heard by him was, that he made his Friend his Idol. But I leave him as *Sir Thomas Overbury*.

But take him as he was the King's Prisoner in the *Tower*; and then see how the case stands. In that Place the State is as it were respondent to make good the Body of a Prisoner. And if any thing happen to him there, it may (tho' not in this case, yet in some others) make an Aspersion and Reflection upon the State itself. For the Person is utterly out of his own Defence, his own Care and Providence can serve him nothing. He is in Custody and Preservation of the Law; and we have a Maxim in our Law, (as my Lords the Judges know) that when a State is in Preservation of Law, nothing can destroy it, or hurt it. And God forbid but the like should be for the Persons of those that are in Custody of Law; and therefore this was a Circumstance of great Aggravation.

Lastly, To have a Man chased to death in such manner (as it appears now by matter of Record; for other Privacy of the Cause I know not) by Poison after Poison, first *Roseacre*, then *Arsenick*, then *Mercury Sublimate*, then *Sublimate* again; it is a thing would astonish Man's Nature to hear it. The Poets feign, that the Furies had Whips, that they were corded with poisonous Snakes; and a Man would think that this were the very Case, to have a Man tied to a Post, and to scourge him to death with Snakes: for so may truly be termed diversity of Poisons.

Now I will come to that which is the principal; that is, his Majesty's princely, yea, and as I may truly term it, sacred Proceeding in this Cause. Wherein I will first speak of the Temper of his Justice, and then of the Strength thereof.

First, It pleased my Lord Chief Justice to let me know, (that which I heard with great Comfort) which was the Charge that his Majesty gave to himself first, and afterwards to the Commissioners in this Case, worthy certainly to be written in Letters of Gold, wherein his Majesty did fore-rank and make it his prime Direction, that it should be carried without touch, to any that was innocent; nay more, not only without Impeachment, but without Aspersion: which was a most noble and princely Caution from his Majesty; for Men's Reputations are tender things, and ought to be like Christ's Coat, without Seam. And it was the more to be respected in this case, because it met with two great Persons; a Nobleman that his Majesty had favoured and advanced, and his Lady being of a great and honourable House: tho' I think it be true, that the Writers say, that there is no Pomegranate so fair or so sound, but may have a perished Kernel. Nay, I see plainly, that in those excellent Papers of his Majesty's own Hand-writing, being as so many Beams of Justice issuing from that Virtue which doth shine in him; I say, I see it was so evenly carried without Prejudice, (whether it were a true Accusation of the one part, or a Practice of a false Accusation on the other) as shewed plainly that his Majesty's Judgment was *tanquam tabula rasa*, as a clean Pair of Tables, and his Ear *tanquam janua aperta*, as a Gate not side open, but wide open to Truth, as it should be by little and little discovered. Nay, I see plainly, that at the first (till farther Light did

did break forth) his Majesty was little moved with the first Tale, which he vouchsafeth not so much as the name of a Tale; but calleth it a Rumour, which is an headless Tale.

As for the Strength or Resolution of his Majesty's Justice, I must tell your Lordships plainly: I do not marvel to see Kings thunder out Justice in Cases of Treason, when they are touched themselves; and that they are *vindices doloris proprii*: but that a King should *pro amore justitie* only, contrary to the tide of his own Affection, for the Preservation of his People, take such Care of a Cause of Justice, that is rare and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this Kingdom, nor in any other Kingdom, the Blood of a private Gentleman vindicated, *cum tanto motu regni*, or to say better, *cum tanto plausu regni*. If it had concerned the King or Prince, there could not have been greater nor better Commissioners to examine it. The Term hath been almost turned into a *justitium*, or Vacancy; the People themselves being more willing to be Lookers on in this Business, than to follow their own. There hath been no Care of Discovery omitted, no Moment of Time lost. And therefore I will conclude this Part with the Saying of Solomon, *gloria Dei celare rem, & gloria Regis scrutari rem*. And his Majesty's Honour is much the greater, for that he hath shewed to the World in this Business, as it hath relation to my Lord of *Somerfet*, (whose Case in no sort I do prejudice, being ignorant of the Secrets of the Cause, but taking him as the Law takes him hitherto, for a Suspect) I say, the King hath to his great Honour shewed, that were any Man in such a Case of Blood, as the Signet upon his right Hand, (as the Scripture says) yet would he pull him off.

Now will I come to the particular Charge of these Gentlemen, whose Qualities and Persons I respect and love; for they are all my particular Friends: But now I can only do this Duty of a Friend to them, to make them know their Fault to the full.

And therefore, first, I will by way of Narrative declare to your Lordships the Fact, with the Occasion of it; then you shall have their Confessions read, upon which you are to proceed, together with some collateral Testimonies by way of Aggravation: and lastly, I will note and observe to your Lordships, the material Points which I do insist upon for their Charge, and so leave them to their Answer. And this I will do very briefly, for the Case is not perplexed.

That wretched Man *Weston*, who was the Actor or mechanical Party in this Impoisonment, at the first Day being indicted by a very substantial Jury of selected Citizens, to the number of nineteen, who found *billa vera*, yet nevertheless at the first stood mute: but after some Days Intermission, it pleased God to cast out the dumb Devil, and that he did put himself upon his Trial; and was by a Jury also of great Value, upon his Confession, and other Testimonies, found guilty: so as thirty-one sufficient Jurors have passed upon him. Whereupon Judgment and Execution was awarded against him. After this, being in Preparation for another World, he sent for Sir *Thomas Overbury's* Father, and falling down upon his Knees, with great Remorse and Compunction, asked him Forgiveness. Afterwards, again, of his own Motion, desired to have his like Prayer of Forgiveness re-

commended to his Mother, who was absent. And at both times, out of the Abundance of his Heart, confessed that he was to die justly, and that he was worthy of Death. And after, again, at his Execution (which is a kind of Sealing-time of Confessions) even at the point of Death, (altho' there were Tempters about him, as you shall hear by and by) yet he did again confirm publickly, that his Examinations were true, and that he had been justly and honourably dealt with. Here is the Narrative, which induceth the Charge. The Charge itself, is this.

Mr. *Lumsden*, whose Offence stands alone single, (the Offence of the other two being in Consort; and yet all three meeting in their End and Center, which was to interrupt or deface this excellent Piece of Justice:) Mr. *Lumsden*, I say, meanwhile, between *Weston's* standing mute and his Trial, takes upon him to make a most false, odious, and libellous Relation, containing as many Untruths as Lines, and sets it down in Writing with his own Hand, and delivers it to Mr. *Henry Gibb*, of the Bed-chamber, to be put into the King's Hand; in which Writing he doth falsify and pervert all that was done the first Day at the Arraignment of *Weston*; turning the Pike and Point of his Imputations, principally upon my Lord Chief Justice of *England*, whose Name (thus occurring) I cannot pass by, and yet I cannot skill to flatter. But this I will say of him, and I would say as much to Ages, if I should write a Story; that never Man's Person and his Place were better met in a Business, than my Lord *Coke* and my Lord Chief Justice, in the Cause of *Overbury*.

Now, my Lords, in this Offence of Mr. *Lumsden's*, for the Particulars of these slanderous Articles, I will observe them unto you when the Writings and Examinations are read; for I do not love to set the Gloss before the Text. But in general I note to your Lordships, first, the Person of Mr. *Lumsden*: I know he is a *Scots* Gentleman, and thereby more ignorant of our Laws and Forms: But I cannot tell whether this doth extenuate his Fault in respect of Ignorance, or aggravate it much, in respect of Presumption; that he would meddle in that that he understood not: but I doubt it came not out of his Quiver; some other Man's Cunning wrought upon this Man's Boldness. Secondly, I may note unto you the Greatness of the Cause, wherein he being a private mean Gentleman, did presume to deal. Mr. *Lumsden* could not but know to what great and grave Commissioners the King had committed this Cause; and that his Majesty in his Wisdom would expect Return of all things from them to whose Trust he had committed this Business. For it is the part of Commissioners, as well to report the Business, as to manage the Business; and then his Majesty might have been sure to have had all things well weighed, and truly informed: and therefore it should have been far from Mr. *Lumsden* to have presumed to put forth his hand to so high and tender a Business, which was not to be touched but by employed Hands. Thirdly, I note to your Lordships, that this Infusion of a Slander into a King's Ear, is of all Forms of Libels and Slanders, the worst. It is true, that Kings may keep secret their Informations; and then no Man ought to enquire after them, while they are shrined in their Breast. But where a King is pleased that a Man shall answer for his false Information; there, I say, the false Information to a King exceeds in Offence the false

false Information of any other kind ; being a kind (since we are in matter of Poison) of Imposition of a King's Ear. And thus much for the Offence of Mr. *Lumsden*.

For the Offence of Sir *John Wentworth* and Sir *John Hollis*, which I said was in Consort, it was shortly this. At the time and place of the Execution of *Weston*, to supplant his Christian Resolution, and to scandalize the Justice already past, and perhaps to cut off the Thread of that which is to come ; these Gentlemen, with others, came mounted on Horseback, and in a ruffling and facing manner, put themselves forward to re-examine *Weston* upon Questions : and what Questions ? Directly cros to that that had been tried and judged ; for what was the Point tried ? That *Weston* had poisoned *Overbury*. What was Sir *John Wentworth's* Question ; whether *Weston* did poison *Overbury* or no ? A Contradictory directly : *Weston* answered only, that he did him wrong ; and turning to the Sheriff said, you promised me I should not be troubled at this time. Nevertheless, he pressed him to answer ; saying, he desired to know it, that he might pray with him. I know not that Sir *John Wentworth* is an Ecclesiastick, that he should cut any Man from the Communion of Prayer. And yet for all this vexing of the Spirit of a poor Man, now in the Gates of Death, *Weston* nevertheless stood constant, and said, I die not unworthily : my Lord Chief Justice hath my Mind under my Hand, and he is an honourable and just Judge. This is Sir *John Wentworth's* Offence.

For Sir *John Hollis*, he was not so much a Questionist ; but wrought upon the other's Questions, and like a kind of Confessor, wished him to discharge his Conscience, and to satisfy the World. What World ? I marvel ! It was sure the World at *Tyburn*. For the World at *Guild-Hall*, and the World at *London*, was satisfied before ; *teste* the Bells that rung. But Men have got a fashion now-a-days, that two or three Busy-bodies will take upon them the name of the World, and broach their own Conceits, as if it were a general Opinion. Well, what more ? When they could not work upon *Weston*, then Sir *John Hollis* in an Indignation turned about his Horse (when the other was turning over the Ladder) and said, he was sorry for such a Conclusion ; that was to have the State honoured or justified : but others took and reported his Words in another Degree : but that I leave, seeing it is not confessed.

Sir *John Hollis's* Offence had another Appendix, before this in time ; which was, that at the Day of the Verdict given by the Jury, he also would needs give his Verdict, saying openly, that if he were of the Jury, he would doubt what to do. Marry (he saith) he cannot tell well whether he spake this before the Jury had given up the Verdict, or after ; wherein this is little gained. For whether Sir *John Hollis* were a Pre-juror or a Post-juror, the one was as to prejudice the Jury, the other as to taint them.

Of the Offence of these two Gentlemen in general, your Lordships must give me leave to say, that it is an Offence greater and more dangerous than is conceived. I know well that as we have no *Spanish* Inquisitions, nor Justice in a Corner ; so we have no gagging of Men's Mouths at their Death, but that they may speak freely at the last Hour ; but then it must come from the free Mo-

tion of the Party, not by Temptation of Questions. The Questions that are to be asked, ought to tend to farther revealing of their own or others Guiltiness ; but to use a Question in the nature of a false Interrogatory, to falsify that which is *res judicata*, is intolerable. For that were to erect a Court or Commission of Review at *Tyburn*, against the *King's-Bench* at *Westminster*. And besides, it is a thing vain and idle : for if they answer according to the Judgment past, it adds no Credit ; or if it be contrary, it derogateth nothing : But yet it subjecteth the Majesty of Justice, to popular and vulgar Talk and Opinion.

My Lords, these are great and dangerous Offences ; for if we do not maintain Justice, Justice will not maintain us.

But now your Lordships shall hear the Examinations themselves. *Hereupon the Examinations were read.*

Mr. *Lumsden* for Answer to this Charge said, That himself was not at the Arraignment, but what he had spoken, or set down in writing, he had received of many in common Discourse ; who being now demanded to justify the same, do deny it ; and therefore he would confess that which was written was false. He pleaded Ignorance of the Law, and that he did it without any Purpose of Prejudice to the publick Business, but only as he conceived out of Duty ; and because he had always lived as a Gentleman, he would not so much degenerate from himself and his Birth, nor so much offend against human Society, as to become a base Accuser ; but would submit himself and his Offence to the Censure of the Court, and to the favourable Interpretation of their Lordships.

Mr. Attorney reply'd, That his Answer and Submission were modest, and therefore he would not press his Offence farther ; yet he would tell him, that in criminal Causes, whosoever would raise a Slander, and refuse to tell his Author, he must tell him that which the Laws tell him, that he was the Author himself. This kind of slandering Judges to Kings and Princes is common. *Popham*, a great Judge in his Time, was complained of by Petition to Queen *Elizabeth* ; it was committed to four Privy-Counsellors ; but the same was found to be slanderous, and the Parties punished in the Court. He likewise said, I may not admit of this new Learning ; I hold it not unworthy a Gentleman to discharge his Fault upon the first Author ; and by the Law, the not doing thereof maketh him the first Author ; so he becomes a false Accuser of himself.

Sir *John Wentworth's* Answer was, That he would not willingly be conceived to speak more here than he had done heretofore. It was true that he was at the Execution of *Weston*, and did ask those Questions touching the poisoning of Sir *Thomas Overbury* ; which he did on two Reasons : The one was because he had seen others do the same at the same time, and especially one *Parkes* ; and he thought he might do it as well as he : Another Reason was, because he not being at the Arraignment, and hearing that *Weston* had denied the Fact, he was desirous to be satisfy'd of the Truth from himself ; yet he purposed not to ask any Questions when he came thither : but if to ask Questions of a Man going to Execution were offensive to the State, he did humbly submit to their Lordships Censures.

Sir

Sir *John Hollis* answered, That the Matter declared against him contained three Crimes. The first, that whereas at the first upon the Indictment he should fore-judge the Jury, by delivering his Opinion; saying, that he should doubt what to do; and this he confessed, as a Man perhaps more trickish and curious to give his Verdict or Judgment of Life or Death than others: And if a bare word of his Opinion drawn by Discourse (he being but a Stander-by in this Business) be to be censur'd, I appeal to your Judgments. His second Offence was for giving of Counsel, and asking Questions of *Weston* at the Execution: He said, he confess he was there, but carried with a general desire which he had to see the Execution, as he had done in many like cases before. And he had formerly seen that it was a common thing for Men Standers-by to ask Questions of those that were to be executed: and now many asking this Question of the Fact of *Weston*, and he answering in general Terms, I die not unworthily; he also, among many others, did ask him the Question (as hath been opened;) which was not purposed of him when he came thither, but was occasioned by reason of one that stood behind him at the Gallows, who said to *Weston*, that he should confess the Truth of this Fact, for if he had had his Right, he had been hanged many years ago: whereunto *Weston* answer'd, Fact or no Fact I die worthily. Sir *John* said, that Mr. Attorney had so well apply'd his Charge against him, that tho' he carry'd the Seal of a good Conscience with him, he would almost make him believe that he was guilty; but he hoped their Lordships would take the Bird by the Body and not by the Feathers: His Speech he said might be well understood, but the worst end of it was turned towards him; he did but the part of a Christian to persuade *Weston* to discharge his Conscience, and intended not to controvert the Law and Justice that had passed on him. As for the Testimony of *Bearingborne*, I know not what he is that hath deposed against me; but it seems he is some Man of Trade, against whom I think I may now put myself in Opposition, that my Denial may stand against his Affirmation. In his Youth some of your Lordships know, that he [Sir *John Hollis*] had spent some of his Time in the Wars and Travel, and afterwards had lived in place at Court, both in the Time of Queen *Elizabeth*, and his Majesty eight Years: he had served the late most worthy Prince, the Memory of whom he said did grieve him that he should plead his Name at the Bar, whom for the Misery of this State it pleased God to take away; since whose Death he had been as a Fish out of the Water. Thus much he said was pulled out of his Mouth, by reason of his Testimony produced against him; but he knew that not Words but his Cause must help him out of this Mire. And therefore if their Lordships had determined any thing against him for these Offences, he did humbly submit himself to their honourable Censures. The Lord Chancellor said, that this Deposition of *Bearingborne* was not read but in Explanation and Aggravation, and not for Evidence of Condemnation against Sir *John Hollis*.

Mr. Attorney reply'd upon Sir *John* to this Answer of his, That his Speech to *Weston* was occasional, and not resolved on before his coming to the Execution; That it was new Matter thought upon and devised since his being questioned for his Offence; for there was never a word thereof spoken in this Examination: and there this is the Feather

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you speak of, and not the Body. Whereunto Sir *John Hollis* answered, that they might very well stand together.

Hereupon Sir *Edward Coke*, the Chief Justice of the King's-Bench, pronounced the Sentence; when he said, that he would say of this Business, and his dealing therein, as *Abimelech* said of himself, *Tu scis, Domine, quod feci in simplicitate cordis & munditie manuum*; and therefore would also boldly affirm, that there were none brought into question of this great Business of Poison, but such as in his Soul and Conscience were apparently Guilty: He said he was no fit Man for a Common-Place; yet he had found some Records of Poisoning, which he would shew: as namely in the Treasury 31 Ed. III. as the King indeed had two Treasuries, the one of Records, the other of Gold and Silver; where a Woman committed Adultery, and after poisoned her Husband. And 21 Edw. I. *Solomon le Roch*, a Judge, was poisoned by a Monk, who afterwards prayed to be deliver'd to the Censure of the Church; and he was denied, because the same was a Wrong to the State to poison a Judge. And it is to be observed in the first Case, that Poison and Adultery go together; and on the second, that Poison and Popery go together. From *Edward III.* down to 22 *Henry VIII.* (which was a great Lump of Time) no mention is made of poisoning any Man; and then a Statute was made, that those that did poison any body should be boiled to death, and were first to be put in at the Tiptoes. In this Business he said he would tell no News, but he was not yet at the Root; God forbid that those kinds of Offences should be unsearched and unpunished, wheresoever they are found: There are divers sorts of Poisoning, by some whereof a Man shall die a Month or a Quarter of a Year after, *ut sic se sentiat mori*; and shall not know in what manner he is poisoned: as one *Squire*, a Priest, should have poisoned Queen *Elizabeth* by poisoning her Saddle. This Poisoning came first from Popery. In this Case of *Weston* he would never confess the Indictment, because the Indictment was, that he poisoned Sir *Thomas Overbury* with Arsenick, Roseaker and Mercury Sublimate; whenas indeed it was not known what Poison killed him. Here the poor Man conceived a Scruple, that if he did not know with which of the Poisons *Overbury* was poisoned, he was not guilty of the Offence laid in the Indictment; and therefore said he was not guilty of the Offence. Now *ut obstruatur os iniqui*, that the Mouth of the wicked Man may be fully stopped; after that it was resolved unto him, that the manner of Killing, laid in the Indictment, was not the Point of the Indictment, but the Matter of Killing; as if the Indictment be, that a Man was killed with a Sword, whereas indeed he was killed with a Dagger; yet the Party is guilty, because the killing of a Man is the Point of the Indictment; then he confessed the Fact. And for this Gentleman, Mr. *Lumsden*, a *Scotish* Gentleman, a Nation that he loved well, (and to his Majesty both *English* and *Scotish* were equally dear) *Scoti & Angli nullo discrimine, &c.* He that insuseth into his Majesty's Ears the least Falshood concerning his Judges unjustly, is like him that insuseth never so little Copper into Coin; they both commit a kind of Treason: and for the Matter of it, which was informed, for *qui non bene respondet, non respondet*; and a little to divert from this Business, you, Mr. *Lumsden*, were a Pander to the Earl of *Somerset*, and were his Favourer in Deed, but his

X x

Follower

Follower in Evil. *Afflictio dat intellectum*, let your Affliction now give you sense and feeling of your Sins; your Service of a Pander is apparently to be shewed you by a Letter under my Lord of Somerset's own Hand, and your Answer to it. Let it then enter your Heart and Soul to assure yourself, that there is now no Safety, Protection, nor Assurance, but under a religious Faith in Jesus Christ; and that, *radix justitiæ est pietas*, the Foundation and Root of Justice is Piety. I confess I had a great Suspicion out of whose Quiver the Murder came first; but because I had no certain Proofs, I would never question them. This Resolution of Weston to be mute, was very great. When he was persuaded by the Bishop of London and Ely to plead, he would not: and after being promised that if he would speak, he should have a Popish Priest; he thereunto answer'd, Have I refused the godly Persuasions of the Bishop of London, and shall I answer to a Popish Priest? And for your Persuasions, Mr. Lumsden, that you will not be an Accuser, this is a contemptuous Answer; for this is not to be an Accuser, being examin'd of another to discover him; but your Refusal in this kind to answer is a manifest Contempt: and for the like Offence, a great Lady of the Land lieth now in the Tower, only for refusing to answer being examined. *Quod diabolus ad malum exposuit, Deus ad bonum exposuit*; that which the Devil exposeth to Evil, God disposeth to Good. This refusing to discover an Offender, is a Contempt to a Master of a Family; if he should command any of his Servants to tell him of an Offence committed, and by whom; and the Servant that is so asked shall refuse to tell him, he shall be worthy of Punishment: much more any Subject being examined by the King's Authority and Commissioners, if he shall refuse to make discovery of the Truth. The Statute of the 1 and 2 of Rich. II. is, that he that doth raise false News between the King and his Nobles, shall be imprisoned for the space of a Year; I think fit that Mr. Lumsden's Imprisonment should be for a Year, and afterwards, until he should produce his Author. As for Sir John Hollis, his Fault of questioning and counselling, it is very great, the same being made after a Verdict; for if a Man commit Treason the twentieth day of May, and sell his Lands the fifth day, and after is indicted that he did commit the Treason the first day, which goes before the Sale, and after is found guilty of this Indictment; he that is to lose the Land cannot deny this Verdict, and say the Treason was committed the twentieth day, tho' it concern him for all that he hath of laying; if that he that is to be undone by a Verdict shall not speak cross Matter to a Verdict (as the Books of Edw. III. and Edw. I. are, and 11 Hen. IV. 53. *Estoppel* 137.) what shall be done to him that having no Cause in a matter Capital, wherein he had nothing to do, would intermeddle? For as the Law saith, *Turpis est admissio rei ad se non pertinentis*. Sir John said, that it hath been a Custom to ask Questions at those times, and that he did usually go to Executions. For his own part he said, that ever since he was a Scholar, and had read those Verses of Ovid, *Trist.* iii. 5.

*Et lupus & vulpes instant morientibus—
Et quæcunque minor nobilitate fera est,*

He did never like it; and therefore he said he did marvel much at the Use of Sir John. Sir John answers here at the Bar, and saith, that if any thing were determined against him, he did humbly submit himself thereto: by which Term so determining, he meant (I think) as if we did give our Censures against him by Conspiracy. For my own Part I talked with none other, nor I think did any of us one speak with other before we came together here. Peradventure he thinks (as some have thought) that all the Carriage of this Business is but a Conspiracy against the Earl of Somerset. He saith he hath been since the Prince's Death but as a Fish out of the Water. I know not what he means by a Fish out of the Water: I have heard that *Clericus in oppido, tanquam piscis in arido*, A Clerk in the Town is like a Fish out of the Water: he is a Justice of Peace, a Commissioner of Oyer and Terminer; a Man of fair Lands, 1500*l.* per annum at the least; this Money is enough to be a Privy-Counsellor: and yet Sir John Hollis is like a Fish out of the Water. I know he hath travelled many Countries, speaks many Languages, hath seen many Manners and Customs, and knows much of foreign Nations; yet a little Knowledge of the Common-Law of this Land would have been better for him than all these; it would have kept him from asking Questions, and counselling in Scandal of Religion and Justice; two of the main Pillars of the Kingdom, and that in cold Blood. Evidence is above Eloquence; the Party himself acknowledged that he died justly; and those that saw him said he died penitently: So to conclude, as it was sometime said of Rome, *Et quæ tanta fuit Romam tibi causa videndi*, he might very well now say of Sir John Hollis his going to Tyburn, with a little Alteration of the Words, *Et quæ tanta fuit Tyburn tibi causa videndi*. For the Censure he agreed with that which had been set; and the Acknowledgment of Mr. Lumsden should be also in the Court of Common-Pleas and the Exchequer, because the Justice of all Courts may be wronged with slanderous Petitions. He moved that Information might be made against the other Gentlemen that were asking such Questions as these were; and that they might receive their due Punishment: he meant, he said, Mr. Sackvil, Sir Thomas Vavasor, and Sir Henry Vane, who would be a Baron if Attainders did not lie in the Way: If these be not punished, these Gentlemen will think that they have wrong; for *quæ mala cum multis patimur leviora videntur*. He said he would wish Gentlemen to take heed how they fell into Discourses of these Businesses, when they be at their Chambers; for in the proceeding of these great Businesses and Affairs, if a Man speak irreverently of the Justice thereof, the Bird that hath Wings will reveal it.

The Sentence was Fine, Imprisonment, and Submission, as followeth:

Lumsden fined two thousand Marks, imprisoned in the Tower for a whole Year, and after until he shall, at the King's-Bench-Bar, submit himself and confess his Fault, and also produce his Authors.

Sir John Hollis was fined one thousand Pound, imprisoned in the Tower for the space of a Year.

Sir John Wentworth fined one thousand Marks, imprisoned in the Tower for a Year; and both to make Submission at the King's-Bench-Bar.



XXIV. *The Trial of ANNE TURNER Widow, at the King's-Bench, for the Murder of Sir Thomas Overbury, the 7th of November 1615. Mich. 13 Jac. I.*

THE Indictment, whereupon *Richard Weston* took his Trial being repeated *verbatim*, she was indicted for comforting, aiding and assisting the said *Weston*, in the Poisoning to death *Sir Thomas Overbury*; to which she pleaded, Not Guilty, putting herself upon God and the Country*. Whereupon a sufficient Jury of two Knights, and the rest Esquires and Freeholders of *Middlesex*, were sworn and impanelled for the Trial, whereof *Sir Thomas Fowler* was Foreman.

Sir Ed. Coke, Lord Chief Justice told her, That Women must be covered in the Church, but not when they are arraigned, and so caused her to put off her Hat; which done, she covered her Hair with her Handkerchief, being before dressed in her Hair, and her Hat over it.

Sir Laurence Hyde, the Queen's Attorney, open'd the Matter much to the Effect as he did at *Weston's* Arraignment, shewing the Wickedness and Heinousness of Poisoning: He shewed further, That there was one *Dr. Forman*, dwelling in *Lambeth*, who died very suddenly, and a little before his Death desired that he might be buried very deep in the Ground, or else (saith he) I shall fear you all.

To him, in his Life-time, often resorted the Countess of *Essex* and *Mrs. Turner*, calling him Father†: their cause of coming to him was, That by force of Magick, he should procure the now Earl of *Somerset*, then Viscount *Rochester*, to love her, and *Sir Arthur Manwaring* to love *Mrs. Turner*, by whom (as it was there related) she had three Children. About this Business, the Countess of *Essex* wrote two Letters, one to *Mrs. Turner*, another to *Dr. Forman*, as followeth:

The Countess's Letter to Mrs. Turner.

[Burn this Letter.]

Sweet Turner,

I Am out of all hope of any Good in this World, for my Father, my Mother, and my Brother said, I should lie with him; and my Brother *Howard* was here, and said, he would not come from this Place all Winter; so that all Comfort is gone: and, which is worst of all, my Lord hath complained, that he hath not lain with me, and I would not suffer him to use me. My Father and Mother are angry, but I had rather die a thousand times over; for besides the Sufferings, I shall lose his Love if I lie with him. I will never desire to see his Face, if my Lord do that unto me. My Lord is very well as ever he was,

so as you may see in what a miserable case I am. You may send the Party word of all; he sent me word all should be well, but I shall not be so happy, as the Lord to love me. As you have taken pains all this while for me, so now do all you can, for never so unhappy as now; for I am not able to endure the Miseries that are coming on me, but I cannot be happy so long as this Man liveth: therefore pray for me, for I have need, but I should be better if I had your Company to ease my Mind. Let him know this ill News: If I can get this done, you shall have as much Money as you can demand, this is fair Play.

Your Sister,

Frances Essex.

A Letter from the Countess to Dr. Forman.

Sweet Father,

I Must still crave your Love, altho' I hope I have it, and shall deserve it better hereafter: Remember the Galls, for I fear, tho' I have yet no cause but to be confident in you, yet I desire to have it as it is yet remaining well; so continue it still, if it be possible, and if you can you must send me some good Fortune, alas I have need of it. Keep the Lord still to me, for that I desire; and be careful you name me not to any body, for we have so many Spies, that you must use all your Wits, and all little enough, for the World is against me, and the Heavens favour me not, only happy in your Love; I hope you will do me good, and if I be ingrateful, let all Mischief come unto me. My Lord is lusty and merry, and drinketh with his Men; and all the Content he gives me, is to abuse me, and use me as doggedly as before: I think I shall never be happy in this World, because he hinders my Good, and will ever, I think so; remember (I beg for God's sake) and get me from this vile Place.

Your affectionate loving Daughter,

Frances Essex.

Give *Turner* warning of all things, but not the Lord: I would not have any thing come out for fear of the Lord Treasurer, for so they may tell my Father and Mother, and fill their Ears full of Toys.

There was also shewed in Court certain Pictures of a Man and Woman in Copulation, made in Lead, as also the Mould of Brasse, wherein they were cast, a black Scarf also full of white Crosses,

* 3 Co. Inst. 49. 135.
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† Complete Hist. of England, Vol. III. p. 693.

which Mrs. *Turner* had in her Custody. At the shewing of these, and enchanted Papers and other Pictures in Court, there was heard a crack from the Scaffolds, which caused great Fear, Tumult and Confusion among the Spectators, and throughout the Hall, every one fearing Hurt, as if the Devil had been present, and grown angry to have his Workmanship shewed, by such as were not his own Scholars; and this Terror continuing about a quarter of an hour, after Silence proclaimed, the rest of the cunning Tricks were likewise shewed.

Dr. *Forman's* Wife being Administratrix of her Husband, found Letters in Packets, by which much was discovered; she was in Court, and deposed that Mrs. *Turner* came to her House immediately after her Husband's Death, and did demand certain Pictures which were in her Husband's Study; namely, one Picture in Wax, very sumptuously apparelled in Silks and Sattins, as also one other sitting in form of a naked Woman, spreading and laying forth her Hair in a Looking-glass, which Mrs. *Turner* did confidently affirm to be in a Box, and that she knew in what part or room of the Study they were.

Mrs. *Forman* further deposeth, That Mrs. *Turner* and her Husband would be sometimes three or four hours locked up in his Study together. She did depose further, that her Husband had a Ring would open like a Watch.

There was also a Note shewed in the Court, made by Dr. *Forman*, and written in Parchment, signifying what Ladies loved what Lords in the Court; but the Lord Chief Justice would not suffer it to be read openly in the Court.

Mrs. *Turner* sent *Margaret* her Maid to Mrs. *Forman*, and wished that all such Letters and Papers as concerned the Earl of *Somerſet*, or the Countess of *Effex*, or any other great Personages, should be burnt; telling her, That the Council's Warrant should come to search the Study, and that all his Goods might be seized: whereupon she and her Maid *Margaret*, with the consent of Mrs. *Forman*, burnt divers Letters and Papers, but yet she kept some without their Privy.

There was also Enchantments shewed in Court, written in Parchment, wherein were contained all the Names of the blessed Trinity, mentioned in the Scriptures; and in another Parchment, + B. + C. + D. + E. and in a third likewise in Parchment, were written all the Names of the Holy Trinity, as also a Figure, in which was written this Word, *Corpus*; and upon the Parchment was fastened a little piece of the Skin of a Man.

In some of these Parchments, were the Devils particular Names, who were conjured to torment the Lord *Somerſet* and Sir *Arthur Manwaring*, if their Loves should not continue, the one to the Countess, the other to Mrs. *Turner*.

Mrs. *Turner* also confessed, That Dr. *Savories* was used in succession after *Forman*, and practised many Sorceries upon the Earl of *Effex's* Person.

Mrs. *Turner* being in a manner kept close Prisoner in one of the Sheriff's Houses in *London*, before she was brought to the Bar, knew not that *Weston* was executed; but by the Proceedings, having understanding thereof, and hearing divers Examinations read, it so much dejected her, that in a manner she spake nothing for herself. Also Examinations and Witnesses, *viva voce*, that were produced at *Weston's* Arraignment, and divers others, were now read again, as the Examinations of one *Edward Pain*, *John Wright*, and *Robert Freeman*.

Symcots, *Raulins*, *Payte* and *Williams*, at one of these Examinations, gave evidence, That one *Franklin*, being an Apothecary and Druggist, was the Provider of all the Poisons given to Sir *Thomas Overbury*.

A Chirurgeon there deposed, That he cured *Franklin* of the Pox; and that at several times he demanded of this Chirurgeon, What was the strongest Poison? The Chirurgeon demanding of him what he would do with it, *Franklin* replies, Nothing but for his Experience, and to try Conclusions.

Another Examination of one *Mercer*, who had Conference with the said *Franklin*, calling him Cousin, who demanded of this Examinant, What News? He answered, I hear ill News, I am sorry that my old Lord and Master's Son is found insufficient, and not able to content the Lady.

Franklin replies, I have a hand in that Business; I have a great Friend of my Lady of *Effex*, she allows me 2 s. 6 d. a-day for my Boat-hire, and 10 s. a-week for my Diet, I could have any Money I would. *Mercer* replies, But, Cousin, how can God bless you in this Business? *Franklin* answers, Let them talk of God that have to do with him, my Lord of *Somerſet* and the Countess will bear me out in any thing I do; if you have any Suit, wherein you may do your self any good, and I may gain by it, I will warrant you I will get it.

Frances deposeth, that *Franklin* married his Sister, and that he thinketh in his Conscience she was poisoned; and that upon some Discontent, he heard him say, He would be hanged for never a Whore or Quean of them all.

The Lord Chief Justice made a Speech upon divers Examinations there read, That the Earl of *Somerſet* gave Directions, that of the Powder he sent to *Overbury*, that which should be left, should be brought back again: his Pretext was, that it should make him sick; which should be the Ground to make the King grant his Liberty, saying further, It would do *Overbury* good; and he had Tarts and Jellies likewise sent him by the Countess, with express Commandment, that none must eat of them but Sir *Thomas*, saying, they will do him no harm.

At another time, the Countess sent Tarts, Jellies and Wine, with Directions, that those which had been formerly sent, should be brought back again; and those last brought, should be given him at Supper, and then all should be well; but Directions given, that neither the Lieutenant, nor his Wife might eat of them, but they might drink of the Wine, for in the Tarts and Jellies there might be Letters, but in the Wine there might be none. And afterwards it was openly related, and proved by divers Witnesses, that those words *Letters* were private Tokens between the Countess, and the Lieutenant, and *Weston*, to give notice what things were poisoned, and what not.

In the Examinations that were of *Weston*, it was related, That Mr. *James* told him, that the Earl his Master would pay him for his pains about Sir *Thomas Overbury*.

Then the Lord Chief Justice gave in charge to the Jury, concerning the Evidence they had formerly heard, and told them, That *Weston*, at his Examination, had confessed, that all he had said formerly was true.

He further related, What a great Vexation and Grief it was to the King, that *Somerſet* only by making use of his Favour and Love, to foul a Fact

was

was done: as, First, To be the Occasion to put Sir *Thomas Overbury* to Employment for the Embassy at *Russia*: and, Secondly, To make him refuse the same, and to give right Cause for his Commitment: Thirdly, To bear him in hand, that he would work his Liberty, but still aggravated and laboured the contrary, and gave Directions to the Lieutenant of the *Tower*, to look surely to him, and to keep him close Prisoner, and that he should send to none of his Friends, or they to him, urging great Matters against him.

Sir *Thomas Monson* was often employed to give Directions to the Lieutenant therein; which was a most barbarous Course to be so dealt withal, only for a Contempt: concluding, that *Overbury* was a close Prisoner to all his Friends, but open to all his Enemies, such as *Somerſet* would have or send unto him.

Then the Lord Chief Justice told Mrs. *Turner*, that she had the seven deadly Sins; viz. a Whore, a Baud, a Sorcerer, a Witch, a Papist, a Felon, and a Murderer, the Daughter of the Devil *For-man*; wishing her to repent, and to become a Servant of Jesus Christ, and to pray to him to cast out of her those seven Devils.

She desired the Lord Chief Justice to be good unto her, saying, she was ever brought up with the Countess of *Somerſet*, and had been of a long time her Servant, and knew not that there was Poison in any of those things sent to Sir *Thomas Overbury*.

Then the Jury went forth, and not long after returned, finding her Guilty.

Who being asked, What she had to say for her self, why Judgment should not be pronounced against her; she only desired Favour, but could not speak any thing for weeping.

Then Judge *Crook* made another grave Speech, exhorting her to Repentance, and to prepare her self ready for Death; and that the little time which should be assigned her to live, she should not spend it either in Hope or in Imagination to get Life, for that Hope was but a Witch. Upon conclusion of which Speech, he gave Judgment, and told her, she had had a very honourable Trial, by such Men as he had not seen for one of her Rank and Quality, and so was delivered to the Sheriffs.

Upon the *Wednesday* following, she was brought from the Sheriff's in a Coach to *Newgate*, and was there put into a Cart; and casting Money often among the People as she went, she was carried to *Tyburn*, where she was executed, and whither many Men and Women of fashion came in Coaches to see her die: to whom she made a Speech, desiring them not to rejoice at her Fall, but to take example by her; she exhorting them to serve God, and abandon Pride, and all other Sins; relating her breeding with the Countess of *Somerſet*, having had no other Means to maintain her and her Children, but what came from the Countess: and said farther, That when her hand was once in this Business, she knew the revealing of it would be her Overthrow. The which, with other like Speeches, and great Penetency there shewed, moved the Spectators to great Pity, and Grief for her.



XXV. The Trial of Sir JERVIS ELWES Kt. Lieutenant of the Tower, at the Guild-Hall of London, for the Murder of Sir Thomas Overbury, the 16th of November, 1615. 13 Jac. I.



THE Form of the Indictment was the malicious Aiding, Comforting, and Abetting of *Weston* in the Poisoning and Murdering of *Overbury*; whereupon it was laid against him as follows: *

First, When *Weston* received the Vial of Poison of two Inches long, to give Sir *Thomas*, he having the Glass in one Hand, and Broth for Sir *Thomas* in the other Hand, meeting the Lieutenant, asked him thus, *Sir, shall I give it him now?* The Lieutenant reproved him, yet that Night he gave it him in his Broth: Ergo, the Lieutenant knew of the Practice and Poisoning of Sir *Thomas Overbury*: & *qui non propulsat injuriam cum possit, infert.* Cicero.

After this was known to be Poison, yet he kept *Weston* still; he favoured, countenanced and graced him, and one time sent him a Cup of Sack, and bid his Man tell him, that he loved him as well as ever he did: all this while he paid him no Wages, and as soon as *Overbury* died, *Weston* was removed.

The Countess wrote a Letter to the Lieutenant, with the Letter she sent poisoned Tarts to *Overbury*, and Wine to the Lieutenant's Wife; and bade him give the Tarts to *Overbury*, for there were Letters in them, but his Wife and Children might drink the Wine, for she was sure there were no Letters in it.

The Earl of *Northampton* writ a Letter to the Lieutenant, concerning the Imprisonment of *Overbury*; the said Earl writ two Letters to *Rocheſter*, containing these Words.

The Earl of Northampton's Letter to Rocheſter.

Sweet Lord,

‘ Think not I find Pain in that which gives me
‘ sweetest Pleasure, which is any thing that
‘ falls from your Pen; three things concur to my
‘ exceeding joy in your worthy Letters, Proof of
‘ your Love, Comfort in your Words, and Judgment

* 3 Co. Inst. 49. 135.

ment in your Writing : you may believe the Words of him that will rather die than flatter you ; my Heart is full of the Love of you ; your Characters are no more pain for me to peruse, being as well acquainted with your Hand as my own, the Pain is no more than the cracking of a Nut for the sweet Kernel, or my Niece's Pain, in the Silver-dropping Stream of your Pen.'-----
[There the Lord Chief Justice left off reading for the Bawdiness of it ; then after in the Letter followed], I spent two Hours yesterday, prompting the Lieutenant with Cautions and Considerations ; observing with whom he is to deal, that he might the better act his Part, for the Adventure in which he dealeth.'

Henry Northampton.

Another Letter to Rochester.

Sweet Lord,

I Cannot deliver unto you with what Caution and Consideration, &c. and the Lieutenant looking to his Business, which concerns no more than Text affords, that marched in his Affairs, I shall hold him discrete, and love him better whilst I live, for this his Conclusion : For this Negro can no more change his Skin than a Leopard his Spots.'

Henry Northampton.

Another Letter to Rochester.

Sweet Lord,

Overbury being viewed, there was found in his Arm an Issue, and on his Belly twelve Kernels likely to break to issue, each as big as Three-Pence ; one Issue on his Back, with a tawny Plaister on it ; this was strange and ugly. He stunk intolerably, insomuch that he was cast into the Coffin with a loose Sheet over him. God is gracious in cutting off ill Instruments from off the factious Crew : If he had come forth, they would have made use of him. Thus, Sweet Lord, wishing you all Increase of Happiness and Honour, I end,

Your Lordship's, more than any Man,

Henry Northampton.

The Lieutenant writ a Letter to the Earl of Northampton, certifying him, That he undertook Sir Thomas Overbury according to his Instructions : That as soon as he came to the Place, Sir Thomas protested his Innocency upon the Bible ; and then (quoth he) he asked me what they meant to do with him ? I answered, *They mean to refine you, that your Pureness may appear a little better.* After I walked with him in his Chamber, and advised him to give way to the Match between Rochester and the Countess ; but then he grew hot against your Lordship and the Countess of Suffolk, saying, *If he were the Countess of Suffolk's Prisoner, (as he thought he was) then (said he) let her know that I care as little to die, as she to be cruel.* The Countess of Suffolk I find to be joined with you in this Plot, tho' the Chamberlain knows not of it, nor any one else. But Rochester's part I shall much fear,

until I see the Event to be clearly conveyed. And so he concluded his Letter.

Jervis Elwes.

The Answer of Sir Jervis Elwes to the Points proposed.

My Lord, Before I answer to the Matter of Charge against me, let me remember your Lordship of one Speech which I learned from your Mouth : I have heard you speak it at the Council-Table, and you have delivered it at the Assizes in the Country, That when a Prisoner stands at the Bar for his Life, comfortless, allowed no Counsel, but strong Counsel against him, perchance affrighted with the Fear of Death, his Wife and Children to be cast forth out of doors, and made to seek their Bread ; you have always pitied the Cause of such a one : You have protested you had rather hang in Hell for Mercy to such a one, than for Judgment.

My Lord, you have not observed your own Rule in my Cause ; you have paraphrased upon every Examination, you have aggravated every Evidence, and applied it to me, so that I stand clearly condemned before I be found guilty : If I be so vile a Man as your Lordship conceives me, I were unworthy of any Favour ; but I hope your Lordship shall not find it.

So I will deny nothing that hath Evidence of Truth against me, I will not tell a Lye to save my Life, and I beseech your Lordship so to conceive of me, move your Charity towards me.

Then desired he the Court, that the Heads of the Accusations might be collected by the Counsel for the King, which were the same which were mentioned before ; to which he severally answered, &c.

To the first, Shall I give it him now ? he answered, that when Weston asked him the Question, he saw no Poison in his Hand, and therefore said he, in Weston's and mine Examination, the Question was, Shall I give it him now ? not, Shall I give him this now ? for there is a great difference between *Hoc* and *Id* in matter of Prevention.

But further, when Weston had told me that it was Poison which he meant to give, I reprov'd and beat him down with God's Judgment ; nay, I humbled him so, that upon his Knees he thanked God and me, and told me, that he and his had cause to bless God for me, for that I withheld him from doing that Act : and if you call this Comforting and Abetting, to terrify a Man for his Sins, and to make him so confess his Faults to God, and to abhor and detest the Act, then was I an Abettor and Comforter of Weston.

To the second, after I had thus terrified Weston with God's Judgments, and saw him cast down for his Offence ; I could do him no better Office than of Charity, to raise him up, who was thus down, and therefore favoured him ; I shewed him kindness, I drank to him, to the intent I might encourage the Intentions of his Mind, which I found then resolved in abhorring the Fact : and that I gave him no Wages, it is true, I took him from the Commendations of my Lord of Northampton, and Sir Thomas Monson, whom I took to be my Friends, and thought they would commend no Man to be a Keeper, which might any way endanger me.

To the third, I never knew any other meaning to the Countess's words in her Letters, but the bare literal meaning; and sure (quoth he) after I had received the Tarts, and they had stood a while in my Kitchen, I saw them so black and foul, and of such strange Colours, that I did cause my Cook to throw them away, and to make other Tarts and Jellies for him.

To the fourth, he said the Earl of *Northampton's* Letter to me, was not any thing touching the Poisoning of *Overbury*, but for a close Restraint; to the end, that *Overbury* might agree to their Purposes concerning the Marriage to be had between *Rochester* and the Countess: if the Earl of *Northampton* had any other Plot to take away his Life, I was not any thing of his Council, or had knowledge therein.

To the fifth, whereas it is said, I received him according to my Instructions, I meant none other thing than I have delivered before, which was concerning the closeness of his Imprisonment. But being asked what he meant by these words; *Rochester's part I shall greatly fear, until I see the Event to be clearly carried*; in this, he staggered, and wavered much, and gave his Answer: It was long since I wrote this Letter, and for the particular Circumstances that induced me to this Speech, I cannot now call to Memory; but sure I am, that at that time, knowing my self to be innocent, I could the better have satisfied my remembrance, so that I meant nothing the taking away of his Life: but because I was a Stranger to *Rochester*, and had heard and known of that great League that was between them; I might well think, suspect, and fear, whether he would always countenance these Projects for his restraint. These were the Answers he made to his Accusations, and after he had made many Protestations between God and his Soul, of his Innocency of this malicious plotting and abetting of *Overbury's* Death, he applied himself to the Jury, and told them thus:

I will prove unto you by many infallible and unanswerable Reasons, that I could not be Aider and Complotter with *Weston* in this Poisoning.

First, I made a free and voluntary discovery of it my self, I was not compelled: will any Man imagine, that I would discover a thing, whereof I could not clear my self? Nature is more kind than to be its own Accuser.

Besides, that my Clearness might more appear, and remain in the World without any Suspicion, I proceed and accused the Murderer *Weston*: it had been a senseless thing, and absurd in me, if I had not thought my self clear, to have accused him, who might have done as much for me.

Nay, *Weston* himself proved me to be an honest Man before the Chancellor of the Exchequer; for he confessed to him, and others being present, that he thought that the Lieutenant knew not of the Poison: and in his Examination before the Lord Chief Justice, and Serjeant *Crew*, being asked the meaning of these words, Shall I give it him now? he answers, that he thought that those which had set him on work, had acquainted the Lieutenant with their Plot.

Also I was so confident in my own Innocency, that I told my Lord Chief Justice, and my Lord *Zouch* the way to make *Weston* confess, and to discover all; which was by fair and gentle intreaty of him, and so by this means they might search the

bottom of his Heart: in this the Lord Chief Justice witnessed with him.

And after *Sir Thomas Overbury* was dead, *Weston* and Mrs. *Turner* were sent to know of me whether I had any inkling of the Death of *Sir Thomas*? What need they have made this Question, if I had known any thing thereof?

Also that which I do know concerning the Poisoning of *Sir Thomas*, was after his Death, by Relation of *Weston*; and here I am indicted as Accessary before the Fact, when I knew nothing till after the Fact.

After that he had confirmed these Reasons by sundry Proofs and Witnesses, he went further in his own Defence: If I be in the Plot, the Lord Treasurer is, I have his Letter to shew in it; he called me to his Lodging, and said the Plots you know them as well as I, the Plots were only to repair her Honour: my Wife hath the Letters from my Lord Treasurer and *Monson*; for these Plots I will run willingly to my Death, if Circumstances be knit with any manner of Fact.

He proceeded further, and told the Lord Chief Justice, that he spake not this to justify himself, so that no blemish or stain might cleave unto him; for (said he) this Visitation is sent me from God, and whether I live or die, it is the happiest Affliction to my Soul, that I ever received. I have laid open my whole Heart for Blood-guiltiness: I have not repented me other than of Errors of my Judgment, in not detecting what I suspected, and yet I do ask God forgiveness daily for lesser Sins; but of this I know no other, but the gross Error of my Judgment, in not preventing it, when I saw such Intendment and Imaginations against him.

Then he put to my Lord Chief Justice this Case: If one that knoweth not of any Plot to poison a Man, but only suspecteth, is no Actor or Contriver himself, only imagineth such a thing, Whether such a one be accessary to the Murder; for the words of the Indictment are, Abetting and Comforting with Malice: Now if there be any Man that charges me expressly, or in direct Terms, that I was an Abettor, or if the Court shall think in this Case which I have put that such a concealing without Malice, is an Abetting, I refuse not to die, I am Guilty. This was the Sum of his Speech.

Then the Lord Chief Justice replied; That to his knowledge, he spake no more concerning the Evidence than he could in Conscience justify, which was only to express the Evidence of things, and not wresting any thing in prejudice of his Life.

But further he told him, That two Days before *Sir Thomas Overbury* died, you wished his Man to bring his best Suit of Hangings to hang his Chamber, which you knew were your Fees.

And after he told him, that his Accusation of the Lord Treasurer was very malicious; for in the Examinations he had taken, and in all the exact Speech he could work for the finding out of the Truth, he saw not that honourable Gentleman any way touched.

In conclusion he told him, It is not your deep Protestations, nor your appealing to God, that can sway a Jury from their Evidence, which is not yet answered unto.

But to leave you without Excuse, and to make the Matter as clear as may be, here is the Confession of *Franklin*, (which he then drew out of his Bosom) saying, This poor Man, not knowing *Sir Jervis* should come to his Trial, this Morning he

he came unto me at Five of the Clock, and told me, That he was much troubled in his Conscience, and could not rest all that Night until he had made his Confession; and it is such a one (these were his Words) as the Eye of *England* never saw, nor the Ear of *Christendom* never heard.

The Confession of James Franklin, the 16th of November, 1615.

Mrs. Turner came to me from the Countess, and wished me from her to get the strongest Poison I could for Sir *Thomas Overbury*. Accordingly I bought seven, viz. *Aqua fortis*, *White Arsenick*, *Mercury*, *Powder of Diamonds*, *Lapis Costius*, great *Spiders*, and *Cantharides*: All these were given to Sir *Thomas Overbury* at several times. And further confesseth, That the Lieutenant knew of these Poisons; for that appeared (said he) by many Letters which he writ to the Countess of *Essex*, which I saw, and thereby knew that he knew of this Matter: One of these Letters I read for the Countess, because she could not read it herself, in which the Lieutenant used this Speech;

Madam, The Scab is like the Fox, the more he is cursed, the better he fareth; and many other Speeches. Sir Thomas never eat White Salt, but there was White Arsenick put into it: Once he desired Pig, and Mrs. Turner put into it Lapis Costius.

The *White Powder* that was sent to Sir *Thomas* in a Letter, he knew to be *White Arsenick*.

At another time he had two Partridges sent him from the Court; and Water and Onions being the Sauce, Mrs. Turner put in *Cantharides* instead of Pepper; so that there was scarce any thing that he did eat, but there was some Poison mix'd. For these Poisons the Countess sent me Rewards: She sent many times Gold by Mrs. Turner.

She afterwards wrote unto me to buy her more Poisons. I went unto her, and told her I was weary of it; and I besought her upon my Knees that she would use me no more in those Matters: But she importuned me, bad me go, and enticed me with fair Speeches and Rewards; so she overcame me, and did bewitch me.

The cause of this Poisoning, as the Countess told him, was, Because Sir *Thomas Overbury* would pry so far into their Suit, as he would put them down. He did also say that the *Toothless Maid*, trusty *Margaret*, was acquainted with the Poisoning; so was Mrs. Turner's Man *Stephen*; so also Mrs. *Horne*, the Countess's own Hand.

He saith, On the Marriage-Day of the Countess with *Somerfet* she sent him 20*l.* by Mrs. Turner; and he was to have been paid by the Countess 200*l.* per Annum during his Life.

That he was urged and haunted two hundred several times, at least, by the Countess to do it against his Conscience. He saith, she was able to bewitch any Man; and then he wrought the Love between *Rocheſter* and her; and that he had twelve several Letters from her to prosecute it, and was to have 200*l.* to continue their Loves until the Marriage; and that all Things were burnt since the first Discovery.

Those were all the Materials in *Franklin's* Confession. To this Sir *Jervis Elwes* knew not what to answer, or to make of his own Letters.

Then presently the Jury departed from the Bar, and shortly after returned, and found him Guilty;

and the Lord Chief Justice gave Judgment of Death against him.

ON Monday the 20th of *November*, 1615, he was executed at *Tower-hill*, upon a Gibbet there set of purpose, about six a-clock in the Morning.

He came on foot to the Gibbet from Sheriff *Goare's* House, between Dr. *Whyting* and Dr. *Felton*, two of his Majesty's Chaplains; and coming to the Ladder's Foot, he talked a Word or two to the Executioner.

Then he went up the Ladder four or five Steps, the Executioner sitting over his Head, upon the Top of the Gibbet: Sir *Jervis* finding the Ladder to stand too upright for his Ease, spake to have it amended, which forthwith (he coming down) was done, being fastened in the Ground; and then he went up again six Steps, where after a while, sitting easily, he said:

Nobles, Right Worshipful, and others, I am here come, as well to shew, explain, and unfold that which, at the time of my Arraignment, so many of you as were present expected: as also to shew that then I perceived I had lost the good Opinion of many, in standing so long upon my Innocency, which was my Fault, I confess, hoping now to recover the same, and your good charitable Opinions of me; which Fault I then saw not, being blinded with mine Errors, which made me account it no Sin.

But since my Condemnation, by Means and Help of these two Gentlemen here present (*the two Doctors*) I was persuaded of the Greatness of my Sin, and that it was so much the greater, by how much the more I did conceal it; which by God's Mercy I perceiving, consulted not with Flesh and Blood, but thought, in this my Condemnation, my best way for my Soul's Health, to reveal to the Omnipotent and All-seeing God, the most secret and inward Intentions and Thoughts of my deceitful Heart, not once suspecting the Pains or Dispraises of the World, which I regard not at all.

It may be some will say, that this Place was most unfit for my Execution, appointed to terrify and daunt me so much the more; but alas! I fear not Death, Place, nor any such like thing, for I account it the King's and Council's special Favour that I die here; for that I requesting the same, it was granted; whereby I see now this Tower, wherein of late I have been called to the State Business, and still might, if I had perform'd a more loyal Service to my King and Country than I did.

Next, That I was not appointed to *Tyburn*, a Place of more publick Reproach than now I am brought, being worthy to die by due and lawful Justice, in prosecuting this bloody and enormous Act against a kind Gentleman, who deserved not ill at my Hands, nor at any Man's else for aught I know.

But were it I had not trusted him, who was a most perfidious Wretch, I had not fallen into this same; which may warn all here present to take heed whom they trust in a bad Matter, and to admonish you that are trusted never to break honest and just Fidelity.

I was by divers Tricks drawn into this Action, which I received from the Earl of *Northampton*, Sir *Thomas Monson*, and none other: but had I remembered the 119th Psalm 115th Verse, and said with that holy Prophet, *Away from me ye Wicked,*

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for I will keep the Commandments of my God; then had I refused such like Tricks. Alas! now too late; there was my Fault, that I did not refuse them, and cast myself upon God's Providence, without any Dependency on Man, tho' never so honourable. Was ever any deceiv'd that did trust in God? there was never any.

Therefore I admonish you all; let none, how honourable soever he be, or the King himself, move you to any thing not agreeable to God's Word, do it not, reject it; for this was my Fault, that I had not at the first opened this Plot to his Majesty, who no doubt would most justly and righteously have punish'd the same.

You Nobles, Worshipful, and others, let my Example teach you thus much, That you prophane not *the holy Sabbath of the Lord*, nor his good Creatures, nor that you turn (by a lascivious Course) Nights into Days and Days into Nights, as I have done; and that in serving God, you must not only read the Scriptures, but join Practice therewith: for what Good else will the same effect, if the Heart be foul, bloody, and impure?

Some here knew my Forwardness therein; but I plead not Innocency that way, but cast it off, and confess, that of this great Assembly I am the most wretched Sinner.

You expect Speeches from me of some concealed Matters, and upon some of my Speeches used at the closing up of my Arraignment; but I stand here *loco Peccatoris, non Oratoris*: yet I will shew you that I have opened to my Lord Chief Justice of England, since my Arraignment, that which to the uttermost of my power I was able to verify, upon which then I took the *Body and Blood of Jesus Christ*; and in further Testimony thereof, I will now seal it with my last and dearest Breath.

Nobles and others, to see your Faces it rejoiceth me, whereby you manifest your Love in granting my Request, to be Witnesses of my Death; I see a Number of my Friends, there, there, there, [*pointing as he spake*] whom, out of their Loves, I entreat to beseech God to strengthen me in Death; tho' ignominious to some, yet to me *a bitter Cup, mingled to me with God's Mercy*, a special Favour this way to call me Home, whereas he might have taken away my Life by shooting the Bridge, or some Fall, or otherwise; and then this unrepented Sin, which I accounted no Sin (such was my Blindness) had been Damnation to me; for God is just, and the unrepented Sinner shall have no Salvation.

There is none of you present here, that knows how or in what sort he shall die, it may be in his Bed, it may be otherwise (God knows); I protest before you all, I never came over this Hill, in the chiefest of all my Prosperity, with more Joy than now I have at this present; for I now know that presently I shall behold the glorious Face and Sight of my Creator.

Take heed, and let my Example incite you to serve God truly and uprightly, better than I have done, lest a shameful Death overtake you, as it doth me, who am unworthy of my Parents Care in bringing me up.

It may be some will say I have a flinty Heart, because I shed no Tears; my Heart is Flesh as any others, and I am as faint-hearted to look Death in the Face as any others: but because my Use hath been not to shed Tears, I cannot now easily, except it be for the Loss of some great Friend; albeit now my Heart beginneth to melt within me, being

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wounded [*with that the Tears stood in his Eyes*] to see the Faces of some there present, whom I most earnestly love, and now must depart from with Shame: for worldly Regard I respect not, for well Mr. Sheriff knows, that (to shame this my sinful Flesh the more) I wish (if he had pleased) to have been brought from *Westminster* thro' the City, to have warned all Spectators how they should not escape without Judgment for Blood; for God is just.

I had almost forgotten to shew you a strange thing, which God brought to my Memory the last Night, which was this; I confess I have been a great Gamester, and especially on the other side, have wasted and played many Sums of Money, which exhausted a great Part of my Means; which I perceiving, vowed seriously (not slightly or unadvisedly) to the Lord in my Vow and Prayers, *Lord let me be hanged if ever I play any more!* which not long after is most justly come upon me, whereof you are all Eye-witnesses, because a thousand times since I brake this my Vow.

Then he espied one Sir Maximilian Dallison standing near the Gibbet on horseback, and said unto him: You know, Sir Maximilian, what gaming we have had, and how we have turned Days into Nights, and Nights into Days; I pray you in time to leave it off, and dishonour God no more by breaking his Sabbaths, for he hath always enough to punish, as you now see me, who little thought to die thus.

To which Sir Maximilian answer'd him; Sir Jervis, I am much grieved for you, and I shall never forget what you have here said; whereunto Sir Jervis said, Look to it, do then.

Further, he continued his Speech, saying, Let no Man boast of the Abilities and Gifts of Nature, which God giveth him; for therein I displeased God, being transported with over-much Pride of my Pen; which obsequious Quill of mine procured my just Overthrow, upon the knitting of my Lord Chief Justice's Speech at my Arraignment, by reason of two or three Passages at the bottom of my Letter, subscribed with my own Hand, which I utterly had forgotten, because I felt not any Sin; which when I heard, I saw none other but the *Finger of God* could thus point to this Fact; by this Means I do protest before God, and confess before you all, that I was so far overtaken by this bloody Fact, that for Satisfaction of the same, I willingly yield my dearest Blood, to the Shame of this my Carcass, not being so much grieved for the same as for others, that I wish I had hanged in Chains perpetually, so that I had revealed at first the heinous Plot.

Then should I have saved the Lives of some already dead, some in the Tower, some in the City, some over Seas; so should I have prevented many from being Widows, some from being Fatherless, and some from being Childless, among whom mine own Wife for one, and eight fatherless Children of mine, which I leave now behind me, and God knows how many be guilty of this Fact, and when it will be ended.

The Lord Chief Justice, upon closing up of my Speeches at my Arraignment, said I was an *Anabaptist*: I would to God I were as clear from all other Sins, as from that, for I always detested that Condition.

As for my Wife, some say she is a Papist; but true it is, she comes so short from a sincere Protestant, (I mean in that respect) that when she is among *Papists* she cannot well forbear them.

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Then he spake to the Sheriff, saying, If it may be permitted without Offence, I have somewhat to say, and that is this, *Is it lawful for any one here to demand of me any Questions?* To which the Sheriff answer'd, *It is not lawful;* wherefore good Sir Jervis (quoth he) forbear. Sir Jervis thereunto said, with doubling his Words, *It is enough, it is enough.*

I have here (quoth he) one that holdeth my Cloak, may I bestow somewhat on him? *The Sheriff answer'd,* That you may, Sir; whereupon he call'd the young Man to him by his Name, who stood waiting at the Ladder's Foot, and gave him out of his Pocket some Pieces of Gold, or Silver, *Here take this, spend it;* which he with bitter Tears thankfully accepted. Dr. Whyting and Dr. Felton strained Courtesy, which of them should begin a publick Prayer, fitting for this Party's Condition; one of them willed the other: but at last Dr. Whyting said, *If you Sir Jervis can perform it your self, you of all Men are the fittest to do it, with Efficacy both of Soul and Spirit:* whereupon he said, I shall do my best then; but my Hearers, I crave your charitable Construction, if with half Words, and imperfect Speeches, *I chatter like a Crane.*

His Prayer being ended, he asked if he might pray privately; the Doctor said, Yes, Sir.

Then made he a short Prayer to himself, with his Face cover'd; and after he uncover'd it, and said, *Now I have pray'd, now I must pay, I mean, do the last Office to Justice.* With that Dr. Whyting said,

Sir Jervis, you may stand one Step lower on the Ladder: To whom the Sheriff answer'd, *It is better for him, Mr. Doctor, to be where he is.* Stay (quoth the Doctor) *to the Executioner, for he hath given a Watch-word, he is in private Prayer again.* Yea, quoth he, *I know that, for he hath given me a Watch-word, when I shall perform my Office to him.*

He uncover'd his Face after his second short Prayer, and first took his leave of all the Assembly, saying, with a chearful Voice and Countenance, *I pray you pray for me, who shall never more behold your Faces.* Then he said with a great Fervency of Spirit, *Lord, I desire at thy hands this bitter Cup of Death, as the Patient receiveth a bitter Potion, not once demanding what is in the Cup, but takes and drinks it off, be it never so bitter.*

As soon then as he had audibly said, *Lord Jesus receive my Soul;* which, it seems, was the Executioner's Watch-word, he presently turn'd him off the Ladder; and being off, the Executioner's Man caught hold of one of his Feet, his own Man on the other Foot, whereby they suddenly weigh'd his Life; where hanging a small Distance of Time, his Body not once stirred, only his Hands a little stirred and moved, being tied with a little black Ribband, which a little before he had reach'd to the Executioner, putting up his Hands to him for that purpose. All which being ended, both Corps and high Gibbet were from thence removed.



XXVI. *The Trial of JAMES FRANKLIN, at the King's-Bench, for the Murder of Sir Thomas Overbury, 27th of November, 1615. Mich. 13 Jac. I.*



AFTER he had put himself for his Trial upon the Country, a Jury of Esquires and Gentlemen was impanelled to pass upon his Life. Then *Weston's* Indictment was read, and *Franklin* accused as Accessary to the Poisoning of *Sir Thomas Overbury*, and in his Examination formerly taken were these Words:

James Franklin's Confession.

He confesseth, That in a House near to *Doctors-Commons*, Mrs. *Turner* did first come unto him about the Poisoning of *Sir Thomas Overbury*, and prayed him to provide that which should not kill a Man presently, but lie in his Body for a certain time, wherewith he might languish away by little and little; at the same time she gave him four Angels, wherewith he bought a Water called *Aqua fortis*, and sent it to Mrs. *Turner*, who, to try the Operation thereof, gave it to a Cat, wherewith the Cat languished, and pitifully cried for the space of two days, and then died.

Afterwards Mrs. *Turner* sent for *Franklin* to come to the Countess, who told him, that *Aqua fortis* was too violent a Water; but what think you (quoth she) of *White Arsenick*? He told her, it

was too violent. What say you (quoth she) to *Powder of Diamonds*? He answers, I know not the Nature of that. She said, then he was a Fool; and gave him Pieces of Gold, and bade him buy some of that Powder for her. *Franklin* demands of the Countess, what was the reason she would poison *Sir Thomas Overbury*? She told him, He would pry so far into their Estate, that he would overthrow them all.

A little before *Sir Thomas Overbury's* Death, the Countess sent for *Franklin*, and shewed him a Letter written from the Lord of *Rocheſter*, wherein he read these Words; *I marvel at these Delays, that the Business is not yet dispatched.* Whereby *Franklin* thinketh in his Conscience, was meant the Poisoning of *Sir Thomas Overbury*. And in another Letter from the Lord of *Rocheſter*, was written, that *Sir Thomas* was to come out of the Tower within two days, and they all should be undone: whereupon the Countess sent for *Weston*, and was very angry with him that he had not dispatched *Sir Thomas Overbury*. *Weston* told her, that he had given him a thing that would have killed twenty Men.

Also a Fortnight after *Weston's* Apprehension, the Countess sent for *Franklin* to her House at *St. James's Park*, where he found the Earl and the Countess walking together; and as soon as he came, the

the Earl went apart into a Chamber. Then she told him, *Weston* had been sent for by a Pursuivant, and had confessed all, and we shall all be hanged: but on your Life (quoth she) do not you confess that you brought any Poison to me, or to Mrs. *Turner*: for if you do, you shall be hanged, for I will not hang for you; and, says Mrs. *Turner*, I will not hang for you both.

The Countess told him, That the Lord who was to examine him, would promise him a Pardon to confess; but believe him not, for they will hang thee when all is done.

Weston comes to *Franklin's* House, and told him, Now the Countess's Turn is serv'd, she used him unkindly, and they should be poisoned, and that two were set of purpose to poison him.

Franklin having confessed his former Examinations under his own Hand, being permitted to

speak for himself, said, That at the Entreaty of the Countess and Mrs. *Turner*, he did buy these Poisons, but protested his Ignorance what they meant to do with them; and for the rest, he referred himself to the Conscience of the Jury: who went from the Bar, and within a quarter of an hour, did return, and pronounc'd him Guilty.

Then Judge *Crook*, after a brief Exhortation, gave the Sentence of Death upon him.

The Lord Chief Justice made a short Exhortation also, with addition of these Words; That knowing as much as he knew, if this had not been found out, neither the Court, City, nor any particular Family had escaped the Malice of this wicked Cruelty.

He was afterwards executed according to the Sentence.

XXVII. The Arraignment of Sir THOMAS MONSON Kt. at the Guild-Hall of London, for the Murder of Sir Thomas Overbury, 4th of December, 1615. 13 Jac. I.



WHEN he came to the Bar, he made a Motion to the Lord Chief Justice; That, whereas he had written unto his Lordship, to ask the Lord Treasurer two Questions, which my Lord would do; he desired then an Answer, and that Sir *Robert Cotton* might be present.

After the Questions were read, he was indicted for conspiring with *Weston* to poison Sir *Thomas Overbury*; to which he pleaded, Not Guilty, and would be tried by God and his Country.

The Lord Chief Justice brake up the Proceedings, and made a Speech to this effect, viz.

He saw a great Assembly, and tho' it had been shewed them often, yet it could not be said too often, that the City was much bound to God, and to his Deputy on Earth the King, his Master, for their great Deliverance, and exact Justice; for God was always just; and for the King, tho' they were never so high in Place, nor so dear to him, tho' his own Creatures, yet his Justice is dearer to him, for which we are upon our Knees to give him Thanks; as also for so mild a Proceeding in so great an Affair: for neither the great Man's House in the Tower, nor his Lady's House, nor this Prisoner's House (to my knowledge) have been searched, neither hath this Prisoner been committed to the Sheriff, but to an Alderman, a Man who of all others might be most kind to him; for, as I take it, lest I should be mistaken, Sir *Francis Anderson* married Sir *Stephen Somes's* Daughter, and Sir *Thomas Monson* married Sir *Francis Anderson's* Sister. I never new the like Favour, nor do I like it so well, but do declare it as a gentle Proceeding from the King.

For other things, I dare not discover Secrets; but tho' there was no House searched, yet such Letters were produced, which make our Deliverance as great, as any that happened to the Children of *Israel*.

For *Weston* and Mrs. *Turner*, they died penitent-
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ly, as is worthy to be written in Letters of Gold; and for the Lieutenant, tho' with great Imprecations, and a high hand he denied, yet for the great Glory of the King's Justice, he died most penitently and resolutely: this is spoken to the Praise of God, that hath crowned these just Proceedings, tho' not having need of it, *Justitia confirmata non eget Autoritate*; wherein we may see the great Hand of God, for that Morning the Lieutenant was arraigned, *Franklin* came to me as one afflicted in Conscience, not knowing of his Arraignment, with Evidence against him: which being delivered to the Jury, one of them heard him say, *Then Lord have mercy on me*. But for this present, *Non est cunctatio longa de vita hominis*; therefore he must be conveyed to the Tower as a safer Place, till further Order be taken. Then the Lord Chief Justice addressed his Speech to Sir *Thomas Monson*, saying,

Whereas you name my Lord-Treasurer, every Man's Fame is dear unto him, and he hath ever been honourable, you shall hear what he hath answered to my Letter.

'After my hearty Commendations, I have heard that Sir *Thomas Monson* thinks I can clear him, but I know nothing of him to accuse or excuse him; but I hope he is not guilty of so foul a Crime.'

You hear (quoth he) that he will neither accuse you, nor excuse you.

Monson. I do not accuse the Lord-Treasurer, nor calumniate him, for I know he is very honourable, but I desire to have an Answer to my two Questions.

Ld. Ch. Just. You shall hear more of that when the time serveth; do you as a Christian, and as *Joshua* bad *Achan*, *My Son acknowledge thy Sin, and give Glory to God*.

Monson. If I be guilty, I renounce the King's Mercy and God's; I am innocent.

Ld. Ch. Just. There is more against you than you know of.

Monson. If I be guilty, it is of that I know not.

Ld. Ch. Just. You are Popish, that Pulpit was the Pulpit where *Garnet* died, and the Lieutenant as firmly; I am not superstitious, but we will have another Pulpit.

Doderidge. It is an Atheist's word to renounce God's Mercy, you must think the Change of your Lodging means somewhat.

Hyde. I have looked into this business, and I protest my Lord, he is as guilty as the guiltiest.

Monson. There was never Man more innocent than I; in this I will die innocent.

After this Speech, certain Yeomen of his Majesty's Guard, attending for that purpose, conducted him to the Tower, where between the Yeomen and the Warders, there was some Contention about his Entertainment.

The Lord Chief Justice having at this Trial let drop some Insinuations that *Overbury's* Death had somewhat in it of Retaliation, as if he had been guilty of the same Crime against Prince *Henry*, Sir *Thomas Monson's* Trial was laid aside, and himself soon after set at liberty, and the Lord Chief Justice was rebuked for his Indiscretion, and before the next Year expired, remov'd from his Post. *



XXVIII. *The Trial of the Lady FRANCES Countess of SOMERSET, for the Murder of Sir Thomas Overbury, the 24th of May 1616.* 14 Jac. I.

The Summons of the Peers to the Trial.



AFTER our hearty Commendations to your Lordship; Whereas the King's Majesty has resolv'd, that the Earl of *Somerset*, and the Countess his Wife lately indicted of Felony, for the Murder and Poisoning of Sir *Thomas Overbury*, then his Majesty's Prisoner in the Tower, shall now receive their lawful and publick Trial, by their Peers, immediately after the end of this present *Easter Term*; at the Trial of which noble Personages your Lordship's Presence, as being a Peer of the Realm, and one of approv'd Wisdom and Integrity, is requisite to pass upon them: These are to let your Lordship understand, that his Majesty's Pleasure is, and commandeth by these our Letters, that your Lordship make your repair to the City of *London*, by the eleventh Day of the Month of *May* following, being some few days before the intended Trial; at which time your Lordship shall understand more of his Majesty's Pleasure. So not doubting of your Lordship's Care to observe his Majesty's Directions, we commit you to God.

Your Lordship's

Very loving Friends,

From Whitehall
this 24th of
April, 1616.

G. Cant.
T. Ellesmere Canc.
Fenton.
E. Watton.
Tho. Lake.
Lord *Darcy*, of the South.
C. Edmonds.
E. Worcester.
Lenox.
P. Herbert.
Ralph Winwood.
Fulke Grevyl.
Jul. Caesar.

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* *Bacon's Works*, Vol. I. p. 87.

The Names of the Peers.

The Earl of *Worcester*, Lord Privy-Seal.
The Earl of *Pembroke*, Lord Chamberlain.
The Earl of *Rutland*.
The Earl of *Suffex*.
The Earl of *Montgomery*.
The Earl of *Hertford*.
The Lord Viscount *Lisle*.
The Lord *Zouch*, Warden of the *Cinque-Ports*.
The Lord *Willoughby* of *Eresby*.
The Lord *Delaware*.
The Lord *Dacres*, of the South.
The Lord *Mounteagle*; who being sick, went away before Judgment.
The Lord *Wentworth*.
The Lord *Rich*.
The Lord *Willoughby* of *Parham*.
The Lord *Hunsdon*.
The Lord *Russel*, the second Day was not there.
The Lord *Compton*.
The Lord *Norris*.
The Lord *Gerrard*.
The Lord *Cavendish*.
The Lord *Dormer*.
Thomas Lord Ellesmere, Chancellor of England,
Lord High-Steward *hac vice*.

His Assistants in the Commission there present.

Sir *Edward Coke*, Lord Chief Justice of England.
Sir *Henry Hubbart*, Lord Chief Justice of the Common-Pleas.
Sir *Lawrence Tanfield*, Lord Chief Baron of the Exchequer.
Judge *Altham*, one of the Barons of the Exchequer.
Judge *Crooke*, one of the Judges of the King's-Bench.

Judge

Judge *Doderidge*, one of the Judges of the *King's-Bench*.

Judge *Houghton*, one of the Judges of the *King's-Bench*.

Judge *Nicholls*, one of the Judges of the *Common-Pleas*.

The Council that were there the first Day.

Sir *Francis Bacon*, the King's Attorney-General.
Serjeant *Montague*.

Serjeant *Crew*.

Sir *Henry Yelverton*, the King's Solicitor.

Francis Moor, the Queen's Serjeant.

Sir *Lawrence Hyde*, the Queen's Attorney.

Mosley, Attorney of the Dutchy.

Sir *John Davis*, the King's Serjeant.

Mr. *Walter*, the Prince's Attorney.

Mr. *Finch*, Keeper of the Records of Attainders.

More the second Day.

Serjeant *Thomas Moor*.

Serjeant *Finch*.

The Peers above-named were all that appear'd at any time at the Trial, tho' there were six others summon'd, but why they absented themselves is not known; and those were,

The Duke of *Lenox*, Lord Steward of the Household.

Earl of *Huntingdon*.

Lord *Darcy of Menell*.

Lord *Eure*.

Lord *Hunsdon*.

Lord *Darcy of Chiche*.

The Form of their Sitting, and their Ceremonies.

When my Lord Chancellor, who for this time was High-Steward of *England*, came into the Court, there came before him six Serjeants at Arms, with their Maces; Sir *George Coppin* with his Patent; Sir *Richard Coningsby* with his white Staff; Mr. *Manwaring* with the great Seal; he himself, at the upper end of the Court, sitting under a Cloth of Estate; on both Hands of him the Peers, under them the Judges; at the farther end the King's Counsel, below the Judges; on one side *Finch*, Keeper of the Records of Attainders; the Clerk of the Crown and his Deputy, in the midst of the Court, the Serjeant-Crier standing by him; Sir *Richard Coningsby*, Sir *George Coppin*, the Seal-bearer, &c. at my Lord Steward's Feet. The Prisoner at the Bar behind the King's Counsel, the Lieutenant of the Tower in a little place adjoining to the Bar.

All being silent, Sir *George Coppin* rises and delivers the Patent to the Lord High Steward, upon his Knee; he receives it and kisses it, then redelivers it to Mr. *Fenshaw*, who takes it kneeling. Then the Serjeant-Crier makes a Proclamation in the Lord High-Steward's Name, to keep silence; then Mr. *Fenshaw* reads the * Commission, which bears date the 10th of *May*: then there is another O yes, to certify my Lord Steward, whether

Weston were convicted as Principal, for the Murder of Sir *Thomas Overbury*. Then the Lord Chief Justice delivers a † Schedule indorsed with a Certificate of four Judges of the *King's-Bench*, and others the Commissioners. This *Fenshaw*, turning to my Lord Steward, reads. A third O yes, for certifying of other Indictments: My Lord *Coke* delivers another Schedule indors'd with the Certificate of my Lady *Somerset's* Indictment; which *Fenshaw*, as before, read. A fourth O yes, for *Walter Lee*, Serjeant at Arms, to return the Precept for the Peers of *Frances Countess of Somerset*; which accordingly, after his three Reverences to the Lord High-Steward, he delivered to Mr. *Fenshaw*: he reads the Indorsement. A fifth O yes, to call the Lords summon'd by the Command of the Lord High-Steward, to answer to their Names, which they accordingly did, beginning at the first; and as every one was named they put off their Hats, and stood up till the next was named. A sixth O yes to the Lieutenant of the Tower, to return his Precept, and bring the Prisoner to the Bar; which he did, and gave his Precept to the Serjeant, who gave it to Mr. *Fenshaw*, and he, as before, read the Indorsement. The Prisoner made three Reverences to his Grace and the Peers; she was in black Tammel, a Cypress Chaperon, a Cobweb Lawn Ruff and Cuffs.

L. H. S. My Lords, the Reason why you be call'd hither this day, is to sit as Peers of *Frances Countess of Somerset*.

Mr. *Fenshaw*, Clerk of the Crown. *Frances Countess of Somerset*, hold up thy Hand.

She does so, and held it up till Mr. Lieutenant told her she might put it down; and then he read the Indictment, containing *Weston's* Accounts, in the poisoning of Sir *Thomas Overbury*, and her abetting of him, the 8th of *May* 1613.

The Countess of *Somerset*, all the while the Indictment was reading, stood, looking pale, trembled, and shed some few Tears; and at the first naming of *Weston* in the Indictment, put her Fan before her Face, and there held it half cover'd till the Indictment was read.

Mr. *Fenshaw*. *Frances Countess of Somerset*, what sayst thou? Art thou guilty of this Felony and Murder, or not guilty?

The Lady *Somerset* making an Obeisance to the Lord High Steward, answer'd Guilty, with a low Voice, but wonderful fearful.

My Lady, upon her Arraignment, having pleaded ‖ Guilty, the Proceeding after was thus:

Mr. Attorney. May it please your Grace, my Lord High Steward of *England*, I am glad to hear this Lady's so free Acknowledgement, for Confession is noble. Those that have been formerly indicted at their Arraignment, persisted in denial, as *Weston*, *Elwes*, *Franklin* and *Turner*; but you see this Lady's Humility and Repentance by so pleading; and certainly she cannot but be a Spectacle of much Commiseration, if you either respect the Sex, a Woman, or her Parentage, honourable; but this Day and To-morrow is to crown Justice: the Mercy-Seat is the inner part of the Temple, the Throne publick, and therefore I shall now only pray a Record of the Confession and Judgment: but since the Peers are met, for Honour's fake

* See the Commission in Rym. Fœd. Vol. XVI. pag. 781.
‖ 3 Co. Inst. 50. Bacon's Works, Vol. I. p. 87.

† 3 Co. Inst. 135, 136.

fake it is good to declare the King's Justice. This is the second time since the King's coming, these thirteen Years, that any Peers have been arraign'd, and both these times your Grace had the Place of High-Steward; the first were *Grey* and *Cobham*, and tho' they were convicted, yet Execution followed not. No noble Blood hath yet been spilt since his Majesty's Reign. The first was Revenge of Treason amongst Malecontents; and this of a particular Offence to a private Subject, against those that have been so high in the King's Grace and Favour, and therefore deserve to be written in a Sun-beam. But his being the best Master in the World, hinders him not from being the best King; for he can as well plain a Hill, as raise a Valley: a good Lesson to put to my Lords the Peers; he is Lieutenant to him that is no Respector of Persons. This that I should now speak of, may be reduced to that which was acted in the Vault, and since upon the Stage: The first I will not now enter into, because I will neither grieve a Lady that is present, nor touch a Lord that is absent; my Duty requires it not, and my Humanity forbids it. For that which hath been upon the Stage, which is the Theatre of God's Justice, you shall understand that which hath been worthily acted by the King, in this noble Work of Justice, and right well by his Ministers. *Overbury* died poisoned the 15th of September 1613, in the Tower of London: He was no sooner dead, but there was a certain Rumour and Muttering, that was *Vox Populi*, that *Overbury* came strangely to his Death: And in that time, on the contrary hand, there was another Rumour, but that was *Vox Diaboli*, that he died of a foul Disease, so foul a one as is not fit for me to name. But for two years after this, tho' *Overbury's* Blood cried for Revenge, *Vox Dei* was not heard. *Gloria Dei celare, Regis perscrutare rem*: It is the Glory of God to conceal a thing, of a King to find it out; yet all the while God so dazzled the Eyes of these two great Procurers, and their Instruments, that the first look'd not about them, the other fled not. About the beginning of the last Progress it first brake forth; and as all Murders are strange in their Discovery, so this was miraculous, for it came out in a Compliment thus: My Lord of *Shrewsbury*, who is now with God, commended Sir *Jervis Elwes* to a Counsellor of Estate; and it was by him that Sir *Jervis*, in respect of the good Report he had heard made of his Honour and Worth, desired to be made known unto him. That Counsellor answered, That he took it for a Favour from him; but withal added, there lies a kind of heavy Imputation on him, about *Overbury's* Death: I could wish he would clear himself, and give some Satisfaction in the Point. This my Lord *Shrewsbury* related back, and presently *Elwes* was struck with it, and makes a kind of Discovery, that some Attempts were undertaken against *Overbury*, but took no effect, as check'd by him. Tho' the truth be, he lack'd rather Fortitude in the Repulse, than Honesty. This Counsellor weighing well this Narration from *Elwes*, acquainted the King with the adventure; who commanded presently that *Elwes* should set down his Knowledge in Writing, which accordingly he did, but still reserving himself within his own Compass, not to touch himself, endeavouring rather to discover others than any else should undertake that Office, and so accuse him. The King still endeavours

to search the Truth of this Business, gives Direction for the Examination of the Truth of it, commits it to certain Counsellors; they pick something out of *Weston*; then the further Enquiry is deliver'd over to my Lord *Coke*, who in this Cause was very painful, took two or three hundred Examinations: but when he found it might touch upon greater Persons, then he desired some others might be join'd with him, which was accordingly granted; namely, the Lord Chancellor, Lord Steward, the Lord *Zouch*. But then there were no Practices left untry'd for the Suppression of the Discovery; *Weston* was solicited to stand mute, but at last this dumb Devil was cast out. Then follows *Elwes*, *Turner*, *Franklin*, all of which were Actors in this Tragedy, without Malice, but no Authors. Now when this Lady comes to her part, she meets Justice in the way, by Confession, which is the Corner-stone either of Mercy or Judgment; yet it is said, that Mercy and Truth be met together. Truth you have in her Confession, and that may be a Degree to Mercy, which we must leave to him in whose Power it resides; in the mean time this Day must be reserved for Judgment. Now to conclude, and give you an Account of the often Procrastinations in this Business; the first was due to Humanity, her Child-birth; the second was for Reason of State; and the last had a grave and weighty Cause. Those Directions the King at the first gave written with his own Hand, for the Examination of his Business, I desire may be read.

The King's Instructions read.

There be two things in this Cause to be try'd, and the Verity can be but in one of them: First, Whether my Lord of *Somerset* and my Lady were the Procurers of *Overbury's* Death; or, That this Imputation hath been by some practised to cast an Aspersion upon them. I would first have you diligently enquire of the first; and if you find them clear, then I would have you as carefully look after the other, to the intent such Practices may be discover'd, and not suffered to pass with Impunity.

Mr. Attorney. There be other Directions in these Instructions, by way of Interrogatories, that are not now necessary to be read.

L. H. S. Let the Lords the Peers view these Directions from the King.

Ld. Coke. None of these Interrogatories, which the King desired there should be Examinations upon, came away empty; and whatsoever Whispers there be abroad of the Death of *Weston*, they all (some before the hour of their Death) confess'd the Fact, and died penitent; and if need should require, I have brought their Confessor along, (namely, Dr. *Whyting*.)

L. H. S. My Lords, you see, and have heard those Directions under the King's Hand; give the Glory to God, and Honour to the King.

Mr. Attorney. May it please your Grace, &c. whereas *Frances Countess of Somerset* hath been indicted as Accessary before the Fact, of the wilful Poisoning and Murder of Sir *Thomas Overbury*; upon her Indictment, she hath been arraign'd; upon her Arraignment, pleaded guilty: I desire that her Confession may be recorded, and Judgment given against the Prisoner.

Fenshaw. *Frances Countess of Somerset*, hold up thine Hand: Whereas thou hast been indicted, arraign'd,

arraign'd, and pleaded guilty, as Accessary before the Fact, of the wilful Poisoning and Murder of Sir Thomas Overbury; what canst thou now say for thy self, why Judgment of Death should not be pronounced against thee?

C. of Som. I can much aggravate, but nothing extenuate my Fault; I desire Mercy, and that the Lords will intercede for me to the King. (This she spake humbly, fearfully, and so low, the Lord Steward could not hear it, but Mr. Attorney related it.)

Mr. Attorney. The Lady is so touch'd with Remorse and Sense of her Fault, that Grief surprizes her from expressing of her self; but that which she hath confusedly said, is to this effect, That she cannot excuse herself, but desires Mercy.

Sir Richard Coningsby fitting before the Lord

High Steward, rises, and upon his Knee delivers him the White Staff.

L. H. S. Frances Countess of Somerset, whereas thou hast been indicted, arraigned, pleaded guilty, and that thou hast nothing to say for thy self, it is now my part to pronounce Judgment; only thus much before, Since my Lords have heard with what Humility and Grief you have confessed the Fact, I do not doubt they will signify so much to the King, and mediate for his Grace towards you: but in the mean time, according to the Law, the Sentence must be this, That thou shalt be carried from hence to the Tower of London, and from thence to the place of Execution, where you are to be hang'd by the Neck till you be dead; and the Lord have Mercy upon your Soul.



XXIX. *The Trial of ROBERT CARR * Earl of Somerset, for the Murder of Sir Thomas Overbury. May 25, 1616. 14 Jac. I.*

Ser. Cryer.



Yes, my Lord High-Steward of England purposes this Day to proceed to the Trial of Robert Earl of Somerset. O yes, Whoso-

ever have any Indictments touching this Cause, publickly give them in.

My Lord Coke delivers in the Indictment of my Lord of Somerset to Mr. Fenshaw indors'd.

Ser. Cryer. O yes, *Walter Lee*, Serjeant at Arms, return the Precept for the Lords, which thou hast warn'd to be here this Day. O yes. [He calls every Lord by his Name, and they stand up as they be called.]

My Lord High Steward excuses the Lords Mounteagle and Russel of their Absence, in respect of their Sicknes.

Serj. Cryer. O yes, Lieutenant of the Tower, return thy Precept, and bring the Prisoner to the Bar. Which he did, and my Lord makes three Reverences to the Lord High Steward and the Lords.

Mr. Fenshaw. Robert Earl of Somerset, hold up thy Hand.

He holds it up so long, until Mr. Lieutenant bad him hold it down. The Indictment is read, containing *Weston's* Actions in the poisoning of Sir Thomas Overbury, and his abetting of him, the 8th of May 1613.

My Lord of Somerset was apparelled in a plain black Sattin Suit, laid with two Sattin Laces in a Seam; a Gown of Unent Velvet lined with Unshorn; all the Sleeves laid with Sattin Lace; a pair of Gloves with Sattin-tops; his George about his Neck, his Hair curl'd, his Visage pale, his Beard long, his Eyes sunk in his Head. Whilst his Indictment was reading, he three or four times whisper'd to the Lieutenant.

* 3 Co. Inst 50. Bacon's Works, Vol. I. p. 87.

Mr. Fenshaw. Robert Earl of Somerset, What sayst thou, art thou Guilty of this Felony and Murder whereof thou standest indicted, or Not Guilty?

My Lord of Somerset making an Obeisance to the Lord High Steward, answered, Not Guilty.

Mr. Fenshaw. How wilt thou be try'd?

Ld. Som. By God and the Country; but presently recalling himself, said, by God and my Peers.

Ser. Cryer. O yes, all you that be to give in Evidence against Robert Earl of Somerset, who stands now at the Bar upon his Deliverance, make your Appearance, and you shall be heard what you have to say against him.

My Lord of Somerset, upon his Arraignment, having pleaded Not Guilty, the Proceeding after was thus.

† Lord High Steward. Robert Earl of Somerset, you have been arraigned, and pleaded Not Guilty; now I must tell

† Ellesmere, Lord Chancellor.

you, whatsoever you have to say in your own Defence, say it boldly, without Fear; and tho' it be not the ordinary Custom, you shall have Pen and Ink to help your Memory: but remember that God is the God of Truth; a Fault defended is a double Crime; hide not the Verity, nor affirm an Untruth; for, to deny that which is true, increases the Offence; take heed lest your Wilfulness cause the Gates of Mercy to be shut upon you. Now for you, my Lords the Peers, you are to give diligent Attention to that which shall be said; and you must not rest alone upon one piece of Evidence, but ground your Judgment upon the whole. This moreover I would have you remember,

ber, that tho' you be not sworn as common Juries, upon a Book, yet that you are ty'd in as great a Bond, your own Honour and Fidelity, and Allegiance to the King: and thus I leave the whole Proceeding to your Censures. And for you that be of the King's Counsel, free your Discourse from all Partiality, but let Truth prevail, and endeavour to make it appear.

Serj. Montague. My Lord High Steward of *England*, and you my Lords, this cannot but be a heavy Spectacle unto you, to see that Man that not long since in great Place, with a white Staff, went before the King, now at this Bar hold up his Hand for Blood; but this is the Change of Fortune, nay, I might better say, the Hand of God, and Work of Justice, which is the King's Honour.

But now to the Fact; *Robert Earl of Somerset* stands indicted as Accessary before the Fact, of the wilful Murder and Poisoning of *Sir Thomas Overbury*, done by *Weston*, but procur'd by him; this, my Lord, is your Charge. The Indictment hath been found by Men of good Quality, seventeen Knights and Esquires of the best Rank and Reputation, some of whose Names I will be bold to read unto you; *Sir Thomas Fowler*, *Sir William Slingsby*, and fifteen more; these have return'd *billaver*. Now an Indictment is but an Accusation of Record in Form thus: *Weston*, at four several times, gave *Overbury* four several Poisons, the first, *May* the 9th, 1613. that was *Rosalgar*, carrying this Poison in one Hand, and his Broth in the other; the second was *June* following, and that was *Arsenick*; the third was *July* the 10th following, and that was *Mercury Sublimate* in Tarts; the fourth was *September* the 14th following, and that was *Mercury Sublimate* in a Clyster, given by *Weston* and an Apothecary yet unknown, and that kill'd him. Of these four several Poisons ministred by *Weston*, and procur'd by you, the 15th of *September* 1615. *Overbury* died, and the Author is ever worse than the Actor. The first Poison laid in the Indictment, that *Weston* gave *Sir Thomas Overbury*, was the 9th of *May*; and therefore we say, That the Lord *Somerset*, the 8th of *May*, hir'd, counsel'd and abetted *Weston* to this Fact: and as this Day, my Lord, I do charge you for a King, so heretofore King *David* was charg'd in the like Case, for the Murder of *Uriah*; and tho' *David* was under his Pavilion, and *Uriah* in the Army, yet *David* was the Cause of his Murder: So tho' you were in the King's Chamber, and *Overbury* in the Tower, yet it was you that kill'd him. It was a stronger Hand than *Weston's* that wrought this. The Proof, Mr. Attorney will follow; and I will now conclude with two Desires to the Peers: First, That they will not expect visible Proofs in the Work of Darkness: The Second is, That whereas in an Indictment there be many things laid only for Form, you are not to look that the Proof should follow that, but only that which is substantial; and the Substance must be this, Whether my Lord of *Somerset* procur'd or caus'd the Poisoning of *Sir Thomas Overbury*, or no?

Ld. High Steward. That indeed, my Lords, is that which you are to look after, Whether my Lord of *Somerset* was the Cause of his Poisoning, or not.

Ld. Coke. This was very well mov'd by Mr. Recorder, and the Law is clear in this Point, that the Proof must follow the Substance, not the Form.

The Judges all rising, affirm'd this to be true.

* *Attor. Gen.* May it please your Grace, my Lord High Steward of *England*, and you my Lords the Peers, you have here before you *Robert Earl of Somerset* to be tried for his Life, concerning the procuring and consenting to the Poisoning of *Sir Thomas Overbury*, then the King's Prisoner in the Tower of *London*, as an Accessary before the Fact.

I know your Honours cannot behold this noble Man, but you must remember the great Favours which the King hath conferred on him, and must be sensible, that he is yet a Member of your Body, and a Peer, as you are; so that you cannot cut him off from your Body, but with Grief: and therefore you will expect from us that give in the King's Evidence, sound and sufficient Matter of Proof to satisfy your Honours Consciences.

As for the Manner of the Evidence, the King our Master (who amongst other his Virtues, excelleth in that Virtue of the Imperial Throne, which is Justice) hath given us Command, that we should not expatiate nor make Invectives, but materially pursue the Evidence, as it conduceth to the Point in question.

A Matter, that (tho' we are glad of so good a Warrant) yet we should have done of our selves: For far be it from us by any strains of Wit or Arts, to seek to play Prizes, or to blazon our Names in Blood, or to carry the Day otherwise than upon sure Grounds; we shall carry the Lanthorn of Justice (which is the Evidence) before your Eyes upright, and so be able to save it from being put out with any ground of Evasion or vain Defence, not doubting at all, but that the Evidence it self will carry that Force, as it shall need no Advantage or Aggravation.

First, my Lords, The Course that I will hold in delivering of that which I shall say (for I love Order) is this:

1st, I will speak somewhat of the Nature and Greatness of the Offence, which is now to be tried, not to weigh down my Lord with the Greatness of it, but rather contrariwise to shew, that a great Offence needs a good Proof. And that the King, howsoever he might esteem this Gentleman heretofore as the Signet upon his Finger, (to use the Scripture Phrase) yet in such a Case as this, he was to put it off.

2^{dly}, I will use some few words touching the Nature of the Proofs, which in such a case are competent.

3^{dly}, I will state the Proofs.

And, lastly, I will produce the Proofs, either out of Examination and Matters of Writing, or Witnesses *viva voce*.

For the Offence it self, it is of Crimes, next unto High-Treason, the greatest; it is the foulest of Felonies. It hath three Degrees; First, It is Murder by Impositionment: Secondly, It is Murder committed upon the King's Prisoner in the Tower: Thirdly, I might say, That it is Murder under the colour of Friendship; but that is a Circumstance moral, and therefore I leave that to the Evidence it self.

For Murder, my Lords, the first Record of Justice which was in the World, was Judgment upon a Murderer, in the Person of *Adam's* First-born *Cain*: and tho' it was not punished by Death, but Banishment, and Marks of Ignominy, in respect of the Population of the World; yet there was

a severe Charge given, that it should not go unpunished.

So it appeareth likewise in Scripture, that the Murder of *Abner* by *Joab*, tho' it were by *David* respited in respect of great Services past, or reason of State, yet it was not forgotten. But of this I will say no more, because I will not discourse; it was ever admitted and ranked in God's own Tables, that Murder is, of Offences between Man and Man, next unto High-Treason, and Disobedience to Authority, (which sometimes have been referred to the first Table because of the Lieutenantcy of God in Princes) the greatest.

For Impositionment, I am sorry it should be heard of in our Kingdom; it is not *nostri generis, nec sanguinis peccatum*; it is an *Italian Comfit* for the Court of *Rome*, where that Person that intoxicateth the Kings of the Earth, is many times really intoxicated and poisoned himself. But it hath three Circumstances, which make it grievous, beyond other matters.

The first is, That it takes a Man away in full Peace, in God's and the King's Peace, that thinks no harm, but is comforting of Nature with Refection and Food; so that, as the Scripture saith, his Table is made a Snare.

The second is, That it is easily committed, and easily concealed; and on the other side, hardly prevented, and hardly discovered: For Murder by Violence, Princes have Guards, and private Men have Houses, Attendants and Arms; neither can such Murder be committed, but *cum sonitu*, with some overt and apparent Acts, that may discover and trace the Offenders: but for Poison, the Cup it self of Princes will scarce serve in regard of many Poisons that neither discolour nor distaste; it comes upon a Man when he is careless, and without suspicion, and every day a Man is within the Gates of Death.

And the last is, Because it concerneth not only the Destruction of the maliced Man, but of every Man, *Quis modo tutus erit?* For many times the Poison is prepared for one, and is taken by another, so that Men die other Men's Deaths, *Concidit infelix alieno vulnere*; and it is, as the *Psalmist* calleth it, *Sagitta nocte volans*, the Arrow that flieth by Night, that hath no Aim nor Certainty. And therefore if any man shall say to himself, Here is great talk of Impositionment, but I am sure I am safe, for I have no Enemies, neither have I any thing another Man should long for: Why, that is all one, he may sit next him at the Table, that is meant to be imposed, and pledge him of his Cup: As we may see in the Example of 21 *Henry VIII.* That where the Purpose was to poison one Man, there was Poison put into Barm or Yeast, and with that Barm, Pottage or Grewel was made, whereby sixteen of the Bishop of *Rocheſter's* Servants were poisoned; nay, it went into the Alms-Basket likewise, and the Poor at the Gate were poisoned. And therefore with great Judgment did the Statute made that Year, touching this Accident, make Impositionment High-Treason, because it tends to the dissolving of Human Society; for whatsoever Offence doth so, is in the nature thereof High-Treason.

Now for the third Degree of this particular Offence, which is, that it is committed upon the King's Prisoner, who was out of his own Defence, and merely in the King's Protection, and for whom the King and the State were a kind of Re-

spondent: it is a thing that aggravates the Fault much, for certainly (my Lord of *Somerſet*) let me tell you this, that Sir *Thomas Overbury* is the first Man that was murdered in the Tower of *London*, save the Murder of the two young Princes, by the appointment of *Richard* the Third.

Thus much of the Offence; now to the Proofs.

For the matter of Proofs, you may consider that Impositionment, of all Offences, is most secret, even so secret, that if in all cases of Impositionment, you should require Testimony, you should as good proclaim Impunity.

Who could have impeached *Livia* by Testimony, for the poisoning of her Figs upon the Tree, which her Husband was wont to gather with his own Hands? Who could have impeached *Parasetis*, for the poisoning of the one side of the Knife she carried with her, and keeping the other side clean, so that her self did eat of the same piece of Meat that they did whom she did impose?

These Cases are infinite, and need not to be spoken of the Secrecy of Impositionment; but wise Men must take upon them, in these secret Cases, *Solomon's* Spirit, that when there could be no Witnesses, collected the Act by the Affection: but yet we are not at our Cause, for that which your Lordships are to try, is not the Act of Impositionment, for that is done to your hands; all the World, by Law, is concluded to say, that *Overbury* was poisoned by *Weston*: but the Question before you is, of the Procurement only, and, as the Law termeth it, as Accessary before the Fact; which abetting is no more, but to do or use any Act or Means which may aid or conduce to the Impositionment.

So that it is not the buying, nor the making of the Poison, nor the preparing, nor confecting, nor commixing of it, nor the giving or sending, or laying of the Poison, that are the only Acts that do amount unto the Abetment: but if there be any other Act or Means done, or used, to give Opportunity of Impositionment, or to facilitate the Execution of it, or to stop or divert any Impediments that might hinder it, and that it be with an intention to accomplish and achieve the Impositionment; all these are Abetments and Accessaries before the Fact. As for Example, if there be a Conspiracy to murder a Man, as he journeyeth on the way, by Invitation, or by colour of some Business; and another taketh upon him to dissuade some Friend of his Company, that he is not strong enough to make his Defence; and another hath a part to hold him in talk till the first Blow be given: all these, my Lords, without scruple, are Accessaries to the Murder, altho' none of them give the Blow, nor assist to give the Blow.

My Lords, He is not the Hunter alone, that lets slip the Dog upon the Deer, but he that lodgeth him and hunts him out, or sets a Train or Trap for him, that he cannot escape, or the like. But this, my Lords, little needeth in this Case; for such a Chain of Acts of Impositionments as this, I think, was never heard nor seen. And thus much of the Nature of the Proofs.

To descend to the Proofs themselves, I shall keep this course:

First, I will make a Narration of the Fact it self.

Secondly, I will break and distribute the Proofs, as they concern the Prisoner. And,

Thirdly, According to the Distribution, I will produce them, and read them, to use them. So

that there is nothing that I shall say, but your Lordship shall have three Thoughts or Cogitations to answer it.

1st, When I open it, you may take your aim.

2^{dly}, When I distribute it, you may prepare your Answers without Confusion. And,

3^{dly}, When I produce the Witnesses, or the Examinations themselves, you may again ruminate, and re-advise to make your Defence.

And this I do, because your Memory and Understanding may not be oppressed or overladen with length of Evidence, or with confusion of Order; nay more, when your Lordship shall make your Answer in your time, I will put you in mind, where cause shall be, of your Omission.

First therefore, Sir *Thomas Overbury*, for a time, was known to have great Interest and strait Friendship with my Lord of *Somerset*, both in his meaner Fortunes, and after; insomuch that he was a kind of Oracle of Direction unto him, and if you will believe his own Vaunt (being indeed of an insolent and *Thraasonical* Disposition) he took upon him that the Fortunes, Reputation and Understanding of this Gentleman (who is well known to have an able Teacher) proceeded from his Company and Counsel: and this Friendship rested not only in Conversation and Business at Court, but likewise in Communication of Secrets of State; for my Lord of *Somerset* exercising at that time by his Majesty's special Favour and Trust, the Office of Secretary, did not forbear to acquaint *Overbury* with the King's Packets and Dispatches from all parts of *Spain*, *France*, and the *Low-Countries*: and this then not by Glimpes, or now and then rounding in the Ear for a Favour, but in a settled manner; Packets were sent, sometimes opened by my Lord, sometimes unbroken unto *Overbury*, who perused them, copied them, registered them, made Table-talk of them, as they thought good. So I will undertake the time was, when *Overbury* knew more of the Secrets of State, than the Council-Table did; nay, they were grown to such Inwardness, as they made a Play of all the World besides themselves, so as they had Ciphers and Jargons for the King and Queen, and Great Men of the Realm; things seldom used, but either by Princes to their Confederates, or at the least, by such as practise and work against, or, at the least, upon Princes.

But understand me, my Lord, I shall not charge you with Disloyalty at this day; and I lay this for a Foundation, That there was great Communication of Secrets between you and Sir *Thomas Overbury*, and that it had relation to Matters of State, and the great Causes of this Kingdom.

But, my Lords, as it is a Principle in Nature, that the best Things are, in their Corruption, the worst, and the sweetest Wine maketh the fourest Vinegar; so it fell out with them, that this Excess, as I may say, of Friendship, ended in mortal Hatred on my Lord of *Somerset*'s part.

I have heard my Lord Steward say sometimes in the Chancery, that Frost and Fraud end foul; and I may add a third, and that is, the Friendship of ill Men, which is truly said to be Conspiracy, and not Friendship. For it fell out some twelve months or more before *Overbury*'s Imprisonment in the Tower, that the Earl of *Somerset* fell into an unlawful Love towards that unfortunate Lady, the Countess of *Essex*, and to proceed to a Marriage with her: this Marriage and Purpose did *Overbury*

mainly impugn, under pretence to do the true part of a Friend, for that he accounted her an unworthy Woman. But the truth was, *Overbury*, who (to speak plainly) had little that was solid for Religion, or Moral Virtue, but was wholly possess'd with Ambition and Vain-glory, was loth to have any Partners in the favour of my Lord of *Somerset*; and especially not any of the House of the *Howards*, against whom he had always professed Hatred and Opposition.

And, my Lords, that this is no sinister Construction, will appear to you, when you shall hear that *Overbury* made his Brags, That he had won him the Love of the Lady, by his Letters and Industry; so far was he from Cases of Conscience in this Point.

And certainly, my Lords, howsoever the tragical Misery of this poor Gentleman, *Overbury*, might somewhat obliterate his Faults, yet, because we are not upon point of Civility, but to discover the face of Truth, before the face of Justice, for that it is material to the true Understanding of the state of this Cause, *Overbury* was naught and corrupt; the Ballads must be mended for that point.

But to proceed: When *Overbury* saw that he was like to be Possessor of my Lord's Grace, which he had possessed so long, and by whose Greatness he had promised himself to do Wonders, and being a Man of an unbounded and impudent Spirit, he began not only to dissuade, but to deter him from the Love of that Lady; and finding him fixed, thought to find a strong Remedy; and supposing that he had my Lord's Head under his Girdle, in respect of Communication of Secrets of State, as he calls them himself Secrets of Nature; and therefore dealt violently with him, to make him desist, with Menaces of Discovery, and the like: Hereupon grew two streams of Hatred upon *Overbury*, the one from the Lady, in respect that he crossed her Love, and abused her Name (which are Furies in Women;) the other of a more deep nature from my Lord of *Somerset* himself, who was afraid of *Overbury*'s Nature, and if he did break from him and fly out, he would wind into him, and trouble his whole Fortunes. I might add a third stream of the Earl of *Northampton*'s Ambition, who desires to be first in favour with my Lord of *Somerset*; and knowing *Overbury*'s Malice to himself, and to his House, thought that Man must be removed and cut off, so as certainly it was resolved and decreed, that *Overbury* must die.

That was too weak, and they were so far from giving way to it, as they crossed it; there rested but two ways of Quarrel, Assault and Poison. For that of Assault, after some Proposition and Attempt, they passed from it, as a thing too open, and subject to more variety of Shame; that of Poison likewise was an hazardous thing, and subject to many Preventions and Caution, especially to such a working and jealous Brain as *Overbury* had, except he was first fast in their hands: therefore the way was first to get him into a Trap, and lay him up, and then they could not miss the Mark. And therefore in execution of this Plot, it was concluded, that he should be designed to some honourable Employment in Foreign Parts, and should underhand, by my Lord of *Somerset*, be encouraged to refuse it; and so, upon contempt, he should be laid Prisoner in the Tower, and then they thought he should be close enough, and Death should be his Bail. Yet were they not at their end, for they consider'd,

sider'd, that if there were not a fit Lieutenant of the Tower for their purpose, and likewise a fit Under-keeper of *Overbury*; First, They should meet with many Impediments in the giving and exhibiting of the Poison; Secondly, They should be expos'd to Note and Observation, that might discover them; and, Thirdly, *Overbury*, in the mean time, might write clamorous and furious Letters to his Friends, and so all might be disappointed. And therefore, the next Link of the Chain was to displace the then Lieutenant *Wade*, and to place *Elwes*, a principal Abetter to the Impositionment; to displace *Cary* that was Under-keeper in *Wade's* Time, and to place *Weston*, that was the Actor in the Impositionment: And this was done in such a while, that it may appear to be done as it were in a Breath.

Then, when they had this poor Gentleman in the Tower, close Prisoner, where he could not escape, nor stir; where he could not feed, but by their Hands; where he could not speak or write, but thro' their Trunks; then was the Time to act the last day of his Tragedy.

Then must *Franklin*, the Purveyor of the Poisons, procure five, six, seven several Poisons, to be sure to hit his Complexion: Then must Mrs. *Turner*, the Lay-mistress of the Poisons, advise what works at present, and what at distance: Then must *Weston* be the Tormenter, and chase him with Poison after Poison, Poison in Salt-meats, Poison in Sweet-meats, Poison in Medicines and Vomits, until at last his Body was almost come by use of Poisons to the state of *Mithridates's* Body, by the use of Treacle and Preservatives, that the Force of the Poisons was blunted upon him; *Weston* confessing, when he was chid for not dispatching him, that he had given him enough to poison twenty Men.

And, lastly, Because all this asked Time, Courses were taken by *Somerset*, both to divert all the true Means of *Overbury's* Delivery, and to entertain him with continual Letters, partly with Hopes and Protestations for his Delivery, and partly with other Fables and Negotiations, somewhat like some kind of Persons which keep in a Tale of Fortune-telling, when they have a felonious Intent to pick Pockets and Purfes. And this is the true Narration of this Act, which I have summarily recited.

Now, for the Distribution of the Proofs, there are four Heads to prove you Guilty, whereof two are precedent to the Impositionment, the third is present, and the fourth is following or subsequent: for it is in Proofs, as it is in Lights, there is a direct Light, and there is a Reflexion of Light, and a double Light.

The first Head or Proof is, That there was a Root of Bitterness, a mortal Malice or Hatred, mixed with a deep and bottomless Mischief, that you had to Sir *Thomas Overbury*.

The second is, That you were the principal Actor, and had your hand in all those Acts, which did conduce to the Impositionment, and gave opportunity to effect it, without which the Impositionment could never have been, and which could seem to tend to no other end, but to the Impositionment.

The third is, That your Hand was in the very Impositionment itself, that you did direct Poison, and that you did deliver Poison, and that you did continually hearken to the Success of the Impoi-

sonment, and that you spurred it on, and called for dispatch, when you thought it lingered.

And lastly, That you did all things after the Impositionment, which may detect a guilty Conscience, for the smothering of it, and the avoiding of Punishment for it; which can be but of three kinds.

That you suppressed, as much as in you was, Testimony; that you did deface, destroy, clip and misdate all Writings that might give light to the Impositionment; and you did fly to the Altar of Guiltiness, which is a Pardon of Murder, and a Pardon for your self, and not for your self.

In this, my Lord, I convert my Speech unto you, because I would have you alter the Points of your Charge, and so make your Defence the better. And two of these Heads I have taken to my self, and left the other to the King's two Serjeants.

For the first main Part, which is the mortal Malice coupled with Fear, that was in you to Sir *Thomas Overbury*, altho' you did palliate it with a great deal of Hypocrisy and Dissimulation, even to the very End; I will prove it, my Lord Steward, the root of his Hate, was that which cost many a Man's Life, that is, fear of discovering Secrets; I say, of Secrets of a dangerous and high nature: wherein the Course that I will hold, shall be this.

I will shew that a Breach and Malice was betwixt my Lord and *Overbury*, and that it burst forth into violent Threats and Menaces, on both sides.

Secondly, That these Secrets were not of a light, but of an high nature. I will give you the Elevation of the Pole, they were such, as my Lord of *Somerset* had made a Vow, that *Overbury* should neither live in Court, nor Country; that he had likewise opened himself so far, that *either he or himself must die for it*: and of *Overbury's* part, he had threaten'd my Lord, that *whether he did live or die, my Lord's Shame should never die*, but that *he would leave him the most odious Man in the World*. And farther, that my Lord was like enough to repent where *Overbury* wrote, which was in the Tower of *London*; he was a Prophet in that: so there is the highest of the Secret.

Thirdly, I will shew you that all the King's business was, by my Lord, put into *Overbury's* hands, so as there is work enough for Secrets whatsoever; they write them, and like Princes they had Confederates, their Ciphers, and their Jargons.

And, Lastly, I will shew you that it was but a Toy, to say the Malice was only in respect he spake dishonourably of the Lady, or for doubt of breaking the Marriage, for that *Overbury* was Co-adjutor to that Love, and the Lord of *Somerset* was as deep in speaking ill of the Lady as *Overbury*: and again, it was too late for that Matter, for the Bargain of the Match was then made and past; and if it had been no more than to remove *Overbury* for disturbing the Match, it had been an easy matter to have landed over *Overbury*, for which they had a fair way, but that would not serve.

And, Lastly, *Periculum periculo vincitur*: to go so far as an Impositionment, must have a deeper Malice than Flashes, for the Cause must have a Proportion in the Effect.

For the next general Head or Proof, which consists in the Acts preparatory, or middle Acts, they are in eight several Points of the Compass, as I may term them.

1st, There were divers Devices and Projects to set *Overbury's* Head on work, to dispatch him, and overthrow him, plotted between the Countess of *Essex*, and the Earl of *Somerset*, and the Earl of *Northampton*, before they fell upon the Impositionment; for always before Men fix upon a course of Mischief, there will be some Reflection: but die he must one way or other.

2^{dly}, That my Lord of *Somerset* was principal Practiser, I must speak it, in a most perfidious manner; to set a Trap and Train for *Overbury*, to get him into the Tower, without which they durst not attempt the Impositionment.

3^{dly}, That the placing of the Lieutenant *Elwes*, one of the Impositioners, was done by my Lord of *Somerset*.

4^{thly}, That the placing of *Weston* the Under-keeper, who was the principal Impositioner, and displacing of *Cary*, and the doing all this within the space of fifteen days after *Overbury's* Commitment, was by the means and countenance of my Lord of *Somerset*: and these were the active Instruments of the Impositionment, and this was a Business the Lady's power could not reach unto.

5^{thly}, That because there must be a Cause of this Tragedy to be acted, and chiefly because they would not have the Poisons work upon the fudden, and for that the strength of *Overbury's* Nature, on the very custom of receiving the Poisons into his Body, did overcome the Poisons that they wrought not so fast; therefore *Overbury* must be held in the Tower, as well as he was laid in: and as my Lord of *Somerset* got him into the Trap, so he keeps him in, and amuseth him with continual hope of Liberty, but diverted all the true and effectual means of his Liberty, and makes light of his Sickness and Extremities.

6^{thly}, That not only the Plot of getting *Overbury* into the Tower, and the Devices to hold and keep him there, but the strange Manner of the close keeping of him, being in but for a Contempt, was by the Device and Means of my Lord of *Somerset*, who denied his Father to see him, denied his Servants that offered to be shut up close Prisoners with him, and in effect handled it so, that he made him close Prisoner to all his Friends, and exposed to all his Enemies.

7^{thly}, That all the Advertisement the Lady received from time to time, from the Lieutenant or *Weston*, touching *Overbury's* state of Body and Health, were ever sent nigh to the Court, tho' it were in progress, and that from my Lady; such a thirst and listening he had to hear that he was dispatched.

Lastly, That there was a continual Negotiation to set *Overbury's* Head on work, that he should make some offer to clear the Honour of the Lady, and that he should be a good Instrument towards her and her Friends; all which was but Entertainment: For your Lordships shall see divers of my Lord of *Northampton's* Letters, (whose Hand was deep in this Business) written I must say in dark Words and Clauses, that there was one thing pretended, and another thing intended; that there was a real Charge, and somewhat not real; a main Drift and Dissimulation. Nay, farther, there be some Passages which the Peers, in their Wisdoms, will discern to point directly at the Impositionment.

And now for producing of my Proofs, I will use this Course: Those Examinations that have been taken upon Oath, shall be here read; and

the Witnesses also I have caus'd to be here, that they may be sworn, and to justify or deny what they hear read, and to diminish or add to their Examinations; and besides, that my Lord of *Somerset*, and you my Lords the Peers, may ask them what farther Questions you please.

H. Payton, *Servant of Sir Thomas Overbury, now of his Father, examined before the Lord Chief Justice.*

He saw a Letter of his Master's, whose Hand he knew, to my Lord of *Somerset*, wherein were these Words, *If I die, my Blood lie upon you.* And in that or another Letter there was this Clause, *My Lord, you are now as good as your Word, you have kept your Vow to me.* Moreover, that in the Privy-Gallery at *White-hall*, my Lord of *Somerset* coming late to his Chamber, met there Sir *Thomas Overbury*; How now, said my Lord, are you up yet? Nay, answers Sir *Thomas Overbury*, what do you here at this time of Night? Will you never leave the Company of that base Woman? And seeing you do so neglect my Advice, I desire that to-morrow Morning we may part; and that you will let me have that Portion you know is due to me; and then I will leave you free to your self, to stand on your own Legs. My Lord of *Somerset* answer'd, His Legs were strong enough to bear himself; and so departed in great displeasure. And to his certain knowledge, they were never perfectly reconcil'd again. And being ask'd how he heard this Discourse, he said, It was in the dead of the Night, and he, being in a Room within the Gallery, heard all that pass'd.

H. Payton. I acknowledge every Part of this Examination to be true: And more, That my Master being in the Tower, he sent a Letter by *Weston* to me, to carry to my Lord; and withal, to deliver my Lord this Message, That that Powder he had sent him had made him very sick, and given him in one Night sixty Stools, besides Vomits. This Letter I carried to the Court, and deliver'd to Mr. *Parvins* to carry in to my Lord, who was then in his Chamber. My Lord presently came out; asked me how my Master did. I told him very sick; and withal, this Message how the Physick had wrought with him. My Lord smiled, and cry'd *Pish*; and so turn'd him away.

L. Davis, *sometime Servant of Sir Thomas Overbury, now of Sir Humphrey May, his Examination before the Lord Coke.*

Saith, That he hath heard his Master say, That he would have gone Ambassador, but that my Lord of *Rochester* dissuaded him. He hath seen some Letters of Sir *Thomas Overbury's*, wherein he writ that the Lord of *Rochester* was even with him: But he thinks he (*i. e.* the Lord *Rochester*) never saw those Passages.

Lord of Som. I pray you, my Lords, note he says, I never saw those Passages.

Mr. Attorney. It is true: For those Letters were lost; but after found by him, who knew them to be his Master Sir *Thomas Overbury's* Hand.

Sir Thomas Overbury's First Letter to my Lord Somerset.

' **I** S this the Fruit of my Care and Love to you?
' Be these the Fruits of common Secrets, common Dangers? As a Man you cannot suffer me
' to

‘ to lie in this Misery; yet your Behaviour betrays you. All I intreat of you is, that you will free me from this Place, and that we may part Friends. Drive me not to Extremities, lest I should say something that you and I both repent. And I pray God that you may not repent the Omission of this my Counsel in this Place, whence I now write this Letter.’

L. Wentworth. How did you know these Letters were sent from him to my Lord of Somerset?

L. Coke. They were found in a Cabinet, among some other Things, left in Trust by my Lord of Somerset with Sir Robert Cotton: And thus they were discover’d; Sir Robert Cotton, fearing Searches, delivers them to a Friend of his in Holborn, one Mrs. Farnesforth; she, to the intent they might be safely kept, sent them to a Merchant’s House in Cheapside, where, some nine Monrhs before, she had lodged, and desir’d that they might safely be kept for her, pretending they were some Writings that concern’d her Jointure. On St. Thomas’s Day she her self comes to have them again, saying, she must carry them to her Counsel to peruse. He said, *If you will suffer me to open it before you, and that there be nothing else, you shall have them.* But she by no means would consent to the breaking of it open. Then he answer’d, *It is a troublesome Time; I will go to my Lord Chief Justice, and if he find no other Writings than such as concern you, you shall have them again.* So coming to my Chamber, and not finding me within, (for I was gone to St. Paul’s to the Sermon) he went to my Lord Zouch, one of the appointed Commissioners for this Cause; who himself alone would not break it up, but came to St. Paul’s to me; where in a By-room we broke it up, and in it found these Letters, and divers from my Lord of Northampton, besides many other Papers.

L. Zouch. I affirm this Relation of my Lord Coke’s to be true.

Sir Thomas Overbury’s Second Letter to my Lord Somerset.

‘ THIS comes under Seal; and therefore I shall be bold. You told my Brother Lidcote, that unreverend Style might make you neglect me. With what Face could you do this, who know you owe me for all the Fortune, Wit, and Understanding that you have? [Here were inserted some borrowed Names.]

Mr. Attorney. Under these false Names they meant Great Persons; Julius the King, Dominick my Lord of Northampton, Unclius my Lord of Canterbury.

The rest of the Letter.

‘ And yet pretend the Reason why you seek not my Liberty, to be my unreverend Style; whilst, in the mean time, you sacrifice me to your Woman, still holding Friendship with those that brought me hither. You bad my Brother Lidcote keep my Desire of Liberty secret: Yet this shall not serve your turn; for you and I, ere it be long, will come to a publick Trial of another nature. I upon the Rack, and you at your Ease; and yet I must say nothing! when I heard (notwithstanding my Misery) how you

‘ went to your Woman, curled your Hair, preferred Gibbe into the Bed-chamber, and in the mean time send me nineteen Projects, how I should cast about for my Liberty; and give me a long Account of the Pains you have taken, and then go out of Town. I wonder to see how you should neglect him, to whom such Secrets of all kinds have pass’d: and suffer my Mother and Sisters to lie here in Town, expecting my Liberty; my Brother Lidcote to be in a manner quite overthrown, in respect of my Imprisonment; and yet you stand stupid: Nor have neither Servant nor Friend suffer’d to come to me. Well, all this Vacation I have written the Story betwixt you and me: How I have lost my Friends for your sake; what hazard I have run; what Secrets have pass’d betwixt us; how after you had won that Woman by my Letters, and then you conceal’d all your After-proceedings from me; and how upon this there came many Breaches betwixt us; of the Vow you made to be even with me, and sending for me twice that Day that I was caught in the Trap, persuading me that it was a Plot of mine Enemies, to send me beyond Sea; and urging me not to accept it, assuring me to free me from any long Trouble. On Tuesday I made an end of this, and on Friday sent it to a Friend of mine under eight Seals; and if you persist still to use me thus, assure your self it shall be publish’d. Whether I live or die, your Shame shall never die, but ever remain to the World, to make you the most odious Man living.’

H. Payton and L. Davis. We both, upon our Oaths, know this to be Sir Thomas Overbury’s Hand.

Simcocks’s Examination before my Lord Coke, writ with his own Hand.

He says, That Weston many times, when Sir Thomas Overbury was in the Tower, told him, That my Lord of Somerset charg’d him to look to Overbury well; for if ever he came out, one of us two must die.

L. Som. I would fain know whether Weston were examin’d, or no.

L. Wentworth. How long is it since this familiar Acquaintance betwixt Simcocks and Weston?

Simcocks. He and I were of antient and familiar Acquaintance long since.

Mr. Attorney. Weston had continual Access to my Lord, had Rewards from him: My Lord charg’d him to look to Overbury well. It could not be his Marriage that made him so much fear; but what the Secrets were that caus’d it, it is not the Work of this Day. Now to shew that the greatest Matters of State were communicated to him, read Davis.

L. Davis examined. There was a Packet of Letters, and seal’d, which, as he takes, came from Sir John Digby, directed to the King; and his Master Sir Thomas Overbury open’d it, took brief Notes for my Lord of Somerset, and sealing it again, sent both the Notes and Packets to him. Another of this he saw his Master had at New-Market from Sir Thomas Edmundes to the King, out of which, after he had taken Extracts, he seal’d it up again, and sent both back by this Examinant to my Lord Somerset.

Mr.

Mr. Attorney. I will not now, my Lords, endeavour to press the Greatness of this Offence: But I urge it thus, That you may see there were no mean Secrets betwixt my Lord and Sir *Thomas Overbury*, that might rather cause him to fear him, than the Hindrance of his Marriage: If that had been it alone, his going beyond Sea would have serv'd the Turn.

L. of Som. exam. Says, That amongst many other Characters for Names, that pass'd between Sir *Thomas Overbury* and him, *Simonist* was for Sir *Henry Nevil*, *Wolfy* for the now Lord Treasurer, *Duſsius* for my Lord of *Canterbury*.

Mr. Attorney. In good Faith, these two made Plays of all the World besides themselves; but tho' it were a Play then, it hath prov'd tragical since.

A Letter of my Lord of Northampton to my Lord of Somerset.

' **N**OW all is concluded about the *Form of the Non-ality*, I doubt not but God will bleſs the next Bargain. I hope hereafter to find better Pen and Ink in this Lady's Chamber. Be still happy. Underneath subscrib'd *H. Northampton*, and I am Witness to this Bargain,

Fra. Howard.

This Letter was shew'd my Lord of *Somerset*, and he confess'd the Hand.

Mr. Attorney. For the second Branch that I mean to follow; and that is, That you used the Means to expose him to the Tower, and there to keep him close Prisoner. It is a Chain of eight Links, and shall be shewed you upon eight Points of the Compass. But before we come to these, it is to be consider'd, that as no Consultation is ripe in an Hour, so no more was theirs; for they purpos'd at first to have taken away his Life by Assault. And *Franklin* tells you the Cause of this Malice.

Franklin examin'd before my Lord Coke, but not upon Oath.

He saith, That my Lady *Somerset* said the Cause of this Hatred of Sir *Thomas Overbury* was, that he would pry so far into my Lord of *Somerset*, that he would put him down.

Sir D. Woodes examined before Lord Coke.

He saith, My Lady *Somerset* knowing there was some Discontent betwixt *Overbury* and him, in respect of a Suit that he cross'd him in, told him, That if he would kill Sir *Thomas Overbury* he should have 1000*l.* and besides she would make his greatest Enemy to become his greatest Friend: And he knew no Enemy he had in Court but my Lord of *Rocheſter*. He answer'd, That if my Lord of *Rocheſter* would give him his Hand, or but pass his Word, if he did it, that he should escape, and have his Pardon, he would do it. Upon this she paused, and desir'd some time to give her Answer; and when he came again to her, she told him that could not be: but promised all Favour possible

unto him, and warrant'd him to go on upon her Life.

L. of Som. exam. Saith, It was once resolv'd somebody in Court should fall out with *Overbury*, and offer him some Affront; but that was not follow'd.

Mr. Attorney. Note, my Lords, he does not say it was dislik'd. And now to the Puddle of Blood: The first Link of which is, That the Means to entrap *Overbury* for the Tower, was by the Means of my Lord of *Somerset*.

Sir Dudley Diggs sworn.

Sir *Thomas Overbury* once told me, That he went to undertake the Employment offer'd him to go beyond Sea; but afterwards he sent me word by Sir *Robert Mansel*, that he had chang'd his Mind. And Sir *Robert Mansel* told me farther, That he saw a Letter from the Lord of *Somerset* to *Overbury*, that dissuaded him from that Course. Seeing Mr. Attorney hath call'd me so far out of the Country for this small Testimony, I wish Sir *Robert Mansel* were here to justify it.

My Lord of Somerset's Declaration in Writing to the King.

Being told by my Lord Chief-Justice that I was indicted, and was shortly to expect my Arraignment, I did not then believe him; for I did not look for that Way. Your Majesty hath three Kingdoms, wherein to exercise the Prerogative of your Power, and but few that taste of the first of your Favours; in which number I did think myself, if not the first, yet inferior to very few. And having committed no Offence against your Person, nor the State, I hope your Majesty will not for this bring me to a publick Trial, which for my Reputation's Cause, I humbly desire to avoid. Grace truly given may be a Benefit; for it is not enough to give Life, and not to save Reputation. But if I must come to my Trial, knowing the Presumptions may be strong against me, in respect I consented to, and endeavour'd the Imprisonment of Sir *Thomas Overbury*, (tho' I design'd it for his Reformation, not his Ruin) I therefore desire your Majesty's Mercy, and that you will be pleas'd to give me leave to dispose of my Lands and Goods to my Wife and Child, and graciously to pardon her, having confess'd the Fact. For my self, being uncertain how I shall be judg'd upon Presumptions, I humbly desire that in the mean time you will be pleas'd to give my Lord *Hays* and Sir *Robert Carr* leave to come to me.

Mr. Attorney. The second Link is, How that *Elwes* came to be Lieutenant of the Tower by your means: And yet that must have a Colour; my Lord of *Shrewsbury* and Lord Chamberlain must prefer him to you as their Friend, tho' it was resolv'd before he should have the Place.

Sir *Jervis Elwes* examined, but not on Oath. He saith, Sir *Thomas Monson* told him that *Wade* was to be remov'd; and that if he succeeded Sir *William Wade*, he must bleed, that is, give 2000*l.* And ten Days after *Wade* was removed he came into the Place, and paid 1400*l.* of the Money at his Uncle Alderman *Elwes's* House to Dr. *Campion*.

Mr.

Mr. Attorney. You may see they had Ciphers for Money, He must bleed; a strange Preface! And as it is impossible to serve God and Mammon, so in that kind it is hard to serve a King.

Sir Thomas Monson examined, but not on Oath: Saith, My Lord of Northampton, upon the displacing of *Wade*, mov'd the King for *Sir Jervis Elwes*; and that he directed *Sir Jervis Elwes* to go to the Lords of *Shrewsbury* and *Pembroke*, to move my Lord of *Somerset* to speak for him to the King.

Sir Jervis Elwes's Examinat. When it was resolv'd *Wade* should be removed, and he to succeed him, then he was advis'd to desire my Lord of *Somerset* to move for him; which he did accordingly: But took that only to be but for a Colour, because it was resolv'd before.

Mr. Attorney. Now the third Link concerns the placing of *Weston* for his Keeper.

Sir Thomas Monson, exam. Saith, He recommended *Weston* to the Service of *Sir Jervis Elwes*, and to keep *Sir Thomas Overbury*, upon the Countess of *Somerset's* Entreaty: And farther saith, That my Lord of Northampton was acquainted with the placing of him.

R. Weston exam. My Lord and Lady *Somerset* gave good Words of him to the Lieutenant.

L. of Som. exam. He denies the Knowledge of *Weston*, either before his coming into the Tower, or since.

Simcocks exam. *Weston*, during the time *Sir Thomas Overbury* was in his keeping, came often to my Lord, had much Money of him, and wonder'd *Sir Thomas Overbury* had so good Opinion of my Lord; and thought he had not so much Wit as the World esteem'd, for there was no Man hinder'd his Liberty but he: And whenever he came to my Lord, he might use such Means as *Rawlins* his Man must not know.

[In this interim a Scaffold broke, and there was a great Noise and Confusion; but after Silence was proclaim'd, all hush'd and quiet.]

Mr. Attorney. All the Confessions of *Weston* were taken before Conviction: And these two last Witnessses are merely to his denying the Knowledge of *Weston*. Now for the fourth Link, which is the placing and displacing Officers.

Sir Jervis Elwes exam. Saith, That *Overbury* was committed April the 30th, and May the 6th himself came to be Lieutenant of the Tower; and that *Weston* was prefer'd to be *Sir Thomas Overbury's* Keeper May the 7th; and that all this time he serv'd, he never had Wages from him.

Mr. Attorney. Now the fifth Link or Point of the Compals I promis'd to shew you, was, That this must not be done suddenly, but by degrees; and so he must be poisoned leisurely, to avoid Suspicion. And in the mean space you entertain'd his Father and Mother with frivolous Hopes; and yet indeed hinder'd and made opposition (but underhand) to all the Means that were used for his Delivery.

Mr. Overbury the Father sworn. After my Son was committed, I heard that he was very sick; I went to the Court, and deliver'd a Petition to the King: The Effect whereof was, That in respect of my Son's Sickness some Physicians might have Access unto him. The King answer'd, That his own Physician should go to him: And then instantly sent him word by *Sir William Button*, that his Physician should presently go. Upon this I only address'd myself to my Lord of *Somerset*, and none

else; who said my Son should be presently deliver'd, but dissuaded me from preferring any more Petitions to the King: Which notwithstanding, I (seeing his Freedom still delay'd) did deliver a Petition to the King to that purpose; who said I should have a present Answer. And my Lord of *Somerset* told me, he should be suddenly reliev'd; but with this, That neither I nor my Wife must press to see him, because that might protract his Delivery; nor deliver any more Petitions to the King, because that might stir his Enemies up against him. And then he wrote a Letter to my Wife, to dissuade her from any longer Stay in London.

My Lord of Somerset's Letter to Mrs. Overbury.

MRS. Overbury, Your Stay here in Town can nothing avail your Son's Delivery; therefore I would advise you to retire into the Country, and doubt not before your coming home you shall hear he is a Freeman.

Mr. Overbury. Then after my Son's Death, he writ another Letter to me.

My Lord of Somerset's Letter to Mr. Overbury.

SIR, Your Son's Love to me got him the Malice of many, and they cast those Knots on his Fortune that have cost him his Life; so, in a kind, there is none guilty of his Death but I: And you can have no more cause to commiserate the Death of a Son, than I of a Friend. But tho' he be dead, you shall find me as ready as ever I was to do all the Courtesies that possibly I can to you and your Wife, or your Children. In the mean time I desire Pardon from you and your Wife for your lost Son, tho' I esteem my Loss the greater. And for his Brother that is in France, I desire his Return, that he may succeed his Brother in my Love.

Mr. Attorney. By this you see my Lord's Dissimulation. And I think he was a piece of a Lawyer, by his insinuating with his next Kindred, for fear of Appeals. Now to come to the sixth Link, which shews how light my Lord of *Somerset* made both of *Sir Thomas Overbury's* Fortunes and Sickness, read *Simcocks*.

Simcocks exam. Saith, That *Weston* told him he wonder'd *Sir Thomas Overbury* should have so great Confidence in my Lord of *Somerset*, and think that he lov'd him so well; for he knew that he could not abide him, and thought of nothing less than his Liberty.

Sir John Lidcote sworn. Saith, He desir'd my Lord of *Somerset* that either he or *Sir Robert Killigrew* might have leave to see *Sir Thomas Overbury* in his Sickness, which my Lord obtain'd from the King: And so they had a Warrant from my Lord of Northampton, and some other Counsellors, to see him; and found him very sick in his Bed, his Hand dry, his Speech hollow. And at this time he desired me to write his Will; I propos'd to come to him again the next Day. Now being ready to depart, the Lieutenant going out before, *Overbury* ask'd me softly this Question, Whether *Somerset* juggled with him, or not? But I then told him, as I believed, that I thought not. But the Lieutenant looking back, and perceiving that some

some Whispering had pass'd, swore that I had done more than I could justify. But afterwards, coming to press my Lord of *Somerset* about Sir *Thomas Overbury*, I perceived he dealt not plainly with him. And once speaking with my Lord about him, he gave a counterfeit Sigh, (as this Deponent conceiv'd) for at that instant he smil'd in my Face.

Mr. Attorney. The seventh Link is to shew you the Manner of his Keeping; which was close Prisoner in the Tower, his Offence being only a Contempt: And who was the Author of this, read Sir *Thomas Monson*.

Sir *Thomas Monson* examined, but not upon Oath, faith, My Lord of *Northampton* and my Lord of *Somerset* gave Directions to the Lieutenant of the Tower to keep him close Prisoner.

L. Davis exam. Saith, That he was a Suitor to my Lord of *Somerset*, that he might wait upon his Master Sir *Thomas Overbury* in the Tower, tho' he were shut up with him. But my Lord answered, He shortly purpos'd to procure his total Liberty, and this might hinder it.

Mr. Attorney. Now the eighth and last Link is, In the interim that *Overbury* in the Tower was ply'd with Poisons, my Lord thirsted after the News, to know what became of him, and continual Posts went between him and my Lady; and all this while bore him in hand with other Pretences.

Franklin (but not upon Oath) faith, That being with my Lady *Essex*, she told him that she had that Day received a Letter from my Lord of *Rochester*, wherein he writ, That if *Weston* did not presently dispatch, Sir *Thomas Overbury* would be out.

Sir *Jervis Elwes exam.* Saith, He received divers Letters from my Lady *Essex*, wherein she desir'd to know how *Overbury* did, that she might certify to the Court.

Lord of Som. exam. Saith, That there pass'd many Letters betwixt my Lady and him, but not concerning *Overbury*. But then desir'd that this Point might be altered; for it might be that some Letters concerning *Overbury* might have then pass'd betwixt them.

Mr. Attorney. My Lord knew not whether any of these Letters were extant, and therefore desir'd that this might be alter'd.

Loubell, an Apothecary, a *Frenchman*, faith, That coming to my Lord of *Somerset*, he ask'd him of *Overbury*, and how he did? and he said ill. Another time also he sent for him to enquire about *Overbury*; and then he answer'd him, That he was ill, but hoped he might recover. What, says my Lord, do you think he would recover if he were at Liberty? And he answer'd, Yes. Again, my Lord sent for him a third time; and carrying him into the Gallery at *Whitehall*, ask'd him how *Overbury* did. He answer'd, He was very sick: And farther added, He found him ill before the 25th of *June*, that he came to him.

L. of Som. exam. Denies that ever he saw *Loubell* but once at *Theobalds*.

Mr. Attorney. Here again you see my Lord falsify'd: But it seems, imagining or not knowing that *Loubell* could say more against him than he hath done, he denied the Knowledge of him, as he did of *Weston*.

L. Coke. It was doubted *Loubell* might be a Delinquent; and therefore I durst not examine him

upon Oath, no more than I did *Franklin*. But when in their Testimony they accuse themselves, it is as strong as if upon Oath.

Mr. Attorney. Now in respect *Overbury* had a working Brain, my Lord of *Northampton* must in shew negotiate about his Delivery, and the Terms of his coming out, whilst they intended his Poisoning: That was real, and the other but in pretence.

My Lord of Northampton's First Letter to my Lord of Somerset.

'IN this Business concerning *Overbury* there must be a main Drift, and a real Charge: You may imagine the Meaning.'

My Lord of Northampton's Second Letter to my Lord of Somerset.

'I Yesterday spent two Hours in prompting the Lieutenant, with as great Caution as I could, and find him to be very perfect in his Part. And I long exceedingly to hear his Report of this Adventure.'

My Lord of Northampton's Third Letter to my Lord of Somerset.

'YOU need not use many Instruments, so long as I am in Town, with the Lieutenant.'

My Lord of Northampton's Fourth Letter to my Lord of Somerset.

'I Cannot deliver with what Caution and Discretion the Lieutenant hath undertaken *Overbury*. But for his Conclusion, I do and ever will love him the better; which was this, That either *Overbury* shall recover, and do good Offices betwixt my Lord of *Suffolk* and you; which if he do not, you shall have reason to count him a Knave: or else, that he shall not recover at all, which he thinks the most sure and happy Change of all; for he finds sometimes from *Overbury* many Flashes of a strong Affection to some Enemies of his.'

L. of Som. I acknowledge these Letters to be my Lord of *Northampton's*; and all those that I sent to him were deliver'd me after his Death by Sir *Robert Cotton*: all which the Evening before my Commitment to the Dean of *Westminster's*, I burnt.

Mr. Attorney. These Letters of *Northampton*, were found in the Box Sir *Robert Cotton* gave Mrs. *Farnforth*. And here my Part ends: And that that rests behind, I leave to the two Serjeants.

Lord High-Steward. My Lord, you have heard what hath been urged against you, and may imagine that there rests much behind: And therefore you had best confess the Truth; otherwise you will but more and more wind in your self.

L. of Som. My Lord, I came with a Resolution to defend my self.

After this my Lord High-Steward and the rest of the Lords retir'd themselves.

Serj.

Serj Montague. May it please your Grace, my Lord High-Steward of *England*, it falls to my part to discover those Secrets that were concurrent and present with the Murder of Sir *Thomas Overbury*. And there be three Things that make evidently that my Lord of *Somerset* was the principal Procurer: 1. A Powder that was sent Sir *Thomas Overbury* from your own hand, which was Poison, and taken by him. 2. Poison in Tarts, which you occasioned to be sent. 3. That you thirsted after the Success, and wonder'd that he was no sooner dispatch'd. How the first general Light of this Poisoning came out, Mr. Attorney yesterday excellently observ'd that it was by a Compliment; so now I shall shew how out of the Compunction of an Offender's Heart these came to be discover'd: *Franklin* confesses the Poisons he bought for this purpose, and the trial that he made of them before they were sent. And 1. For the Powder, it was sent in a Letter written with my Lord's own Hand to *Overbury*: And you writ that it would make him a little sick, (which it did in a high degree;) and that upon this you would take occasion to speak for him to the King. And this Letter, with the Powder, you sent to him by *Davis*; and the Powder was Poison. 2. For the poisoned Tarts: At first you sent them good, to disguise the bad; but after came the poisoned Tarts which you sent him. And to make this appear that they came from you, continual Posts ran between you and my Lady; and she writes to the Lieutenant, 'I was bid to tell you, That in the Tarts and Jellies there are Letters; but in the Wine none: And of that you may take your self, and give your Wife and Children; but of the other not. Give him these Tarts and Jelly this Night, and all shall be well.' And it appears that the Letters did signify Poison. 3. The third Charge that I lay upon you, is, That you writ to my Lady that you wonder'd these things were not dispatch'd. She presently sent for *Franklin*, and shew'd him your Letters; which he read, and remembers the Words. She then also sent for *Weston* to dispatch him quickly; who answer'd, That he had already given him as much as would poison twenty Men. And in all these things, my Lord, I shall prove you as guilty as any whosoever hath been formerly arraign'd: And *Weston*, upon his Arraignment, affirm'd all these things to be true. Now to the Proof: He sends a Petition to the Lord *Coke*, to desire to speak with him, the very Night before *Elwes's* Arraignment, he knowing nothing of it; and says, That his Conscience troubles him so, that he cannot sleep, and therefore desires to reveal something to him; and that until he had done it, he could never be at quiet.

Franklin's Exam. Mrs. *Turner* desir'd him to buy some of the strongest Poisons he could get; which he did, and brought them to Mrs. *Turner* and my Lady; and at that time they both swore him to Secrecy. And afterwards he perceiv'd that these Poisons were sent to the Tower; and amongst the rest a kind of white Powder called *Arsenick*, which she told him was sent *Overbury* in a Letter; and after shew'd him, and told him of many more Poisons that were sent, and to be sent by *Weston* to *Overbury*. And those Poisons which my Lady shew'd him, were wrapp'd in a Paper, written with a *Roman Hand*. And they try'd some of the Poisons upon a Cat, or a Dog, which was wonderfully tormented, and died.

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Weston's Exam. My Lady told him that he should be well rewarded; but before she could procure that, the Fact must be done: And that he had already given him as many Poisons as would poison twelve Men.

Ld. of Som. exam. Saith, That he caus'd a Vomir to be sent him at his own request, which was a white Powder; and it was the same that he had had before of Sir *Robert Killebrew*, and sent by *Rawlins*; and it may be that this second sent by *Davis* was in a Letter.

L. Davis exam. Saith, That three Weeks after Sir *Jervis Elwes* came to be Lieutenant of the Tower, my Lord sent, in a Letter by him, a white Powder to Sir *Thomas Overbury*; and that it would make him a little sick, so he might have the better Opportunity to speak for him to the King; and he saw this Letter. Next Day *Weston* told him how sick *Overbury* had been, and shew'd him what loathsome stuff he had vomited, which he would have had to have carried to the Lord *Somerset*; but *Weston* would not let him, saying, It was an unfit Sight to shew him.

H. Payton exam. Saith, That this Powder gave Sir *Thomas* fifty or sixty Stools and Vomits for four or five days.

Serj. Mont. Four several Juries have found that this Powder was Poison, and of this Poison Sir *Thomas Overbury* died; now for the Proof of the poison'd Tarts.

La. of Som. exam. She saith, She knoweth of no Tarts were sent Sir *Thomas Overbury*, but either from her self or my Lord.

Sir Jervis Elwes exam. Saith, By Letters my Lady meant Poison, but the Word was then used to clear his Eyes.

The Lady Somerset's Letter to Sir Jervis Elwes.

'I Was bid to bid you say, that these Tarts came not from me; and again, I was bid to tell you, that you must take heed of the Tarts, because there be Letters in them, and therefore neither give your Wife nor Children of them, but of the Wine you may, for there are no Letters in it; Sir *Thomas Monson* will come from the Court this day, and then we shall have other News.'

La. of Som exam. Saith, That by Letters she meant Poison.

Serj. Mont. Now for my Lord's haste to spur this on, (and here I end) read *Franklin's* Examination.

Franklin exam. Saith, in a Letter which my Lady told him was sent her from my Lord, there were these Words, *That he wondred things were not yet dispatch'd*; and *that he thinks was meant about Overbury, by reason of her then Speeches to him, and present sending for Weston.*

Serj. Crew. My Part is now to discover those Acts that succeeded the Fact, and then my Lord begins to sew Fig-leaves; 1. Practices to suppress all Testimonies. 2. To surprize all Letters. 3. To get a Pardon, and desires a Pattern of the most large Pardon. Now for your Practice to suppress the Testimony of *Franklin*; you come from Court and tell my Lady, that *Weston* was apprehended; then Mrs. *Turner* sends to *Franklin* to come to my Lady at one a Clock at Night. Then my Lady tells him that *Weston* had confess'd all,

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and that we shall all be hang'd; and at that time did again give him another Oath for Secrecy. And, during this Dialogue, she went into an inner Room, to speak with one, (whom he took to be my Lord of *Somerset*;) when she came out, then she instructs *Franklin* what to say, if he were examin'd, but by no means to confess the Knowledge of her, or of Mrs. *Turner*: That the Lords will promise him, upon his Confession, hope of a Pardon, but that by no means he should believe their fair Words; for if he did, then they should all be hang'd. Now for the Course you took in suppressing of Letters, *Lawrence Davis*, after his Master's Death, made suit to serve my Lord, then his Suit was rejected; but last Summer, fearing this might break out, sends *Rawlins* to him, proffers him all Courtesy, and desires that he would send to him all those Letters, and Copies of Letters, which had pass'd between Sir *Thomas Overbury* and him. *Davis* did so; and upon this my Lord gave him 30*l*. After *Weston* and Mrs. *Turner* were committed, there was a Trunk, wherein were many Letters: This Trunk stood at the House of *Weston's* Son's Master. For this Trunk, my Lord (after he was commanded to forbear the Court) makes a Warrant to the Constable to break it open, and to send unto him those Bundles of Writings that were in it; pretending they were certain Bonds and Writings belonging to Mistress *Hide*, a Sister of Mrs. *Turner's*. According to this Direction, those Letters that were in the Trunk were brought unto him. Now for those Letters that pass'd betwixt my Lord of *Northampton* and you; thirty of those you had sent him, were deliver'd you after his Death by Sir *Robert Cotton*; and all these the Night before your Commitment to the Dean of *Westminster* you burnt. For those Letters of *Overbury's* that you had, Sir *Robert Cotton* advis'd you not to burn, but keep them: And all of them being without Dates, *Cotton* told you there might be such Dates given them as would be much to your advantage: So you gave him Order for that purpose, to give Dates to those Letters. According to your Directions he did so; but not till after *Weston's* Arraignment: And then understanding at what Time the Poisons in the Indictment were said to be deliver'd, he dated some of them with a Purpose to cross the Indictment; and some of the Letters he razes, some pastes, some pares, as they were advantageous or disadvantageous to him; and all this to obscure the Fact. My next Aggravation is, That my Lord went about to get a Pardon; and that Precedents should be sought of the largest that ever were granted; and they were brought him. Why should he seek this, but to be freed from this Murder? And in the Precedent of *Henry the VIII's* Pardon to Cardinal *Wolsey*, after many Offences were forgiven, both in the Beginning and Ending, then in the Midst come in all Treasons and Murders. Lastly, Now I urge the Declaration you sent to the King; wherein you seem'd to doubt your self, because that you endeavour'd and consented to the Punishment of Sir *Thomas Overbury*; and in respect you had formerly been so much in the King's Favour, thought you might expect Mercy; and seeing you had never done any Offence against the King, nor the State, hoped that you should never be call'd in question for this: But if you should, then you implor'd Grace for your Wife; but you never sought a Pardon for her, as you did for your self. And then, lastly, you desire to have

leave to dispose of your Lands to your Wife and Child. Now for the Proofs of all this that I have said, first read *Franklin*, for the Suppression of his Testimony.

Franklin's Exam. When my Lord of *Somerset* came to Town, after *Weston's* Apprehension, he (*Franklin*) was sent for to the *Cock-Pit*; and there my Lady swore him again to Secrecy, told him *Weston* was taken, and that it was likely he should be so shortly, and that they should all be hang'd. Then retiring into an Inner-room, to speak with one, (whom he verily believes to be my Lord of *Somerset*) she came again, and told him, That the Lords, if they examin'd him, would put him in hope of a Pardon upon Confession: But, said she, believe them not; for when they have got out of you what they would, we shall all be hang'd. Nay, said Mrs. *Turner*, Madam, I will not be hang'd for you both.

Mary Erwin's Examination, (not upon Oath)
Mrs. *Turner's* Maid.

Mrs. *Turner* sent her for *Franklin*, to bring him to the *Cock-Pit*, at Ten a-Clock at Night; and is sure that Night my Lord of *Somerset* came from Court, and was at the *Cock-Pit* when she came.

Lady Som. exam. She confesseth all that *Franklin* said concerning her Discourse with him; and that my Lord was with her that Night in the *Cock-Pit*.

Mr. Serj. Crew. Next follows the Proof for surprising Letters.

L. Davis exam. Saith, That in Summer last my Lord sent *Rawlins* to him, to desire that if he had any Letters, either from my Lord to Sir *Thomas*, or from him to my Lord, that he would send them by him; which he did: And for this my Lord did afterwards send him by *Rawlins* 30*l*.

George Errat the Constable's Examination.

Saith, That *Poulter*, a Messenger, brought him a Warrant from my Lord of *Somerset*, to break open and search a House for certain Writings, which were pretended to be one Mrs. *Hide's*, a Sister of Mrs. *Turner's*; and that he shewed him a part of the Warrant only, but not all; so that for that cause he would not execute it. Whereupon, *Poulter* got Smiths himself to break open the House and Doors, and found in the Cellar a Box and Bag of Writings, where he saw the Name of Mrs. *Turner*; and those were carried to my Lord.

L. of Som. For these Letters, Sir *Robert Cotton* deliver'd them me back after my Lord of *Northampton's* Death; and concerning the Dates, you need not trouble yourself, for it now grows late, and I shall have very little time to answer for my self. I confess, Sir *Robert Cotton* deliver'd me back those Letters I had sent my Lord of *Northampton*, and that I burnt them; and that some Parts were cut off as impertinent.

Sir R. Cotton exam. Saith, my Lord deliver'd into his hands many of Sir *Thomas Overbury's* Letters; and that he cut and dated them by my Lord's Direction; and that he put in Dates the next Day to some of the Letters, after *Weston's* Arraignment.

Mr. Serj. Crew. I desire my Lord will be pleas'd to look upon this Book of *Overbury's* Letters. And now for the Copy of the largest Pardon:

Sir

Sir Robert Cotton saith, That at my Lord of *Somerſet's* Intreaty, a little before *Michalemas* laſt, he got him a Draught of the largeſt Pardon, and the Precedent was of one that King *Henry* the Eighth granted to Cardinal *Wolſey*: and if he deſired ſuch a one, I told him the beſt way was to follow Precedents.

The Pardon was read; wherein, amongſt other Offences, before and after, of ſmall account, Treason and Murder be ſoiſted in.

Mr. Serj. Crew. And this was it that made *Wef-ton* fear that the Net was for the little Fiſhes, and that the great ones could break through.

Alderman Bowles exam. Saith, That after he had perſuaded *Wef-ton* from ſtanding mute, he told him That he fear'd the Net was laid for the little Fiſhes, and that the great ones would break through.

Mr. Serj. Crew. The laſt thing I urge, is my Lord's Declaration to the King, which I deſire ſhould be read.

The ſame that were noted before, after he underſtood by my Lord *Coke* that he was to be arraign'd, &c.

Mr. Attorney. You ſee, my Lords, in this Declaration of my Lord *Somerſet* there is a Brink of Confeſſion; I would to God it had a Bottom. He urges that in reſpect he hath formerly been ſo great in the King's Favour, and had never committed any Treason, neither againſt his Perſon nor State, that he ſhould never have been call'd to an Account for this Fault, though he had been guilty: That Grace timely given is a Benefit; and that it is not only enough to give Life, but to ſave Reputation. But if he muſt be urg'd, then he deſires his Wife might be pardon'd, having confeſs'd the Fact: And that if he muſt be put upon the Hazard of a Trial, the King will before give him leave to diſpoſe of his Lands and Goods to the Uſe of his Wife and Child; and that in the mean time he will give my Lord *Hay* and Sir *Robert Carr* leave to come to him.

Mr. Serj. Crew. This Declaration is an implicative Confeſſion.

Mr. Attorney. I think there is none here but wonders, ſeeing that all Poiſons be Works of Darkneſs, how this ſhould ſo clearly appear: But it ſeems, his Greatneſs in Fortune caus'd this Groſſneſs in offending.

L. High-Steward. My Lord of *Somerſet* hath behav'd himſelf modeſtly in the Hearing: And only this, (before you ſpeak for your ſelf) by way of Advice, I will ſay unto you, in giving you two Examples: Your Wife, that yeſterday confeſs'd the Fact; and there is great hope of the King's Mercy, if you now mar not that which ſhe made. On the contrary, *Bryon*, who when the King of *France* uſed all the means he poſſibly could, to bring him to the Acknowledgement of his Offence, which if he had done, there was no queſtion to be made of the King's Grace. And I think there never was, nor is, a more gracious and merciful King than our Maſter. But *Bryon* ſtill perſiſting in the Denial of his Fact, you know his End.

L. of Som. I am confident in mine own Cauſe, and am come hither to defend it. And in reſpect the King's Counſel have been ſo long in ſpeaking againſt me, that neither my Memory nor Notes will give me leave to answer every Particular in order, I will begin with ſome of the laſt Things that they ſeem'd moſt to urge againſt me, and ſo answer the reſt that I think do any thing at all

touch me. For the Powder that was ſent *Overbury* to make him ſick, that ſo I might have the better occaſion to ſpeak for him to the King for that purpoſe, he himſelf deſir'd it, and upon his Letter I ſent it. And though it be true that I conſented to his Imprifonment, to the end he ſhould make no Impediment in my Marriage; yet I had a care of his Lodgings, that they ſhould be where he might have the beſt Air, and Windows both to the Water and within the Tower, ſo that he might have liberty to ſpeak with whom he would. So you ſee it was againſt my Intention to have him cloſe Priſoner.

Whereas the Breach of Friendſhip betwixt *Overbury* and me is uſed for an Aggravation againſt me; it is no great wonder for Friends ſometimes to fall out, and leaſt of all with him; for I think he had never a Friend in his Life that he would not ſometime fall out with, and give Offence unto: And this they term'd Inſolence in him; but I give it a better Name.

For the great Truſt and Communication of Secrets between *Overbury* and me, and for the Extracts that he took of Ambaſſadors Letters, I confeſs this; I knew his Ability, and what I did was by the King's Commiſſion. For other Secrets; there were never any betwixt us.

And for his faſhion of braving both in Words and Writing, there was none that knew it better, nor fear'd it leſs than my ſelf. At that time he was in diſgrace with the Queen, and for that cauſe was enforc'd for a time to abſent himſelf from Court; and this was for ſome particular Miſcarriage of his towards her Maſteſty; and tho' I labour'd his Reconcilement and Return, yet he with main violent Terms laid the cauſe of his Diſgrace upon me. And another time my Lord of *Salisbury* ſent for him, and told him, That if he would depend upon his Favour, he would preſently help him with a Suit that ſhould benefit him 2000 *l.* which preſently *Overbury*, coming to me, told me of: To which I answer'd, He did not need to rely upon any body but me; and that, if he would, he might command my Purſe, and preſently have more than that; and ſo he had. And yet afterwards, upon ſome cauſeleſs Diſcontent, in a great Paſſion he ſaid, That his Love to me had put him out of my Lord of *Salisbury's* Favour, and made him loſe 2000 *l.* Whereas it was urg'd that I caus'd him to reſuſe the Employment that was impos'd upon him; it is not ſo; for I was very willing he ſhould have undertaken it, but he not. My Lord of *Canterbury* mov'd him to it, but not without my privity; for I ſhould have been glad to have remov'd him, both in reſpect of my Marriage and his Inſolence. But *Overbury* came to me, and ſaid, I will tell Sir *Dudley Diggs* I will undertake this Embaſſage, that he may ſo return Answer to my Lord of *Canterbury*; but then you muſt write to me not to do ſo, and ſo take it upon you. Whereas it is pretended that I ſhould cauſe poiſon'd Tarts to be ſent him to the Tower; my Wife in her Confeſſion ſaith, That there were none ſent but either by me or her; and ſome were wholeſome, and ſome not: Then it muſt needs follow, that the good ones were thoſe which I ſent, and the bad hers.

L. Liſle. If you had ſent him good Tarts, you ſhould have ſeen them convey'd by a truſty Meſſenger.

L. Compton. My Lady, in her Letter to the Lieutenant, writes, I was bid to bid you do this. Who ſhould bid her?

Mr. Serjeant Montague. The continual Letters between my Lord and her argues that.

L. of Som. If *Franklin* knew me so well, and that I was privy to the Plot, why should then my Wife and I (as he pretends) when he was there, speak so closely, and always out of his Hearing and Sight? But for *Overbury*, my furthest Intent in his Imprisonment was, that he should be no Impediment to my Marriage; and this I communicated to my Lord of *Northampton* and *Elwes*.

Serj. Montague. You could not couple your self worse than with them two.

L. of Som. Whereas *Simcocks* says, from the Relation of *Weston*, That he so often came to me; I protest I never saw him till after *Overbury's* Death, and then *Rawlins* brought him to me.

Serj. Crew. Sir *Jeris Elwes* in his Examination saith, that *Weston* many times told him, that my Lord of *Somerset* many times sent for him: And for this purpose you shall have *Weston's* Examination.

Weston's Examin. Saith, That my Lord of *Somerset* many times sent him Directions, before *Overbury's* going to the Tower, to appoint Meetings betwixt him and my Lady.

L. of Som. This may hold, and yet that I never spake to him: So for those Messages he spoke of, he might receive Directions from me by a third Person. And for that which *Payton* alledges about the Powder which I sent, and made Sir *Thomas Overbury* so sick; that Powder I sent was one of them which I receiv'd from Sir *Robert Killegrew*.

Serj. Crew. But this, my Lord, was none of the Powders you receiv'd from Sir *Robert Killegrew*, for you had three from him: The first was lost; the second you sent him by *Rawlins*; and the third your self took at *Buly*: Now a fourth, which was sent by *Davis*, was that that made him so sick, and gave him so many Stools; and that was poison, and sent three Weeks after that that *Rawlins* carried.

Sir *Robert Killegrew* saith, That my Lord desir'd him to give him Powders, which he himself sometimes used to take for a Vomit; but he thought it had been only for himself, not that he had had a Purpose to send it to Sir *Thomas Overbury*; and that my Lord never had of this Powder of him but thrice.

Mr. Rawlins exam. Saith, That the first Vomit Sir *Robert Killegrew* gave my Lord, was laid upon a Tetter of a Bed, and lost; and that then upon that he got another, which my Lord sent to Sir *Thomas Overbury* by him; and afterwards a third, which my Lord took at *Buly*: But he never heard that Sir *Thomas Overbury* desir'd my Lord to send him any.

Franklin exam. Saith, That he provided a white Powder, which was Poison, for my Lady called it *Arsenick*; which, as my Lady did afterwards tell him, was sent to Sir *Thomas Overbury* in a Letter.

L. of Som. I do not think you can take *Franklin* for a good Witness. Now for the Antedates which are used as a Circumstance against me; Sir *Robert Cotton* mov'd me to it, saying, That the Dates might prove useful to me at this time. Whereas my Lord of *Northampton* writes in one of his Letters, that he had promoted the Lieutenant; I conceive his Meaning to be, That he should endeavour to make *Overbury* to be a good Instrument betwixt my Lord of *Suffolk* and me; and to that end, those whom he thought to be his principal Enemies should be the only Causes of his Freedom. And

what I understand by *Elwes's* Conclusion, which my Lord of *Northampton* relates in the end of one of his Letters to me, That Death is the best Way; I wish that my Answers to those Letters were now to be seen: and if I had ever thought that those Letters of my Lord of *Northampton's* would be dangerous to me, it is likely I would never have kept them. For the Warrant I made, my Wife desir'd me to do it for Mrs. *Turner's* sake: *Packer* formed it; and told me, I might do it as a Counsellor alone, without other Hands; for I would have had at that time my Lord *Knowles* to have joined with me, but that he was at Council. And when this Warrant was sent, I was not commanded from Court, as is pretended.

L. High-Steward. All the Council together could not justify the making of such a Warrant.

L. of Som. For my endeavouring to get a Pardon; having had many things of Trust under the King, and the Custody of both the Seals, without particular Warrant, I desir'd by this means to be exonerated. And for all general Words, the Lawyers put them in without my privacy. And for the Precedent of the largest Pardon, which I had from Sir *Robert Cotton*, it was upon this occasion: Sir *Robert Cotton* said, In respect you have receiv'd some Disgrace in the Opinion of the World, in having past that Pardon which the last Summer you desir'd, especially seeing there be many Precedents of larger; I would have you now get one after the largest Precedent, that so by that Addition you might recover your Honour. And upon this I bad him search for the largest.

Serj. Mont. Sir *Robert Cotton* says otherwise.

Sir *R. Cotton exam.* Saith, My Lord desir'd to seek Precedents of the largest Pardons.

L. of Som. For the Declaration which I lately sent to the King, and particularly the Word [*Mercy*], which is now so much urg'd against me, it was the Lieutenant's; for I would have used another, but he said it could be nothing prejudicial unto me: But when I writ it, I did not think thus to be sifted in this Declaration; for I in that, in all Humility, did so far endeavour to humble and yield my self, that the King might the better express his Grace. And for the Words, [That I did consent to and endeavour the Imprisonment of Sir *Thomas Overbury*] it is true, for the Reason there alledg'd.

Mr. Attorney. May it please your Grace, my Lord here hath had a most gracious Hearing, and hath behav'd himself modestly and wittily.

L. High-Steward. If you have any more to say, my Lord, you shall be heard at length; we will not straiten you in Time.

L. of Som. For *Loubell*, I never saw him but twice: he affirms the contrary, I deny it; and there is none else that proves it but himself. For Sir *Robert Cotton*, I could wish that he were here to clear many things that now be obscure.

Mr. Attorney. If he were here, he could not be sworn, for Reason of State, being held for a Delinquent.

L. of Som. For Sir *David Wood*, there was a Suit wherein he might have benefited himself 1200 *l.* which I was willing to further him in, conditionally, that *Overbury* should have been a Sharer: But for the not effecting of it, it seems, he took some dislike of Sir *Thomas Overbury*. The Money that is said Sir *Jervis Elwes* gave for his Place, I had no part of it. Whereas the shifting of

of Offices is urg'd against me, to make the more easy way for *Elwes's* Entrance; it is well known, the reason of *Wade's* displacing was in respect of his Carelessness, in suffering the Lady *Arabella* to have a Key, by which she might have convey'd herself out of Prison. More I cannot call to mind; but desire Favour.

Mr. Attorney. It hath, my Lord, formerly at Arraignments been a Custom, after the King's Counsel and the Prisoner's Defence hath been heard, briefly to sum up what hath been said: But in this we have been so formal in the Distribution, that I do not think it necessary: And therefore now there is no more to be done, but that the Peers will be pleas'd to confer, and the Prisoner to withdraw 'till the Censures be pass'd.

E. of Som. My Lords, before you go together, I beseech you give me leave to recommend myself and Cause unto you: As the King hath rais'd me to your Degree, so he hath now dispos'd me to your Censures. This may be any of your own Cases, and therefore I assure myself you will not take Circumstances for Evidence; for if you should, the Condition of a Man's Life were nothing. In the mean time, you may see the Excellence of the King's Justice; which makes no Distinction, putting me into your Hands for a just and equal Censure. For my part, I protest before God I was neither guilty of, nor privy to, any Wrong that *Overbury* suffer'd in this kind. A Man sensible of his own Preservation, had need to express himself.

So he being withdrawn from the Bar, my Lord High-Steward briefly reported to the Lord the Proofs against my Lord of *Somerset*. Then the Lords by themselves (and my Lord Steward for his Ease, but returning before the rest) staid some time together; in which Interim they sent for the two Chief Justices. Being return'd, the Serjeant-Cryer *Mr. Fenshaw*, call'd every Lord by his Name, *Robert Lord Dormer*, and so to the rest, before my Lord High-Steward spake.

L. H. Steward. *Robert Lord Dormer*, How say you? Whether is *Robert Earl of Somerset* guilty of the Felony, as Accessary before the Fact, of the wilful Poisoning and Murder of *Sir Thomas Overbury*, whereof he hath been indicted and arraigned, or not guilty? And so particularly to every Lord, one by one.

L. Dormer. Guilty, my Lord: Standing up, and bare-headed; then sitting again. My Lord *Norris*, when it came to him, said, Guilty of Murder: But being told by my Lord High-Steward that he must say either Guilty, or Not Guilty to the Indictment, he said, Guilty. Then *Mr. Lieutenant* brought the Prisoner again to the Bar: But he had before taken off his George himself.

Mr. Attorney. My Lord High-Steward, *Robert Earl of Somerset* hath been indicted and arraigned, and put himself upon his Peers, who all, without the Difference of one Voice, have found him guilty; I pray Judgment.

Mr. Fenshaw. *Robert Earl of Somerset*, hold up thy Hand. Whereas thou hast been indicted, arraign'd, and pleaded Not guilty, as Accessary before the Fact, to the wilful Poisoning and Murder of *Sir Thomas Overbury*, and hast put thyself upon thy Peers, who have found thee guilty; what hast thou to say for thyself, why Sentence of Death should not be pronounc'd against thee?

L. of Som. The Sentence that is pass'd upon me must be just: I only desire a Death according to my Degree. For that *Simcocks* said—

L. H. Steward. My Lord, you are not now to speak any more in your Defence; but why Judgment of Death should not be pronounc'd.

L. of Som. Then I have no more to say; but humbly beseech you my Lord High-Steward, and the rest of the Lords to be Intercessors to the King for his Mercy towards me, if it be necessary.

My Lord High-Steward, taking the White-Staff from *Sir Richard Coningsby*, pronounc'd Sentence.

L. High-Steward. *Robert Earl of Somerset*, Whereas thou hast been indicted, arraign'd, and found guilty, as Accessary before the Fact, of the wilful Poisoning and Murder of *Sir Thomas Overbury*; you are therefore to be carried from hence to the Tower, and from thence to the Place of Execution, where you are to be hang'd 'till you be dead: And the Lord have Mercy upon you.

L. of Som. My Lords the Peers, I beseech you, as you have been the Judges of this Day, so you will be my Intercessors.

Then my Lord Steward broke his Staff, the Court dissolv'd, and the Prisoner was carried away.

Afterwards the Earl and his Countess receiv'd several Reprieves, during which he wrote to the King the following obscure Letter*.

May it please your Majesty,

BY this Gentleman your Majesty's Lieutenant, I understand of some halt you made, and the cause of it, at such time as he offered to your Majesty my Letters; but soon after your Majesty could resolve your self, and behold me nothing so diffident of you, but in humble Language petitioning your Favour; for I am in hope that my Condition is not capable of so much more Misery, as I need to make my Passage to you by such way of Intercession.

This which follows after, I offer your Majesty, tho' not as to your self, for upon less Motive you can find Favour for me.

Now I need only move, not plead before your Majesty, as my Case doth stand; for what I seek to have done, follows upon what you have already done, as a Consequence and succeeding Growth of your own Act.

But to the intent that your Majesty may see that there is enough to answer those (if any such there be) as do go about to pervert the exercise of your Power, and to turn it from its own clear Excellency, for to minister unto their Passions; I have presum'd to this end to awake your Majesty's own Conceit upon this Subject, which can gather to it self better and more able Defences in my behalf upon this View. For tho' the Acts of your Mercy which are not communicable, nor the Causes of them with others; as derived from those secret Motives which are only sensible and privy to your own Heart, and admit of no search or discovery to any general Satisfaction; and that under this Protection I might guard my Particular sufficiently; yet my Case need not hide itself, but attend the Dispute with any, that would put it upon a monstrous and heavy Shape: tho' that I must acknowledge,

that

* It is not improbable, that some Expressions in this Letter may have relation to a Report spread about at that time, of *Somerset's* threatening Message sent to King James by the Lieutenant of the Tower, That if he had not his Pardon, he would discover an important Secret, which it was the King's interest to have conceal'd.

‘ that both Life and Estate are forfeited to you by Law; yet so forfeited, that the same Law gives you the same Power to preserve, as it doth to punish, whereby your Majesty’s higher Prerogative doth not wrestle with it, nor do you infringe those Grounds by which you have ever governed, so as the Resistance is not great, that your Majesty hath for to give Life, and which is less in the Gift of Estate, for that the Law casts wholly upon your self, and yields it as fit matter for Exercise of your Goodness.

‘ Once it was your Majesty’s Gift to me, so it may be better not taken, for to avoid to take that, which hath been once their own; and I may say farther, that the Law hath not been severe upon the Ruin of innocent Posterity, nor yet cancelled nor cut off the Merits of Ancestors, before the Politick Hand of State had contriv’d it into these several Forms, as fitted to their Ends of Government.

‘ To this I may add, that whereupon I was judged, even the Crime it self might have been none, if your Majesty’s Hand had not once touched upon it, by which all Access unto your Favour was quite taken from me. Yet as it did at length appear, I fell rather for want of well defending, than by the Violence or Force of any Proofs; for I so far forsook my self, and my Cause, as that it may be a question whether I was more condemned for that, or for the matter it self, which was the subject of that day’s Controversy.

‘ Then thus far nothing hath appeared, wherein your Majesty hath extended for me your Power, beyond the reasonable bound; neither doth any thing stand so in the way of your future Proceedings, but rather make easy your Majesty’s favour for my Relief.

‘ What may then be the Cause that Malice can pitch upon, wherefore your Majesty should not proceed to accomplish your own Work? Aspersions are taken away by your Majesty’s letting me loose to the utmost power of Law, with the Lives of so many Offenders, which yieldeth the World Subjects of Sorrow rather than Appetite to more Blood. But Truth and Innocency protect themselves in poor Men, much more in Kings; neither was there such Aspersions (God knows) in any possibility towards your Majesty, but among those who would create these Pretences to mislead your Majesty, and thereby make me miserable; if not this (whereof the Virtue and Use was in the former time and is now determined) there is not any but your Pleasure.

‘ It is true, I am forfeited to your Majesty, but not *against* you by any treasonable or unfaithful Act; besides, there is to be yielded a distinction of Men, as in *Faults*; in which I am of both under the nearest degrees of Exception.

‘ Yet your Majesty hath pardoned Life and Estate to Traitors and Strangers, sometimes the one, sometimes the other; nay, to some concerned in this Business, wherein I suffer, you have pardoned more unto them, than I desire, who (as it is reputed) if they had come to the Test, had proved Copper, and should have drunk of the bitter Cup as well as others.

‘ But I do not by this envy your Favours to any Persons, nor seek I to draw them into the Yoke with my self, but applaud your Majesty’s Good-

ness, being in that respect in a near possibility to come at me; besides this, to *Elwes* your Majesty has given an Estate, (which is a greater Gift than Life, because it extends to Posterity,) who was the worst deserfer in this Business, an unoffended Instrument, who might have prevented all After-mischief, but for his own Ends suffered it, and by the like Arts afterwards betrayed it.

‘ To this I may add *Tresham* in the *Powder-Treason*, upon whose Successors I do not cast any of his Infamy, yet he preserved himself to Posterity; so as what he, or others such as he, have defrauded by the Arts of Law, and whom their own unfaithfulness made safe; I have much ado to hold my Ingenuity and Confidence, how it may be, because I distrusted not your Majesty, or because it returned in your Power from whom I had it. Is it in danger to be broken or dismembred? Let me hope that there is nothing, which by Favour may be excused, or by Industry might have been avoided, that will fail me, where your Majesty is to determine. It is not I, that put your Majesty in mind opportunely, it is he, that was your *Creature*; it is *Somerset* with all your Honours and envious Greatness, that is now in question. Kings themselves are protected from the breach of Law, by being Favourites and God’s Anointed; which gives your Majesty like Privilege over yours, as I took from Doctor *Donne* his Sermon, That the Goodness of God is not so much acknowledged by us in being our *Creator*, as in being our *Redeemer*; nor in that he hath chosen us, as that nothing can take us out of his hand; which in your Majesty’s remembrance let me challenge and hope for: for the first access of Favour, they may be ascribed unto one’s own pleasing themselves, but that appears to be for our Sakes, and for our Good, when the same forsakes not our civil Desires.

‘ This Redemption I crave, not as to my own Person, but with your Benefits once given; nor do I assume them very deep, for I have voluntarily departed from the hopes of my Pension, Place, Office; I only cleave to that which is so little, as that it will suffer no parting or diminution.

‘ And as in my former Letters, so by this, I humbly crave of your Majesty not to let the Practices of Court work upon your Son the *Prince*, not fearing the Sufferings of my Loss in that particular so much (for I cannot lose it but willingly all with it,) as for to take off the Stage, that which in the attempt may prove inconvenient.

‘ But if your Majesty have any respects to move you to suspend your Goodness towards me, let that which is mine rest in your own Hands, till that you find all opposite Humours conformed to your Purpose.

‘ I have done wrong to myself, thus to entertain such a doubt of your Majesty; but the unrelenting of Adversaries, which, when you will have them, will soon alter; and that all this while I have received nothing of present Notice for Direction, or to comfort me from your Majesty, hath made me to expostulate with my self thus hardly: for God is my Judge, Sir, I can never be worthy of it, if I have these Marks put upon me of a *Traitor*, as that tumbling and disordering of that Estate, would declare. The

Divorce

Divorce from your Presence, lays too much upon me, and this would upon both.

I will say no further, neither in that which your Majesty doubted my aptness to fall into: for my Cause nor my Confidence is not in that Distress, as for to use that Mean of Intercession or any thing besides; but to remember your Majesty that I am the Workmanship of your Hands, and bear your Stamp deeply imprinted in all the Characters of Favour; that I was the first Plant ingrafted by your Majesty's Hand in this Place, therefore not to be unrooted by the same Hand, lest it should taint all the same kind with the Touch of that fatalness; and that I was even the Son of a Father, whose Services are register'd in the first Honours and Impressions I took of your Majesty's Favour, and laid there as a Foundation-Stone of that Building.

These and your Majesty's Goodness for to receive them, is what I rely upon, praying for your Majesty's Prosperity; I am in all humbleness,

Your Majesty's

Loyal Servant and Creature,

R. Somerset.

On the 18th of January 1621, the King by Order of Council granted them the Liberty of retiring to a Country-House.

At White-hall, January the 18th, 1621.

Present,

L. Keeper.	L. Brooke,
L. Treasurer	Mr. Treasurer.
L. President,	Mr. Secretary Calvert.
L. M. Hamilton,	Mr. Chancellor of the Ex-
Earl Marshal	chequer,
L. Vis. Falkland,	Master of the Rolls.
L. Digby,	

Whereas his Majesty is graciously pleased to enlarge and set at liberty the Earl of Somerset and his Lady, now Prisoners in the Tower of London; and that nevertheless it is thought fit that both the said Earl and his Lady be confined to some convenient Place: It is therefore, according to his Majesty's gracious Pleasure and Command, ordered, That the Earl of Somerset and his Lady do repair either to Grays or Cowsham, the Lord Wallingford's Houses, in the County of Oxon, and remain confined to one or either of the said Houses, and within three Miles Compass of either of the same, until farther Order be given by his Majesty.

At last in the Year 1624, about four Months before the death of the King they obtain'd their Pardons notwithstanding the King had formerly made a solemn Declaration *, that he would never pardon any Person who should appear to have been concerned in this Murder.

The Countess of Somerset's Pardon.

Jacobus Rex,

REX omnibus ad quos, &c. salutem. Cum tam iustitiam quam misericordiam fontes a solio Regis promanare consueverint & debeant ex quibus prior

ille iustitiæ in memorabili casu mortis & interfectionis Thomæ Overbury mil. cursu constanti, & recto a nobis, & cura nostra regia fluxit, & derivatus est, in nostram & subditorum satisfactionem plenariam: Cumque diversæ & multiplices causæ, & Motiva clementiæ nostræ occurrant, quæ misericordiam nostræ regiam erga Franciscam Carr nuper Comitiss. Somerset promovere possint, præsertim eadē illa totæ & talis exemplis iustitiæ jam antea expiata, præcipue vero duæ, quarum prima ad patrem ejus & amicos spectat, familiamque & prosapiam prænobil. altera ad eam ipsam, quod lib. & spontaneè delictum suum confessæ sit, se submitiendo & prosternendo ad misericordiam nostræ altare, non solum durante tempore incarcerationis suæ, verum etiam publice & in iudicio. Cumque Tho. Dominus Ellesmere Cancellar. nr. Angliæ, & magnus Senescallus nr. Angliæ ea vice existens, necnon omnes pares ejus per quorum iudicium convicta fuit ad humil. Petitionem ejusdem Franciscæ publice factæ promissio suo ad intercedend. pro misericordia nostra regia erga eam solenniter se obstrinxerint. Imprimis autem nobiscum perpendentes naturæ delicti ejus unde ipsa indictat. arraignat. convict. & condemnat. sit (viz.) quod non fuer. process. & iudicium tanquam de principal. sed de accessoria ante fact. eaque ipsa procuratio ex conscelerata instigatione hominum quorundam ignobilium originem suscepisse videtur. Sciatis quod nos pietate moti de gratia nostra speciali ac certa sciens & mero motu nostr. pardonavimus, remisimus, & relaxavimus, ac per præsentis pro nob. hæred. & succ. nostris pardonamus, remittimus, & relaxamus præfat. Franciscæ Carr nuper Comitiss. Somerset, seu quocunque alio nomine, cognomine sive additione nominis vel cognominis, dignitatis, loci vel locorum eadem Franciscæ sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, occisionem, necem, venenationem, intoxicationem, mortem, feloniam, & feloniam interfectionem præd. Thomæ Overbury mil. seu quocunque alio nomine, cognomine, sive additione nominis vel cognominis loci vel locor. idem Thomas Overbury mil. sciatur, censeatur, vocetur sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, per ipsam Franciscam per se solam sive cum aliqua alia persona sive aliquibus al. personis quibuscunque, quomodocunque qualitercunque, quandocunque seu ubicunque fact. commiss. sive perpetrat. ac omnes & omnimodas conspirationes, felonias, abettationes, procurationes, incitationes, confortation. manuenson. auxiliationes, conductiones, mandati. consilia, crimina, transgressiones, malefacta, offens. & delict. quæcunque præd. mortem, occisionem, necem, venenationem, intoxicationem, feloniam & feloniam interfectionem præd. Thomæ Overbury mil. in aliquo tangen. sive concern. ac accessar. eorundem tam ante factum, quam post factum, ac fugam, & fugas superinde fact. licet eadem Franciscæ de permiss. vel aliquo præmissor. indictata impetit. appellat. rectat. vocat. waviat. convict. condemnat. attinet. sive adjudicat. per iudicium parium suorum coram præd. magno Senescallo nostro Angl. vel alr. quomodocunque existit vel non existit, aut indictari, impetiri, appellari, rectari, vocari, waviari, convinci, condemnari, attingi, sive adjudicari contigerit in futur. ac omnia & singula indictamenta, judicia condemnationes, executiones, pænas, mortis pænas, corporal. punitiones, ac omnes al.

pænas,

* At the time when this Prosecution was first set on foot, the King gave a strict Charge to the Judges to make a diligent search and inquiry into the Truth, and told them, If ever he spared any that were guilty, he wish'd the Curse of God might light on him, and his Posterity.

panas, & pœnalitat. quascunque de pro sive concern. mortem, occisionem, necem, venenationem, intoxicationem, feloniam, & feloniam interfectionem præd. Thomæ Overbury mil. in sup. vel versus ipsam Franciscam hab. fact. reddit. sive adjudicat. aut imposter. habend. fiend. reddend. sive adjudicand. aut quæ nos versus ipsam Franciscæ pro præmiss. vel aliquo præmissor. habuim. habem. seu imposter. habere poterimus, aut hæred. seu suc. habere poterint in futur. (Imprisonament. ad arbitrium nr. regium aut restric. ullo modo ad locum certum Anglicè confining, tantum except.) Pardonamus insuper ac per præsent. pro nob. hæred. & succr. nr. remitt. & relax. præfat. Franciscæ omn. & singul. utlagar. si quæ versus ipsam Franciscæ ratione, sive occasione præmissor. seu eor. alicujus promulgat. fuer. sive imposter. erunt promulgand. ac omn. & omnimod. sect. querel. impetitiones, & demand. quæcunque, quæ nos versus ipsam Franciscam pro præmiss. vel aliquo præmissor. habuimus, habem. seu in futur. habere poterimus, Sectamque pacis nostræ, quæ ad nos versus ipsam Franciscæ pertinet, seu pertinere poterit ratione præmissor. seu eor. alicujus, & firmam pacem nr. eidem Franciscæ inde demus & concedimus per præsent. : Nolentes quod eadem Franc. per Just. Vic. Escaetor. Ballivos, seu aliquos Ministr. nr. occasionibus præd. seu eor. aliquo molestetur, perturbetur, seu in aliquo gravetur; ita tamen quod stet rect. in cur. nr. si quis versus eam loqui voluerit de præmissis vel aliquo præmissor. Licet eadem Franciscæ bonam & sufficient. securitat. non inveniat secundum formam & effectum cujusdam Actus Parliament. Domini Edwardi nuper Regis Angliæ tertii, progenitor. nr. anno regni sui decimo apud Westm. tent. edit. de se bene gerend. ex nunc erga nos hæred. ad succ. nr. & cunctum populum nr. Et ulterius pro nobis hæred. & succ. nostris de ampliori gratia nostra speciali, ac ex certa scienc. & mero motu nostris volumus & concedimus per præsentis, quod hæc Litt. nræ. Paten. pardonationis, ac omnia & singula in eisdem content. bone, firme, valide sufficient. & effectual. in lege stabunt, & existent, & debinc nullo modo vacue devenient; Quodque imposter. eadem Franciscæ ullo modo non indictetur, arreſtetur, impetatur, vexetur, seu gravetur de pro vel concernend. mort. occisionem, necem, venenationem, intoxicationem, feloniam aut feloniam interfectionem præd. Thomæ Overbury mil. qualitercunque seu quocunque modo idem Thomas Overbury mil. ad mortem suam devenit. Statut. in Parliament. Domini Richardi nuper Regis Angliæ secundi, anno regni sui decimo tertio tent. edit. aut aliquo alio statut. acti, ordination. provisione, sive restrictione in contrar. inde non obſtan. In cujus rei, &c. Teste, &c.

Ex per Francis Bacon.

May it please your excellent Majesty.

THIS Bill containeth your Majesty's gracious Pardon unto the Lady Frances late Countess of Somerset, for being Accessary before the Fact, of the Death and Impositionment of Sir Thomas Overbury.

It hath inserted, as Motives to your Majesty's Mercy, four respects; that is to say: The respect of her Father, Friends and Family.

Her Voluntary Confession, both when she was Prisoner, and at the Bar.

The Promise made publicly by the Lord High Steward, and her Peers, to intercede for your Majesty's Mercy.

And that the Crime was not of a Principal, but of an Accessary, before the Fact, by the Infligation of base Persons.

The like Pardon formerly passed your Majesty's Signature, and is now amended by your Majesty's special Direction from your Royal Mouth, in two Points: The one is, That Imprisonment in the Tower, or other Confining at your Majesty's Pleasure, is not pardoned. The other, that the solemn Promise made at her Arraignment by the Lord Steward and the Peers to intercede to your Majesty for your Mercy, is inserted.

Francis Bacon.

The aforesaid Bill translated into English.

James Rex,

THE King to whom, &c. Greeting. Where as the Fountains, as well of Mercy as Justice, are wont and ought to flow from the King's Throne; of which the former of Justice in the memorable Case of the Death and Murder of Sir Thomas Overbury, in a constant and right Course, hath flowed and is derived from us and our Royal Court, for the full Satisfaction of our Self and Subjects. And whereas divers and manifold Causes of our Clemency occur, which may move our Regal Mercy towards Frances Carr, late Countess of Somerset; chiefly, that Murder, with so many and such Examples of Justice, before this time expiated; especially two, whereof the first respecteth her Father, and Friends, and Family, and noble Progeny; the other hath respect to herself, because she freely and willingly confessed her Offence, submitting and prostrating her self at the Altar of our Mercy, not only during the time of her Imprisonment, but also publicly, and in her Trial. And forasmuch as Thomas Lord Ellesmere, our Chancellor of England, and being our High Steward of England in that behalf, and all her Peers, by whose Judgment she was convicted, at the humble Petition of the said Frances publicly made, solemnly bound themselves by their Promise, to intercede for our Royal Mercy towards her: And first weighing with ourselves the nature of her Offence, upon which she was indicted, arraigned, convicted and condemned, viz. That the Process and Judgment were not as of a Principal, but as of an Accessary before the Fact, and that she seemed to have begun by the Procurement and wicked Infligation of certain base Persons: Know ye, that we, moved with Pity, of our special Grace, and of our certain Knowledge, and our mere Motion, have pardoned, remitted and remised, and by these Presents for us, our Heirs and Successors, do pardon, remise, and release to the aforesaid Frances Carr, late Countess of Somerset, or by whatsoever other Name, or Surname, or addition of Name, or of her Surname of Dignity, Place, or Places, the same Frances may be known, esteemed, called, or named, or lately was known, esteemed, called or named, the Slaughter, Killing, Poisoning, Bewitching, Death, Felony and felonious Murdering of the aforesaid Sir Thomas Overbury; or by whatsoever other Name, Surname, or addition of Name or Surname, of Place or Places, the said Sir Thomas Overbury may be known, esteemed, called or named, or lately was known, esteemed, called or named, by the said Frances, by herself alone,

alone, or with any other Person, or any other Persons whatsoever, howsoever, in what manner forever, whensoever, or wheresoever done, committed, or perpetrated; and all, and all manner of Conspiracies, Felonies, Abetments, Procurements, Incitations, Partnerships, Maintainances, Helps, Hirings, Commands, Counsels, Crimes, Transgressions, Wrongs, Offences and Faults whatsoever, the aforesaid Death, Slaughter, Killing, Poisoning, Bewitching, Felony and felonious Murdering of the aforesaid Sir Thomas Overbury, in any wise touching or concerning. And the Accessary of them, as before the Fact, as after the Fact, and Flight and Flights made thereupon, altho' the said Frances of the said Premises, or any of the Premises stand, or not stand indicted, impeached, *appellat. vocat. reſtat. waviat.* convicted, condemned, attainted, or adjudged by the Judgment of her Peers, before the aforesaid High Steward of England, or otherwise howsoever, or thence in time to come shall appear to be indicted, impeached, *appellar. reſtari, vocari, waviari,* convicted, condemned, attainted or adjudged. And all and singular Indictments, Judgments, Condemnations, Executions, Pains of Death, Pains of Corporal Punishments, and all other Pains and Penalties whatsoever of, for, or concerning the Death, Slaughter, Killing, Poisoning, Bewitching, Felonies, and felonious Murdering of the aforesaid Sir Thomas Overbury, in, upon, or against the same Frances, had, made, returned, or adjudged; or hereafter to be had, made, returned, or adjudged, or which we against the same Frances may have in time to come (Imprisonment at our Royal Pleasure, or Restraint, confining to a certain Place only excepted.) Moreover, we do pardon, and by these Presents for us, our Heirs and Successors, remit and remise to the aforesaid Frances, all and every Outlawries which against the same Frances, by reason or occasion of the Premises, or any of them, have been proclaimed, or hereafter shall be proclaimed; and all, and all manner of Suits, Complaints, Impeachments, and Demands whatsoever, which we against the same Frances, for the Premises, or any of the Premises, have had, have, or in time to come shall have; and the Suit of our Peace which appertained to us against the same Frances, or may appertain by reason of the Premises, or any of them. And by these Presents, We do give and grant our firm Peace to the same Frances, willing that the same Frances, by the Justices, Sheriffs, Escheators, Bailiffs, or any other our Ministers, by the Occasions aforesaid, or any of them, be not molested, troubled, or in any manner vexed; so as nevertheless she stand right in our Court: if any towards her should speak concerning the Premises, or any of the Premises, although the said Frances do not find good and sufficient Security, according to the Form of a certain Act of Parliament, of the Sovereign Lord Edward the Third, late King of England, our Progenitor, held at Westminster, in the tenth Year of his Reign, for her good Behaviour from henceforth towards us, our Heirs and Successors, and all our People. And farther, for us, our Heirs, and Successors, of our more ample special Grace, and out of our certain Knowledge, and our mere Motion, we will and grant by these Presents, That these our Letters-Patent of Pardon, and all and singular the Things contained in the same, shall stand, and be

good, firm, valid, sufficient and effectual in the Law, and from henceforth shall by no means become void. And that in time to come, the said Frances, by any means, shall not be indicted, arrested, accused, vexed or troubled of, for, or concerning the Death, Murder, Slaughter, Poisoning, Bewitching, Felony, or felonious Killing of the aforesaid Sir Thomas Overbury, howsoever, or by whatsoever Means the said Sir Thomas Overbury came to his End: The Statute of the Sovereign Lord Richard the Second, late King of England, in the thirteenth Year of his Reign, or any other Statute, Act, Ordinance, Provision, or Restriction to the contrary thereof notwithstanding. In Testimony whereof, &c. Witnesses, &c.

Ex. per Francis Bacon.

De Pardonatione speciali pro Roberto Karr, nuper Comiti Somerset.*

REX omnibus ad quos, &c. Salutem. Cum per quandam Inquisitionem captam apud Civitatem Westm. in Comitatu Middlesexie, in magnâ Aulâ Placitorum ibidem, Die Veneris decimo nono die Januarii, Anno Regni nostri Angliæ, Franciæ & Hiberniæ tertio decimo, & Scotiæ quadragesimo-nono, coram Edwardo Coke Milite, Capitali Justiciario nostro ad Placita coram nobis tenenda assignato, uno de Privato Concilio nostro: Julio Cæsar Milite, Magistro Rotulorum Cancellariæ nostræ, altero de Privato Concilio nostro: Henrico Hobarte Milite, Capitali Justiciario nostro de Banco: Laurentio Tanfield Milite, Capitali Barone Scaccarii nostri: Jacobi Alibam Milite, uno Baronum Scaccarii nostri: Johanne Croke Milite, uno Justiciariorum nostrorum ad Placita coram nobis tenenda assignato: Johanne Dodderidge Milite, altero Justiciario ad Placita coram nobis tenenda assignato: Roberto Houghton Milite, altero Justiciario nostro ad Placita coram nobis tenenda assignato: Rogero Wilbrabam Milite, Supervisore Curiae nostræ Wardorum & Liberationum: Daniele Dunn Milite, uno Magistrorum Curiae nostræ Requisitionum: Jacobo Ley Milite, Attornato Nostro Curiae nostræ Wardorum & Liberationum: Et Edwardo Moseley Milite, Attornato Curiae Ducatus nostri Lancastriæ: Ad tunc Justiciariis nostris, per Literas Patentes nostras eis, & quibuscunque quatuor vel pluribus eorum, inde confectas; ad inquirendum per Sacramentum proborum & legalium Hominum de Comitatu Middlesexie, ac aliis viis, modis & mediis quibus melius sciverint aut poterint, tam infra Libertatis quam extra, per quos rei Veritas melius sciri poterit, de quibuscunque Proditionibus, Misprisionibus Proditionum, Infurrectionibus, Rebellionibus, Contrafacturis, Tonfuris, Loturis, falsis Fabricationibus, & aliis Falsitatibus Monetæ hujus Regni nostri Angliæ, & aliorum Regnorum sive Dominiorum

* 22 Jac. I. A. D. 1624 Rymer's Fœdera, Vol. XVII. p. 625, & seq. Edit. 1717.

nostrorum quorumcunque; ac de quibuscunque Murdris, Feloniis, Homicidis, Interfectionibus, Burglariis, Raptibus Mulierum, Congregationibus & Conventiculis illicitis, Verborum Prolationibus, Coadunationibus, Misprisionibus, Confoederationibus, falsis Allegationibus, Transgressionibus, Riotis, Routis, Retentionibus, Escapiis, Contemptibus, Falsitatibus, Negligentiis, Concelamentis, Manutenentiis, Oppressionibus, Cambipartiis, Deceptionibus, & aliis Malefactis, Offensis & Injuriis quibuscunque; Nec non Accessariis eorundem infra Comitatum prædictum, tam infra Libertates quam extra, per quoscunque & qualitercunque factis, habitis, perpetratis sive commissis, & per quos vel per quem, cui vel quibus, quando, qualiter & quomodo; ac de aliis Articulis & Circumstantiis præmissa, & eorum quodlibet, sive eorum aliquod vel aliqua qualitercunque concernentibus plenius veritatem; & ad easdem Proditiones, & alia Præmissa audiendi & terminandi, secundum Legem & Consuetudines Regni nostri Angliæ assignatis, recitantes quod cum Ricardus Weston, nuper de London, Yeoman, Deum præ Oculis suis non habens, nec acerbissimas Pœnas & Punitiones contra Malefactores per Leges & Statuta hujus Regni Angliæ edita & provisâ, atque quotidie in Exemplum & Terrorem eorundem in Executionem posita, aliquantulum verens; sed Instigatione Diabolicâ motus & seductus, machinans & intendens quandam Thomam Overbury Militem, non solum in gravissimos, odiosissimos & periculossimos Morbos inducere, verum etiam præfatum Thomam Overbury de Vitâ suâ felonice & voluntarie deprivare atque spoliare, & nequissimam Intentionem illam atque Animi sui impium propositum prædictum efficere; Nono die Maij Anno Regni nostri Angliæ, Franciæ, & Hiberniæ undecimo, & Scotiæ quadragesimo-sexto, apud Turrim London, in Parochiâ Omnium Sanctorum Barking, in Warda Turris London, ex Malitia sua præcogitata, quoddam Venenum Coloris subviridis & subflavi (Anglicè *of a greenish and yellowish Colour*) vocatum *Roseacre*, in Manus suas obtinuerit & acquisiverit: Ac prædictus Ricardus Weston, eisdem Die & Anno apud Turrim London prædictam in Parochia & Warda prædictis, sciens prædictum Venenum, vocatum *Roseacre* fore Venenum mortale, idem Ricardus Weston Venenum prædictum vocatum *Roseacre*, cum quodam genere Jusculi (Anglicè *Broth*) in quodam Disculo per ipsum Ricardum Weston, ad tunc apud Turrim London prædictam, in Parochiâ & Wardâ prædictis, composuit & miscuit, & Jusculum prædictum cum Veneno prædicto, vocato *Roseacre*, ad tunc apud Turrim London prædictam in Parochia & Warda prædictis, vitiauerit & infecerit eâ Intentione, ut idem Ricardus Weston præfatum Thomam Overbury cum Veneno prædicto, sic, ut præfertur, composito & mixto, interficeret & murraret. Et prædictus Ricardus Weston, Jusculum prædictum sic per ipsum Ricardum Weston, ut præfertur, vitiatum & infectum, & cum Veneno prædicto compositum & mixtum, præfatum Thomam Overbury, ad tunc apud Turrim London prædictam, in Parochiâ & Wardâ prædictis, felonice, voluntarie & ex Malitia sua præcogitata, tanquam salubre Jusculum ad edendum præbuerit & dederit: Super quo prædictus Thomas Overbury credens prædictum Jusculum, sic, ut præfertur, cum Veneno prædicto per præfatum

Ricardum Weston compositum, mixtum, vitiatum & infectum, fore salubre, idem Thomas Overbury postea, scilicet, eisdem Die & Anno apud Turrim London prædictam, in Parochiâ & Wardâ prædictis, prædictum Jusculum sic, ut præfertur, per præfatum Ricardum Weston, cum Veneno prædicto compositum, mixtum, vitiatum & infectum, ad tunc apud Turrim London, in Parochia & Warda prædictis, ceperit & comederit.

Cumque etiam prædictus Ricardus Weston postea, scilicet, primo Die Junii Annis undecimo & quadragesimo-sexto supradictis, in Parochia & Warda prædictis, ex Malitia sua præcogitata, quoddam aliud Venenum in Pulvere vocatum *white Arsenick*, in Manus suas obtinuerit & acquisiverit, & prædictus Ricardus Weston ad tunc, scilicet, prædicto primo Die Junii Annis supradictis, sciens prædictum Pulverem, vocatum *white Arsenick*, fore mortale Venenum, idem Ricardus Weston, eâ Intentione ut idem Ricardus Weston cum Veneno prædicto, vocato *white Arsenick*, præfatum Thomam Overbury magis celeriter interficeret & murraret, Venenum illud, vocatum *white Arsenick*, tanquam salubrem pulverem, ad edendum præfatum Thomam Overbury ad tunc, scilicet, prædicto primo Die Junii Annis supradictis, apud Turrim London prædictam, in Parochia & Warda prædictis, felonice, voluntarie & ex Malitia sua præcogitata, præbuerit & dederit; super quo prædictus Thomas Overbury, credens prædictum Pulverem, vocatum *white Arsenick*, fore salubrem Pulverem, idem Thomas Overbury Pulverem prædictum, vocatum *white Arsenick*, ad tunc, scilicet, prædicto primo Die Junii Annis supradictis, apud Turrim London prædictam, in Parochia & Warda prædictis, sumpserit & comederit.

Cumque etiam prædictus Ricardus Weston postea, scilicet, decimo Die Julii Annis undecimo & quadragesimo-sexto supradictis, apud Turrim London prædictam, in Parochia & Warda prædictis, ex Malitia sua præcogitata, quoddam aliud Venenum, vocatum *Mercury sublimate*, in Manus suas obtinuerit & acquisiverit, ac prædictus Ricardus Weston ad tunc, scilicet, prædicto decimo Die Julii Annis supradictis, apud Turrim London prædictam, in Parochia & Warda prædictis, sciens Venenum prædictum, vocatum *Mercury sublimate*, fore mortale Venenum, idem Ricardus Weston postea, scilicet, prædicto decimo Die Julii Annis supradictis, apud Turrim London prædictam, in Parochia & Warda prædictis, Venenum prædictum, vocatum *Mercury sublimate* in Placentis, Anglicè *Tarts*, posuerit; & Venenum prædictum, vocatum *Mercury sublimate* cum Placentis illis ad tunc, scilicet, prædicto decimo Die Julii Annis supradictis, apud Turrim London prædictam in Parochia & Warda prædictis, miscuerit; & Placentas prædictas cum Veneno prædicto, vocato *Mercury sublimate* ad tunc, scilicet, prædicto decimo Die Julii Annis supradictis, apud Turrim London prædictam in Parochia & Warda prædictis, vitiauerit & infecerit, eâ Intentione ut idem Ricardus Weston præfatum Tho. Overbury cum Veneno prædicto, vocato *Mercury sublimate* sic, ut præfertur, per præfatum Ricardum Weston in Placentis prædictis posito, & cum Placentis prædictis sic, ut præfertur, mixto, magis celeriter interficeret & murraret. Et prædictus Ricardus Weston prædictas Placentas sic, ut præfertur, per præfatum Ricardum Weston cum Veneno prædicto, vocato *Mercury sublimate* mixtas, vitiatas

&c

& infectas postea, scilicet, prædicto decimo die
 Julii, annis undecimo & quadragesimo-sexto
 prædictis apud Turrim London prædictam, in
 parochia & warda prædictis, felonice, voluntarie
 & ex Malitia sua præcogitata tanquam salubrem
 placentam præfato Thomæ Overbury ad edendum
 præbuerit & dederit; super quo prædictus Thomas
 Overbury, credens prædictas placentas sic, ut præ-
 fertur, per præfatum Ricardum Weston cum Ve-
 neno prædicto, vocato Mercury Sublimate, mixtas,
 vitiatas & infectas, fore salubres placentas; idem
 Thomas Overbury postea, scilicet, prædicto decimo
 die Julii, annis undecimo & quadragesimo-sexto
 supradictis, apud Turrim London prædictam, in
 parochia & warda prædictis, placentas prædictas
 sic, ut præfertur, per præfatum Ricardum Weston,
 cum Veneno prædicto, vocato Mercury Sublimate,
 mixtas, vitiatas & infectas sumpserit & comederit.
 Cumque etiam prædictus Ricardus Weston, &
 quidam homo ignotus existens Pharmacopola,
 (Anglicè, *an Apothecary*) Deum præ oculis suis
 non habentes, sed instigatione Diabolicâ moti &
 seducti, postea, scilicet, quarto-decimo die Sep-
 tembris, anno regni nostri Angliæ, Franciæ &
 Hiberniæ undecimo, & Scotiæ quadragesimo-sep-
 timo, apud Turrim London prædictam, in paro-
 chia & warda prædictis, ex Malitiis suis præco-
 gitatis, quoddam Venenum, vocatum Mercury
 Sublimate in manus suis obtinuerunt & acquisive-
 runt, ac prædictus Ricardus Weston & præfatus
 Pharmacopola ad tunc, scilicet, prædicto quarto-
 decimo die Septembris, annis undecimo & quadra-
 gesimo-septimo supradictis, scientes prædictum
 Venenum, vocatum Mercury Sublimate, ultimò
 mentionatum, fore Mortale Venenum, idem Ri-
 cardus Weston & præfatus Pharmacopola postea,
 scilicet, prædicto quarto-decimo die Septembris,
 annis undecimo & quadragesimo-septimo supra-
 dictis, apud Turrim London prædictam, in paro-
 chia & warda prædictis, Venenum prædictum,
 vocatum Mercury Sublimate, ultimò mentionatum
 in quoddam Clisterium (Anglicè *a Glistre*) ma-
 litiosè, diabolicè, felonice & voluntariè imposue-
 rint, & Clisterium prædictum cum Veneno præ-
 dicto, vocato Mercury Sublimate, ultimo mentio-
 nato ad tunc, scilicet, quartodecimo die Septem-
 bris, annis undecimo & quadragesimo-septimo
 supradictis, apud Turrim London prædictam in
 parochia & warda prædictis, vitiauerint & infe-
 cerint, ea intentione ut idem Ricardus Weston &
 præfatus Pharmacopola, præfatum Thomam Over-
 bury cum Veneno prædicto, vocato Mercury Sub-
 limate, ultimo mentionato, sic ut præfertur, in
 Clisterium prædictum, per præfatum Ricardum
 Weston & prædictum Pharmacopolam, impositum
 magis celeriter interficerent & murrarent; & præ-
 dictus Pharmacopola pro iniquo lucro viginti li-
 brarum ei in ea parte dandarum & solvendarum,
 Clisterium prædictum sic ut præfertur, per præ-
 fatum Ricardum Weston & ipsum Pharmacopolam
 prædictum, cum Veneno prædicto, vocato Mer-
 cury Sublimate, ultimo mentionato vitiatum & in-
 fectum præfato Thomæ Overbury, tanquam bonum,
 medicinale & salutare Clisterium pro corpore
 ipsius Thomæ Overbury ad tunc, scilicet, prædicto
 quarto-decimo die Septembris, annis undecimo &
 quadragesimo-septimo supradictis, apud Turrim
 London prædictam, in parochia & warda prædictis,
 felonice, voluntariè, & ex Malitia sua præcogi-
 tata suppeditaverint (Anglicè, *did minister*) & in
 intestina (Anglicè, *the Guts*) ipsius Thomæ Overbury

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infuderint (Anglicè, *did infuse and put up*;) & quod
 prædictus Ricardus Weston ad tunc, scilicet, præ-
 dicto quarto-decimo die Septembris, annis undeci-
 mo & quadragesimo-septimo supradictis, apud
 Turrim London prædictam, in parochia & warda
 prædictis, felonice, voluntariè, & ex Malitia sua
 præcogitata, fuerit præsens & auxilians eidem
 Pharmacopolæ in suppeditatione & infusione præ-
 dicti Clisterii sic, ut præfertur, per præfatum
 Ricardum Weston & prædictum Pharmacopolam
 cum Veneno prædicto, vocato Mercury Sublimate
 ultimo mentionato, vitiatum & infectum, in intestina
 prædicti Thomæ Overbury; & quod immediatè,
 tam post prædictas separales captiones & comestu-
 ras separalium Venenorum prædictorum, per præ-
 fatum Thomam Overbury in forma prædicta, quam
 post prædictam infusionem & suppeditationem
 Clisterii prædicti in intestina prædicti Thomæ
 Overbury, per præfatum Pharmacopolam in forma
 prædicta, idem Thomas Overbury apud Turrim
 London prædictam, in parochia & warda prædictis
 ægrotaverit, & in diversa genera morborum, tam
 ratione prædictarum captionum & comesturarum
 separalium Venenorum prædictorum per prædic-
 tum Thomam Overbury in forma prædicta, quam
 ratione Infusionis & Suppeditationis Clisterii præ-
 dicti in Intestina ipsius Thomæ Overbury, per præ-
 fatum Pharmacopolam in forma prædicta, inci-
 derit, & in Corpore suo variè distemperatus &
 disturbatus devenerit: Et prædictus Thomas Over-
 bury de separalibus Venenis prædictis & opera-
 tione inde prædictis separalibus temporibus, tam
 captionis & comesturæ separalium Venenorum
 prædictorum per præfatum Thomam Overbury in
 forma prædicta, quam prædictæ Infusionis & Sup-
 peditationis Clisterii prædicti in Intestina ipsius
 Thomæ Overbury per præfatum Pharmacopolam
 in forma prædicta usque in quintum-decimum
 diem Septembris, anno regni nostri Angliæ, Fran-
 ciæ & Hiberniæ undecimo, & Scotiæ quadragesi-
 mo-septimo supradictis, apud Turrim London præ-
 dictam, in parochia & warda prædictis, graviter
 languebat & intoxicatus fuit; quo quidem quinto-
 decimo die Septembris, annis undecimo & quadra-
 gesimo-septimo supradictis, prædictus Thomas
 Overbury apud Turrim London prædictam in paro-
 chia & warda prædictis de separalibus Venenis
 prædictis obiit venenatus: Et sic prædictus Ricar-
 dus Weston præfatum Thomam Overbury modo &
 forma supradictis, felonice, voluntariè & ex Mali-
 tia sua præcogitata, venenaverit, interfecerit &
 murraverit, contra Pacem nostram, Coronam
 & Dignitatem nostras, & in Jurium & Legum
 nostrarum contemptum manifestum, & in pessi-
 mum exemplum omnium aliorum in tali casu de-
 linquentium, nec non contra formam Statuti in
 hujusmodi casu editi & provisi.

Robertus Karr nuper Comes Somerset, per no-
 men Roberti Comitis Somerset nuper de parochia
 Sanctæ Mariæ in Westm. in Comite Middlesex
 indictatus fuit, pro eo quod ipse, Deum præ ocu-
 lis suis non habens, sed instigatione Diabolicâ mo-
 tus & seductus, ante Feloniam & Murdrum præ-
 dicta, per præfatum Ricardum Weston modo &
 forma prædictis felonice facta & perpetrata (vi-
 delicet) octavo die Maii anno regni nostri Angliæ,
 Franciæ & Hiberniæ undecimo, & Scotiæ qua-
 dragesimo-septimo supradictis, prædictum Ricardum
 Weston, apud prædictam parochiam Sanctæ Mar-
 garetæ in Westm. in dicto Comite Middlesex ad Fe-
 loniam & Murdrum prædicta modo & forma præ-
 dictis

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dictis facienda & perpetranda malitiosè, felonice, voluntariè & ex Malitiâ suâ præcogitatâ, incitavit, movit, præcepit, conduxit, auxiliatus fuit, abbetavit, procuravit & consuluit contra Pacem nostram, Coronam & Dignitatem nostras, nec non contra formam Statuti in hujusmodi casu editi & provisi, prout per Indictamentum prædictum in Curiâ nostrâ coram nobis de Recordo remanens, plenius liquet & apparet.

Cumque præfatus *Robertus Karr* nuper Comes *Somerfet*, super prædictam Inquisitionem in modo & forma prædictis captam, de & super Accessariis Feloniæ & Murdri prædictorum, ante Feloniam & Murdram illa facta & perpetrata in eadem Inquisitione contenta mentionata, arreatus, convictus, atinctus & adjudicatus existit, prout per Recordum inde plenius liquet & apparet.

Sciatis quòd Nos,

Oculis verè regiis & gratiosis Præmissa intuentes, nec non gratissima & fidelissima servitia quæ *Thomas Karr* de *Farniberst* in Regno nostro *Scotie* Miles, Pater præfati *Roberti* nuper Comitis *Somerfet*, tam præcharissimæ Matri nostræ Dominæ *Mariæ* nuper *Scotie* & *Franciæ* Reginæ, ob cujus causam prædictus *Thomas Karr* exilium & fortunarum suarum jacturam & ruinas constanti Animo & Fide passus est, quam nobis ipsis summa cum Fide & Alacritate multifariè præstiterit, Animo benigno recolentes, Pietate etiam moti erga ipsum nuper Comitem *Somerfet* & innocentem Sobolem suam; qui etiam ipsi *Robertus* multa Fidelia & perquam acceptabilia Servitia Nobis antehac impendit.

De Gratia nostra speciali, ac ex certa Scientia & mero Motu nostris, pardonavimus, remisimus, & relaxavimus, ac per præsentem, pro Nobis, Hæredibus & Successoribus nostris, pardonamus, remittimus & relaxamus præfato *Roberto Karr* nuper Comiti *Somerfet*, aliàs dicto *Roberto* communiter dicto Comiti *Somerfet*, aliàs dicto *Roberto* nuper Comiti *Somerfet*, aut quocunque alio Nominæ, Cognomine, sive Additione Nominis vel Cognominis Officii, Honoris, Dignitatis, Loci vel Locorum idem *Robertus Karr* sciatur, censeatur, vocetur sive nuncupetur, aut nuper sciebat, censebatur, vocabatur sive nuncupabatur, omnes & omnimodas Conspiraciones, Felonias, Abattationes, Procuraciones, Incitationes, Motiones, Confortationes, Manutationes, Præceptiones, Auxiliationes, Conducciones, Mandata, Confilia, Crimina, Transgressiones, Malefacta, Offensa & Delicta quæcunque in Indictamento sive Inquisitione prædicta specificata, Mortem, Occisionem, Necem, Venenationem, Intoxicationem, Feloniam, & feloniam Interfectionem prædicti *Thomæ Overbury* Militis, in aliquo tangentia sive concernentia: Ac Accessaria eorundem tam ante Factum quam post Factum, ac Fugam & Fugas superinde factas, licet idem *Robertus Karr* nuper Comes *Somerfet* de Præmissis vel aliquo Præmissorum indictatus, impetitus, appellatus, arreatus, utlagatus, convictus, condempnatus, atinctus sive adjudicatus existit vel non existit, aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condempnari, attingi sive adjudicari contigerit in futurum; ac omnia & singula Indictamenta, Judicia, Condemnationes, Executiones, Pœnas Mortis, Pœnas Corporales, Pecunarias Punitiones, Imprisonamentas, Restrictiones ad locum certum vel loca certa (Anglicè

Confining) Pœnas & Pœnalitates quascunque, de, pro, sive concernentes Mortem, Occisionem, Necem, Venenationem, Intoxicationem, Feloniam, & feloniam Interfectionem prædicti *Thomæ Overbury* Militis, in aliquo tangentia sive concernentia: Ac Accessaria eorundem tam ante Factum quam post Factum, ac Fugam & Fugas superinde factas, licet idem *Robertus Karr* nuper Comes *Somerfet* de Præmissis vel aliquo Præmissorum indictatus, impetitus, appellatus, arreatus, utlagatus, convictus, condempnatus, atinctus sive adjudicatus existit vel non existit; aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condempnari, attingi sive adjudicari contigerit in futurum; ac omnia & singula Indictamenta, Judicia, Condemnationes, Executiones, Pœnas Mortis, Pœnas Corporales, Pecunarias Punitiones, Imprisonamenta, Restrictiones ad Locum certum vel Loca certa (Anglicè *Confining*) Pœnas & Pœnalitates quascunque, de, pro, sive concernentes Mortem, Occisionem, Necem, Venenationem, Intoxicationem, Feloniam & feloniam Interfectionem prædicti *Thomæ Overbury* Militis, in, super vel versus ipsum *Robertum Karr* nuper Comitem *Somerfet* habita, facta, reddita, sive adjudicata, aut imposterum habenda, fienda, reddenda, sive adjudicanda; aut quæ Nos versus ipsum *Robertum Karr* nuper Comitem *Somerfet*, pro Præmissis vel aliquo Præmissorum habuimus, habemus seu imposterum habere potuimus, aut Hæredes vel Successores nostri ullo modo habere poterint in futurum.

Pardonavimus insuper, ac pro Nobis, Hæredibus & Successoribus nostris remittimus, pardonamus & relaxamus præfato *Rob. Karr* nuper Com. *Somerfet* omnes & singulas Utlagaria, si quæ versus prædictum *Rob. Karr* nuper Comitem *Somerfet*, ratione sive occasione præmissorum, sive eorum alicujus promulgatæ fuerint, sive imposterum erint promulgandæ; ac omnes & omnimodas Sectas, Quærelas, Impetitiones & Demanda quæcunque, quæ Nos, versus ipsum *Robertum Karr* nuper Comitem *Somerfet*, pro Præmissis vel aliquo Præmissorum habuimus, habemus, seu in futurum habere poterimus: Sectamque Pacis nostræ quæ ad nos versus ipsum *Robertum Karr* nuper Comitem *Somerfet* pertinet seu pertinere poterit ratione præmissorum, sive eorum alicujus, & firmam Pacem nostram eidem *Roberto Karr* nuper Comiti *Somerfet* damus & concedimus per Præsentem.

Nolentes quod idem *Robertus Karr* nuper Comes *Somerfet*, per Vicecomites, Justiciarios, Escautores, Ballivos sive alios Ministros nostros occasionibus prædictis seu eorum aliquo, molestetur, occasionetur, perturbetur, seu in aliquo gravetur, licet idem *Robertus Karr*, nuper Comes *Somerfet*, non inveniatur sufficientes Manucaptiones sive Securitates, juxta formam & effectum cujusdam Actus in Parlamento Domini *Edwardi* nuper Regis *Angliæ* Tertii Progenitoris nostri, Anno Regni sui decimo, apud *Westmonasterium* tento, editi, de se bene gerendo, exnunc, erga Nos, Hæredes & Successores nostros & cunctum Populum nostrum.

Sciatis ulterius quòd nos, de uberiori Gratia nostrâ speciali, & ex certâ Scientiâ & mero Motu nostris, pro Nobis, Hæredibus & Successoribus nostris concedimus præfato *Roberto Karr*, nuper Comiti *Somerfet*, & Hæredibus suis, quantum in nobis est, quod idem *Robertus Karr*, nuper Comes *Somerfet*, de cætero plenè & integrè adjudicetur, habeatur & reputetur in lege de &

in

in eisdem hujusmodi & consimilibus honore, statu, ordine, dignitate, stilo, sanguine, & loco honoris & præcedentiæ, ad omnes intentiones & proposita, ac si prædictæ feloniam, venenatio, intoxicatio & felonica interfectio præfati *Thomæ Overbury*, militis & accessaria eorundem, & prædictæ conspirationes, feloniam, abettationes, procurationes, incitationes, motiones, confortationes, proscriptiones, auxiliationes, condemnationes, mandata, consilia, & alia malefacta, transgressiones & offensæ, per ipsum, per se solum, aut cum aliis nunquam facta commissæ sive perpetrata fuissent, & prout prædictæ convictiones, condemnationes, judicia, utlagaria sive attincturæ nunquam habita, data, seu promulgata fuissent: Ac eundem *Robertum Karr*, nuper Comitem *Somerſet*, & hæredes suos ad omnia & singula dignitates, status, præheminentias sanguinis, loci honoris, ordinis & præcedentiæ quæcunque, quæ idem *Robertus Karr*, nuper Comes *Somerſet*, ratione aliquorum prædictorum convictionum, judiciorum, utlagariarum sive attincturarum, seu eorum alicujus, amisit seu forisfecit plenariè quantum in nobis est damus, reddimus & restituimus per Præsentes, adeo plenè, liberè & integrè ad omnes intentiones & proposita, ac si idem *Robertus Karr*, nuper Comes *Somerſet*, prædicta Felonia aut alia Malefacta nunquam commisisset aut perpetrasset; aut pro eisdem indicatus, arrestatus, convictus, utlagatus aut attinctus nunquam extitisset: quodque idem *Robertus Karr*, nuper Comes *Somerſet*, & hæredes sui de cætero & deinceps (quantum in nobis est) sunt & erunt in lege capaces & habiles in sanguine, ac de cætero & deinceps fore hæredes ad omnes & singulos antecessores lineales sive collaterales suos quoscunque, & (quantum in nobis est) ad petendum, habendum, hæreditandum & gaudendum omnia & singula, honores, maneria, dominia, terras, jura, titulos, actiones & hereditamenta quæcunque impoſterum descendentiæ seu devenientiæ, per descensum hæreditarium ab aliquo antecessorum suorum quorumcunque.

Et ulterius de ampliori Gratiâ nostrâ speciali, ac ex certa scientiâ & mero motu nostris volumus & concedimus per præsentes, pro Nobis, hæredibus & successoribus nostris, præfato *Roberto Karr*, nuper Comiti *Somerſet*, hæredibus & assignatis suis, quod hæc Literæ nostræ Patentes, & omnia & singula in eisdem contenta vel instrumentum earundem, erunt in omnibus & per omnia firmæ, validæ, bonæ, sufficientes & effectuales in lege erga & contra nos, hæredes & successores nostros, tam in omnibus curiis nostris quam alibi infra Regnum nostrum *Angliæ*, absque aliquibus Confirmationibus, Licentiis vel Tolerationibus, de Nobis, hæredibus vel successoribus nostris per prædictum *Robertum Karr*, nuper Comitem *Somerſet*, aut hæredes sive assignatos suos, procurandis vel obtinendis; quodque impoſterum idem *Robertus Karr*, nuper Comes *Somerſet*, ullo modo non judicetur, arrestetur, impetatur, vexetur, seu gravetur de, pro, vel concernente mortem, occisionem, necem, venenationem prædicti *Thomæ Overbury* militis qualitercunque, seu quocunque modo idem *Thomas Overbury* miles ad mortem suam devenerit: Non obstante statuto in Parlamento Domini *Ricardi*, nuper Regis *Angliæ* secundi, Anno Regni sui decimo ter-

tio, tento, Editio: Et non obstante male aut non vere recitando vel mentionando prædictum Indictamentum sive Inquisitionem superius in præsentibus mentionatum, vel aliquam inde Parcelam: Et non obstante non recitando vel non mentionando aliquam inquisitionem de, pro, aut concernentem præmissa per præsentes pardonata sive relaxata, aut eorum aliquod vel aliqua, aut aliquo alio Statuto, Actu, Ordinatione, Provisione, Restrictione, Materiâ vel Re, in contrarium inde non obstantibus.

In Cujus Rei, &c.

Teste Rege apud *Westmonasterium* septimo die *Octobris*.

Per Breve de Privato Sigillo.

When King *Charles* came to the Crown, *Somerſet* used great Sollicitations for the Recovery of his Estate; for which end he presented the following Petition.

To the King's most Excellent Majesty: The humble Petition of Robert Earl of *Somerſet*.

Sheweth,

THAT in the Year 1616, after your Petitioner's Troubles were over, the King (your Majesty's Father) was pleased by the Earl of *Suffolk*, the Lord Treasurer, the Earl of *Worcester*, Lord Privy-Seal, and the Duke of *Richmond*, Lord Steward, to make known to your Petitioner his favourable Intentions towards him, as well touching his Pardon and Inlargement, and the Payment of his Debts, as for his Estate, of which they shewed him that his Majesty did mean to take some part to the Crown; but would make up to your Petitioner in other Lands to as much in Value: and in particular, that with a Manor which he had in *Northamptonshire*, of a Thousand Pounds *per Ann.* there was four Thousand Pound of the King's Lands to be given him, which should be improvable, and be esteem'd at six Thousand Pounds *per Ann.* But your Petitioner, in that he had never taken any Lands of Gift from the King, as for some other Reasons, did delay to take hold of that Offer, desiring that he might be allow'd to keep that Estate which he had formerly got, without Prejudice to his Majesty or any Person. In which Hope he rested, until he found that some Pieces of it had been disposed of. Whereupon, being urged by his Wife's Friends, he was content, in the behalf of her and his Daughter, to give way that they should sue to his Majesty for the Performance of that which had been proffer'd to your Petitioner; but in that he would not appear therein himself, (doubting lest that might be understood to imply an Assent on his part to that which had been done with his Estate) it was given otherwise than as it was at first intended. Notwithstanding whereof, and that your Petitioner continued in the same mind, without craving any Reparation therein for the space of eight or nine Years after, yet he found cause at last to sue both for his Freedom and Pardon, and for that Part of his Estate which rested in the Crown; which Pardon he had not above four Months before God took the King.

And

‘ And his Majesty being moved a little before
 ‘ concerning your Petitioner’s Estate, (he being
 ‘ then at *New-Market*) professed that he would
 ‘ give Order therein at his coming to *Whitehall*;
 ‘ which it pleased God to prevent.

‘ Since that time he hath sued to your Majesty
 ‘ by the Duke of *Buckingham*, the Earl of *Port-*
 ‘ *land*, and afterwards by my Lord of *Canterbury*,
 ‘ my Lord of *Cottingham*, and others. At the Mar-
 ‘ riage of his Daughter with the now Earl of *Bed-*
 ‘ *ford*, he was by the Dutcheffs of *Buckingham* and
 ‘ the Earl of *Pembroke* desired, for Reasons they
 ‘ then gave him, not to press your Majesty there-
 ‘ in at that time; being assured by them, that
 ‘ whatsoever he had to demand justly of your Ma-
 ‘ jesty, or should make appear to have been meant
 ‘ of him by your Father, you would do him right
 ‘ in it. Whereupon he went on, and engaged him-
 ‘ self to the late Earl of *Bedford*, and for his Use,
 ‘ in which he stands yet bound, to his exceeding
 ‘ great Prejudice: All which notwithstanding, and
 ‘ that he afterwards did petition your Majesty for
 ‘ a Reference in this same Cause, yet he could not
 ‘ then neither obtain any.

‘ Your Petitioner humbly prayeth, That your
 ‘ Majesty will be pleased to take into your Consi-
 ‘ deration this Suit of his, of a nature far differing
 ‘ from all others that are made to you; that which
 ‘ he craves being only the Performance of what
 ‘ your Father intended for him, in lieu of so much
 ‘ as he had taken of his, and the same no other-
 ‘ wise in your Majesty to give him, than as he hath
 ‘ forborn to take hold of it; and for which your
 ‘ Majesty may conceive there hath been a Cause,
 ‘ and that not a common one, which had made
 ‘ him so long dispute with himself the Receipt of
 ‘ so great a Benefit, and wherein his whole For-
 ‘ tune consisted, and all that he had been getting
 ‘ for many Years. However, he being the first
 ‘ that hath left in the Crown that which he might
 ‘ have had from it, may well hope that his Confi-

‘ dence will not be imputed to him for a Crime, or
 ‘ that your Majesty (if he had thereby given you
 ‘ any Advantage) would think fit to make use of
 ‘ it, against one whom you may have cause to find,
 ‘ when it comes to be enquired into, that he hath
 ‘ been more than any trusted by the Crown, and
 ‘ hath more Proofs to shew than any other, that
 ‘ he hath deserved well of the King your Father,
 ‘ of your Majesty, and of all these your three
 ‘ Kingdoms.

‘ His last and humble Suit to your Majesty is,
 ‘ That in respect of the many Crosses he hath met
 ‘ with in this present Cause, and that Time hath
 ‘ taken away those great Men before-mentioned,
 ‘ as also the Earl of *Carlisle* and others, that were
 ‘ employed by the King to your Petitioner, or pre-
 ‘ sent when he received his Message from the
 ‘ Lords, there remaining only now some noble
 ‘ Persons of a greater Number in this Kingdom,
 ‘ that can testify so much as will give Credit to
 ‘ that which is deliver’d here; that your Majesty
 ‘ will therefore please to be inform’d by them
 ‘ what your Petitioner hath further to say herein
 ‘ for himself, and what they themselves can re-
 ‘ port touching the Intentions of the King, your
 ‘ Majesty’s Father, towards him in this Particular
 ‘ which is now fought of you: That after the ma-
 ‘ ny Losses he hath sustained by his want of Access
 ‘ to your Majesty, and the Assistance of those a-
 ‘ bout you, such Course may be taken now at
 ‘ length by your Majesty for the repairing him a-
 ‘ gain, either out of that Estate which was his own,
 ‘ or otherwise, as may accord with the Purpose
 ‘ of the King your Father, with your Majesty’s
 ‘ Justice, and is due to the Demand of your
 ‘ Petitioner.

*And he shall pray for your Majesty’s long and
 happy Reign.*

The Request of this Petition was never granted,
 and he and his Countess both died in Obscurity.



XXX. Proceedings in Parliament against Francis Bacon Lord Verulam, Viscount St. Albans, Lord-Chancellor of England, upon an Impeachment for Bribery and Corruption in the Execution of his Office, March 19, &c. 1620. 18 and 19 Jac. I.

PROCEEDINGS in the House of Commons.

Jovis 15^o die Martii 1620.



MR Robert Phillips reports from the Committee appointed to enquire into Abuses in the Courts of Justice, viz.

I am commanded from the said Committee to render an Account of some Abuses in the Courts of Justice, which have been presented unto us. In that which I shall deliver, are three Parts.

First, The Person against whom it is alledged.

Secondly, The Matter alledged.

Thirdly, The Opinion of the Committee.

1. The Person against whom it is alledged, is no less than the Lord Chancellor *, a Man so endued with all Parts, both of Nature and Art, as that I will say no more of him; being not able to say enough.

2. The Matter alledged, is *Corruption*.

3. The Persons by whom this is presented to us, are two, viz. *Awbrey* and *Egerton*.

Awbrey's Petition saith, that he having a Cause depending before the Lord Chancellor, and being tir'd by Delays, was advised by some that are near my Lord, to quicken the way by more than ordinary Means, viz. by presenting my Lord with one hundred Pounds.

The poor Gentleman, not able by any means to come to his wish'd-for Port, struck Sail at this, and made a shift to get an hundred Pounds from the Usurer; and having got it, went with Sir *George Hastings* and Mr. *Jenkins* to *Grays-Inn*: and being come to my Lord's House, they took the Money of him, and carry'd it in to my Lord Chancellor, and came out to him again, saying, my Lord, was thankful, and assured him of good Success in his Business.

Sir *George Hastings* acknowledgeth the giving of Advice, and carrying in of the Money to my Lord,

and saith he presented it to my Lord as from himself, and not from *Awbrey*.

This is all confirm'd by divers Letters, but it wrought not the Effect which the Gentleman expected; for notwithstanding this, he was still delay'd.

Egerton sheweth, that he desiring to procure my Lord's Favour, was persuaded by Sir *George Hastings* and Sir *Richard Young*, to present my Lord with a Sum of Money.

Before this Advice, he had given a Present of 52 l. and odd Shillings in Plate, as a Testimony of his Love; but is doubtful whether before his calling to the Seal, or since: But now by mortgaging his Estate he got up 400 l. and sends for Sir *George Hastings* and Sir *Richard Young*, desires their Assistance in presenting this Money, and told them how much it was.

They took it and carry'd it to my Lord Chancellor as a Gratuity from the Gentleman; for that my Lord (when he was Attorney) stood by him. My Lord (as they say) started at first, saying it was too much, he would not take it; but at length was persuaded, because it was for Favours past, and took it, and the Gentlemen return'd him Thanks; saying that their Lord said, that he did not only enrich him, but laid a Tie on him to assist him in all just and lawful Business.

Sir *George Hastings* and Sir *Richard Young* acknowledged the Receiving and Delivery of the Purse; but said they knew not what was in it.

Then a Question was proposed, Whether there were any Suit depending during those Offerings, either in the Chancery, or the Star-Chamber; but there was no certain Evidence of it.

Thus you see *Corruption* laid to the Charge of a Judge too, a great Judge; nay, to the Great Keeper of the King's Conscience.

Another Point came in by the by, shewing that some indirect Means are sometimes open (I fear too often) to the Courts of Justice.

It concerns no less a Man than a Divine, (who is now a Bishop †) but then called Dr. *Field*. Mr. *Egerton* and he being acquainted, and Mr. *Egerton's* Mind being troubled with the ill Success of his Business, vented it to the Divine, who (contrary

* Francis Lord Verulam, Viscount St. Albans.

† Bishop of Landaff.

triary to his Profession) took upon him to broke for him, in such a manner as was never preceded by any.

He made *Egerton* to acknowledge a Recognizance of 10000 Marks, with a Defeazance, that if my Lord Chancellor did decree it for him, 6000 Marks was to be distributed among those honourable Persons that did solicit it for him: But if it did not go as they desired, he promis'd, *in verbo Sacerdotis*, that he would deliver up the Bonds.

This appear'd by Letters from the now Reverend Bishop, but then Practical Doctor.

Mr. *Johnson* (a moral honest Man) perceiving that Mr. *Egerton* finding no Relief, did intend to prefer a Petition against the Lord Chancellor by one *Heales's* means, took occasion to talk with Mr. *Egerton*; asking him why he would prefer such a scandalous Petition against my Lord; he would have him take the Money out of the Petition, and then his Cause by the Mediation and Conference of some other Judge with my Lord, might be brought to a good End; and for Money, if he had lent any, he might be satisfy'd again.

Afterwards upon a Petition to the King by Sir *Rowland Egerton*, there was a Reference of this Matter to the Lord Chancellor, and Mr. *Edward Egerton* enter'd into a Bond for ten thousand Marks.

He had treated with one Dr. *Sharp*, that if he would give 1100*l.* he should have his Desire.

We sent for *Sharp*, but he deny'd that he ever contracted with him.

The Desire of the Committee was, to reform that which was amiss; and they thought fit to give as much Expedition as might be, because so great a Man's Honour is foiled with it, and therefore do think meet that farther Inquisition be made this Afternoon, and when the Truth of the Matter is found, then to be sent to the Lords.

Thus I have faithfully related what hath passed, and with as much Duty and Respect, as I might, to my Lord Chancellor; I desire it to be carry'd out of the House with a favourable Construction.

Order'd,

That this Matter be further consider'd by the Committee this Afternoon.

Then the House adjourn'd.

Sabbati 17^o die Martii, 1620.

Sir *Robert Phillips* made Report from the Committee of the Abuses in the Courts of Justice, viz.

We met on *Thursday* in the Afternoon; the principal Thing wherein I desir'd to be satisfy'd was, whether at the Time of giving those Gifts to the Lord Chancellor there were any Suit depending before him.

In *Awbrey's* Case it appear'd plainly there was: Something accidentally fell out in this Examination, and that is, a Declaration of Sir *George Hastings*, who hath been struggling with himself betwixt Gratitude and Honesty; but publick and private Goods meeting, he prefer'd the Publick, and own'd, that he taking pity on *Awbrey's* Suit, did give in a Box of 100*l.* to the Lord Chancellor, in these Terms or the like, *That it was to help Awbrey in his Cause.* Notwithstanding, not long after, a very prejudicial and murdering Order was

made against *Awbrey* in his Cause: whereupon Sir *George Hastings* moved my Lord Chancellor to rectify this Order. My Lord promised to do it, but did it not.

The Order was put into the Hands of one *Churchil* (one of the Registers in Chancery) by a Servant of the Lord Chancellor's.

There are Letters of *Awbrey's* to the Lord Chancellor touching this Business.

Now for Mr. *Egerton's* Case: As the Matter was of more Weight, so the Sum was of larger Extent, for there was 400*l.* given then, and a Suit then depending in the *Star-Chamber*; about which time Sir *Rowland Egerton* did prefer a Petition to the King for a Reference unto the Lord Chancellor: Whereupon my Lord caus'd him to enter into a Bond for six thousand Marks to stand to his Award. An Award was afterwards made, which was refused by Mr. *Edward Egerton*; thereupon a Suit by the Lord Chancellor's Direction was commenced against him, and the Bond of six thousand Marks assign'd over to Sir *Rowland Egerton*.

About this time *Edward Egerton* became acquainted with Dr. *Field*, and related his Cause unto him; who pitying him, sent him to two worthy Gentlemen, Mr. *Damport* and Sir *John Butler*, (who is now dead;) he makes known his Case to them, and desires them to be a means to put off his Cause from Hearing, because his Witnesses were not here.

Whereupon *Damport* wrote to the Duke of *Buckingham* to have had his Letter to the Lord Chancellor to stop it: But the Duke said he would not write, because the Matter was already decreed, and he would not receive it.

Mr. *Egerton* was drawn into a Bond of 10000 Marks for the Payment of 6000: and Mr. *Damport* being asked what he and Dr. *Field* should have had of this Money, he said, he did not remember what certain Sum; but he said it was more than any Cause could deserve in any Court of Justice.

In *Awbrey's* Case this is to be said,

That Sir *George Hastings* being at *Hackney*, where he dwelt, was sent for by the Lord Chancellor, and accordingly he came to him and found him in Bed, who bid him come near him, and willed the rest to depart the Room; and then said unto him, Sir *George*, *I am sure you love me, and I know that you are not willing that any thing done by you shall reflect any Dishonour upon me. I hear, that one Awbrey pretends to petition against me; he is a Man that you have some Interest in; you may take him off if you please.*

Sir *George Hastings* afterwards met with *Awbrey*, and asked him whether he intended any such thing, and desired to see it, to shew my Lord Chancellor; which Sir *George* accordingly did, and desir'd my Lord to do the poor Man Justice.

My Lord promised to do it, and bad him bring his Council; and they did, but could have no Remedy, so the Petition went on.

Sir *George Hastings*, some time since, had Conference with my Lord Chancellor; and he told him, *He must lay it upon his Lordship.* If you do, *George*, (said he) *I must deny it upon my Honour.*

Thus you see the Relation of what hath passed.

Now for our Proceedings in it; it is a Cause of great Weight, it concerns every Man here: For if the Fountains be muddy, what will the Streams be?

If

If the great Dispenser of the King's Conscience be corrupt, who can have any Courage to plead before him?

I will present one thing unto you, and then make a Request.

That which I move is, That we present his Business singly to the Lords, and deliver it without Exasperation; 1st. Because there is but one Precedent * for it, in the like Case, for a Chancellor in a Cause of Corruption. 2^{dly}. Because the Party accused is a Peer of the Kingdom, sitting in the higher House, whom we cannot meddle with. 3^{dly}. Because we have no Power to give an Oath.

That which I request is, that those People which have been fetter'd with much Calamity by these Courses, may by Petition to his Majesty, or otherwise, have their Cause Revived and Revived.

Sir Edward Sackville. This honourable Lord stands but yet suspected, and I hold not those Gentlemen that have testified against him competent Witnesses.

First, Because they speak to discharge themselves.

Secondly, Because if he be guilty, they were those that tempted him.

But yet, if notwithstanding you resolve to send it up to the Lords, let it be presented without any prejudicial Opinion, to be weighed in the Balance of their Lordships Judgments.

And if they think fit to examine these Witnesses, let them.

Sir George Hastings. This adds to my Grief; but this is my Resolution, I had rather perish with a just Sentence here, than escape with a guilty Conscience.

Some moved that Sir George Hastings and Sir Richard Young should be sequestred from Parliament till the Matter was ended; but there was nothing order'd therein.

Mr. Nevill. After some Reluctation within me, I am resolv'd to speak what my Conscience leads me unto.

I speak for the good of my Country, the honour of my King, and advancement of Justice.

Justice is the Fountain, the King the Head thereof, clear as the Waters of *Siloah*, pure as the River of *Damascus*: but there is a derivative Justice brought unto us by Channels, those are often muddy and more bitter than the Waters of *Marah*: Such Waters flow abundantly in Chancery.

I will not touch upon the Person of him that sits in Court, for he is the Dispenser of the King's Conscience; but because some Motions are made against the Testimony of those Gentlemen, I will say this, I think them fit to sit here, because they are neither Delinquents nor Accused.

My Lord means to deny it upon his Honour: But I would not have that serve his Turn, for he himself hath made the Nobility swear in Chancery.

Therefore I would have their Lordships informed what Privileges they have lost.

Next, I would have them note the luxuriant Authority of that Court, and how it is an inextricable Labyrinth, wherein resideth such a Monitor as gormandizeth the Liberty of all Subjects whatsoever.

Mr. Recorder Finch. If we shall make but a Presentation of this, we do in a fort accuse him,

nay judge him: if the Gentlemen be admitted to give Testimony, before it shall condemn another it must agree with it self.

First, I heard him say, he gave it as a Present from himself: Yet afterwards he saith, he told my Lord Chancellor he had it from *Awbrey*.

Again, *Awbrey* speaks not of any Delivery of Money himself to my Lord Chancellor.

Then again it's urg'd, that a discontented Suitor writ Letters to my Lord: The Letters are rejected, not hearken'd unto; what doth this but free him?

In the other Case, if *Egerton*, out of a Desire to congratulate him at his coming to the Seal, made my Lord a Present for his Kindnesses and Pains in former Businesses, what Wrong hath he done if he hath received a Present? And tho' a Suit were depending, yet who keeps a Register in his Heart of all Causes? Nay, who can, amongst such a Multitude?

And for the six thousand Marks there is no Colour to say that ever he was to have any Part thereof.

For taking away the Privilege of the Nobility in requiring an Oath, he found the Court possessed of it before he came there; so that we have no sufficient Grounds to accuse so great a Lord upon that Account.

But if we shall present Articles to the Lords, what do we (as I said before) but accuse him?

Sir Edward Coke. It is objected, that we have but one single Witness; therefore no sufficient Proof.

I answer, That in the 37th of *Eliz.* in a Complaint against *Soldier-Sellers*, for that having Warrant to take up Soldiers for the Wars, if they press'd a rich Man's Son they would discharge him for Money, there was no more than *singularis testis* in one Matter; but tho' they were single Witnesses in several Matters, yet agreeing in one and the same third Person, it was held sufficient to prove a Work of Darkeness.

For in such Works it is a marvel there are any Witnesses.

But some object, that these Men are culpable; and therefore no competent Witnesses.

I answer, They came not to accuse, but were interrogated.

If I be interrogated, I had rather speak Truth than respect any Man; and you will make *Bribery* to be unpunish'd, if he that carrieth the *Bribe* shall not be a Witness.

In this, one Witness is sufficient: He that accuseth himself, by accusing another, is more than three Witnesses: and this was wrought out of them.

Order'd,

That the Complaint of *Awbrey* and *Egerton* against the Lord Chancellor and the Bishop for *Corruption*, for the 100 *l.* and 400 *l.* and the Recognizance, should be drawn up by Sir Robert Phillips, Sir Edward Coke, Mr. Noy, and Sir Dudley Diggs; and that the same be related to the Lords without Prejudice or Opinion at a Conference; and that a Message be sent to the Lords for this Purpose on Monday next.

Adjourn'd, &c.

* This seems to be the Case of Cardinal Wolsey. See 3 Co. Inst. 148. 4 Co. Inst. 89.

Lune 19^o die Martii 1620.

A Message was sent to the Lords by Sir *Robert Phillips*, to desire a Conference touching the Lord Chancellor and the Bishop of *Landaff*, being petition'd against by *Awbrey* and *Egerton*.

Sir *Robert Phillips* reports that the Lords had agreed to a Conference.

Mr. Secretary *Calvert* brings a Message from the King, that this Parliament hath sat a long time, and *Easter* is near come, and thinks it is fit there should be a Cessation for a time; yet the King will appoint no time, but leaves it to your selves.

But for the beginning again, he thinketh the 10th of *April* a fit time, but will appoint none; only he would have you take care that there be no Impediment in the Subsidies.

The King also took notice of the Complaints against the Lord Chancellor, for which he was sorry, for it hath always been his Care to have placed the best; but no Man can prevent such Accidents: But his Comfort was, that the House was careful to preserve his Honour.

And his Majesty thought not fit to have the Affair hang long in suspense; therefore would not have any thing to hinder it.

But for the Furtherance thereof, he proposed a Commission of six of the higher House, and twelve of the lower House, to examine it upon Oath.

This Proposition if we liked well, he would send the like to the Lords, and this he thought might be done during this Cessation: and tho' he hoped the Chancellor was free, yet if he should be found guilty, he doubted not but you would do him Justice.

Sir *Edward Coke* said, We should take heed the Commission do not hinder the Manner of our Parliamentary Proceedings.

The Answer return'd to the King was, To render him Thanks for the first Part of his gracious Message.

And for the second, we desired that the like Message may be sent to the Lords; for there being so great a Concurrence betwixt us, we may have Conference with them about it.

And then Adjourn'd, &c.

Martis 20^o die Martii 1620.

Sir *Edward Giles* made a Motion that one *Churchil* should be called in.

Whereupon there was a Petition of one *Montacute*, *Wood*, &c. against the Lord Chancellor for taking 300 *l.* of the Lady *Wharton*, and making Orders, &c. which was read.

Churchil and *Keeling* were said to be Witnesses, and a Committee was appointed to examine them.

Sir *Robert Phillips* reports from the Conference, that according to the Commandment of this House he had deliver'd those Heads which were agreed on at the Conference Yesterday; excusing himself if he had failed in any Point.

That the Lords accepted it with a great deal of Affection, as sensible of the Wrongs done to the Commonwealth; and return'd Answer by the Lord Treasurer: First, By way of Question, Whether we would not reduce them into Writing. Resolv'd

No, for no Cause; this only consisting of two or three Points, clear and plain: and as for the Letters and other things which the Lords desir'd, we would acquaint the House, and doubted not but it would be yielded.

The Lords further return'd for Answer, That they would proceed in this Matter with Care, Diligence and Expedition.

A Message from the Lords to signify, that they have taken into Consideration the last Conference, and shall need the Testimony of two Members of this House; and therefore desire, that voluntarily, and without ordering, as private Persons, they make Declaration upon Oath, and the like for others if occasion were.

The Answer return'd was, That the Gentlemen would attend voluntarily as private Gentlemen, and upon private Notice be examined.

Sir *Robert Phillips* reports from the Committee appointed to examine *Churchil*; from which Particular a General may be extracted, conducing to the Discovery of Corruption in the Lord Chancellor.

The Lady *Wharton* having a Cause depending in Chancery, many Orders were made in it.

Amongst the rest, there was an Order made for the Dismission of the Bill, by the consent of the Council on both sides; which my Lady disliking, took *Churchil* the Register into her Coach, and carry'd him to my Lord Chancellor's, and so wrought that he was willed not to enter the last Order; so that my Lady was left at liberty to prosecute it in Chancery, brought it to a Hearing, and at length got a Decree.

Keeling being examin'd, saith, That near about the time of passing this Decree, my Lady took an hundred Pound (he saw it) and she made him set down the Words and Style which she should use in the Delivery of it.

Then she goes to *York-house*, and deliver'd it to my Lord Chancellor, as she told him.

She carry'd it in a Purse.

My Lord asked her, *What she had in her Hand?* She reply'd, *A Purse of my own making*, and presented it to him; who took it and said, *What Lord could refuse a Purse of so fair a Lady's Working.*

After this my Lord made a Decree for her, but it was not perfected; but 200 *l.* more being given (one *Gardiner* being present) her Decree had Life.

But after the giving of the 100 *l.* because she had not 200 *l.* ready in Money, one *Shute* dealt with her to convey the Land to my Lord Chancellor and his Heirs, reserving an Estate to her self for Life: But she knowing no Reason to disinherit her own Children, asked *Keeling* her Man what he thought of it; he (like an honest Servant) was against it.

Shute knowing this, sets upon *Keeling*, and brings him to be willing my Lady should do it, with Power of Revocation upon the Payment of 200 *l.* but that not being liked, they made a shift to pay 200 *l.* in a reasonable time.

Keeling lets fall some Speeches, as if he had left *York-house* for the Corruption which was there, which he himself knew in part.

Gardiner, *Keeling's* Man, confirm'd the Payment of the 300 *l.* for the Decree, viz. 100 *l.* before, and 200 *l.* after.

This purchas'd Decree being lately damn'd again by my Lord Chancellor, was the Cause of this Complaint.

Keeling

Keeling saith, Sir *John Trevor* did present my Lord Chancellor with 100 *l.* by the Hands of Sir *Richard Young*, for a final End to this Cause.

Sir *Richard Young* answer'd, That when he attended my Lord Chancellor, Sir *John Trevor's* Man brought a Cabinet and a Letter to my Lord Chancellor, and intreated me to deliver it, which I did openly; and this was openly done, and this was all I knew of it.

Sir *Edward Coke*. Strange to me that this Money should be thus openly deliver'd, and that one *Gardiner* should be present at the Payment of the 200 *l.*

Ordered,

That Sir *Robert Phillips* do deliver to the Lords this Afternoon the Bishop of *Landaff* and *Awbrey's* Letters, and all other Writings that he hath.

And then Adjourn'd, &c.

Mercurii 21^o die Martii 1620.

Sir *Robert Phillips* reports from the Committee appointed to examine *Keeling* and *Churchil*, who inform'd many Corruptions against the Lord Chancellor.

1. In the Cause betwixt *Hull* and *Holeman*, *Hull* gave or lent my Lord one thousand pound since the Suit began.

2. In the Cause between *Wroth* and *Manwaring*, there were one hundred Pieces given, of which *Hunt* had 20 *l.*

3. *Hoddy* gave a Jewel which was thought to be worth 500 *l.* but he himself said it was a Trifle of a hundred or two hundred Pound Price: It was presented to the Lord Chancellor by Sir *Thomas Peryn* and Sir *Henry Holmes*.

4. In the Cause between *Peacock* and *Reynell*, there was much Money given on both sides.

5. In the Cause of *Barker* and *Bill*, *Barker* said he was 800 *l.* out in Gifts since this Suit began.

6. In the Cause between *Smithwick* and *Welsh* *Smithwick* gave 300 *l.* yet my Lord decreed it against him; so he had his Money again by piece-meal.

In this and other Causes, my Lord would decree Part; and when he wanted more Money he would send for more, and then decree another Part.

In most Causes my Lord's Servants have undertaken one Side or another; insomuch as it was usual for Council, when their Clients came unto them, to ask what Friend they had at *Tork-houfe*.

Mr. *Mewtys*. Touching the Persons that inform, I would intreat this honourable House to consider that *Keeling* is a common Solicitor (to say no more of him) *Churchil* a guilty Register by his own Confession: I know that Fear of Punishment, and Hopes of lessening it, may make them to say much, yea more than is true.

For my own part, I must say I have been an Observer of my Lord's Proceedings; I know he hath sown the good Seed of Justice, and I hope that it will prove that the envious Man hath sown those Tares.

I humbly desire that these Generals may not be sent up to the Lords, unless these Men will testify them in particular.

Ordered,

That a Message be sent to the Lords by Sir *Robert Phillips*, to relate the Case of the Lady *Whar-ton*, and the Informations of *Churchil*.

Sir *Robert Phillips* reports from the Lords, that they acknowledged the great Care of this House in these important Businesses; return Thanks for the Correspondence of this House with them, and assure the like from them for ever to this House. In these and all other things they will advise, and return Answer as soon as possible.

And then Adjourn'd, &c.

PROCEEDINGS in the House of Lords.

ON Monday the 19th Day of March 1620. in the Afternoon the Commons had a Conference with the Lords: which Conference was reported the next Day by the Lord Treasurer; That it was the desire of the Commons to inform their Lordships of the great Abuses of the Courts of Justice, the Information whereof was divided into these three Parts.

First, The Persons accused.

Secondly, The Matters objected against them.

Thirdly, The Proofs.

The Persons are the Lord Chancellor of England, and the now Bishop of Landaff, being then no Bishop, but Dr. Field.

The incomparable good Parts of the Lord Chancellor were highly commended, the Place he holds magnified, from whence Bounty, Justice and Mercy were to be distributed to the Subjects, with which he was solely trusted; whither all great Causes were drawn, and from whence no Appeal

lay for any Injustice or Wrong done, save to the Parliament.

That the Lord Chancellor was accused of great Bribery and Corruption* committed by him in this eminent Place; whereof * 3 Co. Inst. 148. two Cases were alledged.

The one concerning *Christopher Awbrey*, and the other concerning *Edward Egerton*.

1. In the Cause depending in the Chancery between the said *Awbrey* and Sir *William Bronker*, *Awbrey* feeling some hard Measure, was advised to give the Lord Chancellor 100 *l.* the which he delivered to his Council, Sir *George Hastings*, and he to the Lord Chancellor: This Business proceeding slowly notwithstanding, *Awbrey* did write divers Letters, and delivered them to the Lord Chancellor, to which he never obtained any Answer from his Lordship; but at last delivering another Letter, his Lordship answered, *If he importuned him, he would lay him by the Heels.*

The Proofs of this Accusation are five.

First, Sir *George Hastings* relating it long since unto Sir *Charles Montague*.

Secondly, The Lord Chancellor fearing this would be complained of, desired Silence of Sir *George Hastings*.

Thirdly, Sir *George Hastings*'s Testimony thereof, which was not voluntary, but urged.

Fourthly, The Lord Chancellor desired Sir *George Hastings* to bring the Party *Awbrey* unto him, and promised Redress of the Wrongs done him.

Fifthly, That the Lord Chancellor said unto Sir *George Hastings*, if he should affirm the giving of this 100*l.* his Lordship would and must deny it upon his Honour.

2. The Case of Sir *Edward Egerton* is this: There being divers Suits between *Edward Egerton* and Sir *Rowland Egerton* in the Chancery, *Edward Egerton* presented his Lordship, a little after he was Lord Keeper, with a *Bason* and *Ewer* of the Value of 50*l.* and upwards; and afterwards he delivered unto Sir *George Hastings*, and Sir *Richard Young*, 400*l.* in Gold.

Sir *Richard Young* presented it to his Lordship, who took it, and poised it, and said it was too much; and returned Answer, that Mr. *Egerton* had not only enriched him, but had laid a tie upon his Lordship to do him Favour in all his just Causes.

The Proofs for this are the Testimony of Sir *George Hastings*, and the Testimony of *Merefill* a Scrivener thus far, that he took up 700*l.* for Mr. *Egerton*; Mr. *Egerton* then telling him that a great part of it was to be given to the Lord Chancellor, and that Mr. *Egerton* afterwards told him that the 400*l.* in Gold was given to the Lord Chancellor.

At this Conference was farther declared somewhat relating to a Bishop, who was touched in this Business upon the bye, whose Function was much honoured, but his Person touched herein: The Business depending between the *Egertons* being order'd against *Edward Egerton*, he procured a new Reference thereof from the King to the Lord Chancellor; his Lordship demanded the Parties to be bound in 6000 Marks to stand to his Lordship's Award; they having entred into that Bond, his Lordship awarded the matter against *Edward Egerton* for Sir *Rowland Egerton*; but *Edward Egerton* refusing to stand to the said Award, a new Bill was exhibited in the Chancery, and thereupon his Lordship ordered that this Bond of 6000 Marks should be assigned unto Sir *Rowland Egerton*, and he to put the same in Suit in his Lordship's Name.

The Bishop of *Landaff*, as a Friend to Mr. *Edward Egerton*, adviseth with *Randolph Dampont* and *Butler* (which *Butler* is now dead) that they would procure a stay of the Decree of that Award, and procure a new Hearing; upon which it was agreed, that the said 6000 Marks should be given for this by *Edward Egerton*, and shared amongst them, and amongst certain Noble Persons.

A Recognizance of 10000 Marks was required from Mr. *Egerton* to the Bishop for the Performance hereof; the Bishop his Share of this 6000 Marks was so great, as no Court of Justice would allow.

To prove this, they produce Letters of the Bishop, naming the Sum, and setting down a Course

how these 6000 Marks might be rais'd, viz. the Land in question to be decreed for Mr. *Egerton*, and out of that the Money to be levied; and if this were not effected, then the Bishop *in verbo Sacredotis* promised to deliver up this Recognizance to be cancelled; the new Recognizance is sealed accordingly, and *Randolph Dampont* rides to Court, and moved the * Lord Admiral for his Lordship's Letter to the * Duke of Buckingham Lord Chancellor herein; but his Lordship denied to meddle in a Cause depending in Suit.

Then the said *Randolph Dampont* assayed to get the King's Letter, but failed therein also; so that the Good they intended to Mr. *Egerton* was not effected, and yet the Bishop, tho' required, refused to deliver up the said Recognizance, until Mr. *Egerton* threatned to complain thereof unto the King.

The Lord Treasurer shewed also that the Commons do purpose, that if any more of this kind happen to be complained of before them, they will present the same to your Lordships, wherein they shall follow the antient Precedents, which shew that great Persons have been accused for the like in Parliament.

They humbly desire, that forasmuch as this concerneth a Person of so great Eminency, it may not depend long before your Lordships, that the Examination of the Proofs may be expedited, and if he be found Guilty, then to be punished; if not Guilty, the now Accusers to be punished.

This being reported, the Lord Admiral presented to the House a Letter written unto their Lordships; the Tenor whereof follows.

My very good Lords,

I Humbly pray your Lordships all to make a favourable and true Construction of my Absence; it is no feigning nor fainting, but sickness both of my Heart, and of my Back, tho' joined with that Comfort of Mind, that persuades me, that I am not far from Heaven, whereof I feel the first Fruits: and because whether I live or die, I would be glad to preserve my Honour and Fame as far as I am worthy; hearing that some Complaints of base Bribery are coming before your Lordships, my Requests unto your Lordships are,

First, That you will maintain me in your good Opinion without Prejudice, until my Cause be heard.

Secondly, That in regard I have sequester'd my Mind at this time in great part from worldly Things, thinking of my Accompt and Answer in a higher Court, your Lordships would give me convenient Time, according to the Course of other Courts, to advise with my Council, and to make my Answer; wherein nevertheless my Council's part will be the least, for I shall not by the Grace of God trick up an Innocency with Cavillations, but plainly and ingenuously, as your Lordships know my manner is, declare what I know or remember.

Thirdly, That according to the Course of Justice, I may be allowed to except to the Witnesses brought against me, and to move Questions to your Lordships for their cross Examination, and likewise to produce my own Witnesses for discovery of the Truth.

And *Lastly*, ' That if there come any more Petitions of like Nature, that your Lordships would be pleased not to take any Prejudice or Apprehension of any Number or Muster of them, especially against a Judge, that makes two Thousand Orders and Decrees in a Year; not to speak of the Courses that have been taken for hunting out Complaints against me; but that I may answer them according to the Rules of Justice severally and respectively. These Requests I hope appear to your Lordships no other than Just; and so thinking my self happy to have so Noble Peers, and Reverend Prelates to discern of my Cause, and desiring no privilege of Greatness for subterfuge of Guiltiness, but meaning, as I said, to declare fairly and plainly with your Lordships, and to put my self upon your Honours and Favours, I pray God to bless your Councils, and your Persons; and rest

Your Lordships

March 19.
1620.

Humblest Servant,

Fra. St. Alban.

Upon which Letter, Answer was sent from the Lords unto the said Lord Chancellor on the said 20th of March, viz. *That the Lords received his Lordship's Letter delivered unto them by the Lord Admiral: They intend to proceed in his Cause now before their Lordships, according to the right Rules of Justice; and they shall be glad, if his Lordship shall clear his Honour therein; to which End they pray his Lordship to provide for his just Defence.*

And afterwards, on Wednesday the 21st of March, the Commons sent a Message unto the Lords concerning their further Complaint against the said Lord Chancellor; which consisted of these four Points, viz.

1. The First in Chancery being between the Lady Wharton Plaintiff, and Wood and others Defendants, upon Cross-Bills; the Lord Chancellor upon hearing wholly dismissed them, but upon entry of the Order, the Cross-Bill against the Lady Wharton was only dismissed, and afterwards for a Bribe of 300 l. given by the Lady Wharton to the Lord Chancellor, his Lordship decreed the Cause further; and then hearing that Wood and the other Defendants complained thereof to the House of Commons, his Lordship sent for them, and damned that Decree as unduly gotten: and when the Lady Wharton began to complain thereof, his Lordship sent for her also, and promis'd her Redress; saying, the Decree is not yet entered.

2. Secondly, In a Suit between Hall Plaintiff and Holman Defendant, Holman deferring his Answer was committed to the Fleet, where he lay twenty Weeks; and petitioning to be delivered, was answered by some about the Lord Chancellor, the Bill shall be decreed against him (*pro confesso*) unless he would enter into 2000 l. Bond to stand to the Lord Chancellor's Order; which he refusing, his Liberty cost him one way or other one Thousand Pounds. Holman being freed out of the Fleet, Hall petition'd to the Lord Chancellor, and Holman finding his Cause to go hard with him on his side, complained to the Commons; whereupon

the Lord Chancellor sent for him, and to pacify him, told him, *He should have what Order he would himself.*

3. Thirdly, In the Cause between Smithwick and Welsh, the matter in question being for Accompts, it was referred to certain Merchants, who certified in the behalf of Smithwick; yet Smithwick to obtain a Decree, was told by one Mr. Burrough, one near to the Lord Chancellor, that it must cost him 200 l. which he payed to Mr. Burrough or Mr. Hunt to the use of the Lord Chancellor, and yet the Lord Chancellor decreed but one part of the Certificate; whereupon he treats again with Mr. Burrough, who demanded another 100 l. which Smithwick also paid to the use of the Lord Chancellor. Then his Lordship referred the Accounts again to the same Merchants, who certified it again for Smithwick; yet his Lordship decreed the second part of the Certificate against Smithwick, and the first part, which was formerly decreed for him, his Lordship made doubtful. Smithwick petitioned to the Lord Chancellor for his Money again, and Smithwick had all his Money again, save 20 l. which was kept back by Hunt for a Year.

The Lord Chief Justice* also delivered three Petitions, which his Lordship receiv'd yesterday from the Commons, the first by the Lady Wharton, the second by Wood and others, and the third by Smithwick.

The Fourth part of the Message consists only of Instructions delivered unto the Commons by one Churchill a Register, concerning divers Bribes and Abuses in the Chancery, which the Commons desire may be examined.

The Lords in the mean time proceeded to the Examination of the Complaints, and took divers Examinations of Witnesses in the House, and appointed a select Committee of themselves, to take Examination of Witnesses to the Briberies and Corruptions of the Lord Chancellor; which being ended and collected, were order'd to be transcribed with the Proofs, and were as follow.

That in the Cause between Sir Rowland Egerton and Edward Egerton, his Lordship received on the part of Sir Rowland Egerton before he decreed for him,	300
Item, Of Edward Egerton in the said Cause,	400
Item, In the Cause between Hodie and Hodie, a dozen of Buttons (after the Cause ended) of the value of	50
Item, Of the Lady Wharton,	310
Item, Of Sir Thomas Monk,	100
Item, Of Sir John Trevor,	100
Item, Of one Young,	100
Item, Of one Fisher,	106
Item, In the Cause of Kenday and Valore, of Kenday a Cabinet worth	800
Of Valore (borrow'd at two times)	2000
Item, In the Cause between Scot and Lentball, of Scot	200
Item, Of Lentball,	100
Item, Of one Wroth, who had a Cause between him and one Manwaring,	100
Item, Of Sir Ralph Hansby,	500
Item, In the Lord Mountaine's Cause, of the Lord Mountaine, and more promis'd at the end of the Cause,	600 or 700
Item,	

* Sir James Ley.

382 30. Proceedings against Francis Lord Bacon, 18 Jac. I.

Item, Of one Mr. Dunch, ————	l. 200
Item, In a Cause between Reynell and Peacock, 200 l. in Money, and a Diamond Ring worth 5 or 600 l. ————	700
Item, Of Peacock, ————	100
Item, In a Cause of Barker, ————	700
Item, There being a Reference from his Majesty to his Lordship of a Business between the Grocers and Apothecaries, he had of the Grocers ————	200
Of the Apothecaries, (besides a rich Present of Ambergrease) ————	150
Item, Of the French Merchants, to constrain the Vintners of London to take 1500 Tuns of Wine; to accomplish which, he used very indirect means, by colour of his Office and Authority, without Bill or other Suit depending, as threatening and imprisoning the Vintners, for which he receiv'd of the Merchants ————	1000

Lastly, That he had given way to great Exactions by his Servants, in respect of private Seals, and sealing Injunctions.

On Tuesday the 24th of April, the Prince his Highness signified unto their Lordships, that the said Lord Chancellor had sent a Submission unto their Lordships, which was presently read *in hac Verba*.

May it please your Lordships,

I Shall humbly crave at your Lordships Hands a benign Interpretation of that, which I shall now write; for Words, that come from wasted Spirits, and an oppressed Mind, are more safe in being deposited in a noble Construction, than in being circled with any reserved Caution.

This being moved, and as I hope obtained in the Nature of a Protection for all that I shall say, I shall now make into the rest of that, wherewith I shall at this time trouble your Lordships, a very strange entrance: for in the midst of a state of as great Affliction, as I think a mortal Man can endure, (Honour being above Life) I shall begin with the professing of Gladness in some things.

The first is, that hereafter the Greatness of a Judge or Magistrate shall be no Sanctuary or Protection of Guiltiness, which (in few words) is the beginning of a Golden World.

The next is, that after this Example, it is like that Judges will fly from any thing that is in the likeness of Corruption (tho' it were at a great distance) as from a Serpent; which tendeth to the purging of the Courts of Justice, and the reducing them to their true Honour and Splendor. And in these two Points, God is my Witness, that, tho' it be my Fortune to be the Anvil whereupon these good Effects are beaten and wrought, I take no small Comfort.

But to pass from the Motions of my Heart, wherof God is only Judge, to the Merits of my Cause, wherof your Lordships are Judges under God, and his Lieutenant; I do understand there hath been heretofore expected from me some Justification, and therefore I have chosen one only Justification instead of all other, one of the Justifications of Job: for after the clear Submission and Confession, which I shall now make unto your Lordships, I hope I may say and

justify with Job in these words *,
I have not hid my Sin, as did Adam, * Job c. 31.
nor concealed my Faults in my Bosom; v. 33.

this is the only Justification, which I will use: it resteth therefore, that without Fig-leaves I do ingenuously confess and acknowledge, that having understood the particulars of the Charge, not formally from the House, but enough to inform my Conscience and Memory, I find matter sufficient and full both to move me to desert the Defence, and to move your Lordships to condemn and censure me.

Neither will I trouble your Lordships by singling those Particulars, which I think may easiest be answer'd, *Quid te exempta jure spinis de pluribus una?* neither will I prompt your Lordships to observe upon the Proofs, where they come not home, or the Scruples touching the Credit of the Witnesses; neither will I represent to your Lordships how far a Defence might in divers things extenuate the Offence in respect of the time or manner of the Gift, or the like Circumstances; but only leave those things to spring out of your own noble Thoughts and Observations of the Evidence and Examinations themselves, and charitably to wind about the particulars of the Charge here and there, as God shall put you in mind, and so submit my self wholly to your Pity and Grace.

And now that I have spoken to your Lordships as Judges, I shall say a few words to you as Peers and Prelates, humbly commending my Cause to your noble Minds and magnanimous Affections.

Your Lordships are no simple Judges, but parliamentary Judges, you have a farther extent of Arbitrary Power, than other Judges; and if your Lordships be not tied by the ordinary Course of Courts or Precedents in Points of Strictness and Severity, much less are you in Points of Mercy and Mitigation.

And yet if any thing which I shall move, might be contrary to your honourable and worthy End to introduce a Reformation, I should not seek it; but herein I beseech you give me leave to tell your Lordships a Story. Titus Manlius took his Son's Life for giving Battle against the Prohibition of his General: not many Years after the like severity was pursued by Papirius Cursor the Dictator against Quintus Maximus; who, being upon the Point to be sentenc'd by the Intercession of some principal Persons of the Senate, was spared; whereupon Livy makes this grave and gracious Observation, *Neque minus firmata est Disciplina militaris periculo Quinti Maximi, quam miserabili supplicio Titi Manlii.* The Discipline of War was no less established by the questioning of Quintus Maximus, than by the punishing of Titus Manlius. And the same Reason is of the Reformation of Justice; for the questioning Men of eminent Place hath the same Terror, tho' not the same Rigour, with the Punishment.

But my Case stayeth not there; for my humble desire is, that his Majesty would take the Seal into his Hands, which is a great downfall, and may serve I hope in itself for an expiation of my Faults.

Therefore if Mercy, and Mitigation be in your Powers, and do no way cross your noble Ends, why should I not hope of your Lordships Favours

‘ Favours and Commiseration? Your Lordships will be pleased to behold your chief Pattern, the King our Sovereign, of most incomparable Clemency, and whose Heart is inscrutable for Wisdom and Goodness: Your Lordships will remember that there sat not these 200 Years before a Prince in your House, and never such a Prince, whose Presence deserves to be made memorable by Records and Acts mixt of Mercy and Justice. Your selves, either Nobles (and Compassion ever beats in the Veins of noble Blood) or reverend Prelates, who are the Servants of him that would not break the bruised Reed, nor quench the smoking Flax; you all sit upon an high Stage, and therefore cannot but be more sensible of the Changes of the World, and of the Fall of any of High Place.

‘ Neither will your Lordships forget, that there are *vitia temporis* as well as *vitia hominis*; and that the beginning of Reformations hath the contrary Power of the *Pool of Bethesda*, for that had strength to cure only him, that is first cast in, and this hath strength to hurt him only, that is first cast in: And for my part I wish it may stay there, and go no further.

‘ Lastly, I assure my self your Lordships have a noble feeling of me as a Member of your own Body; and one thing there was, that in this very Session had some taste of your loving Affections, which I hope was not a Lightning before Death, but rather a Spark of that Grace, which now in conclusion will more appear.

‘ And therefore my humble Suit unto your Lordships is, that my penitent Submission may be my Sentence, and the Loss of the Seal my Punishment, and that your Lordships will spare my farther Sentence: But recommend me to his Majesty’s Grace and Pardon for all that is past. God’s Holy Spirit be among you.

Your Lordships humble Servant

April 22.
1621.

and Supplicant,

Fran. St. Albans, *Canc.*

The Lords having consider’d of this Submission, and heard the Collections of Corruptions charged upon the said Lord Chancellor, and the Proofs thereof read, they sent a Copy of the same without the Proofs unto the Lord Chancellor by Mr. Baron *Denham*, and Mr. * Attorney-General, with this Message from their Lordships, *viz.* That the Lord Chancellor’s Confession is not fully set down by his Lordship in the said Submission, for three Causes.

1. *First*, His Lordship confesseth not any particular Bribe or Corruption.
2. Nor sheweth how his Lordship heard the Charge thereof.
3. The Confession, such as it is, is afterwards extenuated in the same Submission. And therefore the Lords have sent him a particular of the Charge, and do expect his Answer to the same with all convenient Expedition.

Unto which Message the Lord Chancellor answered, that he would return the Lords an Answer with speed.

And on the 25th of *April*, the Lords considered of the Lord Chancellor’s said Answer sent unto their Message yesterday, and sent a second Message unto his Lordship to this effect by the said Mr. Baron *Denham*, and Mr. Attorney General, *viz.* The Lords having received a doubtful Answer unto the Message their Lordships sent him yesterday, therefore they now send to him again to know of his Lordship directly, and presently, whether his Lordship will make his Confession, or stand upon his Defence.

Answer returned by the said Messengers, *viz.* The Lord Chancellor will make no manner of Defence to the Charge, but meaneth to acknowledge Corruption, and to make a particular Confession to every Point, and after that an humble Submission; but humbly craves Liberty, that where the Charge is more full than he finds the Truth of the Fact, he may make Declaration of the Truth in such Particulars, the Charge being brief, and containing not all Circumstances.

The Lords sent the same Messengers back again to the Lord Chancellor, to let him know, that their Lordships have granted him time until Monday next the 30th of *April*, by Ten in the Morning, to send such Confession and Submission as his Lordship intends to make.

On which *Monday* the Lord Chancellor sent the same accordingly, which follows in *hæc Verba*, *viz.*

To the Right Honourable the Lords Spiritual and Temporal, in the High Court of Parliament assembled:

The humble Confession and Submission of me the Lord Chancellor.

UPON advis’d Consideration of the Charge, descending into my own Conscience, and calling my Memory to account so far as I am able, I do plainly and ingenuously confess, that I am guilty of Corruption, and do renounce all Defence, and put my self upon the Grace and Mercy of your Lordships.

The Particulars I confess and declare to be as followeth:

To the *first* Article of the Charge, *viz.* In the Cause between Sir *Rowland Egerton* and *Edward Egerton*, the Lord Chancellor receiv’d 300*l.* on the part of Sir *Rowland Egerton*, before he had decreed the Cause.

I do confess and declare, that upon a Reference from his Majesty of all Suits and Controversies between Sir *Rowland Egerton* and *Edward Egerton*, both Parties submitted themselves to my Award by Recognizances reciprocal in 10000 Marks a-piece. Thereupon, after divers Hearings, I made my Award, with the Advice and Consent of my Lord *Hobart*. The Award was perfected and published to the Parties, which was in *February*. Then some Days after, the 300 Pounds, mentioned in the Charge, were delivered unto me. Afterwards Mr. *Edward Egerton* flew off from the Award. Then in *Midsummer* Term following a Suit was begun in Chancery by Sir *Rowland*, to have

* Sir Thomas Coventry.

have the Award confirmed: And upon that Suit was the Decree made, mentioned in the Article.

The *second* Article of the Charge, *viz.* In the same Cause he received from *Edward Egerton* 400 *l.*

I confess and declare, that soon after my first coming to the Seal, being a Time when I was presented by many, the 400 *l.* mentioned in the said Charge, was delivered unto me in a Purse, and as I now call to mind, from Mr. *Edward Egerton*; but, as far as I can remember, it was express'd by them that brought it, to be for Favours past, and not in respect of Favours to come.

The *third* Article of the Charge, *viz.* In the Cause between *Hody* and *Hody*, he received a dozen of Buttons of the value of 50 *l.* about a Fortnight after the Cause was ended; I confess and declare, that as it is laid in the Charge about a Fortnight after the Cause was ended, it being a Suit for a great Inheritance, there were gold Buttons, about the value of 50 *l.* as is mentioned in the Charge, presented unto me, as I remember, by Sir *Thomas Perrot*, and the Party himself.

To the *fourth* Article of the Charge, *viz.* In a Cause between the Lady *Wharton* and the Coheirs of Sir *Francis Willoughby*, he received of the Lady *Wharton* three hundred and ten Pounds:

I confess and declare, that I did receive of the Lady *Wharton*, at two several times, as I remember, in Gold 200 *l.* and 100 Pieces, and this was certainly *Pendente Lite*: But yet I have a vehement Suspicion, that there was some shuffling between Mr. *Shute* and the Register, in entring some Orders, which afterwards I did distaste.

To the *fifth* Article of the Charge, *viz.* In Sir *Thomas Monk's* Cause, he received from Sir *Thomas Monk*, by the Hands of Sir *Henry Holmes*, 110 *l.* but this was three quarters of a Year after the Suit was ended:

I confess it to be true that I received 100 Pieces, but it was long after the Suit ended, as is contained in the Charge.

To the *sixth* Article of the Charge, *viz.* In the Cause between Sir *John Trevor* and *Afcue*, he received on the part of Sir *John Trevor* 100 *l.*

I confess and declare, that I received at *New-Year's-Tide* 100 *l.* from Sir *John Trevor*; and because it came as a *New-Year's* Gift, I neglected to inquire, whether the Cause was ended, or depending: but since I find, that tho' the Cause was then dismissed to a Trial at Law, yet the Equity was reserved, so as it was in that kind *Pendente Lite*.

To the *seventh* Article of the Charge, *viz.* In the Cause between *Holman* and *Young*, he received of *Young* 100 *l.* after the Decree made for him:

I confess and declare, that as I remember, a good while after the Cause ended, I received 100 *l.* either by Mr. *Toby Mathew* or from *Young* himself: but whereas I have understood, that there was some Money given by *Holman* to my Servant *Hatcher*, to that Certainty I was never made privy.

To the *eighth* Article of the Charge, In the Cause between *Fisher* and *Wrenham*, the Lord Chancellor, after the Decree passed, received a Suit of Hangings worth one hundred and threescore Pounds and better, which *Fisher* gave him by advice of Mr. *Shute*:

I confess and declare, that some time after the Decree passed, I being at that time upon remove to *York-house*, I did receive a Suit of Hangings of the value, I think, mentioned in the Charge by Mr. *Shute*, as from Sir *Edward Fisher*, towards the furnishing of my House, as some others, that were no ways Suitors, did present me with the like about that time.

To the *ninth* Article of the Charge, In the Cause between *Kenneday* and *Vanlore*, he received a rich Cabinet from *Kenneday*, apprais'd at 800 *l.*

I confess and declare, that such a Cabinet was brought to my House, tho' nothing near half the value; and that I said to him that brought it, that I came to view it, and not to receive it, and gave commandment that it should be carried back, and was offended when I heard it was not. And about a Year and an half after, as I remember, Sir *John Kenneday* having all that time refused to take it away, as I am told by my Servants, I was petitioned by one *Pinkney*, that it might be delivered to him, for that he stood engaged for the Money that Sir *John Kenneday* paid for it; and thereupon Sir *John Kenneday* wrote a Letter to my Servant *Sherborne*, with his own Hand, desiring I would not do him that disgrace as to return that Gift back, much less to put it into a wrong hand: And so it remains yet ready to be returned to whom your Lordships shall appoint.

To the *tenth* Article of the Charge, *viz.* He borrowed of *Vanlore* 1000 *l.* upon his own Bond at one time, and the like Sum at another time upon his Lordship's own Bill, subscribed by Mr. *Hunt* his Man:

I confess and declare, that I borrowed the Money in the Article set down, and that this is a true Debt; and I remember well, that I wrote a Letter from *Kew* about a twelve-month since to a Friend about the King, wherein I desired, that whereas I owed *Peter Vanlore* 2000 *l.* his Majesty would be pleased to grant me so much out of his Fine set upon me in the Star-Chamber.

To the *eleventh* Article of the Charge, *viz.* He received of *Richard Scott* 200 *l.* after his Cause was decreed, but upon a precedent Promise; all which was transacted by Mr. *Shute*:

I confess and declare, that some Fortnight after, as I remember that the Decree passed, I received 200 *l.* as from Mr. *Scott* by Mr. *Shute*, as upon some precedent Promise or Transaction by Mr. *Shute*: Certain I am I knew of none.

To the *twelfth* Article of the Charge, *viz.* He received in the same Cause on the part of Sir *John Lentall* 100 *l.*

I confess and declare, that some Month after, as I remember, that the Decree passed, I received 100 *l.* by my Servant *Sherborne*, as from Sir *John Lentall*, who was not the adverse Party to *Scott*, but a third Person relieved by the same Decree in the Suit of one *Power*.

To the *thirteenth* Article of the Charge, *viz.* He receiv'd of Mr. *Worth* 100 *l.* in respect of the Cause between him and Sir *Arthur Manwaring*:

I confess and declare, that this Cause being a Cause for Inheritance of good value, was ended by my Arbitrement and Consent of Parties, and so a Decree passed of course; and some Month after the Cause was ended, the 100 *l.* mentioned in the said Article, was deliver'd to me by my Servant *Hunt*.

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To the *fourteenth* Article of the Charge, viz. He received of Sir Ralph Hansbye, having a Cause depending before him, 500*l*.

I confess and declare, that there were two Decrees, one, as I remember, for the Inheritance, and the other for the Goods and Chattels, but all upon one Bill: and some good time after the first Decree, and before the second, the said 500*l*. was deliver'd unto me by Mr. Toby Mathew; so as I cannot deny but it was upon the matter *Pendente Lite*.

To the *fifteenth* Article of the Charge, viz. William Compton being to have an Extent for a Debt of 1200*l*. the Lord Chancellor staid it, and wrote his Letter; upon which part of the Debt was paid presently, and part at a future Day. The Lord Chancellor hereupon sends to borrow 500*l*. and because Compton was to pay 400*l*. to one Huxley, his Lordship requires Huxley to forbear six Months, and hereupon obtains the Money from Compton. The Money being unpaid, Suit grows between Huxley and Compton in Chancery, where his Lordship decrees Compton to pay Huxley the Debt, with Damage and Coſts, when it was in his own Hands.

I do declare, that in my Conscience the stay of the Extent was just, being an Extremity against a Nobleman, by whom Compton could be no loser. The Money was plainly borrowed of Compton upon Bond with Interest, and the Message to Huxley was only to intreat him to give Compton a longer Day, and in no sort to make me Debtor or responsible to Huxley; and therefore, tho' I was not ready to pay Compton his Money, as I would have been glad to have done, save only 100*l*. which is paid, I could not deny Justice to Huxley in as ample manner as if nothing had been between Compton and me: But if Compton hath been damnified in my respect, I am to consider it to Compton.

To the *sixteenth* Article of the Charge, viz. In the Cause between Sir William Bronker and Awbrey, the Lord Chancellor receiv'd from Awbrey 100*l*.

I do confess and declare, that the Money was given and received; but the manner of it I leave to the Witnesses.

To the *seventeenth* Article of the Charge, viz. In the Lord Mountague's Cause he received from the Lord Mountague 6 or 700*l*. and more was to be paid at the ending of the Cause:

I confess and declare, there was Money given, and as I remember, to Mr. Bevis Thelwall, to the Sum mentioned in the Article, after the Cause was decreed; but I cannot say it was ended, for there have been many Orders since caused by Sir Francis Inglesfield's Contempts: and I do remember, that when Thelwall brought the Money, he said, that my Lord would be yet farther thankful if he could once get his quiet. To which Speech I gave little regard.

To the *eighteenth* Article of the Charge, viz. In the Cause of Mr. Dunch, he received from Mr. Dunch 200*l*.

I confess and declare, that it was delivered by Mr. Thelwall to Hatcher, my Servant, for me, as I think some time after the Decree; but I cannot precisely inform my self of the time.

To the *nineteenth* Article of the Charge, viz. In the Cause between Reynell and Peacocke, he received from Reynell 200*l*. and a Diamond-Ring worth 5 or 600*l*.

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I confess and declare, that at my first coming to the Seal, when I was at Whitehall, my Servant Hunt deliver'd me 200*l*. from Sir George Reynell, my near Ally, to be bestowed upon Furniture of my House; adding farther, that he had received divers former Favours from me: And this was, as I verily think, before any Suit began. The Ring was receiv'd certainly *Pendente Lite*: and tho' it were at *New-Year's-Tide*, it was too great a value for a *New-Year's Gift*, tho', as I take it, nothing near the value mentioned in the Article.

To the *twentieth* Article of the Charge, viz. That he took of Peacocke 100*l*. without Interest, Security, or Time of Payment:

I confess and declare, that I received of Mr. Peacocke 100*l*. at Dorset-house, at my first coming to the Seal, as a Present; at which time no Suit was begun: and at the Summer after I sent my then Servant Lister to Mr. Rolfe, my good Friend and Neighbour, at St. Albans, to use his means with Mr. Peacocke (who was accounted a money'd Man) for the borrowing of 500*l*. and after by my Servant Hatcher, for borrowing of 500 more; which Mr. Rolfe procured, and told me at both times it should be without Interest, Script, or Note, and that I should take my own time for payment of it.

To the *twenty-first* Article of the Charge, viz. in the Cause between Smithwick and Welsh, he received from Smithwick 200*l*. which was repaid:

I confess and declare, that my Servant Hunt did, upon his Account, being my Receiver of the Fines upon original Writs, charge himself with 200*l*. formerly received of Smithwick, which after that I had understood the nature of it, I ordered him to re-pay, and to defalk it out of his Accompts.

To the *twenty-second* Article of the Charge, viz. In the Cause of Sir Henry Ruswell, he received Money from Ruswell, but it is not certain how much:

I confess and declare, that I received Money from my Servant Hunt, as from Mr. Ruswell, in a Purse: And whereas the Sum in the Article is indefinite, I confess it to be 3 or 400*l*. and it was about a Month after the Cause was decreed; in which Decree I was assisted by two of the Judges.

To the *twenty-third* Article of the Charge, viz. In the Cause of Mr. Barker, the Lord Chancellor receiv'd from Barker 700*l*.

I confess and declare, that the Sum mentioned in the Article was received from Mr. Barker some time after the Decree pass'd.

To the 24th, 25th, and 26th Articles of the Charge, viz. the 24th; There being a Reference from his Majesty to his Lordship of a Business between the Grocers and the Apothecaries, the Lord Chancellor receiv'd of the Grocers 200*l*. The 25th Article; In the same Cause he receiv'd of the Apothecaries, that stood with the Grocers, a Taster of Gold, worth between 4 and 500*l*. and a Present of Ambergrease. And the 26th Article; He receiv'd of a new Company of Apothecaries, that stood against the Grocers, 100*l*.

To these I confess and declare, That the several Sums from the three Parties were received: and for that it was no judicial Business, but a Concord of Composition between the Parties, and that as

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I thought all had received good, and they were all three common Purfes, I thought it the lefs matter to receive that which they voluntarily prefented; for if I had taken it in the nature of a corrupt Bribe, I knew it could not be concealed, becaufe it needs muft be put to account to the three feveral Companies.

To the *twenty-feventh* Article of the Charge, *viz.* He took of the *French* Merchants 1000 *l.* to conftain the *Vintners* of *London* to take from them 1500 Tuns of Wine: To accomplifh which he ufed very indireft means, by Colour of his Office and Authority, without Bill or Suit depending, terrifying the *Vintners* by Threats, and by Imprifonment of their Perfons, to buy Wines, whereof they had no need nor ufe, at higher Rates than they were vendible:

I do confeff and declare, that Sir *Thomas Smith* did deal with me in behalf of the *French* Company, informing me that the *Vintners*, by combination, would not take off their Wines at any reasonable Prices; that it would deftroy their Trade, and ftay their Voyage for that Year; and that it was a fair Buſinefs, and concerned the State: and he doubted not but I ſhould receive thanks from the King, and Honour by it; and that they would gratify me with a thouſand Pounds for my travail in it. Whereupon I treated between them by way of perfuaſion, and to prevent any compulſory Suit, propounding ſuch a Price as the *Vintners* might be gainers 6 *l.* in a Tun, as it was then maintained unto me. And after the Merchants petitioning to the King, and his Maſteſty recommending this Buſinefs unto me as a Buſinefs that concerns his Customs and the Navy, I dealt more earneſtly and peremptorily in it, and, as I think, reſtrained in the Meſſenger's hand for a day or two ſome that were the moſt ſtiff; and afterwards the Merchants prefented me with 1000 *l.* out of their common Purſe; and acknowledging themſelves, that I had kept them from a kind of Ruin, and ſtill maintaining to me that the *Vintners*, if they were not infatiably minded, had a very competent Gain. Theſe are the Merits of the Cauſe, as it then appear'd to me.

To the *twenty-eighth* Article of the Charge, *viz.* The Lord Chancellor hath given way to great Exactions by his Servants, both in reſpect of private Seals, and otherwiſe for ſealing of Injunctions:

I confeſs it was a great Fault of neglect in me, that I look'd no better to my Servants.

This Declaration I have made to your Lordſhips with a ſincere Mind, humbly craving, that if there ſhould be any Miſtake, your Lordſhips would impute it to want of memory, and not to any deſire of mine to obſcure Truth, or palliate any thing; for I do now again confeſs, that in the Points charged upon me, tho' they ſhould be taken as my ſelf have declared them, there is a great deal of Corruption and Neglect, for which I am heartily ſorry, and ſubmit myſelf to the Judgment, Grace and Mercy of the Court.

For extenuation, I will uſe none concerning the Matters themſelves; only it may pleaſe your Lordſhips, out of your Nobleneſs, to caſt your Eyes of Compaſſion upon my Perſon and Eſtate: I was never noted for an avaritious Man, and the Apoſtle ſaith, *that Covetouſneſs is the Root of all Evil.* I hope alſo that your Lordſhips do the

rather find me in the State of Grace, for that in all theſe Particulars there are few or none that are not almoſt two Years old; whereas thoſe, that have an Habit of Corruption, do commonly wax worſe. So that it hath pleaſed God to prepare me by precedent Degrees of Amendment to my preſent Penitency: And for my Eſtate, it is ſo mean and poor, as my Care is now chiefly to ſatisfy my Debts.

And ſo fearing I have troubled your Lordſhips too long, I ſhall conclude with an humble Suit unto you, That if your Lordſhips proceed to ſentence, your Sentence may not be heavy to my ruin, but gracious and mix'd with Mercy: and not only ſo, but that you would be noble Interceſſors for me to his Maſteſty likewiſe, for his Grace and Favour.

Your Lordſhip's moſt humble

Servant and Suppliant,

Franc. St. Albans, *Canc.*

The Lords having heard this Confeſſion and Submiſſion read, theſe Lords under-named, *viz.* the Earl of *Pembroke* Lord Chamberlain, the Earl of *Arundel*, the Earl of *Southampton*, the Biſhop of *Durham*, the Biſhop of *Wincheſter*, the Biſhop of *Coventry* and *Litchfield*; the Lord *Wentworth*, the Lord *Cromwell*, the Lord *Sheffield*, the Lord *North*, the Lord *Chandois*, the Lord *Hunſdon*, were ſent to him the ſaid Lord Chancellor, and ſhewed him the ſaid Confeſſion, and told him, that the Lords do conceive it to be an ingenuous and full Confeſſion; and demanded of him, whether it be his own Hand that is ſubſcribed to the ſame, and whether he will ſtand to it or not. Unto which the ſaid Lord Chancellor answer'd, *My Lords, it is my Act, my Hand, my Heart; I beſeech your Lordſhips to be merciful to a broken Reed.* The which Answer being reported to the Houſe, it was agreed by the Houſe to move his Maſteſty to ſequeſter the Seal: and the Lords intreated the Prince's Highneſs that he would be pleas'd to move the King; whereunto his Highneſs condeſcended. And the ſame Lords which went to take the Acknowledgment of the Lord Chancellor's Hand, were appointed to attend the Prince to the King, with ſome other Lords added. And his Maſteſty did not only ſequeſter the Seal, but awarded a new Commiſſion unto the Lord Chief Juſtice, to execute the Place of the Chancellor, or Lord-Keeper.

This was on the 1ſt of *May*: And on *Wednesday*, the 2d of *May*, the ſaid Commiſſion being read, their Lordſhips agreed to proceed to ſentence the Lord Chancellor to-morrow Morning. Wherefore the *Gentleman-Uſher*, and *Serjeant at Arms*, Attendants on the upper Houſe, were commanded to go and ſummon him, the ſaid Lord-Chancellor, to appear in Perſon before their Lordſhips to-morrow Morning by nine of the Clock. And the ſaid *Serjeant at Arms* was commanded to take his Mace with him, and to ſhew it unto his Lordſhip at the ſaid Summons: But they found him ſick in bed; and being ſummon'd, he answer'd, that he was ſick, and proteſted that he feigned not this for any Excuse, for if he had been well he would willingly have come.

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The Lords resolved to proceed notwithstanding against the said Lord Chancellor. And therefore on *Thursday*, the 3d of *May*, their Lordships sent their Message to the Commons to this purpose, viz. 'That the Lords are ready to give Judgment against the Lord Viscount *St. Albans*, Lord Chancellor, if they, with their Speaker, will come to demand it.' And the Commons being come, the Speaker came to the Bar; and, making three low Obeisances, said:

'The Knights, Citizens, and Burgeesses of the Commons House of Parliament, having made Complaints unto your Lordships of many exorbitant Offences of Bribery and Corruption, committed by the Lord Chancellor, understand that your Lordships are ready to give Judgment upon him for the same; Wherefore I, their Speaker, in their Name, do humbly demand, and pray Judgment against him the said Lord Chancellor, as the nature of his Offence and Demerits do require.'

The Lord Chief Justice answered:

'Mr. Speaker, Upon complaint of the Commons against the Viscount *St. Albans*, Lord Chancellor, this High Court hath thereby, and by his own Confession, found him guilty of the Crimes and Corruptions complained of by the Commons, and of sundry other Crimes and Corruptions of like nature.

'And therefore this High Court having first summoned him to attend, and having his excuse of not attending, by reason of Infirmary and Sicknes, which he protested was not feigned, or else he would most willingly have attended, doth nevertheless think fit to proceed to Judgment: And therefore this High Court doth adjudge;

"That the Lord Viscount *St. Albans*, Lord Chancellor of *England*, shall undergo Fine and Ransom of 40000 Pounds.

"That he shall be imprisoned in the *Tower* during the King's pleasure.

"That he shall for ever be incapable of any Office, Place, or Employment, in the State or Commonwealth.

"That he shall never sit in Parliament, nor come within the Verge of the Court."

This is the Judgment and Resolution of this High Court.

Thus he lost the Privilege of his Peerage, and his Seal; and it was for some time doubtful, whether he should be allowed to retain his Titles of Honour, which was all he did, having only a poor empty Being left, which lasted not long with him, his Honour dying before him. Tho' he was afterwards set at liberty, and had a Pension from the King, he was in great want to the very last, living obscurely in his Chambers at *Grays-Inn*, where his lonely and desolate Condition so wrought upon his melancholy Temper, that he pined away; and after all his height of Abundance was reduced to so low an Ebb, as to be denied Beer to quench his Thirst: for having a sickly Stomach, and not liking the Beer of the House, he sent now and then to Sir *Fulk Grevil* Lord *Brook*, who liv'd in the Neighbourhood, for a Bottle of his Beer; and, after some grumbling, the Butler had Orders to deny him.

He died on the 9th of *April*, 1626. being *Easter-day*, early in the Morning, in the 66th Year of his Age, at the Earl of *Arundel's* House in *High-gate*, near *London*, to which Place he had casually repair'd about a Week before. The Distemper of which he died was a gentle Fever, accidentally accompanied with a violent Cold; whereby the Defluxion of Rheum was so great upon his Breast, that he was quite suffocated.

He was buried in *St. Michael's* Church at *St. Albans*, being the Place directed for his Burial by his last Will, both because his Mother had been buried there before, and because it was the only Church then remaining within the Precincts of old *Verulam*; where he hath a Monument erected for him of white Marble, by Sir *Thomas Meautys*, formerly his Lordship's Secretary, afterwards Clerk of the King's Privy-Council, with an Inscription compos'd by the famous Sir *Henry Wotton*.



XXXI. *The Trial of MERVIN Lord Audley, Earl of Castlehaven, for a Rape and Sodomy, on the 25th of April, 1631. 7 Car. I.*

HERE were three Indictments found at *Salisbury* in *Wiltshire* against the Earl, the *Wednesday* preceding *Easter*, before the Lord Chief Justice *Hyde*, the Lord Chief Justice *Richardson*, and Baron *Denham*, Justices of Assize for that Circuit, and special Commissioners in that matter *. One Indictment was for a Rape upon his own Wife; for holding her by Force, while one of his Minions forcibly, against her Will, had carnal Knowledge of her: So that he was indicted as *Præfens*, *Auxiliarius*, and *Confortans*; and therefore a Principal. The other two Indictments were for Buggery with a Man.

The Judges, on *Friday* Morning before the Trial, being sent for, all but *Denham* being met at *Serjeants-Inn* in *Fleet-street*, these Questions were proposed them by Sir *Robert Heath*, the King's Attorney-General; a Memorial of which a learned Judge, Sir *James Whitlock*, one of the eight hereafter mentioned, set down in Writing, to the effect following.

1. Whether a Peer of the Realm might waive his Trial by Peers, and plead he will be try'd by God and the Country?

Ans. He might not: For his Trial by Peers was no Privilege, but the Law declared by *Magna Charta*; which if he would not plead to by a Trial of his Peers, it was standing mute.

2. Whether a Peer might challenge his Peers, as in the case of common Jurats?

Ans. He might not, (which I think is so, said that Judge) because they were not upon their Oath, but upon their Honour; and a Challenge is try'd whether he stands indifferent, as unworn.

3. Whether a Peer might not have Counsel any more than a Commoner?

Ans. If Matter of Law appear'd, he might; not for Matter of Fact.

Certain Examinations having been taken by the Lords without an Oath,

It was resolv'd, Those could not be used until they were repeated upon Oath. unless of the Party to be try'd; which might be read without an Oath.

4. Whether the Wife in this Case might be a Witness against her Husband for the Rape?

Ans. She might: For she was the Party wronged; otherwise she might be abused. In like manner a Villain (Vassal) might be a Witness against his Lord in such Cases.

5. Whether, if he stood mute, he could demand his Clergy?

Ans. If he stood mute in the Case of Rape or Buggery, he might have his Clergy † in either.

6. Then if he might not be put to a Trial on the other Indictment, might not he be for a later Buggery, and be deny'd the Clergy?

Ans. On that he might by 18 *Eliz.* 7.

7. Whether, in case one stood mute, Evidence might be open'd by the Court's Command concerning the Fact, tho' the Delinquent was to be press'd to Death for his Contempt?

Ans. That was a Matter which lay in the Discretion of the Court.

8. Whether in Cases wherein Clergy was allowable, the Party might pray it before he answered, and deny to answer otherwise?

Ans. This was a Confession.

9. Whether in a Rape there must be Penetration?

The Answer was in the Affirmative.

10. The Prisoner having petition'd to be bail'd, whether it might not be granted?

Ans. The King, as King, was to advise about it: The Judges acquainted the Lord Keeper he could not in Justice require it; yet he might be bail'd *ex gratia*, which was not fit in that odious Case.

At a second Meeting of the Judges in *Serjeants-Inn*, there were other Things considered of concerning this Matter.

They made a Difference between Buggery and a Rape, in point of having the Clergy if he stood mute: For it was argued he might have his Clergy if he stood mute in a Rape, but not in Buggery; because by the Statute 25 *Hen.* 8. Buggery was made Felony, which by the Common Law was not. And in the very Creation of the Offence, Clergy was taken away; whereas Clergy lay for a Rape until it was (should be) taken away by Statute.

It was concluded the Lords might eat and drink before they were agreed; but that they could not separate nor adjourn till they gave their Verdict: That this appeared out of the Lord ||

Dacres of *Greystock's* Case, who was || *Kely.* 56 try'd for Treason, and acquitted by his Peers in 26 *Hen.* 8.

It was agreed by the Justices in that Case of the Lord † *Dacres*, That Verdict could not be given by a lesser Number of Lords than Twelve; and that if twelve were for the King, and thirteen for the Prisoner,

* *Rush Col.* Vol. II. p. 93—101. *Hut.* 115.

† The Statute of 25 *H.* 8. c. 6. in Case of Buggery, and of 18 *Eliz.* c. 7. in case of a Rape, take away Clergy only from such as are convicted by Verdict, Outlawry or Confession; which don't extend to those who stand mute, 11 *Co. Rep.* 30. 6. *Poulter's* Case; but by the 3 & 4 of *Wil. & Mar.* c. 9. all who would be excluded in case of Conviction by Verdict or Confession, are excluded in case of standing mute.

soner, the Prisoner should be acquitted: That in an Appeal, if the Defendant should be mute, he should be hang'd; and it was an Attainder, it being not within the Statute of * *Westminster*, cap. 12. *De Paine fort & Dure*. No more was Treason.

* S. P. C. Lib. 3. c. 60.

It was also agreed, That a Lord of Parliament was within the Statute of *Westminster* 1. in case of Felony, and should be pres'd to Death.

Farther, That if the Lord *Audley* should have his Clergy upon his being mute, yet he might be try'd upon the other Indictments of Rape and Buggery, and should not have his Clergy, by the Statute of 18 *Eliz.* because the admitting him to his Clergy would be a Superseas to all Indictments of Offences within Clergy, not of those without, by that Statute: For by the Common Law, he that was admitted to his Clergy was discharged from answering any other Offence; for by Indictment of that Law he was taken out of the power of the Secular Judge, and put into the hands of the Ordinary, whose Prisoner he was all his Life after.

It was resolv'd, from the Lord *Dacre's* Case, That the Lord Steward, after Verdict given, might take time to advise upon it, for any Point of Law; that his Office continued to him 'till his Judgment and Resolution; and it was but a Commission *pro hac vice* notwithstanding.

The Arraignment.

The Lord *Coventry*, Lord Keeper of the Great Seal of *England*, was appointed Lord High-Steward for that Day; who, having Orders for the said Trial from his Majesty, gave Directions for the same.

The Lords the Peers took their Places about Eight of the Clock in the Morning, and were seated on Benches on each side of a large Table, cover'd with Green Cloth; and below them were the Judges placed, and the King's learned Counsel, and the Officers of the Court. And having dispos'd of themselves in their several Places, the Lord Steward about Nine of the Clock enter'd the Hall uncover'd, with seven Maces carried before him by seven Serjeants at Arms, and was attended upon by Sir *John Burroughs*, Garter Principal King at Arms, and Mr. *James Maxwell*, Usher of the Black Rod.

After the Lord Steward had saluted all the Lords the Peers, (who saluted him again) he presently ascended the State; and being seated in the Chair, he was presented with his Majesty's Commission by one of the Masters of the *Chancery*, which bore date the 13th of *April*, 1631.

After he had received the said Commission, he commanded an *O Yes* to be made, by one of the Serjeants at Arms, for a general Silence; and then deliver'd the said Commission to Sir *Thomas Fenshaw*, Clerk of the Crown, to be openly read. Which being done, Mr. *Maxwell* kneel'd down and presented his Lordship with a White-Staff Verge of State, which he gave to one of the Serjeants at Arms, who held the same up by the Cloth of State on the Right-hand thereof. And after the Commission was read, and the Staff received as aforesaid, his Grace commanded a solemn *O Yes* to be made; and then gave leave to all the Lords the Peers, and the Judges, and to all Privy-Counsellors there present, to be cover'd; and Command was given, that none under that Degree should keep on their

Hats upon pain of Imprisonment. And then the Peers were severally called by their Names, and each of them answer'd particularly, viz.

1. Lord *Weston*, Lord High-Treasurer of *England*;
2. Earl of *Manchester*, Lord Privy-Seal;
3. Earl of *Arundel and Surrey*, Earl Marshal;
4. Earl of *Pembroke and Montgomery*, Lord Chamberlain;
5. Earl of *Kent*;
6. Earl of *Worcester*;
7. Earl of *Bedford*;
8. Earl of *Essex*;
9. Earl of *Dorset*;
10. Earl of *Salisbury*;
11. Earl of *Leicester*;
12. Earl of *Warwick*;
13. Earl of *Carlisle*;
14. Earl of *Holland*;
15. Earl of *Berks*;
16. Earl of *Denbigh*;
17. Viscount *Wimbleton*;
18. Viscount *Conway*;
19. Viscount *Dorchester*;
20. Viscount *Wentworth*;
21. Lord *Percy*;
22. Lord *Strange*;
23. Lord *Clifford*.
24. Lord *Petre*;
25. Lord *North*;
26. Lord *Goring*;
27. Lord *Howard*.

The Judges present.

Sir *Nicholas Hyde*, Lord Chief Justice of the King's Bench;

Sir *Thomas Richardson*, Lord Chief Justice of the Common-Pleas;

Sir *Humphrey Davenport*, Lord Chief Baron of the Exchequer;

Baron *Denham*;

Judge *Jones*;

Judge *Hutton*;

Judge *Whitlocke*;

Judge *Croke*;

The King's Counsel.

Sir *Robert Heath*, Attorney-General;

Sir *Richard Shelton*, Solicitor-General;

Sir *John Finch*, Queen's Attorney-General;

Sir *Thomas Crew*, King's Serjeant at Law.

Officers of the Court.

Sir *Thomas Fenshaw*, Clerk of the Crown;

Mr. *John Keeling*, his Deputy or Assistant.

This done, the Lord Steward, after a solemn Precognizance, commanded the Indictments to be certified and brought in; and then, by a Serjeant at Arms, the Lieutenant of the Tower was called to bring forth the Prisoner, (who until that time was kept in a little Room by the Common-Pleas) and the Lieutenant brought him to the Bar, with divers of the Guard attending on him, where he had a Place in manner of a Pew, lin'd with Green, in which he stood; and the Lieutenant had another of the same Form for him to rest in, adjoining to it. And when he had done his Obedience to the Lord

Lord High-Steward and the Peers, (who all re-saluted him again) the Lord High-Steward spake to him in the manner following :

The Lord High Steward's Speech.

My Lord Audley,

THE King hath understood, both by Report and the Verdict of divers Gentlemen of Quality in your own Country, that you stand impeach'd of sundry Crimes of a most high and heinous nature ; and to try whether they be true or not, and that Justice may be done accordingly, his Majesty brings you this day to your Trial, doing herein like the mighty King of Kings, in the 18th of *Genesis*, ver. 20, 21. who went down to see whether their Sins were so grievous as the Cry of them : *Because the Cry of Sodom and Gomorrah is great, and their Sins be grievous, I will go down* (saith the Lord) *and see whether they have done altogether according to the Cry of it.* And Kings on Earth can have no better Pattern to follow than the King of Heaven ; and therefore our Sovereign Lord the King, God's Vicegerent here on Earth, hath commanded that you shall be here tried this day, and to that end, hath caus'd these Peers to be assembled : and the Desire of his Majesty is, that your Trial shall be as equal as Equity and Justice itself ; and therefore these noble Men your Peers (whose Hearts are as full of Integrity, Justice and Truth, as their Veins full of noble Blood) are this Day to try you. Wherefore, if you be innocent, speak boldly and confidently, and fear not to justify your self ; and be assur'd that those that accuse you (if you be free your self) shall not escape free. But if you be guilty of those Crimes, I advise you to give Honour to God and the King, and confess your Fault ; for it is not vain Confidence, nor Subtilty, nor standing out in Denial, that can hide the Truth ; and all Shifts and Subtilties against it are but *Confilia adversus Dominum*. Therefore, if Truth touch you at the Heart, and your Conscience, which is a thousand Witnesses, and God's Grace, which is greater than both, stand not out against it : And if you do, God will put it into the Hearts of these noble Persons to find it out, and to do that which is just.

The Lord Audley's Answer.

May it please your Grace,

I Have been close Prisoner these six Months, without Friends, without Counsel or Advice : I am ignorant of the Advantages and Disadvantages of the Law, and am but weak of Speech at the best, and therefore I desire to have the liberty of having Counsel to speak for me.

The Lord High Steward's Reply.

FOR your so long Imprisonment, it hath been to you a special Favour ; for you have had time enough to bethink your self, and more than ever any Man had that hath been committed for such an Offence, and more Favour than ever any had that came to this Bar ; and you shall demand nothing, which the Law can allow, but you shall have it. But for your Demand, I must move it

to the Lords the Judges, and they shall satisfy you in it, or any other thing you desire.

Then his Grace desired to be resolv'd of the Judges, Whether this Demand of my Lord *Audley*, to have Counsel to plead for him, might be granted or not ?

The Judges answered, That, in Criminal Cases, Counsel is not to be admitted for Matter of Fact ; but for Matter of Law they may.

Then the Lord Steward proceeded to the Charge, commanded the three Indictments to be read by Sir *Tho. Fenshaw*, Clerk of the Crown ; two for Sodomy with *Lawrence Fitz-Patrick*, his Footman ; the third for a Rape committed on his own Wife, the Countess of *Castlehaven*.

Then being ask'd, whether he was Guilty of them, or Not Guilty ? He answer'd, Not Guilty.

Then he was ask'd, How he would betry'd ?

The Earl said, By God and my Peers.

Whereupon the Peers put off their Hats ; and thereupon the Issue was join'd.

The Lord High-Steward's Speech to the Lords.

My Lords,

THE Prisoner stands indicted for a Rape, by one Indictment, and of Sodomy * by two ; and he hath pleaded, Not Guilty to them all : It is my Duty to charge you with the Trial of it, and you are to judge of it.

The Offences wherewith he stands charged, are to be proved by Evidence ; and the Crimes that come this Day before us, may in some breed Detestation, and the Person of his Lordship in others may breed Compassion ; I desire your Lordships to set these two aside, and let your Reason sway your Judgment, and let that rule your Affections, and your Hearts your Heads ; for neither of these ought to be put into the Ballance, for a Grain on either side may sway the Scale. You are to give attentive Hearing, and then to weigh equally, that the Scale may lean the right way. The Judges will assist you in the Points of Law, which, if you doubt of, you are to expound it to me, and I to them. And this you are to do without Corporal Oath ; for the Law conceiveth you of such Integrity, that you will do that for Justice, which others do upon their Oaths ; and therefore admits of no Challenge : and God direct you to do as you ought.

Then Sir *Tho. Crew* gave the first Charge ; and after him Mr. Attorney said as followeth.

My Lord Steward,

MAY it please your Grace, there are three Indictments against *Mervin Lord Audley* ; the first for a Rape, the other two for Sodomy.

The Person is honourable ; the Crimes of which he is indicted dishonourable ; which if it fall out to be true (which is to be left to Trial) I dare be bold to say, never Poet invented, nor Historian writ of any Deed so foul. And although *Suetonius* hath curiously set out the Vices of some of the Emperors who had absolute Power, which might make them fearless of all manner of Punishment, and besides were Heathens, and knew not God ; yet none of these came near this Lord's Crimes.

* See a Precedent of this kind drawn with great Deliberation in *Scafford's Case*. Co. Entr. 351. d.

The one is a Crime, that I may speak it to the Honour of our Nation, is of such Variety, that we seldom or never knew of the like; but they are all of such a pestilential Nature, that, if they be not punish'd, they will draw from Heaven a heavy Judgment upon this Kingdom.

Whereupon (Mr. Attorney digressing from the Matter) the Lord *Audley* would have interrupted him, and requir'd to hold him to the Points in the Indictments. But the Lord High Steward desir'd his Lordship to be patient, and assur'd him he should be heard in fit time at full. Whereupon Mr. Attorney proceeded again in his Charge as followeth:

May it please your Grace.

I can speak it with Joy and Comfort, that during all my Time of Service, both in his Majesty's Father's Time, and since he came to the Crown, I had never the like Occasion to speak in this place against a Peer of the Realm before now; and God knows I do it now with Sorrow, and I hope I shall never have the like Occasion to do so much again. But his Majesty, who is the Pattern of Virtue, not only as King, but in his Person also; in whom it is hard to judge whether he most excels in Justice or Mercy, (but I rather think in Mercy) would have my Lord *Audley* the Prisoner at the Bar, heard with as much Favour as such a Crime can admit: and when he first heard of it, he gave strict Command, that the Truth should be search'd out, that his Throne and People might be clear'd from so heavy and heinous Sins; and thereupon he was indicted in his own Country: according to the Law, and by Gentlemen of Worth and Quality. The Bill was found; and now he is personally brought to the Bar to be tried by these his honourable Peers, such of whose Wisdom and Sincerity there can be no question, but that he shall have just and honourable Trial. And first, I shall begin with the Indictment of Rape. *Bracton* tells us of King *Athelstane's* Law before the Conquest: *If the Party were of no chaste Life, but a Whore, yet there may be a Ravishment; but it is a good Plea to say she was his Concubine.*

In an Indictment of Rape, there is no Time of Prosecution necessary; for *nullum Tempus occurrit Regi*: But in Case of an Appeal of Rape, if the Woman did not prosecute in convenient Time, it will bar her.

If a Man take away a Maid by Force, and ravish her, and afterwards she give her Consent and marry him, yet it is a Rape.

For the *Crimen Sodomiticum*, our Law had no knowledge of it 'till the 25th of *Hen. VIII.* by which Statute it was made Felony: and in this there is no more Question, but only, whether it be *Crimen Sodomiticum sine Penetratione*; and the Law of 15 *Eliz.* sets it down in general Words: and where the Law doth not distinguish, neither must we. And I know you will be cautious how you will give the least Mitigation to so abominable a Sin, which brought such Plagues after it, as we may see in *Gen. 17. Levit. 18. Judg. 19. Rom. 1.* But (my Lord) it seem'd to me strange at the first, how a Nobleman of his Quality should fall to such abominable Sins; but when I found he hath given himself over to Lust, and that *Nemo repente fit peffimus*, and if once Men habit themselves in Ill, it

is no marvel if they fall into any Sins, and that he was constant to no Religion, but in the Morning he would be a Papist and go to Mass, and in the Afternoon a Protestant and go to a Sermon: When I had consider'd these Things, I easily conceiv'd, and shall be bold to give your Grace a Reason why he became so ill. He believ'd not God, he had not the Fear of God before his Eyes; he left God, and God left him to his own Wickedness: and what may not a Man run into? What Sin so foul, what Thing so odious, which he dares not adventure? But I find in him Things beyond all Imagination: for I find his ill Imagination and Intentions bent to have his Wife naught with the wickedest Man that ever I heard of before: for who would not have his Wife virtuous and good, how bad forever himself be? And I find him Bawd to his own Wife. If she loved him, she must love *Skipwith*, (whom he honour'd above all) and not any honest Love, but in a dishonest Love; and he gives his Reason by Scripture, *She was now made subject to him*; and therefore if she did ill at his Command, it was not her Fault but his, and he would answer it. His irregular Bounty toward *Skipwith* was also remarkable. He lets this *Skipwith* (whom he calls his Favourite) spend of his Purse 500 *l. per Annum*; and if his Wife or Daughter would have any thing, tho' never so necessary, they must lie with *Skipwith*, and have it from him, and not otherwise; also telling *Skipwith* and his Daughter-in-Law, he had rather have a Child by him than any other. But for these things, I had rather they should come of the Witnesses Mouths than from me: and thereupon desir'd that the Proofs might be read.

The Deposition of Walter Bigg.

Walter Bigg depos'd, That *Amptil* was a Page to Sir *H. Smith*, and had no more Means when he came to my Lord *Audley*, but the Mare he rode on. He entertain'd him as his Page eight Years, and afterwards let him keep Horses in my Lord's Grounds, by which I think he enrich'd himself 2000 *l.* but he never sat at Table with my Lord 'till he had marry'd his Daughter, and then he gave him to the Value of 7000 *l.*

That *Skipwith* was sent from Ireland to be my Lady's Page; and that his Father and Mother were very poor Folks there. He spent of my Lord's Purse *per Annum* 500 *l.* and he gave him at one time 1000 *l.* and hath made divers Deeds of Land unto him.

My Lord was first a Protestant; but after, by buying of *Fountbill*, he turn'd his Religion.

That *Henry Skipwith* had no Means when he came to him, and that he had given him 1000 *l.* and that *Skipwith* lay with him when he was straiten'd in Rooms; and that he gave a Farm of 100 *l. per Annum* to *Amptil* that married his Daughter, and at other times to the value of 7000 *l.* and that there was one *Blandina* in his House fourteen Days, and bestow'd an ill Disease there, and therefore he sent her away.

The Lord *Audley's* Examination taken before the Lord-Keeper, Lord-Treasurer, Lord-Marshall, and others; which being shew'd to him, subscrib'd with his own Hand, he would not acknowledge, but excus'd it, saying his Eyes were bad; but being perfectly read, he acknowledg'd it.

My Lord-Steward's Advice to my Lord Audley.

My Lord,

I would advise you not to deny the Things which are clearly prov'd; for then the Lords will give less Credit to the rest you say.

The Countess of Castlehaven's Examination.

That shortly after the Earl marry'd her, viz. the first or second Night, *Amptil* came to the Bed's side, while she and her Husband were in Bed, and the Lord Audley spake lasciviously to her, and told her, *That now her Body was his; and that if she lov'd him she must love Amptil; and that if she lay with any other Man with his Consent, it was not her Fault, but his; and that if it was his Will to have it so, she must obey, and do it.*

That he attempted to draw her to lie with his Servant *Skipwith*; and that *Skipwith* made him believe he did it, but did it not.

That he would make *Skipwith* come naked into his Chamber, and delighted in calling up his Servants to shew their Privities; and would make her look on, and commended those that had the largest.

That one Night, being a-bed with her at *Fountbill*, he call'd for his Man *Brodway*, and commanded him to lie at his Bed's Feet; and about Midnight (she being asleep) called him to light a Pipe of Tobacco. *Brodway* rose in his Shirt, and my Lord pull'd him into Bed to him and her, and made him lie next to her; and *Brodway* lay with her, and knew her carnally, whilst she made Resistance, and the Lord held both her Hands, and one of her Legs the while: and that as soon as she was free, she would have kill'd herself with a Knife, but that *Brodway* forcibly took the Knife from her and broke it; and before that Act of *Brodway*, she had never done it.

That he delighted to see the Act done; and made *Skipwith* to come into Bed with them, and lie with her whilst he might see it; and she cry'd out to have sav'd herself.

Then *Lawrence Fitz-Patrick* was produc'd; but before his Examination was read, the Earl desir'd that neither he, nor any other, might be allow'd Witnesses against him, until he had taken the Oath of Allegiance. This was referr'd to the Lords the Judges.

The Judges resolve against him, that they might be Witnesses, unless they were convicted Recusants.

The Examination of Fitz-Patrick was then read, the Truth of which he then again confirm'd upon Oath.

That the Earl had committed Sodomy twice upon his Person: that *Henry Skipwith* was the special Favourite of my Lord Audley, and that he usually lay with him; and that *Skipwith* said, that the Lord Audley made him lie with his own Lady; and that he saw *Skipwith* in his sight do it, my Lord being present: and that he lay with *Blandina* in his sight, and four more of the Servants, and afterwards the Earl himself lay with her in their sights.

Then Skipwith was produc'd and sworn, and his Examination read, which he again confirm'd upon Oath, and deposeth, viz.

That the Earl often solicited him to lie with the young Lady, and persuaded her to love him; and to draw her thereunto, he urg'd that his Son lov'd her not; and that in the end he usually lay with the young Lady, and that there was Love between them both before and after; and that my Lord said, he would rather have a Boy of his begetting than any other; and that she was but twelve years of Age when he first lay with her, and that he could not enter her Body without Art; and that the Lord Audley fetch'd Oil to open her Body, but she cry'd out, and he could not enter; and then the Earl appointed Oil the second time; and then *Skipwith* enter'd her Body, and he knew her carnally; and that my Lord made him lie with his own Lady, but he knew her not, but told his Lord he did.

That he spent 500 *l. per Ann.* of the Lord's Purse, and, for the most part, he lay with the said Earl.

That the Earl gave him his House at *Salisbury*, and a Mannor of 600 *l. per Annum.*

That *Blandina* lay in the Earl's House half a year, and was a common Whore.

Fitz-Patrick's second Examination.

That the Lord Audley made him lie with him at *Fountbill*, and at *Salisbury*, and once in the Bed, and emitted between his Thighs, but did not penetrate his Body; and that he heard he did so with others.

That *Skipwith* lay with the young Lady often, and ordinarily; and that the Earl knew it, and encourag'd him in it, and wish'd to have a Boy by him and the young Lady.

That *Blandina* liv'd half a year in my Lord's House, and was a common Whore.

Edmund Scott's Examination.

He deposeth, That *Skipwith* frequently knew the young Lady, and that the Earl knew it, and encourag'd him therein.

Fry's Examination.

That *Henry Skipwith* and the young Lady lay often together, and the Earl in Company; and that then the Earl protested, that he would fain have a Boy of his begetting.

Then was read the young Lady Audley's Examination.

That she was married to her Husband by a Romish Priest in the Morning, and at Night by a Prebend at *Kilkenny*; that she was first tempted to lie with *Skipwith* by the Earl's Allurements; and that she had no Means but what she had from *Skipwith*; but she would not lie with *Pawlet*; he solicited her also to lie with one *Green*.

That the Earl himself saw her and *Skipwith* lie together divers times; and nine Servants of the House had also seen it.

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When the Earl solicited her first, he said, that upon his Knowledge her Husband lov'd her not; and threatned, that he would turn her out of doors, if she did not lie with *Skipwith*; and that if she did not, he would tell her Husband she did.

That she being very young, he used Oil to enter her Body first: and afterwards he usually lay with her, and it was with the Earl's Privy and Consent.

Brodway's Examination, who confesseth,

That he lay at the Earl's Bed's Feet, and one Night the Earl call'd to him for Tobacco; and as he brought it in his Shirt, he caught hold of him, and bid him come to Bed, which he refus'd; but to satisfy my Lord, at last he consented, and came into the Bed on my Lord's Side: then my Lord turn'd him upon his Wife, and bid him lie with her, which he did; and the Earl held one of her Legs and both her Hands, and at the last (notwithstanding her Resistance) lay with her.

The the Earl used his Body as the Body of a Woman, but never pierc'd it, only emitted between his Thighs.

He hath seen *Skipwith* lie with the young Lady in Bed together; and when he had got upon her, the Earl stood by and encouraged him to get her with Child: and that he hath made him the said *Brodway* kiss his own Lady, and often solicited him to live with her, telling him, that he himself should not lie long, and that it might be his Making; and that he hath said the like to *Skipwith*.

The Earl's Second Examination.

The Earl desir'd to be pardon'd of those Things whereof he must accuse himself, and said, *That Condemnation should not come out of his own Mouth.*

These Testimonies being read, Mr. Attorney press'd things very earnestly, and in excellent Method against the Earl, and said,

My Lords.

YOU have seen the Clearness of the Proofs, and I know your Wisdoms to be such, as you well know in so dark a Business clearer Proofs cannot possibly be had; for let a Man be never so wicked, or never so impudent, he will not call Witnesses to see his Wickedness: yet you see here this Point fully prov'd.

Then he shew'd how both the Laws of God and Man were against Sodomy, and cited *Levit.* 18. towards the end, *That by these Abominations the Land is defil'd; and therefore the Lord doth visit this Land for the Iniquity thereof.* And then concludes; That God may remove and take away from us his Plagues, let this wicked Man (saith he) be taken away from amongst us.

Then the Earl (after the Lord Steward had told him he should be heard in his own Defence, with as much Patience as was admitted in his Charge) enter'd into his own Defence. But the Lord Steward advis'd him to speak pertinently; whereupon he alledg'd, that he was a weak Man, and of ill Memory, and therefore desir'd that he might not be interrupted.

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I. Then he began his Defence with Exceptions against his Wife, urging, that she was naught and dishonest with *Brodway*, by her own Confession.

Whereupon my Lord Steward answer'd, That this made against his Lordship; therefore he ought not to alledge for his Defence that Fact, as an Imputation to his Wife, which he forc'd her unto by Compulsion and Violence.

II. Then he objected against the Incompetency of the Witnesses, as the one his Wife, the other his Servants; and they drawn to this by his Son's Practice, who sought his Life: and desir'd to know, if there were not a Statute against the Incompetency of Witnesses?

The Judges resolv'd him, that there was none touching Witnesses; but in Cases of High-Treason, there was a Statute concerning Accusers.

III. Then he desir'd to be resolv'd, whether, because *Brodway* doth not depose any Penetration, but only that he emitted upon her Belly while the Earl held her, that should be judg'd Felony as for a Rape?

The Judges resolv'd it to be a Rape, and so consequently to be Felony.

IV. Then he desir'd to be resolv'd, whether his Wife is to be allow'd a competent Witness against him, or not?

The Judges resolve, That in Civil Cases the Wife may not; but in a Criminal Cause of this nature, where the Wife is the Party griev'd, and on whom the Crime is committed, she is to be admitted a Witness against her Husband.

Then the Lord High Steward desir'd the Lords the Judges to resolve the Questions which Mr. Attorney in his Charge submitted and referred to their Judgments.

1. Whether it were to be accounted *Buggery* within the Statute, without Penetration?

The Judges resolve, that it was; and that the Use of the Body, so far as to emit thereupon, makes it so.

2. Whether, it being prov'd that the Party ravish'd were of evil Fame, and of an unchaste Life, it will amount to a Rape?

The Judges resolve it to be a Rape, tho' committed on the Body of a common Strumpet; for it is the enforcing against the Will which makes the Rape; and a common Whore may be ravish'd against her Will, and it is Felony to do it.

3. Whether it is adjudg'd a Rape, when the Woman complaineth not presently? And, whether there be a Necessity of Accusation within a convenient time, as within twenty four Hours?

The Judges resolve, That inasmuch as she was forc'd against her Will, and then shew'd her Dislike, she was not limited to any time for her Complaint; and that in an Indictment, there is no Limitation of Time, but in an Appeal there is.

4. Whether Men of no Worth shall be allow'd sufficient Proofs against a Baron, or not?

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The Judges resolve, that any Man is a sufficient Witness in case of Felony.

Then the Lord Steward spake, and said; My Lord, you have been graciously dealt with in this Proceeding, for it is not an usual thing in so capital and heinous Causes as this, to bring the Party and Witnesses Face to Face before Trial: but (my Lord) you have long before this time heard their Examinations, and question'd and oppos'd them Face to Face; and are thereby the better enabled to make your Defence; and his Majesty is still graciously pleas'd to continue his Goodness towards you, and hath commanded that you should be heard at full: If therefore you have any thing else to say for your self, speak it.

Whereupon the Earl answered, (having first made a solemn Protestation of his Innocency, but nevertheless implor'd the Mercy of God and the King) That he had nothing more to say, but left himself to God and his Peers, and presented to their Consideration three *Woes*:

1. *Woe* to that Man, whose Wife should be a Witness against him!
2. *Woe* to that Man, whose Son should persecute him, and conspire his Death!
3. *Woe* to that Man, whose Servants should be allow'd Witnesses to take away his Life!

And he willed the Lords to take this into their Consideration; for it might be some of their Cases, or the Case of any Gentleman of Worth, that keeps a Footman, or other, whose Wife is weary of her Husband, or his Son arriv'd to full Age, that would draw his Servants to conspire his Father's Death.

He said further, his Wife had been naught in his Absence, and had had a Child, which he conceal'd to save her Honour.

That his Son was now become 21 Years old, and he himself old and decay'd; and the one would have his Lands, and the other a young Husband: and therefore, by the Testimony of them, and their Servants added to their own, they had plotted and conspired his Destruction and Death.

And then (being thereunto required by the Lord Steward) he withdrew himself from the Bar.

Then the Lord Steward (after solemn Proclamation of Silence) address'd himself to the Lords, and said: My Lords the Peers, your Lordships have heard the Proofs, the Prisoner's Defence, all his Doubts and Questions resolv'd by the Lords the Judges; and therefore your Lordships (if you please) may withdraw your selves, if you are satisfy'd; because the Prisoner is not to be called to the Bar again, untill your Lordships are agreed upon the Verdict.

Then the Peers withdrew themselves; and after two Hours Debate, and several Advices and Conferences with the Lord Chief Justice, whom they sent for, and consulted with four several times; having in that time also sent the Earl of *Warwick*, and Viscount of *Dorchester*, together with the Lord Chief Justice, to consult with the Lord Steward, at the last they return'd to their Places: and then the Lord Steward asked them one by one, beginning at the lowest, and so ascending;

1. Whether the said Earl of *Castlehaven* was Guilty of the *Rape* whereof he stood indicted, or not? And they all gave him guilty.

2. Whether the said Earl of *Castlehaven* was Guilty of the *Sodomy* with which he was charged, or not? And fifteen of the Lords condemned him, and the other twelve freed him.

When the Verdict was thus given, the Lieutenant of the Tower was again commanded to bring the Prisoner to the Bar, to hear his Sentence; and after he was brought in, the Lord Steward said unto him:

Forasmuch as thou *Mervin Lord Audley*, Earl of *Castlehaven*, hast been indicted for divers Felonies, by three several Indictments; one for a *Rape*, the other two for *Sodomy*; and hath pleaded Not Guilty to them all, and for thy Trial thou hast put thy self upon God and thy Peers; which Trial thou hast had, and they found thee guilty of them all: What can'st thou say for thy self, why the Sentence of Death should not be pronounced against thee?

Whereupon he answered, He could say no more, but referred himself to God and the King's Mercy.

Then the Lord Steward said, My Heart grieveeth for that which my Tongue must utter; but Justice is the way to cut off Wickedness, and therefore hear thy Sentence.

Thou must go from hence to the Prison from whence thou camest, and from thence to the Place of Execution, there to be hang'd by the Neck till thou be dead, and the Lord have Mercy on thy Soul.

The Lord Steward's Exhortation.

Oh think upon your Offences! which are so heinous and so horrible, that a Christian Man ought scarce to name them, and such as the deprav'd Nature of Man (which of itself carries a Man to all Sin) abhorreth! And you have not only offended against Nature, but the Rage of a Man's Jealousy! And, altho' you die not for that, that you have abus'd your own Daughter! And having both Honour and Fortune to leave behind you, you would have had the impious and spurious Offspring of a Harlot to inherit! Both those are horrid Crimes. But my Lord, it grieves me to see you stand out against the Truth so apparent; and therefore I will conclude with this Admonition, That God might have taken you away when you were blinded in your Sins, and therefore hope he hath reserved you as a Subject of his Mercy: and as he sends you to see this Day of Shame, that you may return unto him, so thereby in a manner he lovingly draws you to him: therefore spend the remainder of your Time in Tears and Repentance; and this Day's Work, I hope, will be a Correction from many Crimes and Corruptions.

Whereupon, at last, the Earl descended to a low Petition to the Lords, and very humbly besought them to intercede with his Majesty, that he might not suddenly cut him off, but give him Time of Repentance. And then he desired their Lordships Pardons, in that he had been so great a Stain to Honour and Nobility.

Then a Proclamation being made by a Serjeant, declaring, That the Lord High Steward's Pleasure was, that all such as had attended this Day's Service might depart; the Lieutenant of the Tower carried the Earl away, and the Court broke up.

IN pursuance of the Sentence, a Warrant was issued for his Execution upon *Saturday* the 14th of *May* following; Notice whereof was given him, and his Coffin carried into the Tower about a Week before, that he might the better prepare himself for Death: The Dean of *Paul's*, Doctor *Winnerse*, failed not daily to visit him, and to see how he stood, and to settle him in his Religion.

Being brought to the Scaffold, attended by the Dean of *Paul's* and Dr. *Wickham*, together with his Servants, he saluted the noble Personages, and whole Assembly, shewing to them all a very noble, manly and chearful Countenance, such as seemed no ways daunted with the fear of Death. After a short while shewing himself to the People, he addressed himself to Prayer, the Deans accompanying him in that Exercise, but somewhat apart; which being not long, he stood upon his Legs, and leaned upon the two Deans, conferring with them. Then he turned to the Lords, and spake to this Effect:

‘ I acknowledge with Thankfulness the great Goodness of Almighty God, that it hath pleased his Divine Majesty to bestow on me many Endowments, as Honour, Riches, and the like, which I have mis-spent; having been a vicious Liver, and justly deserv'd Death, for as much, and in that the least Sin at God's hands justly deserveth Death, and no less; but for the two heinous Crimes with which I am branded, condemned, and here to suffer for, I do here deny them upon my Death, freely forgiving those that have accused me, and have been the Occasion of my Death, even as freely as I my self do desire Forgiveness at God's hands, which I hope to obtain thro' his infinite Goodness and Mercy: and somewhat the rather, by your Christian Prayers, which I expect, and humbly beg of your Lordships and this whole Assembly. Now for as much as there hath been Speech and Rumour of my Unsettledness in my Religion, I have, for Explanation thereof, not only made Confession of my Faith to these two worthy Doctors, but for better Satisfaction to the World in that Point, express the same in Writing under my Hand signed; which as it is here set down, I desire may be publicly read.’

The Confession of his Faith then was read by a young Gentleman, with a loud Voice, wherein he professes he dies in the Faith of the Church of *England*.

After which he proceeded: ‘ I acknowledge the great Justice and Mercy of the King's Majesty; his Justice in bringing me to the Bar; and his Mercy in affording me such a noble and

gracious Trial there: and I give his Majesty humble and hearty Thanks for assigning my Death to be in this Manner, contrary to the Sentence pronounced against me at my Arraignment. But there is a greater Favour than this, for which I am to render Thanks unto his Sacred Majesty, and that is, the long time I have had to repent in; whereof (praised be Almighty God) I can speak with Comfort, I have made good Use, and am now fully prepared for Death, and much the better, by the good Help and Instruction of these two worthy Men, to whom I acknowledge my self bounden, and do here, before you all, give them hearty Thanks for their great Pains taken in coming to me, praying for me, and preaching and reading to me.

‘ And I desire your Lordships to present my humble Acknowledgment to his Majesty, for his Goodness in sending them to me, and my Thanks for the same.

‘ I do also from my Heart desire and beseech Almighty God to bless the King's Majesty, the Queen, and the young Prince, together with all such other Issue as he shall hereafter in Mercy bestow on them, and the whole State; and my Trust and Desire is, there may be ever one of their Line to sway the Scepter of these Kingdoms to the World's end.

‘ And I beseech, and do heartily pray for the Welfare and happy Prosperity of the King and Queen of *Bohemia*, with all their Princely Issue. I do again desire your Lordships to make Tender of my humble Acknowledgment of his Mercy and Goodness.

‘ And now lastly, That you will not bend your Eyes so much upon me, as your Hands and Hearts to Heaven in Prayers for me; and so I take my last Farewel of your Lordships and the World.’

Then he went again to his private Prayers; which being done, he prepar'd himself for Death, striving to shew the like Courage and Magnanimity which he had formerly done, unto the last: but Sight of the Headsman (whom yet he freely forgave, and took him by the Hand, bidding him do his Office manfully) together with the Apprehension of his near approaching End, made him somewhat to change Colour, and shew some Signs of trembling Passion; for his Hands shook a little in undoing his Band-strings; which his Man perceiving, stept to him and helpt him, as also off with his Doublet. Then taking leave again of the Lords, the Doctors, and his Man, saying a very short Prayer by himself, he pulled down his Handkerchief over his Face, and laid his Head upon the Block; which was taken off at one Blow.



XXXII. *The Trial of LAWRENCE FITZ-PATRICK and GILES BRODWAY, two Servants of the before-mentioned Lord Audley, Earl of Castlehaven, at the King's-Bench, for a Rape and Sodomy, the 27th of June, 1631. Trin. 7 Car. I.*



ON Monday the 27th of June 1631, the Marshal of the King's-Bench brought Fitz-Patrick and Brodway to the Bar, where was a Jury of sufficient and able Wiltshire Men, impannell'd to go upon and try them*.

The Countess of Castlehaven herself was in Court, to give Evidence against Brodway; and she came in upon the Instant, when the Lord Chief Justice† demanded of her, Whether the Evidence she had formerly given at her Lord's Arraignment was true, and the full Matter of Charge she had then to deliver against the Prisoner?

Whereunto she answer'd, It was.

My Lord said; Madam, you have sworn that Brodway, Prisoner at the Bar, hath lain with you by Force, which may be, and yet no Act committed: Did he enter your Body?

She said, That in her former Oath taken, when she testified he lay with her by Force, her Meaning was, that he had known her carnally, and that he did enter her Body.

Then was she wished to look on the Prisoner; unto which Motion and Commandment she made a short Reply, That altho' she could not look on him, but with a kind of Indignation, and with Shame, in regard of that which had been offer'd unto her, and she suffer'd by him, yet she had so much Charity in her, and such Respect to God and his Truth, that she had deliver'd nothing for Malice; and therefore hoped that her Oath and Evidence thereupon should be credited: and so desired to be believed and dismiss'd. Which being granted, she departed with as much Privacy as might be into her Coach.

Fitz-Patrick being asked concerning his Guiltiness or Innocency, demanded, who were his Accusers? The Lord Chief Justice answer'd, You have accused your self sufficiently. Fitz-Patrick replied, That he thought neither the Laws of the Kingdom required, nor was he bound to be the Destruction of himself; what Evidence he had formerly given, was for the King against the Earl, and no further.

The Lord Chief Justice replied, It was true, the Law did not oblige any Man to be his own Accuser; yet where his Testimony serv'd to take away any one's Life, and made himself guilty of the same Crime, therein it should serve to cut him off also.

Then the Jury demanded of the Court Satisfaction concerning the Words of the Statute, which

run, *To charge him alone to be, and accounted a Felon in Law, that committed a Buggery with Man or Beast.* (Of which Fact the late Earl was found guilty, and had suffered.)

The Lord Chief Justice replied, That forasmuch as every Accessary to a Felon is a Felon in Law; so he being a voluntary Prostitute, when he was not only of Understanding and Years to know the Heinousness of the Sin, but also of Strength to have withstood his Lord, he therefore was so far forth guilty.

Whereupon the Jury found the Bill, and the Sentence of Death was pass'd on them both; and they were deliver'd and committed to the Sheriff of Middlesex, who, after he had suffer'd them to have some Repast at Mr. Hill's in the Palace-Yard, and Conference with their Friends, carried them to Newgate, where they behav'd themselves civilly and religiously.

As soon as they were found Guilty, the Judges of the Court wrote this Letter to the Lord Keeper to prepare him for the King.

Right Honourable,

MAY it please your Lordship to be inform'd, That this day Giles Brodway and Lawrence Fitz-Patrick were tried before us in the King's-Bench, for the several Offences of Rape and Buggery, of which they were indicted, and they have received Judgment of Death: but we forbear awarding Execution, upon a Message sent from your Lordship by Sir Thomas Fenshaw, of his Majesty's Pleasure for the Stay of Execution, until further Direction from his Majesty: but conceiving there is great Cause to put the Malefactors to Execution, we thought it our Duty to acquaint your Lordship with the Passages of the Trial, that his Majesty by your Lordship's means being made acquainted therewith, may signify his further Pleasure.

Brodway, who was arraigned for the Rape, verily impudently denied his own Confession, taken before the Lords the Peers in the Trial of my Lord Audley: He pretended he was amazed and knew not what he subscribed; and professed himself guiltless, with great Execrations. He would not be satisfied, unless the Lady was produced Face to Face, which she was; who by her Oath, *viva voce*, satisfy'd the Auditors, both concerning the Truth of the Fact and his own Impudence.

Fitz-

* Rush. Col. Vol II. p. 102.

† Sir Nicholas Hyde.

‘ *Fitz-Patrick*, who was arraigned for the *Buggery*, confessed his Examination to be true; but like one very ignorant, or rather senseless, would have them true against the Lord *Audley*, and not against himself, which was impossible: He pretended he was promised Security from Danger, if he would testify against the Lord *Audley*; and so sought to raise a Suspicion, as if he had been wrought upon, to be a Witness to bring the Lord *Audley* to his End. They were both found guilty, to the full Satisfaction of all that were present; and we for our parts thought it to stand with the Honour of common Justice, that seeing their Testimony had been taken to bring a Peer of the Realm to his Death, for an Offence as much theirs as his, that they should as well suffer for it as he did, lest any Jealousy should arise about the Truth of the Fact, and the Justness of the Proceedings. But upon receipt of your Lordship’s Message, we have stopt the Execution till his Majesty’s further Pleasure be known; to which we shall humbly submit our selves, and rest

At your Lordship’s Command,

*N. Hyde, W. Jones,
J. Whitlock, G. Croke.*

The King by this means being truly informed how things stood, signified his Pleasure, that they should be executed, but to have a Week’s time for Repentance.

ON Wednesday, the 6th of July 1631, they were brought to *Tyburn*; where, when the Executioner had ty’d the Halter about *Fitz-Patrick*’s Neck, he said:

‘ Forasmuch as I am here, and, as it were, upon the Instant to suffer Death, I desire all loving Subjects and Members of the Church of *Rome* to pray for me.’ Then he proceeded to pray to our Saviour, his Mother, and the Saints; in which he was interrupted by some Gentlemen, who told him, that the Beginning of his Prayer was good, for that he offer’d it to Christ Jesus, in whom only Salvation is to be found; as for the Virgin Mary, and the Saints, they could do him no good. But notwithstanding he persisted, saying, ‘ O yes, the blessed Virgin never forsook or fail’d any that trusted in, or called upon her; and therefore he would depend upon her and the rest of the Saints; and so proceeded to an Exhortation to Mr. *Brodway*, to cleave to the same Opinion, and die in the *Romish* Faith; for which to have him do, he said, ‘ if he had it, he would give the whole World.’ Unto which Motion *Brodway* gave no Answer, or seemed not to regard it. ‘ Then he proceeded to shew how he had been examin’d by my Lord Chief Justice, touching the Corruptness of my Lord of *Castlehaven*’s Life, wherein he said he confess’d nothing to prejudice the said Earl.

‘ That being within three days after sent for before the Lords of the Council, my Lord Dorset had entrapp’d and ensnar’d him to his Destruction; for saying upon his Honour, and speaking it in the plural Number (as the Mouth of the whole Board) that whatsoever he deliver’d should no ways prejudice himself, he

thereby got him to declare the Earl guilty of the Sin of Buggery; wherein himself being a Party, was the only Cause he came now to suffer Death: for which his Lordship’s Skill and Policy in sifting him, together with a Dispensation of his Promise and Oath, he freely forgave him; saying farther, the said Lord had done him no Wrong, because he therein was but an Instrument to send him out of this World into a better. Then he demanded of the Company, if the Earl deny’d the Sin at his Death; and with’d my Lord had not (if he did) for it was too true; his Lordship had both bugger’d him, and he his Lordship. That it was true (for some private Discontentment) he bore a little Malice to the Earl and *Skipwith*, for which he ask’d God Forgiveness. That for *Brodway*, if he had done any thing to the Countess, he did it not out of his own ill corrupt Nature, but was provok’d and persuaded to it by the Earl.

‘ He clear’d the young Lord, as never being any Occasion or Means of his Father’s Death, in hiring, or persuading him to give Evidence, as he had done. He confess’d he had liv’d an ill Life, in that he had delighted in Drinking, Whoring, and all manner of Uncleaness; but now, as he was heartily sorry, so he doubted not of Mercy of Almighty God, to pardon and forgive him all his Sins, thro’ and for the Merits and Mediation-sake of Christ Jesus, the blessed Virgin, and the Saints in Heaven.

‘ That he had fallen or run into these Sins, (and especially that which he came to die for) by reason he had neglected, and not so duly, as he should have done, repair’d to his ghostly Father, to make Confession, and take Instructions from him. That after he did make Confession, and his Sins known to the Priest, he was not only sorry for them, but also resolv’d never to come into my Lord’s House again; but it was thro’ Frailty, and because he was not furnished of another Place.’

So turning again to *Brodway*, and persuading him to embrace the *Romish* Faith, wherein, as he perceiv’d, his labour was in vain, so the Sheriff and other Persons of Quality willed him to forbear, and shut up his Discourse, unless he had any thing more to say to the purpose. Whereupon, praying for the King, Queen and State, he betook himself to private Prayer, and therein for the most part continu’d to his Death.

Brodway came, (and as it was thought by the Company, a true Penitent) and after fetching a deep Sigh at the sight of the Tree, he lifted up his Eyes and Hands towards Heaven, making and saying to himself two short Prayers; so attending *Fitz-Patrick*’s Discourse, he sat in private Meditation, often making it manifest he was in Prayer most of the time, and also rejoicing at the Assembly’s well wishing of him; for which he return’d Smiles and Thanks. His Time being come to stand up, and have the Halter put about his Neck, and so declare himself, he willingly suffer’d the one, and proceeded to the other. First asking *Fitz-Patrick* if he had done, he pull’d a Sheet of Paper out of his Pocket; which being writ broadways, he could not spread it to read, therefore desir’d to have his Hands unty’d; which was done, and he read it distinctly to the Assembly; the effect whereof was, to declare himself guilty,

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in the sight of Almighty God, of Death and Damnation; for that he had broke all the Commandments, in Thought, Word, and Deed, and sinn'd in pride of Life, lust of the Eye, conceit of his own Beauty, matchless Strength, and other natural Gifts, in desire of Revenge, not pitying the Poor, unlawful Riches, not repairing to Sermons, not observing the Sabbath, &c. For all which and other his Sins whatsoever, he both desir'd of, and trusted in God for Pardon, and that thro' and for the only Merits of our Saviour Christ Jesus, his bitter Death and Passion. He express'd a strong Assurance, which his very Soul had, of Forgiveness, in that, thro' the Assistance of the Holy Ghost, he had laid such hold on Christ as he had done. This Paper-writing contain'd his Confession and Prayer; also (as I remember) something of his slender Guiltiness and Desert of Death, but not so much. Then delivering that to the Sheriff, he open'd a little Book, intitled, *Learn to die*, and desired the Company to join with him; so reading over three short Prayers, the last whereof was compos'd only of Confession, and for Pardon, which Prayer he pronounced with great Comfort, at every *Amen* clapping himself on the Breast; he clos'd it up, and gave it to his ghostly Father, a Minister and Kinsman of his, who came along with him on horseback close by the Cart. Then he pull'd out a little Paper, which contain'd a Prayer of his own making; and when he had read it, and every one join'd with him in the *Amen*, he commended it also to the Sheriff; and then throwing away his Posy of Flowers, he roused himself, and said to this effect:

'Gentlemen, tho' true it is, what I formerly have deliver'd touching my Guiltiness and Desert of Death, my Meaning was, and is, only in respect of my Sins towards God, and no further for Breach of the Laws of the Kingdom, than only lying once with the Lady *Castlehaven*, thro' Persuasion of the Earl, who was then in Bed with her; and using some small Force for the purpose, I did emit, but not penetrate her Body. I came not to my Lord with a Desire or Intent any ways to serve him, but was rather inclin'd for the Sea; only Mr. *Skipwith* had drawn me thither for Society-sake: and not hearing from my Friends concerning my intended Voyage, and being more kindly respected by the Earl than I look'd for, I staid from Week to Week, and Month to Month, contrary to my Intention. Then my Lord, making me his Bed-fellow, did one Day, when *Skipwith* was with him in the Garden, (but walking somewhat apart) break out in Speeches to me to this purpose: *Brodway*, thou art young, lusty, and well-favour'd, and therefore canst not but prevail with any Woman thou attemptest; wherefore for that I am old, and cannot live long, my Wife wholly delighting in Lust, which I am neither able nor willing to satisfy, thou may'st do well to lie with her; and so pleasing her, after my Death marry her, and thereby raise thy Fortune. *Fitz-Patrick* knows my Lord had solicited me again and again, hearing him use this Language when we have been in Bed together, and he lying at the Bed's Feet.' Which to clear, he charg'd *Fitz-Patrick* to speak his Knowledge; who reply'd, 'Twas true. Then he was ask'd by one of the Lords, *Whether, when my Lord solicited him, my Lady desired to have him know her carnally?* To whom he said, *No, he*

would not wrong her, tho' she hated him infinitely. But, said he, I know well, if I were minded, and able to proffer, she would not say nay; for Mr. Skipwith and Amptil lay with her commonly.'

He added, 'That *Skipwith* confessed to him, he had often known her, and gotten a Child upon her, which she, like a wicked Woman, had made away; which was the only and sole Occasion he the said *Skipwith* now hated her, and therefore had turned to the young Lady *Audley*: all which he presum'd *Skipwith* would confess upon his Oath. That the Countess was the wickedest Woman in the World, and had more to answer for than any Woman that lived, as he thought.' At which Words, that Lord which ask'd him the former Question, said, Grow not into a Passion, Mr. *Brodway*, and speak nothing for Malice. He answer'd, 'God forbid I should, I am in Charity with all living People, and do as freely forgive my Lady *Castlehaven*, as I do desire God to forgive me; but what I speak, is true, as I shall presently answer before him that redeem'd me, and the Holy Ghost who sanctify'd me: To whom be all Honour and Glory, now and for evermore. *Amen.*'

Then he proceeded farther, and said, 'That my Lord would have had him done it long before: for one Night coming to him to his Bedside, he caught him, and bid him come to Bed to him and his Wife: that thereupon he made to him as if he would; but being got from him, departed the Chamber, never intending to do so foul a Deed; and that for the Reasons aforesaid he hated her of all Women living. Howbeit, that one time, satisfying my Lord's Desire, he came to Bed to them, where (being gratify'd) Nature provok'd him to a kind of Desire, and he emitted, but did not enter her Body, as he hoped for Salvation; that he never knew any Woman carnally whilst he lived in my Lord's House.

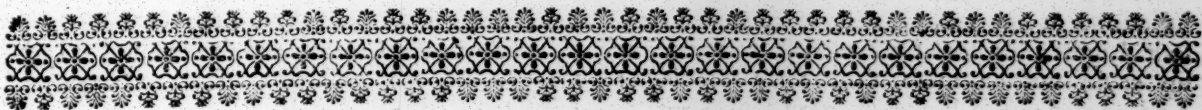
'That it was not his Intentions to bring to light either my Lord's or my Lady's Shame; but that when he was upon his Oath he could not but speak the Truth, his Nature being never prone to Lying; or if it were in his Youth, the good Correction of his Parents had wean'd him from it, saying, that his Mother had often told him the old Proverb, *A Liar is worse than a Thief*; and he thought he had more Stripes for that than all Faults else whatsoever: that he had, as he hoped, spoke nothing of Moment against my Lord at his Arraignment; he could not now remember every thing; if he had, he desired pardon.' And so concluding his Speech, prepared himself for Death; pulling out a laced Handkerchief, he desired the Executioner to tie it about his Head. Then pulling off his Garters, and unbuttoning his Doublet, Mr. *Goodcoale*, the Minister, ask'd him, *if he would not have a Psalm.* He said *Yes, with all my heart.* Then he read the 143d Psalm; which Mr. *Brodway*, pulling up the Handkerchief, sung very chearfully, never changing Colour at all. The Minister desired him to make Confession of his Faith; so he pronounc'd aloud the *Belief*.

Mr. *Goodcoale* said, *these are the Articles of the Christian Faith according to the Church of England, into which Faith you was baptiz'd; pray signify whether in that Faith you intend to die?* He said *Yes*; for there is no other Faith (as I suppose) in and by

by which a Man can be saved. Then he made Request to the Sheriffs, and those of his Kindred there, that he might be bury'd in his own Country. It was then told him, *that it was granted, and Order taken to have it so, wherefore he should now mind his Prayers.* When his Kinsman ask'd him, *if he had never another Prayer in his Pocket?* he said, *No.* Then ask'd Mr. Goodcoale, *if he would say after him?* And he said, *Yes, with all my Heart; but first he desired the Executioner to tie*

his Hands again. Which being done, Mr. Goodcoale said a short Prayer to recommend his Soul and Body to Almighty God, in and for the Merits of Christ's Death and Passion: To which *Brodney* and the People said *Amen.* Then lifting up his Hands to Heaven, he said, *Lord Jesus receive my Spirit,* and the Cart was drawn away.

Fitz-Patrick lifting up his Hands, and commending himself to God, was executed in like manner.



XXXIII. *Proceedings in the Star-Chamber against HENRY SHERFIELD Esq; Recorder of Salisbury, for breaking a painted Glas-Window in the Church of St. Edmonds in the said City; the 6th of February 1632. 8 Car. I.*

The Information was thus opened:

MR. Attorney hath exhibited an Information, in the Behalf of his Majesty, against *Henry Sherfield Esq;* an antient Benchler of *Lincolns-Inn*; for taking upon him, of his own Authority, to deface a Parish-Church in the City of *New-Sarum*, in the County of *Wilts*, and that in opposition to the Church Government, establish'd by the Laws amongst us*.

His Majesty's Attorney, in the said Information, setteth forth, that his Majesty is in his Kingdom, next under Christ, the supreme Head: that all Churches are sacred, and both founded and maintained by Regal and Sovereign Power; that no Subject can meddle with them, in doing any thing for their Ornament or Structure, without Licence of the Bishops in their several Dioceses, or the Ordinary for the Time being, who derive their Authority from the Sovereign Power.

That the Party Delinquent was an Inhabitant of the Parish of *St. Edmonds*, in the City of *New Sarum*.

That in the same Church was an antient and fair Window, containing a Description of the Creation: That in *January, quinto Caroli*, the Defendant, and some factious Persons, intending to deface it, there met and agreed so to do.

The Bishop of *Sarum* commanded the contrary, and accordingly made a publick Act thereof.

But in *October* following, he the said Defendant got the Keys of the Church, upon pretence to walk there, and then lock'd the Door, and contrary to the Bishop's Appointment, he beat down the said Window, and utterly defaced it; and when he had thus done, he did boast and glory in that he had so done, and reported that himself was a Defacer of Idolatry.

And for punishing of this great Crime is this Information exhibited, by his Majesty's Attorney in this honourable Court.

Mr. Herne. The Defendant humbly offers to the Consideration of this honourable Court, that he is aged, and has grey Hairs upon him.

That among all the Croffes of this Life hitherto, he doth not account this the least.

That he is this Day not only suspected, but accused as an Enemy to his Majesty and his religious Government; and the Thing that he is especially accused and charged with, is, that of breaking the Glas Window, whereunto himself giveth this Answer:

That in the Time of King *Hen. III.* this Church of *St. Edmonds* in *Sarum* was built, and that there was a College of Priests there; for there was an House adjoining, called the College to this Day.

That by the Act, in the Time of *Hen. VIII.* this College came to the Crown, and there remained until King *James* granted it to *Gouge* and *Lloyd*, who afterwards granted the same to *Bartholomew Tookey*, and others, to the Use of the Parish of *St. Edmonds*, together with the Advowson and free Disposition of the Vicaridge there, which they have by Grant from his said late Majesty King *James*.

And tho' he did conceive the said Church to be a Lay-Fee, yet he offereth this, that what he hath done, was not to usurp Authority over the Bishop of *Sarum*, nor in Opposition to his Majesty's Government: But the Parishioners, and such as are Vestry-men of the said Parish, have Time out of mind assembled, and met upon Occasions, in a little Room called the *Vestry*, in or near to the Church of *St. Edmonds*; and there they have used, Time out of mind, to make Orders, whereby new Windows have been made, divers Seats in the Church alter'd and new made, and many other Things done for Ornament, and otherwise, in the same; and this without any Order from the Bishop of *Sarum*, or any other Ordinary, for the Time being.

For this Window that is charged to contain the History of the Creation, he answereth,

That it is no true Relation, or Story of the Creation, in that true Manner as it is set down in the Book of *Moses*; but there are made and committed by the Workmen divers Falsities and Absurdities in the painting of the same Window, as that he hath put the Form of a little old Man

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in a blue and red Coat, for *God the Father*, and hath made seven such Pictures; whereas *God* is but One in Deity: And in his Order of placing the several Days Works of *God* in the Creation, he hath placed them preposterously, the fourth before the third; and that to be done on the fifth, which was done on the sixth Day; and in one Place he hath represented *God the Father* creating the Sun and Moon with a pair of Compasses in his Hand, as if he had done it according to some Geometrical Rules.

That this was not one of the greatest and fairest Windows in the said Church, it contained only four Lights; for the Cost at first in setting it up could not be more than forty Shillings: And that which is broken is very little Damage to the Window, and may be repaired for a very little Cost.

He conceiveth, for his defacing of this profane Representation of *God the Father*, it is not so heinous a Crime as deserves the Sentence of this Honourable Court, and for his defence he saith, That he hath for many Years past (*he setteth down for thirty Years past*) been settled and resolved in his Judgment, and that upon good and sound Authorities, (as he conceiveth) that it is utterly unlawful to make any such Representations of *God the Father*; and by such Authorities as were set out and declared in the Time of *Queen Elizabeth*, and otherwise, for the taking down and abolishing superstitious Images and Pictures, especially in the Churches.

He was thereupon the rather emboldened to desire, and endeavour the taking away of the said Window; and because it had been a Cause of Idolatry plainly to some ignorant People. He saith he was placed in the Church in such a Seat as that the said Window was always in his Eye, during his Abode in the Church; and not out of opposition to the King's Majesty, but by special Order and Agreement of the Vestry, about *January 1629*, (wherein it was ordered that *Mr. Sherfield* might, if he thought fit, take down the said Window, and set up new Glasse for the same) he thereupon did with his Staff pick out some of the Glasse in that part of the Window only which represented the Deity; but for the doing the same thro' Combination with others, and by Force, he denieth the same: And that he should do it contrary, and against the Command of the said Bishop of *Sarum*, and his said Act, and Letter supposed to be sent, this he also denieth, and saith, that he had no Notice thereof in any part.

And to all the rest of the Misdemeanours and Offences charged in the Information, he pleadeth *Not Guilty*, and submitteth himself to the Judgment of this Honourable Court.

For the King.

* *Sir Richard Shilton.* * *Sol. Gen.* For that divers Things seem to be set forth in the Defendant's Answer, which have not been opened; we that are of Counsel for the King, desire that the Answer may be read; and the rather, because he hath thereby confessed more than we have proved, or indeed could prove against him.

Whereupon the Answer was read in effect as followeth:

The Answer of Henry Sherfield of Lincolns-Inn, in the County of Middlesex, Esq; to the Information

of Sir Robert Heath Kt. his Majesty's Attorney-General.

All Advantages of exception to the Uncertainties and Insufficiencies of the said Information to this Defendant, now and at all Times saved:

This Defendant saith, That *K. H. 3.* founded in *New Sarum* the College of *St. Edmonds*, and the Church thereunto belonging.

That there belonged unto the said College and Church, a Provost and 13 Priests, which had Maintenance there allowed them. That in the Time of *K. H. 8.* by the Act of Dissolution, the said College and Church, with the Revenue thereof, came to the Crown, and so remained till *septimo Jacobi*, who granted the same to *Gouge* and *Lloyd*, who alienated it to *Baylie*, who conveyed the whole Premises to *Bartholomew Tookey*, one of the Defendants named, who, in 13 *Jacobi*, for many good Uses, conveyed the same to the Use of the Parishioners of the same Church.

That this Defendant is one of them, so that the Right of the said Church is in the said Parishioners, who are seized thereof, as of their Lay-Fee; and the said Church is exempt from the Jurisdiction of the Bishop of *Sarum*; and that they, as lawful Owners, had lawful Power without the Bishop to take down or set up any Window, and to do any other Thing in Repairing or Adorning the said Church, and for Reformation of such Things as are amiss in the same.

And that he, this Defendant, and the rest of the Parishioners being Vestry-men, have met, and have used to meet for a long while, and their Predecessors, Time out of mind, in the Vestry-house, and there have made Orders for the taking down, and setting up again, Parts of the Church. They have taken down Glasse Windows, they have removed Altars, Roodlofts have been pulled down, Seats pulled down and alter'd, the Pulpit taken down and set in another Place; and these and many other Things without any special Licence of the King's Majesty that now is, or of his Father *King James*, or of *John Lord Bishop of Sarum*, or of his Predecessors.

That at a Meeting of the said Vestry-men of the said Parish, this Defendant being one of them, in or about *January 1629*, it was ordered, that this Defendant might, if he pleased, take down the said Glasse Window, being in the South-side of the said Church, so as at his own Cost and Charges he would repair the same with new plain Glasse. And this Defendant being to come to *London*, desired it should be done before his Return; and that the Glazier might not mistake the Window, he pulled down with his Staff two or three of the small Quarrels of Glasse, and so left it to the Church-Wardens to be done.

That he is accused to be an Opposer of his Majesty's Government, and of the Reverend Bishops; and this by the Procurement of those that are ignorant of the Thing, which this Defendant accounteth a very great Affliction.

He saith, That this Window, and the Painting therein, was not a true Representation of the Creation; for that it contained divers Forms of little old Men in blue and red Coats, and naked in the Heads, Feet and Hands, for the Picture of *God the Father*; and in one Place he is set forth with a pair of Compasses in his Hands, laying them upon the Sun and Moon; and the Painter hath set him forth creating of the Birds on the third Day, and hath placed the Picture of Beasts, and

Man

Man and Woman, the Man a naked Man, and the Woman naked in some Part, as much as from the Knees upwards, rising out of the Man; and the seventh Day he therein hath represented the like Image of God, sitting down, taking his Rest: whereas this Defendant conceiveth this to be false, for there is but one God, and this representeth seven Gods; and the Sun and Moon were not made on the third Day, but on the fourth Day; nor the Trees and Herbs on the fourth Day, but on the third Day; nor the Fowls on the third Day, but on the fifth: and Man was not created on the fifth, but on the sixth Day; nor did the Lord God so create Woman, as rising out of Man, but he took a Rib of the Man, when he was in a deep Sleep, and thereof made he the Woman, in all which the Workman was mistaken: In regard of which Falsifications, this Defendant deemeth, that this was not a true Representation of the Creation, tho' it be so pretended, but rather an Abuse of the true and lively Word of God, which to pull down, as aforesaid, cannot be any Offence in him, this Defendant, as he conceiveth, at least in that Manner as in the Information it is pretended. But in as much as he is accused of Infidelity and Impiety to Almighty God, and to be disaffected to the King, therefore this Defendant humbly craveth leave to declare his Opinion in the Thing itself.

And he saith, that he believeth it altogether unlawful to make the Representation of the true God in any Church, or Wall, or Window; and this he hopeth to make appear by the Scripture, by Orthodox Writers, Councils, and Decrees of Emperors, and by a certain Book of the now Bishop of *Sarum* (Dr. *John Davenant*) written on one of St. *Paul's* Epistles, in the 97th and 98th Pages; King *James's* Book, intitled his *Premonition to all Christian Kings and Princes*; the Book of *Homilies*, set forth by Authority, and therein the Homily against Idolatry in particular: That this being so false a Representation, and so profane a setting down of the Image of God the Father seven Times, he, this Defendant, being a Parishioner, and troubled therewith in Conscience by the space of twenty Years, for that he could not come into the Church, but he must see it, sitting right opposite to it, he was much grieved thereat, and wished a long while that the same were removed, and yet in respect of himself laboured still to disaffect his Thoughts; but seeing the Dishonour done to God thereby by some ignorant Persons, (as this Defendant was informed by the Pastor of the said Parish) and fearing that others might offend in Idolatry, he (by Order of the Vestry aforesaid) did take down some little Quarrels of the Window; and it was done by him only, without any Disturbance, and he did it only in such Places of the Glass as the Representation of the Deity so falsified was: He did it not to arrogate to himself Authority, but as bound to do what he did to preserve a good Conscience; it was not done riotously, nor by Combination with any others. And he saith, That he never deserved, nor will deserve such a bitter Charge, as thro' the Malice of his Enemies, is laid upon him by the said Information. And he saith, that he, and other of the Defendants, were Justices of the Peace, and not altogether private Persons, and they were Parishioners, and entrusted, as aforesaid; and the taking down of the Window seem'd to be warranted by the Statute of *Edw. 6.* and by

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the late Queen's Injunctions, set forth in Print in the first Year of her Reign, whereby it was commanded that all idolatrous and superstitious Pictures, Roodlofts, Altars, and other Relicks of Idolatry, especially in Churches, should be defaced and abolished, but the Wall preserved, and this to be done by the Church-Wardens; and these Injunctions being by Act of Parliament, they are still in force, as he conceiveth. And in the 13th of *Elizabeth*, in the Convocation held by the Archbishops, amongst other Canons, this for taking down and defacing idolatrous Pictures and Images was one, and made an Article, that the Church-Wardens shall inquire whether it be done accordingly: And the same order'd by the Convocation, in the 1st of King *James*. He saith, That he doth not countenance any Contemnors of the Church, nor ever did: That the painted Window aforesaid was one of the meanest Windows in the said Church, containing but four Lights, whereof all the Glass at first was worth but 40 s. and all that was taken down by this Defendant, was not worth more than 18 d.

And this Defendant denieth that the Bishop of *Sarum* sent to him to forbid the taking of it down; and denieth that he had any Notice by way of Act, Letter, or Monition to the contrary, or that any such came to his Hands. But this Defendant saith, that he often attended the Lord Bishop, as well upon this Defendant's own Business, as on the Bishop's Occasions: and yet his Lordship never used any Speech thereof to him at all. And therefore this Charge, that it was done by this Defendant against the Bishop's Directions, is not true, as will appear by Proof. But this Defendant doth aver, what he hath done is lawfully done; and to all other the Offences, &c. he pleadeth *Not Guilty*.

Sol. Gen. Here is a Confession of the Fact, and a Justification; and therefore we made no Examinations or Interrogatories; for as I said before, so I make bold to say again, that he hath confessed more than we could prove against him.

The Question is, Whether a Parishioner may of himself undertake to pull down and set up what he conceiveth to be idolatrous, and so take upon him to be a Reformer?

In this Gentleman's Answer, you see how curious he hath been in confusing the Painter that is dead a hundred Years ago. (Nay, it hath been there these three hundred Years, said the Archbishop of York.) From the 5th of *January* 1629, till *October* following, he could find no Opportunity to execute the Vestry's Order; and yet he saith, shortly after the Order, he did with his Staff take down some of the Quarrels of the Window, &c. First, for the Manner of coming into the Church, we shall read a Witness or two for that.

Depositions of Witnesses on the King's Part read.

Bowen the Sexton's Wife saith, That Mr. *Sherfield* came unto her (her Husband not being at home) and said Woman, bring the Keys of the Church-door, and let me into the Church; whereupon she presently brought the Key, and opened one of the little Doors of the Church, and Mr. *Sherfield* went in, and made the Door fast unto him, and staid there alone by himself.

That when he went into the Church, he said, Now Woman go about your Business, while I walk in the Church.

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That

That thereupon she went into her House, and after she had tarried a little in her House, her Child (that was abroad gathering of Sticks) came in, and brought her two or three Pieces of the Glass Window, and said it was done by a Man all in black. Thereupon she went to a private Door and looked into the Church, and she saw Mr. *Sherfield* standing upon a Seat some four Foot above the Ground, and so he stood breaking the Window with a black Staff with a Pike in the End of it.

That the Window was broken in eleven several Places. And after she went by the same Window, and saw it broken; but being on the outside, she did not then see it, yet she heard one groan, which she conceived was Mr. *Sherfield* fallen from the Seat whereon he stood, to the Ground. And she the rather believeth it was Mr. *Sherfield*, because he afterwards sent for a Horse, and rode home.

That afterwards the Window was broken by another, and a Pitch-fork left in it; and divers other Windows were also broken, but by whom this Deponent knoweth not.

That therefore a Watch was set, and continued for a Fortnight, to see who should attempt to break any of the Windows of the said Church.

Elizabeth Bowen, the Sexton's Daughter, saith, That Mr. *Sherfield* came to this Deponent's Mother, about three or four of the Clock in the Afternoon, a little after *Michaelmas*, and commanded her Mother to open the Church Door for him, and she did open it: when he was in the Church he said, Get you about your Business; and when her little Brother brought in part of the Glass of the Window, saying, Somebody was within breaking some of the Windows of the Church, she then run out of her Father's House and went unto the Church, and saw him beating of the Ladder, and heard him talk to himself, and thereupon said to her Mother, That she thought Mr. *Sherfield* was mad.

That thereupon Mr. *Sherfield* came out of the Church, and went into the Clerk's House; and after he had been there a little Space, he went again into the said Church, and bolted the Door after him on the inside, but she peeped in at the Door, and saw him break the Window with his black Staff, which had a Pike in the end of it.

That the Staff broke, and he fell down into the Seat, and lay there a quarter of an Hour groaning; but what Hurt he had, she knoweth not.

That he afterwards kept his House for a Month.

That the Window was broke afterwards, and one *John Palmer* seen there about four of the Clock in the Morning.

Dr. Webb of Steeple-Ashton saith, That Mr. *Sherfield* coming thither to keep a Court-Leet, he afterwards went with this Deponent into the Church of *Steeple-Ashton* to view it, and he asked this Deponent why they should bestow so much Cost in their Windows; and he declared his Dislike thereof, giving these Reasons, to wit, That it made the Windows darker; and it was an occasion of Idolatry: and he conferred with this Deponent about the Window now in question, which he said he would have taken down; but the Bishop's Chancellor opposed him, and said, He knew no Cause why he should, for that it was a Lay-Fee.

John Lymminge of the City of New Sarum saith, That he hath been thirty Years a Parishioner, and two Years ago he was Church-warden of the Parish of *St. Edmond's* in the City of *New Sarum*; that then the Order was made, when he was Church-warden.

That he was present in the Vestry at the making thereof.

That Mr. *Sherfield* moved the Matter to the rest that were present, and they all consented thereunto, saying two, who said, They desired to have the Lord Bishop's Leave for doing it. To whom Mr. *Sherfield* said, Do not you trouble your selves, I will give my Lord Bishop Satisfaction.

That the Bishop afterwards sent for this Deponent, being then Church-warden, as aforesaid; and he went to his Lordship, who told this Deponent, He had heard of such an Order or Agreement to have been made at the Vestry, and ask'd this Deponent if it were so? This Deponent answer'd, That it was so: that thereupon the Lord Bishop said, Let it not be done, and gave Directions and Commandment to this Deponent, not to give Notice of this Inhibition therein to the rest of the Vestrymen.

Francis Roberts, Servant to the Bishop's Register, saith, That an Agreement was brought to the Bishop under Mr. *Sherfield's* Hand, and the Hands of divers others, by Mr. *Sherfield*; and the Effect of the Order was (as he taketh it) for the taking down of the Window, in the South Porch of the Church of *St. Edmond's* in the City of *New Sarum*.

That the Lord Bishop caused this Deponent to take a Copy thereof, which he did; and thereupon the Church-wardens were sent for, and were forbidden by the Bishop to put the same in execution, and made a publick Act thereof, which this Deponent wrote.

It was urged by those of the King's Council, that the Answer was not in this rightly opened, and was therefore one of the Reasons why they desired the Answer itself to be read. In the Answer he justifieth the Act as well done; but the Council that opened the same, did not shew it so to be.

Mr. Herne. In opening the Answer, we declined, as but an Opinion of the Defendant, and from this a Man may recede: It was not the Point in Issue, therefore we were advised not to stand upon it; and we do acknowledge the Church to be a parochial Church, and subject to the Bishop of *Sarum*.

Whereupon Sir *John Finch* desired that *John Lymminge's* Deposition might be read again, and it was read to this Purpose,

That Mr. *Sherfield* said he would satisfy the Bishop, urging that this was after the Bishop's Inhibition; but this did not appear to the Court.

Sir *John Finch* concluded the Evidence on the King's Part: the Question is not what is fit to be in a Church; The Matter is, that he hath taken upon him to determine what is fit. He is an ancient Reader, and well read in the Law; but our Law saith, (and this every one knoweth, that hath suck'd the least Sweetness from the Books of the Law) That the Church must be governed by the reverend Bishops of the Church. That it was a parochial Church he knew well, for that himself was a Parishioner: and tho' his Council decline this, yet his Defence is, that it is a Lay-Fee, and that he might well do as he did, to pull down

down the Window. He is well acquainted with the Bishop, and yet would never desire his Leave in taking it down; but he goeth to the Vestry for Power to do it, and yet there it is his own Motion; and when some question'd their own Power to do it, he beareth them in hand he will satisfy the Bishop. When he cometh to *Steeple-Astton* to Dr. *Webb*, there he saith it is a Lay-Fee; for he being a Justice of Peace, that seemeth to add another Wing to bear him up: But the Matter's not in question, it appertaineth to the ecclesiastical Jurisdiction. For the Bishop's Inhibition, that Mr. *Sherfield*, being a Vestry-man, should not have Notice of this, is very improbable. If it had been done in execution of the Vestry's Agreement, why then was it done so privately, and not some of the Vestry called to be with him?

But to have the Doors shut, to do it with such Privacy and so many Colours, as reading in a Book in the Church, walking and viewing of the Clerk's House; this could not be but that he feared something, and that this was the Inhibition.

Note, This was a great Defect in the Proof of the King's Part, that the Relator could not prove that Mr. *Sherfield* had Notice of the Bishop's Inhibition: nay, he had not the Act of the Bishop, which was so easy to be had, to shew in Court, for which the Bishop of *London* was much displeased, and so was the Lord-Keeper.

To remedy this (if it might be) the * Bishop of *London* desired that Dr. *Lynn* the Bishop of *Sarum's* Chancellor, who was the Relator in this Cause, might be heard what he could say to this Point. And he was permitted to speak, yet could not directly say that Mr. *Sherfield* had any Notice of the Bishop's Inhibition; yet he mention'd a Letter that was sent to him to give him Notice of the Bishop's Commands to the contrary, but it could not be proved that ever any such Letter came to his Hands.

For the Defendant.

Mr. *Herbert*. That the Information contained seven several Charges against the Defendant; for five of which, that is to say,

1. That he being factiously disposed, and disaffected to his Majesty's Government, on his own Authority took upon him to deface the Parish Church of *St. Edmond's* in *New Sarum*.

2. That he is an Opposer of the Authority of the reverend Bishops and their Government.

3. That he is an Encourager and Maintainer of all such as are ill affected Persons to their Government, and Contemnners of their Authority.

4. That the defacing of the Window in question was done by Combination and Confederacy between him and ten others, Defendants.

5. That this was done riotously and routously with Force and Arms. For all these I appeal to this honourable Court, what colour of Proof hath been made; only it hath been proved that the Defendant himself took down a little of the Glass of that Window. And there hath been some offer of Proof made, that it was done against the Lord Bishop of *Sarum's* Inhibition. And whereas the said Dr. *Lynn*, the said Bishop's Chancellor, hath endeavoured to prove some Things out of Course for this last Charge, we shall desire and beseech your Lordships to consider that he is the Prosecutor of the Cause against the Defendant. For

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the Manner of the Prosecution, it hath been very violent, injurious, and favouring of Malice. He was the Man that went to these Witneses and forty other Persons, to raise up and frame a Charge upon the Defendant. He exhibits a foul Bill, or causeth the same to be exhibited against the Defendant, and ten others. And then falleth off from all those Ten, and desireth that Two of the Defendants might be Witneses for him; and when he had thus done, never used them. And this, my Lord, hath been the Manner of Prosecution.

For the taking away of the Glass-Window, it is true, we confess we did take down part of the Glass; but for the second Thing, it doth not appear that he had Notice of the Bishop's Inhibition.

And whereas Sir *John Finch* hath insisted upon some Probabilities for Proof hereof; we hope this Cause shall not be sentenced according to Probabilities. Now tho' the Charge of those five before-mention'd be not proved, nor any Interrogatory administered to prove them, yet we shall desire Leave to offer our Proofs to the contrary to your Lordships Considerations.

And first, as to the Charge that we are ill affected to the Church-Government, and an Encourager of those that be like-minded, and this for private Ends, and out of a private Spirit:

We answer, That Mr. *Sherfield* the Defendant hath on the contrary, in all his Actions, been conformable to the Canons and Constitutions Ecclesiastical, the Rites and Ceremonies of the Church of *England*.

That he hath been so far from encouraging such factious Persons, that he hath been very active in his Place to punish Separatists. And that he did not this (in removing this little Quantity of Glass) of his own Head or private Spirit; but it is true, he conceived it to be Idolatrous, and so was it thought by the Pastor of the Church, and by all the Men of the Vestry thought fit to be removed. What we did therefore, was no way out of a singular or private Spirit, nor our own Authority, but by Order from the Vestry; not in opposition to the Church-Government, or Governors; but as in respect to the Nature of the Thing. Besides, all the Canons, Constitutions, and Commands for taking away such superstitious and idolatrous Relicks, we shall prove, in Fact, there has been much Idolatry committed therewith. We say, that of a long Time there have been Meetings in the Vestry by some antient Men of the Parish, and this by Power from, and under the Ecclesiastical Governors; and this they have used to do, they have ordered many such Things, and they agreed this Window should be taken down by Mr. *Sherfield*, if he thought fit, and to set up new Glass. We go not about to entitle the Vestry to any Jurisdiction; we say they are respondent to the Bishop, and he may punish them if they abuse their Power: but tho' they have not legally a Jurisdiction, yet *de facto* they do meet, and do such Things, tho' it be not justifiable; yet this is the Question before your Lordships, Whether those of his Majesty's learned Council can make it a Crime, *Yea*, or *No*? The Curate and Church-wardens assented, as is required by the Statute.

The Queen's Injunctions, 1 *Eliz.* give Power to the Commissioners and others to take away Things of this Nature, especially in Churches, preserving the Walls, &c. So in the Articles set out in 13 *Eliz.* to inquire whether they were removed, *Yea* or *No*. Afterwards there was the like in the

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First

First of King *James*; and the Canons contain one Particular of the like Power given to the Churchwardens to inquire of such Matters, &c.

Depositions of Witnesses on the Defendant's Part read.

John Joye of the City of New Sarum *Gent. saith*, That he hath known the Defendant above twenty Years, and hath ever since observed him to be conformable to the Church of *England*; and that the Defendant, when he is in health and at home, is present at divine Service and Sermons, and that during all the Time of this Deponent knowing of him, giving good Example by his religious and pious Carriage unto others; and that this Deponent hath known this Defendant divers Times to have received the Sacrament of the Lord's Supper kneeling.

That this Deponent is a Parishioner within the Parish of *St. Edmond's* in *Sarum*, and a Vestryman.

That the Vestrymen of the said Parish have met, and used to meet as often as they thought fit, and used to make Orders for repairing and adorning the said Parish Church, and have hitherto many times ordered the taking down of Seats in the Church, and the setting up of new, taking down of Windows, Walls, and Pieces of the same Church. And this Deponent remembereth, that about twenty Years since, a new Pew was erected in the middle of the Church for the Minister to read Prayers in; and fourteen Years since a new Pulpit was set up, and part of the Minister's Seat was again alter'd; there was also a new Loft made for ringing of the Bells, and thirty Seats were taken down and new made, and a Glass Window in the Towers was quite taken away: and all this was done without any special Order from the Bishop of *Sarum*, for the Time being, or any other Ordinary, and never any Doubt or Question was made thereof.

That upon the 16th Day of *January*, 1629. at a Meeting in the said Vestry, by the Vestrymen, it was order'd, that the Window in question should be taken down, and the Reason why, as this Deponent remembreth, was for the Darkeness caused by it, and for that it was Superstitious; and that five of the said Vestrymen were Justices of the Peace within the said City of *New Sarum*.

Mr. *Herne* noted, that the Defendant's Witnesses are Justices of the Peace, and such as have been Mayors of the City, and are Aldermen there; but the others Witnesses are poor People, and silly Women led by Mr. Chancellor.

This Witnesses, and many others, testified the Defendant to have been conformable during all the Time of their knowing him, and observant of the Rites and Ceremonies of the Church of *England*.

Peter Thatcher, Clerk, Vicar of the Parish Church of *St. Edmond's* in *New Sarum*, saith, That he hath known the Defendant, *Henry Sherfield*, by the space of eight Years last past; that when he is well, and in good Health, he cometh to Church, and there stayeth all the Time of divine Service and Sermon, and hath received the Sacrament of the Lord's Supper kneeling.

That there was an Order made in the Vestry, where this Deponent was present, for the taking down of the Window in question by Mr. *Sherfield*.

That he hath seen the said Window since it was broken; that the Story intended thereby to be set forth, may well enough be discerned, and this, upon his certain knowledge, for he took special Notice thereof, upon *Saturday* last, before his Examination; that there are no Letters in the Window aforesaid, describing the Representation of the Creation.

That it may be amended for a very small matter.

That it is not so good Work as some other Windows of the Church.

That he hath heretofore seen an Accompt, made in the Time of *Henry VII.* of Charges in setting up certain Windows in the said Church, which are all of painted Glass; and there was set down a Particular of 94 Foot of Glass, set up at 3*d.* a Foot, and this Window in question containeth 72 Foot of Glass or thereabouts.

Note, That in the Time while this Deposition was reading, Mr. *Sherfield* caused a Map of the said Window to be presented to the Lords, representing the said Window, and all the several Breakings of the same set forth in Colours like the Window it self, which was inspected by the Lords.

The Bishop of *London* at this Time took some Exception to the Testimony of the last Deponent, *Peter Thatcher*, for that he saith he knoweth he cometh to Church, and stayeth there all the Time of divine Service; whereas he knoweth that this *Thatcher* himself hath not read all the divine Service in a whole Year together; he hath not done it heretofore, whatsoever of late he hath done for By-Respect.

Then proceeded the Deposition of the said Peter Thatcher,

That the Picture of the old Man in blue and red, is taken to be the Picture of God the Father, the Creator of Heaven and Earth; and that he is taken to be there represented creating the Birds and Beasts, the Sun and Moon, and speaking to *Adam* and *Eve*, &c.

That, as this Deponent taketh it, there are many Mistakes, Fallities and Absurdities contained in the said Window.

That he saw *Emma Browne* bowing to the Window aforesaid, on which Occasion (this Deponent coming in the mean while) he asked what was the Cause she so bowed. To which she answered, I do it to my Lord God. Why, said this Deponent, where is he? Said the said *Emma Browne*, In the Window, is he not? This Deponent thinketh he told this Defendant of the same, but doth not remember the Time when.

Michael Mackerell, of the City of *New Sarum*, *Gent. saith*, That he hath known Mr. *Sherfield*, the Defendant, by the space of twenty Years and more, during all which Time he hath been conformable to the Church of *England*, and duly repairer to the Church and Sacrament, &c. That this Deponent knoweth he hath called divers in question for their Inconformity, and divers have been accused for Anabaptists and Separatists before him, and other Justices of the Peace in the same City, and some of them were imprisoned, some bound to their good Behaviour, and some otherwise punished by his Means; and the Deponent set down the Names of those who were called in question for Inconformity in particular.

James

James Palmer of the City of New Sarum, Senior, aged about 80 Years, faith, That in the said Parish of St. Edmond's, for fifty years past, he hath known divers of the Parishioners to have met from time to time in the Vestry of the said Church, which is part of the same Church, or adjoineth thereunto; and they have order'd many things for Reparation of the said Church, without the Bishop of Sarum, or any of his Predecessors; and divers of the said Parish are, and have been called, and have been and are Vestry-men of the said Church, and they have done divers things in the Church without the Bishop's Leave, as namely, the Place of reading the Service was altered from out of the Choir, and appointed and order'd by them to be read in the Body of the Church, without License from the Bishop; and therefore the Parishioners did not ask leave in this Case, of the Bishop, to remove the said Window.

The Bishop of London. Often Vestries take upon them that Authority which pertaineth not unto them, and usually transgress their Bounds; they were made by the Bishops heretofore, where they are granted and suffer'd, and in many Cases, by the common Law, we cannot do without them. The Truth is, that the Archdeacon in every Diocese was wont to be *magnus Oculus Episcopi*, to view and inform the Bishop of the Things fit to be reformed. But you will say, Shall not those Men repair, nor do any thing in the Church without Leave? Yes, they may, but not doubtful things; therefore for such things they should ask License of the Bishop at their Perils.

The Lord Keeper. So for mending of a Wall, or repairing things not well done in the Church, Vestry-men may do it; but when they do ill, they are to be punish'd.

February 8.

THIS Day the Defendant's Council proceeded in reading their Witnesses for their Defence.

William Antopp of the City of New Sarum, Gentleman, faith, That heretofore, about nine or ten Years since, he took Notice of one William Trumpetter, who came as a Stranger into the Town; and this Deponent after understood his Name was Aldersey.

That this Deponent hath observ'd the said William putting off his Hat to the said Window; and that the said William Trumpetter's Master, called Beech, did kneel down and pray before the Crucifix in one of the Windows.

This Deponent had Conference with the said William Trumpetter, and with his said Master, the said Beech; and in their Talk they much commended Pictures in Church Windows, and praised *Bel-larmine's* Writings; wherefore this Deponent did conceive them both to be Romish Recusants: And this Deponent saw the said Trumpetter kneeling and praying towards the said Window; and the said Beech kneeling before the Crucifix, beating his Breast, which this Deponent did conceive was Idolatry.

Here the Defendant's Council offered to speak something to discharge the Defendant of that Point, as to the doing of the said Act contrary to the Lord Bishop of Sarum's Inhibition.

Whereunto Mr. Attorney said, That this was not worthy to be insisted on, because they had come short in Proof against him: But as for Mr.

Chancellor's enquiring into the said Offence done, we conceive it was rightly done, and proper for him to do it; for that this Fact is of a mixt Cognizance, Ecclesiastical and Temporal; and therefore, he being an Ecclesiastical Officer, it was not a Fault, but a commendable thing in him strictly to enquire of the thing as he did, and it was his Duty so to do. And for the preparing and pre-examining of the Witnesses, we say, in this Case by him it was lawfully done, and they were justly prepared.

The Defendant's Council proceeded, and read divers Statutes and Proclamations, and other Records and Authorities in justification of the Defendant's Fact, as concerning the Nature of the thing.

And first was read the particular Injunction in the Point, set out 1 Eliz. the 23d Article or Injunction; Church-wardens are to see the Churches kept clean, and all Loathsomness by Dust, or otherwise, removed: That they have in the Churches the holy Bible and Homilies, late set out in print against Rebellion, and other outrageous Crimes.

That there be in every Church a fair joining Table, and a convenient Pulpit, &c.

Also they shall see that all Shrines, Coverings, and Candlesticks, Pictures, Pilgrimages, Relicks of famed Miracles, Rolls of Wax, and superstitious Things be taken away and defaced, preserving nevertheless the Walls of the Stone Buildings of the Windows.

* Archbishop of York. The Church-wardens executed this by Direction of the Queen's Visitors, not upon their own Authority. * Neale.

Then was read the Article touching this Matter, set forth in the Book of Articles, in the 13th Year of the late Queen. The Title of which Book is, *Articles agreed upon by Matthew Archbishop of Canterbury, and the rest of the reverend Bishops, 3 Aprilis 1571.*

The Article itself runneth thus:

Item, Whether all Shrines, Coverings, Rolls of Wax, &c. and Pictures of false and feigned Miracles, be removed and abolished.

Bishop of London. I do not think that the Story of the Creation was a Picture of false Miracles.

The Canon of 13 Eliz. was, That the Church-wardens should enquire and make Presentment of such things to the Bishop or Ordinary; but it gave no Power to them, being but Lay-men, to do what they would in Reformation.

Archbishop of York. The Injunctions were in 1 Eliz. when the Church was very much out of Order; and this was done by special Commissioners, and not by the Church-wardens Power.

Then was read the Canon, made 13 Eliz. the 18th Canon, That the Church-wardens should see the Church kept clean, the holy Bible to be in the Churches, and the holy Homilies lately set forth against Rebellion, a fair joining Table for the Celebration of the Communion; and all Roodlofts, wooden Crosses, Pictures of false and feigned Miracles, and all other Relicks of Superstition destroyed and demolished; the Walls of the Churches to be new whited, and Sentences of holy Scripture to be written upon them in great Letters, and a Bason to be in the Church wherein Baptism is to be administr'd.

There was the like made in 1 of King James, and 2 Jacobi 1603. Canon 85, That the Windows of the Church be well glazed, the Pavements even and decently kept: The like Care to be had for the

the Church-walls and Church-yards, that they be shut in with Pales, Walls and Rails, as hath been accustomed. And the Officers are to see that the Peace be well kept, and that the Book of Homilies be in the Church, which speaketh against Idolatry and Superstition, &c.

Mr. *Herbert*. The Matter before your Lordships in Judgment, is the Removal of some few Parcels of Glafs out of a Church-Window. Now, upon Things thus opened, whether this be a Crime punishable in this Court, we humbly leave to your Lordships to judge. But if it shall be conceived to be an Ornament to the Church, and so a Fault in any to remove it without the Bishop's Leave; we say it is true, we did it, but not upon our own private Head, the Vestry agreed upon it.

And whereas it hath been objected and charged, that the Defendant did this to encroach upon the Church-Government, we hope it doth not so now appear to your Lordships; but that he is a good constant Observer of the Church of *England*. And for the taking down of this Glafs, we have shewed what we did simply, and not so much what our own Opinion was, but as it was conceived Idolatrous by others.

If this be a Fault, it is then because it seemeth to derogate from the Honour and Authority of the Church, and done in opposition to the Bishop's Jurisdiction; or else it ariseth out of our Answer, in that we justify the doing thereof, as in our Lay-Fee. But we have shewed he did not this to make a Power in the Vestry against the Power of the Bishop; no, this was an Act of Duty to the Bishop, and punishable by him if it were not well done: so we do not divide the Power from the Bishop, but the Question is upon the exercise of this Power, whether the Vestry-men, when they have done well, are to be reprehended; or whensoever they do any thing about the Church, whether they must still go to the Bishop for Leave?

But tho' this be not an Offence in the nature of it, yet it is said, that to us it is an Offence, because of our Justification; which is not only *de facto*, that it is done, but that it is rightly done by the Vestry as their Act in their Lay-Fee, which is exempt from the Bishop's Jurisdiction.

To this we answer, That this was only the Opinion of the Defendant, it was not the Issue; but his Disposition is not to stand out in a thing, which afterwards appeareth unto him to be otherwise; he did conceive it was a Lay-Fee, and was their Impropriation: And tho' he said it was exempt from the Power of supreme Authority, the Archbishop or the King's Majesty, yet he did it as the Act of the Church-wardens, which is subject to the Bishop.

For the Act it self, the taking away of some little quantity of Glafs, we have shewed you the Usage of the Vestry, what they have done in other Cafes; and if every Alteration in a Church should be prosecuted as a Crime in this Court, I suppose the Court would be over-much filled with Prosecutions of this nature. Thus much for the Matter of the Fact; then for the Manner of doing it, It is pretended, that it was done against the Bishop's Inhibition.

The Defendant hath denied this Point upon his Oath, and sheweth Probability to the contrary: My Lord Bishop had long and often Conferences with him, but never spake to him of this thing.

Next, for that Circumstance, that by this Example of his breaking the Window, some others have done the like; but in the Books we find only that some body did break the Windows again after this, but who it was, is not set down. Two or three times a Year for Glafs Windows to be broken by accident, is a common thing. We find also that after this a Pitch-fork was found hanging in the Window; we say that this was discover'd only upon Proof, and was not in the Pleading: But the Men that examined this, said that it was a mad Man indeed that came that way, and threw his Pitch-fork there, and this might have been proved. And shortly after many more Glafs Windows were broken, but where, or in what Church, it doth not appear as I conceive. And, whereas it hath been said by a silly Maid, that she thought Mr. *Sherfield* was mad; and it hath been said, he went about like a mad Man: We say, that if his faithful Care and Industry in that City, for the Good thereof, if his Advice in all the Kingdom so well known be respected, he is not to be accounted a mad Man: He did not come in a mad and braving manner, but secretly, and this is proved by the Mother and Daughter; we say the more privately it was done, the less offensive it was: which we submit to your Lordships, and the whole Cause together with it. The Charge against the Defendant is, that he did dishonour to the Church; but we say, that the Act was to do Honour to God.

Bishop of *London*. Was not this done contrary to the Bishop's Inhibition? Let me ask this Question of the Defendant's Council, Why did Mr. *Sherfield* promise to satisfy the Bishop? did he give this Satisfaction before he did the Fact? This I must needs declare to your Lordships, that my Lord Bishop of *Sarum* hath written to me, and by his Letters it appeareth sufficiently how this Matter was carried, and what passed about it: if it please my Lord Keeper, it may be read.

But this being out of Course, and a thing to which the Defendant could make no Answer, was not approved of. There hath been no Fault in the Bishop of *Sarum*; but the Business on the Prosecutor's part hath been as ill follow'd as ever I saw; and on the other side, by the Defendant's Council, as well defended; so much I must say for them.

Sir *Richard Shilton*. This Offence is clearly against the Bishop's Authority; and the greater by his Defence set forth in his Answer; and by what the Defendant hath shewed, it appeareth he did this by his own Authority.

The Order or Agreement of the Vestry is no more but this, You may, if you please, do such a thing; Mr. *Sherfield* may, if he please, take down the Glafs Window; that is to be understood at his peril, they would not stand to it. This, especially in a Man of his Example, is not to be passed over in these Times. I undertake there are some Spirits now, that if they had been alive in *Solomon's* Time, would have gone nigh to have done Violence to the Cherubims; God knoweth what would have become of them!

Mr. *Herne*. As to my Lord of *London's* Objection, that it seemeth it was done after the Inhibition, Mr. *Sherfield*, upon his Oath, denieth that he had Notice of it. Mr. Chancellor himself saith, he had not Notice till after the Fact: He was often with the Bishop, and he never used any Words about it to him.

Bishop

Bishop of *London*. He undertook to satisfy the Bishop (and the Bishop you are to know, is not bound to give Notice to every Man of his publick Act;) but your Proofs are, that the Vestry have done these and these things, without the Bishop; they prove matter of Fact, but what was done heretofore, maketh not much for an evil Custom.

William Noy. *Attor. Gen.* We will not talk of the Authority of the Vestry against the Bishop's Authority, they were at first made and suffer'd thro' Negligence of the Prelates themselves. The Vestry consists of the Minister and Curate, and some Lay-men, I do not say Lay-Elders; they here agree for the taking of this Window down, but the Question lieth not upon their Power, it lieth upon the Fact it self, confessed by the Defendant himself; and, I say, if he had not confessed and proved more against himself than the Relator himself hath done, he might (I think) have gone without the Censure of this Court. It is proved by the Defendant's Witnesses; and that he did it, is confessed; but he alledgeth in his Excuse, that for Twenty Years he observed this Window, and he took Offence at it; he sat in a Seat in the Church, and he could not choose but gaze on it; he could not rest with a good Conscience, but the Window must be taken down: but in all these twenty years he never complained to the Ordinary; but after twenty years he proposeth it to the Vestry; there were present the Churchwardens the Vestry-men, and Mr. *Thatcher* the Minister; some were so wise as to question whether the Bishop's Consent were not to be had unto it; to this the Defendant saith he will satisfy the Bishop, but never offereth to do it: Afterwards it is agreed Mr. *Sherfield* may take it down, provided he make it up again with new plain Glass. The Bishop hearing of this, fendeth for one of the Church-wardens, and makes a publick Act to prohibit the taking of the Window down, and suspends the Power of the Vestry, if they had any; of this the Bishop is not bound to give Notice: the Defendant must do it afterwards at his Peril, and he told others that the Chancellor opposed it.

For the Manner of it, when he cometh from *London*, he went in secret Manner, it was between four and five of the Clock, when at that time of the Year it was between Day and Night, growing to Darkness: and he went by himself, he took no Glazier with him, nor any other to witness his Act, no not so much as any one of the Vestry-men, upon whose Authority he said he did it; and thus in private and secret manner he committed this Exploit. It is said by the Witnesses on his Part, that some did, by occasion of it, commit Idolatry, but Mr. *Sherfield* knew not of it, (for any thing that appeareth;) besides, he did not follow the Vestry's Order in doing it, for he broke it down, he did not take it down; he taketh Offence at the painted Errors, but he hath broken it, and never mended it again: but he breaketh that Part only which offended him, the Head and the Feet: if this had been done in the Execution of a publick Act, he would surely have had some Witnesses of it; but he had none, he bolted himself into the Church, that none might see him, he was not willing to be seen; so it was clandestinely done: if it had been done by him upon the Order, he would have consulted with the Glazier; wherefore certainly he executed his own Humour, and not the Vestry's Order.

It hath been farther said (to excuse the Defendant) that he may and must do it; but of how dangerous Consequence this *may and must be*, is, I shall endeavour briefly to shew unto your Lordships. He takes notice, first, that the Church is a Lay-Fee, and being in the Parishioners, and himself a Parishioner, that he may therefore do it: But from this they have already started, and they may and must do it; for they well know it is a Parochial Church, and endowed with a Vicaridge, which if they should have denied, we have the Record it self ready here in Court to prove it.

But yet they say, there hath been a Vestry even from the first Foundation; and they have done, and used to do divers such things; they have made Seats, pulled down Seats, remov'd the place for reading the Service, out of the Choir into the Body of the Church, taken down Walls of the Church, and the like, without the Bishop's Leave or License, and therefore may take down this Window.

My Lords, there is a great deal of Difference between Repairing and Reforming: Reformation ought to be made always by the supreme Power, not by private Men; but when private Persons, or a Vestry will take upon them Reformation, I make bold to say, it is the Highway to pull all out of order with their Reformation. Something was said, as if the Reason why the Window should be taken down, was, because the Painting darken'd the Church: But if this had been all, I should not have spoken much against it. But it was done for Reformation, his Conscience could not bear it. If it should be lawful for private Men to do thus much, what will they do next?

Nay, some hold our Church is idolatrous and unclean, because Common Prayers are said in them, and Masses have heretofore been said in them; and therefore these Reformers would at the next Bout take away our Churches also; this must be next. As to the kneeling down to the Windows by some; it may be some will do so to a Saint, or one of the Prophets of the Old Testament when they see their Pictures in a Church or Chapel, (as in *Lincoln's-Inn* Chapel) which if they do, then Mr. *Sherfield* must pull such Windows down, or somebody else to whose Conscience it is a trouble. Again, because it is a Cause of Idolatry in others, therefore must Mr. *Sherfield* pull it down; but it is such Idolatry as must be concealed from the Ordinary. Suppose another Man come, and say it is no Cause of Idolatry, and therefore it shall stand still: Thus they differ first, and then they fight for it; next they have Partakers on both sides, and so an Insurrection may come of it, which has many times taken its Beginnings from less Occasions than this: And tho' (God be thanked) in this Case it was not so, yet it might have been, and may be so (if such things should be allowed) in other Instances of like Nature hereafter. But he may and must do it, because of the late Queen's Injunctions and Articles, &c.

The Injunctions and Articles are but to authorize the Ordinary to enquire of such things, fit to be reformed in Churches by the Church-wardens, and other Officers; and they are to present it to them, and so they are to be reformed by the Power of the Ordinary in every Diocese and Jurisdiction: and the Meaning was, that all Relicks of Idolatry and Superstition should be taken away; but every

every Memorial, or Story of a Saint and Prophet is not a Relick of Idolatry or Superstition. Any Monument of Superstition, or of feigned or false Miracles, may be taken down; but Monuments, or Pictures for Memorials of Saints or Prophets, are not Idolatrous or Superstitious. If they should be so, because some Men conceive them so, and then they may pull them down of their own Heads, why then many might (and I doubt not but some fiery Spirits would) take upon them the Boldness to pull down all Cathedral Churches, because they are made in Form of a Cross, which some of the precise Sort cannot abide: And so, because Churches stand for the most part East and West, they would pull them down, because (forsooth) they hold it Superstition. But Reformation is, and always hath been a Work of publick Authority, and some Men have been punish'd in this Court, heretofore, for offending in this Kind.

In the Queen's Time, many went abroad (of their own Heads) to break down Crosses, Images and Pictures of all sorts, in the 44th *Eliz.* At *Banbury* they pulled down the Cross there. And in the 12th of King *James* some were brought here in this Court, *Ore tenus*, and sentenced for the like. And by the Sentence you shall see what Name is given to those Men, who pulled down Crosses; I shall read but these two Records, and say no more.

The Records were read by Mr. Robert Page, the Recorder's Attorney.

*By the Queen, a Proclamation against pulling down of Images and Pictures: Whereas many violent Persons have of late of their own Authority gone about to deface the Walls and Glass Windows of Churches, and in their Violence have pulled down Tombs and Monuments of Noblemen, and Gentlemen deceased, to their Dishonour, and to the Breach of our Peace: Therefore a strict Commandment is given that all Men forbear to break the Pictures set upon Tombs or Graves, and not to break the Pictures or Portraits of the Noblemen, or others in Churches, Church-Walls, Windows, &c. nor any Images whatsoever, without the Advice of the Ordinary, or the Advice of the Queen's Majesty, or her Council, &c. Given 44th *Eliz.**

The other Record is this:

In Camera Stellata Anno Regni Jac. duodecimo. Whereas William Dale, John Eden, Hugh Jones and Richard Jackson, and other refractory Puritans and Brownists, did deface divers Crosses in Highways, in the Night-time: For this the Judgment of this Court is upon their Confession in open Court, that the said John Dale, John Eden, Hugh Jones and Richard Jackson, shall be bound to the good Behaviour, and acknowledge their Offence at the Assizes, and every one of them pay 100 Marks Fine to the King's Use.

Your Lordships see now that the Defendant might not do it as he did, nor was he bound to do it at all; we therefore leave it now to your Lordships to censure.

The Sentence.

* *Chancellor of the Exchequer.* This Cause (may it please your Lordships) is of great Weight, and well deserves the Consideration of this Court: It is brought by his Majesty's Attorney-General against this Defendant, *Henry Sherfield*, and some others; but the rest are not proceeded against. His Offence (as it hath been proved by Witnesses, and confessed by

himself) is the wilful breaking of a Glass Window in a Church in *Salisbury*, which Window antiently stood there; and this he endeavours to justify. That these, and such like, are the Acts of Puritans and Brownists, it appeareth upon Record. His Answer, I conceive, to be against him, tho' he now quits that Part of his Justification, and it sheweth his Spirit. It is said he is a wise Man, and an old Man, learned in the Laws, and that grey Hairs are upon him; but it had been a better Argument of Extenuation, to have said he was a weak Man, a poor Man, or a mad Man. He took Scandal, and it was an Offence to his Conscience; but this was a tender and scandal-receiving Conscience; he must have the Window removed.

This, and such like Matters may go very far, and great Mischiefs may arise by it, as there have of late Years both here in this Kingdom and in *France*. He did not only do this, but he boasted of it when he had done, as if he had reformed Superstition: One Day's Work, in the representing the Creation, is set before another; and the Picture of the little old Man in blue, must be the Picture of God the Father. But this is as light as to affirm, that Idolatry may be committed to any Thing, which for Ornament the Painter hath made. But for the making of Pews in the Church, Pulpits, &c. this is but Reparation, from this they come to Reformation. Six of the Vestry, at least, conceive they have Power to pull down this Window, they agree it shall be taken down, and *Mr. Sherfield* may do it if he please, &c. This was in *Jan.* 1629, 5th *Caroli*; but it was not done till *October* following, and then it is not taken down, but broken down. I verily believe (tho' it appears not in Proof, and therefore as a *Non liquet* I pass it by) that he knew of the Bishop's Inhibition. But, say they, why then should not the Bishop speak to him of it? He saith it is a Lay-Fee; and said, that before the Fact *Mr. Chancellor* opposed him. The violent Manner of his doing it, is both proved and confessed. It is said he is a Justice of Peace, I hope your Lordships will take Order he be Justice no longer. It is proved he received the Communion kneeling; why did they not prove likewise that *Mr. Sherfield* was baptized? Who doubts that *Mr. Sherfield* was baptized? There was a strict Inquisition to prove the Fact; it was well done so to inquire, you see the ill Example of it, others followed it. They say it was a Madman who did it; this was not proved: but it was more like he was mad himself; it was indeed the Act of a Madman, and fit for none but Madmen to imitate.

For his Answer, I take it to be full of Singularity and Pride, and notwithstanding any thing contained therein, or in the Proof, I hold this his Action a great Offence, an Offence of great Scandal and Presumption as to him that knows the Law. If he or others had been minded, upon good Advice, or in good Way to have presented this or the like Thing fit to be reformed, to the proper Ordinary, or to the King's Majesty, being the Supreme Head, he and they should have done well, and have had a great many Thanks for so doing; but tho' it were fit to be removed, it was not in his or the Vestry's Power to do it. I take it, it differs not from that Case adjudged here in this Court the last Day, when a great many poor Men, who had Right to Common, but in claiming it made a Riot, were justly punish'd. So here, tho' this Window were scandalous, yet a private

* *Lord Cottington.*

private Man, nor many private Men cannot take it down: For what (as Mr. Attorney said) if one half of the Town would have it stand, and the other half would have it down, what must follow but Insurrection? So that here is in this a great deal of Disobedience, and that done in the Singularity of his Spirit in Contempt of the Church; he hath thereby touched upon the Regal Power, and encroached upon the Hierarchy of the Bishops, who have their Authority from the King. I come now to my Sentence; *I will have him to be no more Recorder of this City, that he be bound to the good Behaviour, That he make a publick Acknowledgment of his Fault in that Church where his Fault was done, and in the Cathedral Church. And that he may pay 1000 l. Fine to the King's Majesty.*

* *Sir Robert Heath.* * *Lord Chief Justice of the Common-Pleas.* In this Cause, brought by Information by myself, when I was his Majesty's Attorney-General, against Mr. *Sherfield* and others; the Relator hath only proceeded against this one Defendant. Upon all that hath been said on both sides, these Things come to my Consideration, the Fact, and the Circumstances of Aggravation: For the first of these, I shall agree it to be an Offence; but I shall not agree in the manner of Punishment, set by my Lord that spake last. I dare not give Encouragement for any private Man to do any publick Thing in Church or Commonwealth of his own Authority, it is a very pernicious and dangerous Thing; but yet I shall not sentence him for some Things, which in the first place I shall make mention of.

1. That he should do it by Confederacy and Conspiracy with others, and that riotously: It is true, it is thus charged in the Bill; but this is not proved, nor any other than Mr. *Sherfield* himself prosecuted. I must confess, I was informed that the Cause was much fouler than it is, and many others were suspected to have an hand in it; and this was the Reason of the Charge in the Information.

2. It may be he took just Scandal at this superstitious Window; and had he only moved it at the Vestry, this alone had not been so great a Fault, if he had done according as the Vestry ordered.

3. That he did it contrary to the Command and Direction of the Bishop; but this I dare not say is so fully proved, as on it to ground my Sentence, tho' I verily think (as to my own private Satisfaction) he could not but know of the Bishop's Inhibition. However seeing it is not proved, (tho' if it had been carefully followed, I doubt not but it might have been made appear sufficiently; for the Bishop of *Salisbury* himself, and many others, might have been examined in it) I pass it over as a Thing not manifest.

4. That this was done out of the Spirit of Contradiction, and in opposition of the Church-Government: I condemn his Rashness and Heat of Spirit in doing it without the Bishop; but I cannot perceive that it was done to oppose the Bishop, or Ecclesiastical Government. If this had been proved, or did appear in his Actions, I should have accounted it the greatest Matter against him; as for his inward Thoughts, I dare judge no Man's Conscience.

5. That he did this in a profane Manner, and that it was a Breach of Piety towards God. I must confess I think not so, but rather that the Offence was fit to be removed; he was grieved,

and his Conscience offended at it; and I verily think, if the Bishop had been told of it in a decent Manner, he would have reformed it.

6. That it was done riotously; but it is clear there was no Riot in the Manner of doing this Thing: And so I hold this no aggravating Circumstance, he did but satisfy his ill-grounded Conscience.

7. That when he had thus done, he boasted of it; this appeareth not, no Man seeth this proved: Nay, in his answer, opened by his Council on his Oath, he saith he accounteth it a great Cross to him, and is very sorry for it.

As to his Place and Authority, his Wisdom and Gravity, and his Profession, these excuse him not, but rather increase his Fault.

As to the colourable Pretences by him used in acting this Business, I do not take these, or his secret going about it, to aggravate his Fault; I think Vestries have too great Power, and often take upon them to do Things beyond their Power; and yet I know nothing to the contrary but the Reverend Bishops may abridge that Power when they will. As to this Action of his, I find that he did it not *contra voluntatem Episcopi, sed prater*; that he was the first Mover of the Matter to the Vestry: This is not a Fault in him, I think, but well done of him; and yet when the Vestry had done this, and the Defendant executed their Order or Agreement, I do not see, but the Bishop, if they had done ill, might have punished them. Give me leave, I beseech your Lordships, to speak thus much: A Judge must not speak his own Imaginations, but according to Proof; he is bound never to give Sentence *secundum probata*, not *probabilia*. That he undertook to satisfy the Bishop, this I think is proved by one single Witness; but yet this Action of the Defendant, I conceive to be an Error in the Defendant. The Vestry (he should have known) are but private Men, and have no Jurisdiction to reform, whatsoever they have done in Matters of Repair heretofore. But if this, or such like Things should be permitted in the Church-Government, to be done upon private Authority, why should not the like Men do the like in the Commonwealth? and then we should be at an evil Pass.

We read in the Book of the *Judges of Israel*, when there was no King in *Israel*, private Men did what was good in their own Eyes, and many erroneous Things and Slaughters fell out thereupon.

There was Cause (I am satisfied) that this Window should be removed. It was made for the Picture of God the Father, and so it was generally conceived to be: but tho' it was idolatrous, and their bowing to the same was conceived to be Idolatry, they should therefore have told the Bishop of it; which seeing neither Mr. *Sherfield* nor the Vestry did do, he is not in this to be excused. I shall therefore agree to sentence him for this Fault; but I shall forbear to put him from his Place of Recorder in the said City: It is not an Offence in him as Recorder, nor as Justice of Peace. I hold every Man that is sentenc'd should (as near as may be) be sentenc'd *eo modo quo offendit*, and therefore I think not fit that he be put from either of his Places, for else we should for this one Offence censure him as worthy to be cut off from his Places, and so good for nothing. And I shall forbear to bind him to the good Behaviour, for he is a Gentleman of Reputation in

the Country where he dwelleth; and I have observed, that a Gentleman is not bound to the good Behaviour, but for very foul and enormous Offences. *But I would have him to make acknowledgment of his Fault unto my Lord Bishop of Salisbury, and before such as he shall call unto him: And I would have him give some Satisfaction, and this in the very kind that he hath offended, at the Discretion of the Bishop.* For the Fine of 1000 l. set by my Lord, that spake last before me, I hold it to be too much for an Error, being there appeareth no Contempt: *I shall therefore think, and so set 500 Marks to be enough.*

* Lord Chief Justice of the King's

* Sir Thomas Richardson.

Bench. My Lords, Mr. Attorney-General is Plaintiff against Henry Sherfield Esq; We are not to take notice of any more Defendants, because they are not proceeded against; for this Cause, my Lords, I hold it comes fitly and properly before your Lordships here. This is rightly *crimen Stellionatum*. There be many Covers in it; for it is of mix'd Cognizance, and therefore fit for this Court, which I ever held to be the greatest Court, except the Parliament.

In delivering of my Mind, I shall crave Pardon, if I speak any thing which shall be mistaken. For the Fact, (as it appeareth unto me upon the Proofs) it was the breaking of a certain Window of painted Glass, not one of the greatest in the Church; it was a private Window, and it was privately done by him with his black Staff.

His Motive to do it was this, There was Offence in this Window, and he conceived that it was Idolatry, or the Cause of Idolatry. The Offence was, that God the Father should be pictured there in the Form of an old Man in blue and red. I have no Reason to think Mr. Sherfield took this to be made for God the Father; for he never was, nor never can be pictured; who knoweth him so well? *Moses* himself saw but his back parts. But give me leave, my Lords, as for Idolatry. This worshipping of Idols is the greatest Sin of all others; it is a spiritual Idolatry; it is to give God's Honour unto Creatures: For the Homilies of the Church, I think they are very excellent Things, (and so they are without doubt;) and there is an excellent Homily against Idolatry: so that Mr. Sherfield, and others, taking offence at the Pictures in this Window, (altho' I see not why it should be taken for God the Father) they might, to avoid Occasions of evil Desire, endeavour to remove the same. But then I hold he should have gone to the proper Judge that hath Power. And here I find fault with him, that in the twenty Years of his continued Offence thereat, he would never resort to the Bishop to complain thereof: This was certainly *scandalum acceptum, & non datum*. He should have gone to the Bishop; but for his Colour to do the same, by the Order of the Vestry, I think it a meer Colour. Two withstood this Motion, eight or six consented to the taking of it down. I marvel any Question at all was made of it; for I know Mr. Sherfield is as well beloved of the Citizens as any Man can be; and, I presume, he might command an Order in the Vestry: but, I say, the Vestry hath nothing to do to reform, it wholly belongeth to the Bishop. And the Power of the Church-Wardens, by the Canons and Constitutions, is but to inquire and present; but the Bishop, the supreme Ordinary in his Diocese, and

the Arch-deacon, who is *magnus Oculus Episcopi*, are the proper Agents in a Work of Reformation; what Mischiefs would else ensue? There was a special Commission in Henry VIIIth's Time. I know who were Commissioners, and have seen the Commission: They did strange Things; but I have seen again as strange Stories of Things befallen those Houses.

In 3 *Edw. VI. Cap. 10.* It was enacted, that Reformation in the Churches should be made by Archbishops and their Commissaries.

This was repealed by Queen Mary, but set on foot again *in fac.* and these Times must follow the Wisdom of an Act of Parliament. Again, of what dangerous Consequence is this Act of Mr. Sherfield's? If these Men should be permitted to be Reformers, they would reform some Things that need no Reformation. I have seen, in some Churches in my Circuit, some Stories of the New Testament, some in Windows, some in Needlework and Woven-work; God forbid these should be taken away.

The manner of his doing of it I like not. He did not take it down, but break it down in the Head and Feet, which offended him: This should have been the Act of publick Authority; he presumeth to do it in the Church, a sacred Place, and ever privileged: Therefore it was an Offence to use any Violence in it, tho' but to the Windows, and therefore to be punished. I think Churches too little regarded; I hold it very ill that he did it so in private. He might rather have taken a Glazier with him. Yet I hold clearly, he doth not disaffect the Government. To my knowledge, he hath done good in that City since I went that Circuit; so that there is neither Beggar nor Drunkard to be seen there. For Ecclesiastical Government, he is outwardly conformable: I have been long acquainted with him; he sitteth by me sometimes at Church; he bringeth a Bible to Church with him (I have seen it) with the Apocrypha and Common-Prayer Book in it, not of the new Cut.

That he should do it against my Lord Bishop's special Direction to the contrary, I do not think so. There is but one that proves his Undertaking to satisfy the Bishop. And for the Inhibition, he had no Notice of it, for aught is proved; nay, he expressly denieth it upon his Oath, wherefore I do not believe he had Notice.

To speak somewhat of the Offence that sticketh upon him, the breaking of the Window; I assure myself, if Mr. Sherfield had gone and acquainted the Bishop with this Order, when it was made, this Cause had been prevented; but done as it was, it was disorderly done, and without Warrant. This therefore is an Offence done by the Defendant; and it is an Offence, in arrogating to himself Power and Authority not belonging to him, and his Zeal and good Intention shall not excuse him: Zeal must not transport a Man out of his Calling, nor beyond his Bounds; if it doth, it ceaseth to be Zeal, it is Rashness and Boldness, it is (my Lords) Presumption. I proceed to my Sentence, wherein I must crave Liberty (and in all Things whenever I speak in this Place) to use my own Conscience; and I shall ever hold this Rule, to judge and inflict Punishment, *secundum quantitatem delicti*.

For this Defendant, I think him transported with a little indiscreet Zeal; and he would not seek Remedy for his Grievance of his Ordinary, that he might have had Leave to do this Deed, but rather

rather do it of his own Head, and this by colour of the Veltry's Order, nothing to the Purpose. And this, my Lords, is rather an Error, in not doing what he ought to have done, than any great Offence in doing what he ought not.

My Lords, this I remember always, that every Punishment here must be *ad reformationem, non ad ruinam*: therefore I shall not agree to discharge him of his Recordership, nor of his Place of Justice of Peace in that City. For binding him to the good Behaviour, I humbly crave pardon to differ from that; he is a grave Benchet, and a learned Man, and a Gentleman well governed hitherto, howsoever his indiscreet Zeal transported him into this Error. This is the first Offence that ever you heard of him. *I shall agree for his Submission and Confession of his Fault to my Lord Bishop of Salisbury, to be made before his Lordship, and such as he shall call unto him*: But, my Lords, for his Fine to the King, 1000*l.* is too much, and 500 Marks is too little; I shall therefore go between both, and set 500*l.* and Imprisonment, according to the Course of the Court.

Secretary Windebanke. *I agree in Sentence with Mr. Chancellor of the Exchequer 1000*l.* Fine, Acknowledgment in both Churches; to be put out of his Place, and imprisoned.*

Secretary Cooke. His Majesty's Attorney-General Plaintiff, and Mr. Sherfield, an antient Gentleman, is Defendant. In my Sentence I shall endeavour to keep a good Rule, which is this, not to make Faults where they are not, nor to make them greater than in themselves they are.

The Information hath charged seven several Crimes upon the Defendant; but of all these, nothing but one, touching the Defacing of such Ornaments, sticketh upon him: But is this so much? This Picture was made for the Picture of God the Father: So I thought also, I confess, whosoever was mistaken; for Images in Churches, there hath been heretofore much Trouble about them. The first Trouble that I have read of, was in or about the second *Nicene* Council; and we read, that Imagery, or Image-worship, grew up after it had slyly crept in, in this manner.

First they were made for Stories, to teach that to the Eye which the Word doth to the Ear. Then they began to gain some shew of Reverence at their approach unto them; but not to the Images, the Reverence was done to God. Afterwards they came, as we read, (out of the Windows and Walls) into the Church, and at last upon the Altars, and then to be worshipped and offered unto. Howbeit, this was but a relative Worship, as they would excuse it; nay, as St. Gregory de Valentia saith, they did in his Time give Co-worship to the Images with God: But our Church doth not allow any Adoration to be given to any Image or Picture whatsoever, nor the Image of God the Father to be in the Church.

This is the Matter of his Accusation: So that as unto the Matter, the taking away of such a Picture is no Offence; but in the Manner of doing it, is the greatness of the Offence.

Reformation in a private Man, is Deformation, it is not to be permitted: I shall ever be as ready to punish such as any. But that he did this of his own Head, without Leave of the Church wardens, and against the Bishop's Inhibition, it doth not appear to me as it standeth before us. I conceive he had some Opinion that the Veltry, or his own

Authority, might allow him in that which he did, and warrant him in it; but he should then have done it according to the Authority.

I think he did this out of a little more Zeal than he thought to be in others; and I find that he did it without acquainting the Bishop therewith: but it is fully proved that he is conformable, and therefore it doth not appear to be in Opposition of the Reverend Bishops.

I incline to my Lord the Judge's Opinion that spoke last, that it was done out of Zeal; and he himself answereth, it was done out of Tenderness of Conscience: yet I say, that private Men are not to make Batteries against Glass Windows in Churches at their Pleasure, upon pretence of Reformation. Notwithstanding, I conceive the Danger of Example to encourage others to break down such Windows, will not be so great, as the Occasion of Triumph to ill-affected Persons would be, if this Court should too severely punish an Error in pulling that down which the Church disalloweth. *Therefore an Acknowledgment to the Bishop of Salisbury, in the Presence of such others as he shall appoint, that he hath not done well in not asking his Leave, would do well; and I hold it fit it should so be: And that he be admonished to conform himself to the Government*; but I acquit him (for my Part) of his Fine, and all other Punishment.

Sir Thomas Jarmin. The Cause before your Lordships, is upon Mr. Attorney General's Information against this Gentleman, Mr. Sherfield; and it is for doing of a Thing, which, if it had been done with answerable Circumstances, had been no Fault in him, *sed bonum est ex integris causis*: So that the not doing of this Thing in a right Manner, maketh it an Evil; but not so great an Evil, in my Opinion, as by our Sentence to ruin him. But it is a great Error for Men to be zealous in their private Spirits, and to put themselves forward upon publick Actions belonging to the Supreme Government. I hold that the practical Solecism, by overt Actions, is the greatest Opposition against Authority. These are to be vigilantly met withal; but for this Gentleman, some things here spoken make me pity his Case: Besides his doing the Fact in such manner as he confesseth, there is not any one Thing else brought home upon him by two Witnesses.

To speak my Sentence shortly; As I shall not say any thing to encourage those hot-spirited Men, so I shall still bear and remember that excellent and just saying, mentioned by one of my Lords the Judges, that we are to judge *secundum probata*, not *probabilia*; and therefore *I agree with the same Lord in all the Sentence.*

Sir Henry Vane. As to the Cause, before this Court, at this time, it is (my Lords) a Crime in the Defendant; none differeth from this, that he hath done that which becometh not his Wisdom and Experience. I have learned long since, that Ignorance doth not excuse an Offence, either in Church or Commonwealth: And I hold that this Offence of Conscience is not to excuse him; for he went not to the Bishop to complain of it, all these 20 Years that he was troubled at it. I heard some commend his Manner of doing it. I am not of that mind, he could not but know, that if he had an Order he must pursue it. I must confess, I do admire that he (being a Lawyer) should be ignorant of the Proclamation to the contrary: But he is a learned Man, a Recorder, a Benchet, and a Parliament Man; I have known him give

grave and wife Counsel in that Place: All these aggravate his Offence, and make it Wilfulness in him. But for his Conformity, and yet doing a Thing contrary to his Profession of Conformity, I ground my Sentence the heavier upon him, *he shall pay* (I think fit) 1000 l. *he shall make acknowledgment of his Offence in the Cathedral Church of Sarum before the Bishop, Prebendaries, and Canons, but not be put out of his Recorderhip.*

Sir Thomas Edmonds. *I agree with my Lord Heath for 500 Marks Fine, Acknowledgment before the Bishop of Sarum only, and such as he shall please to call unto him.*

Bishop of London. If there be *defensio facti*, or *confessio facti*, or else two Witnesses, I think any one of these three will be a sufficient Proof to convict a Man of an Offence; and I have observed there are all these together, in this Cause against Mr. Sherfield. He confesseth that he broke the Windows, and setteth forth his Justification in his Answer to Mr. Attorney's Information; and this was done by him with his Pike Staff, as is testified by two Witnesses, such as they were; yet they were Eye-witnesses, which is the strongest Testimony. I am persuaded, as I am a private Man, that at least he heard of the Bishop's Inhibition; I do not say, but *ignorantia facti* may excuse a Man in such a Case, at least *a tanto*, tho' not *a toto* perchance; but *ignorantia juris* never doth excuse: yet, because it is not directly proved that he had Notice of the Act of Inhibition, made by my Lord Bishop, I shall forbear to give my Sentence touching this Particular, the rather because he hath cleared himself of it by his Oath; and yet I have met with as strange an Equivocation in some of late as almost hath been heard of, I have not read the like; but seeing there is not plain Proof, I must not judge him other than an honest Man.

Mr. Herbert hath defended this as well as ever any did a Cause to my knowledge. As for Vestries, which were made and suffered first by Negligence doubtless, yet being of continuance, we cannot so easily restrain the Power which they use. I have had Experience of what I speak herein, in a Parish Church within my Diocese, St. Lawrence by Name, there is a Vestry: It fell out once that they could not agree upon some Election, I interposed as Ordinary; I had no sooner done this, but I was inhibited by the Archbishop of Canterbury; afterwards, by his Grace's means, it was referred to me to end, which I endeavoured; but then a Prohibition at the Common Law was sent me; so that it is not an easy Matter to restrain a Custom.

But it is not in the power of a Vestry to remove or displace any thing in the Church that is doubtful; and tho' they made an Order, in this Case, for the taking down of the Window, yet it was Mr. Sherfield's Fault to go so disorderly to work; his violent and riotous breaking into the Church, and upon a consecrated Thing, is criminal in him.

Whereas divers Things touching his Conformity have been proved, I am confident upon good Information, had the Cause been followed as well as defended, (but it was ill followed by them that prosecuted, and unworthy their Places) many more things might have been proved against him; and that it would have appeared, he had done more Harm underhand in his Place, than Good otherwise. But for his Trouble of Conscience, which should impel to this Action; it troubled not much, for he kept it in, and nourished it 'till it

grew, as you see, to a great Head, so that at last it hath brought him hither, even to the Sentence of this Court.

My Conscience being laid at stake, I am not of Opinion, that Images and Pictures were not in the Church 'till the Time of Gregory the Great: Nor am I of Opinion that the first Trouble about them was at the Second Council of Nice. St. Gregory, who was 600 Years after Christ, in his 9th Book and 9th Epistle, written to faith of Images, *vetustas admittit, &c.* But 200 Years before this, we find that Gregory, surnamed the Divine, otherwise called Gregory Nazianzen, when the Emperor laid Siege to the City of which he was Bishop, in his Oration to the said Emperor, to move him to pity, faith, That the Citizens, above all their Losses, spoiling of the City Walls, ruining of their Houses and Temples, took to heart the pulling down their Statues; *Et hoc acerbum*, faith he. Nay, we find them in them in the Church 200 Years after Christ, they were upon the Chalice, and that is ever upon the Altar.

In Tertullian's Time (who was one of the antientest Fathers) there was painted upon the Chalice the Picture of the Shepherd bringing home the lost Sheep upon his Shoulders; and this was objected against Tertullian himself, who in his latter Time fell into the Opinion and Error of the Montanists, who are against second Marriage and Repentance after Baptism, affirming that no Repentance is left to him that sinneth after Baptism; against which Error, the Church used this Symbol of the Shepherd bringing home the lost Sheep.

Again, in the Time of that ancient Father Irenaeus, who is held to be the Scholar of St. John, they had the Picture of Jesus Christ; and they had it from the Gnosticks, who had Adorations with it, and Sacrifices: and therefore the holy Father condemned that Picture, because (faith he) the Gnosticks did that to this Picture which the Heathens did to their Idol Gods. But it hath been a distasteful Thing to remove Pictures and Images. We read, that the Bishop of Cyrene broke the Pictures in the Churches, which his People took so ill, that they rose against him, and were hardly appeased.

And of late times we have had Experience of like Mischiefs in France and the Low-Countries about this Matter. And we know what Rebelions were raised in the beginning of the Reformation here in this Kingdom and in Germany: when Carlostadius and his Company went about to pull down, and deface the Images in the Churches, what a Stir was there? If Luther himself had not come back and appeased the Multitude by his timely Advice, that the Work of Reformation was to be left to the supreme Magistrates, (which was well done of him, and a Thing wherein he shewed his Wisdom) much more Mischief would have ensued. I do not say these Things to any such Purposes, as that Images should have any Part of Divine Adoration.

When these were brought into the Churches, as one Side fell to worshipping them, so the other Side fell to breaking and defacing them, which bred many Broils; and amongst the rest, one very sharp Contention by reason of the prevailing of Worshippers of Images, was stirred in the Time of Constantine the Great; for I read the Empress gave her Voice against her Son Constantine to put him off from the Empire, because of his defacing of the Images, which they had in their Churches. But

for that gross Council of *Nice*, (pardon me this gross Term, but they deserve it in my Opinion) they decree, the same Honour was to be done to the Image as to the Life, whether it were the Picture of Man, or of *God*, or of *Christ*. And then another Decree in that Council was, that a Man must rather endure Penury than do Violence to a Picture: and their absurd Distinction of *Latria* and *Doulia*, &c. Yet this I say, there is a great deal of Difference between an Image and an Idol. But then, if Men give Worship to them as to the other, it is unlawful.

As for the Injunctions in the Queen's Time; this was done by publick Authority, and done in every Place by the proper Judge.

And, touching the Matter in question, I do not think it lawful to make the Picture of God the Father: but 'tis lawful to make the Picture of Christ, and Christ is called the express Image of his Father. I don't mean to say that the Picture of Christ, as God the Son, may be made; for the Deity cannot be pourtrayed or pictured, tho' the Humanity may. I do not think but the Representation of God the Father (as in the Prophet *Daniel* he is called the Antient of Days) hath been allowed (tho' erroneously) to be made, like an antient old Man: And this the *Lutheran* Party hold too; but whether it be idolatrous or superstitious or no, this I hold not to be the Question. And I shall crave Liberty not to declare * mine Opinion at this time, whether it ought to be remov'd: But the Defendant, Mr. *Sherfield*, did this in Contempt, at least in Neglect of the Church's Authority, and the Authority of the King's Majesty; for the Church derive their Authority from the King, as well as the Civility. I shall therefore sentence him for breaking this Window, whether it were fit or no to be in the Church; if it had been white Glass, it would have been the same thing to me; it was a violent and raging Act, and it is now a Business of great Weight and ill Consequence, and therefore fit for the timely Censure of this Court. And I say farther, if it had been the Idol of *Jupiter*, and they had professed Divine Worship to it, it had not been lawful for Mr. *Sherfield*, or any private Man to deface it; and this I shall prove and maintain by Scripture.

The Idol of *Jupiter* was but as the golden Calf which *Aaron* made, before which the People of *Israel* committed Idolatry; yet we see Judgment was excuted by the supreme Magistrate by Command from God, and the Tribe of *Levi* was command to kill the Idolaters.

Then again, there was a Brazen Serpent appointed to be set up by the Lord himself; and afterwards it became an Idol, and the People committed Idolatry with it; yet none of all *Israel* presumed to break it down, but *Hezekiah* the King did it. Also the Calves of *Jeroboam*, set up at *Dan* and *Bethel*, were plain Idols, yet they continued a long time, and were not pulled down 'till *Josiah* the King did it, and this he doth by his supreme Power; and the King did this by the Priests of the first and second Order. Both these appear in their Stories in the 4th Book of *Kings*, the 18th and 23d Chapters.

As for the Second Commandment, *Thou shalt not make any graven Image*, or Picture, to thy self:

No, take heed, worship it not howsoever it be; if thou dost make an Image, yet thou shalt not worship it. But there is no Commr'd or Example for breaking of Images (when they are made) without publick Authority. You shall see this plainly in that Altar set up by the *Reubenites* and *Gadites* at *Jordan*; this was conceived by some of the People to be an idolatrous Thing, at least an Intention in them to set up another Manner of Worship, and *Jerusalem* was the Place of Worship only: there was an Embassage sent unto them, and *Phineas* and other Princes were employ'd in it; they did not presently fall upon them and break down the Altar, tho' they had special and strict Command to overthrow and break down all Idolatrous and Heathen Altars, Groves, Places of Idolatry and Images; but this they were not to do presently, they were to tarry 'till the Land was theirs, in their own Power, as you may see in the 7th and 12th Chapters of *Deut*. But you will say these were for the *Jews*, but not for us in the Times of the Gospel. In St. *Augustin's* Time the People committed Idolatry with their Images, and many there were that would have pulled down the Images (the Causes of this Idolatry.) St. *Augustin* adviseth, No, first preach them out of Men's Hearts, and he called upon the Ministers so to do; but you shall not pull them down (saith he) till the supreme Power doth it, or Power were given them. Thus, if it were *Jupiter's* Picture, Mr. *Sherfield* or any others are not to pull it down 'till Power be given them. And *Gerardus* the *Lutheran* is of the same Opinion.

The Homily against Idolatry (so much magnify'd) plainly shews it to belong to the supreme Magistrate, and has reference to such Pictures as are upon Walls; but Stories upon Glass Windows were not here meant. And as for my Lord Bishop of *Salisbury*, his † Book of his worthy Lectures at *Cambridge*, upon the 4th Chapter of the Epistle to the *Colossians*, upon these Words, *Walk wisely towards them that are without*, What saith he? Why the very same that St. *Austin* did before, that a private Man hath neither *vocationem* nor *potestatem* to do it; thus if he had read a little farther, he should have found Direction to have walked wisely. And indeed, those that are out of the Church must be dealt wisely withal. When you see these Things, you cannot, as the *Israelites* did not, deface them, for they belong only to the supreme Power. And you shall see St. *Paul's* Practice in the 17th Chapter of the *Acts* of the Apostles; he saw they had set up an Altar to the unknown God, yet he went not to pull it down, but to teach them that God which they knew not, even as St. *Austin* afterwards advised.

So I come to this which is the Work of the Day; this is a violent, riotous and prophane entering into the Church by him, to break this Window down with his Pike-Staff: and as the Matter standeth proved to me, it seemeth there are these Circumstances of Aggravation of his Fault.

1. The First Circumstance of Aggravation is, That when he went about the taking down of this Window, he went not unto the Bishop, but chose another way.

* But he shew'd his Opinion, when upon his Promotion to the See of *Canterbury*, he caus'd the same kind of Pictures to be set up in his Chapels at *Lambeth* and *Croydon*. Rush Col. Vol. 2. p. 273.

† Davenant on the *Colossians*, cap. 4, s. p. 329

2. He was Twenty Years offended at it; and in all this Time we think some good Spirit might have suggested unto him better Advice, if he would have followed it.

3. By his Office and Authority, his Fault is the greater and more scandalous.

4. By his Age, being grown grey, he should have learned Wisdom.

5. That when he went to do this, he went in private, which some have said to be well done, but I am not of that Opinion: true, if it had been a Work of Necessity in him to take it down, he might have done it, but then he must follow his Order, and he should then have taken a Glazier with him to have taken it down, and not break it down with his Staff.

6. His Offence is the greater by his Office of Justice of Peace; certainly herein he was not *Conservator pacis*, for besides the Force and Violence, there might have been much Discord and Blood-shed about it, as was well observed by Mr. Attorney.

7. By the doing of this Act contrary to his Conformity, there have been the like Insolences done in the same Church, for which I think there is a Cause against some of them depending in the *High Commission Court*; there was the Tomb of a dead Bishop there, his Bones taken up, his Scull made a Mazer in an Apothecary's Shop, (as I am inform'd) his Dust thrown about, and all to bury a Tanner's Wife.

8. In regard of his Tenderneſs of Conſcience, which he alledged for himself: My Reason is, for that, if he were of a tender Conſcience indeed; yet in this thing I shall sentence him, for not going to the Bishop to reveal it to him; if it were but a shew of Tenderneſs, then surely there was the more Wilfulness in his Offence, and this can be no Excuse.

9. His Fault is aggravated from his Profession. It is an honourable Profession; and as it is a great Offence in a Divine to infringe the Law of the Kingdom wherein he is born and bred up, so is it also a great Offence, if those of the Profession of the Law vilify the poor Laws of the Church. Thus much let me say to Mr. *Sherfield*, and such of his Profession as slight the Ecclesiastical Laws and Persons, that there was a time when Churchmen were as great in this Kingdom as you are now; and let me be bold to prophesy, there will be a Time when you will be as low as the Church is now, if you go on thus to contemn the Church.

To proceed, he went into the Church. It pleased God to give him a fall upon the Place, and if it had not been God's Mercy he had broken his Back upon the Edge of the Pew; yet all this while these Things have not wrought him to any Confession that he hath done amiss; nay he saith, he was persecuted for God's Cause (as I am informed) but I think he persecuted the poor Sexton of the Church, they put him in Prison, and there kept him, and would have kept him, if my Lord Bishop had not sent Bail; and if it had not been for the Bishop, they would have turned him out of his Place. And then, just upon the Fact committed, cometh a new Lecturer to Town, and he pitcheth upon the Text, *Psalm cxix. ver. 121. I have executed Judgment and Justice; leave me not to mine Oppressors.* I have been the willing to render this Account at this Time, because some are ready to slander us, as Maintainers of

Popish Superstition, and I know not what. *As for my Sentence, I agree with my Lord Cottington.*

Lord *Wentworth*. This is an Offence (my Lords) committed by a Man of Learning and Judgment; the Persons of Men and Times may aggravate Offences. Men now in these Days make themselves wiser than their Teachers; whereas it is said, he did this out of Conscience and Zeal, and with an intent to honour God; he is out of his Element. *Uzzah* touched the Ark with a good Intention; but because he did this without warrant, he was secretly punished: It is not for a Divine to meddle with *Littleton's Tenures*, nor a Lawyer with Divinity, to govern Matters in the Church. The Vestry had no Power to reform, nor authorize Mr. *Sherfield* to do this Thing; and I hold it a very great Boldness in him, to justify his Fact under these Pretences; for things which Vestries undertake to do of themselves, if it be well done, it is well; if it be not, let them look to it. But for their frequent and ordinary transcending their Power, it is high time that the Bishops be directed by the King's Majesty, to regulate all such Things, and to reduce all these Vestrymen into Order and Obedience. I shall not forbear to punish an Offence of this dangerous Consequence upon that Ground, for fear of giving an Occasion of Triumph to some. I think his Impunity will be rather an Encouragement, to Men of other Minds, to set their Hands to the like, of which there is great Danger. I shall not therefore in my Sentence go any thing less than any of my Lords here before me have done; *That he be not any longer Recorder of that City; that he be bound to the good Behaviour; I see no Reason but a Gentleman may be bound to the good Behaviour: For his publick Acknowledgment, I think it necessary to be made in both Churches; and that he pay 1000 l. Fine to his Majesty's Use.*

Sir *Robert Naunton*, Master of the Court of Wards and Liveries, gave not his Sentence because he was not in Court the last Day, at the beginning of the Hearing.

Lord *Newburgh*, Chancellor of the Duchy of Lancaster, forbore to give his Sentence for the same Reason.

Vilcount *Falkland* agreed in his Sentence with my Lord Cottington, for 1000 l. Fine unto the King, &c.

Vilcount *Wimbleton* agreed in his Sentence with my Lord *Heath*, for acknowledgment of his Fault to the Bishop, and such as he should think fit to call to him; and to pay a Fine of 500 Marks to the King's Majesty.

Earl of *Holland*. He was not present at the Beginning of the Hearing of the Cause, and therefore did forbear to give his Sentence.

Earl of *Devonshire*. He agreed with my Lord Cottington for 1000 l. &c.

Earl of *Dorset*. I conceive, my Lords, that the Prosecutor of this Cause is much to be blamed, and did the Court legally take Notice of a Prosecutor, where the King is a Party, I should give my Vote to fine such a Man: He hath here made a great Noise of terrible Things, (seven in Number) but hath not endeavoured to prove many of them. I shall speak somewhat of the Matter in question that sticketh upon him, and not meddle with what hath not been proved. And first is to be considered what was done; a Window in a Church

Church was broken, because of the Image of God the Father which was in it, in those Places of the Head and Feet of the Representation of the Deity: this, if it had been done by the proper Judge, had been well done. If all unlawful Pictures and Images were utterly taken out of the Churches, I think it were a good Work; for at the best they are but Vanities and Teachers of Lyes. For the Antient of Days in *Daniel* (I take it) this doth not give warrant to frame a Picture of God like an old Man; but it sheweth the Eternity of God, that he was before all Times and Days. And it cannot be taken to be the Portraiture of any other; for this being made to represent the Creation, it must needs be intended for the Picture of God the Father; for what Man did help God about the Creation? This therefore is unlawful, no Man ever saw God, nor did he ever appear in any Likeness to Man. But we picture Christ, because he took upon him Man's Nature, and was Man as well as God; and the Holy Ghost appeared in the Similitude of a Dove: But I wish there were no Image of the Father, neither in the Church, nor out of the Church.

Secondly, I note the Mind wherewith it was done, and it was out of a little too much Zeal, his Conscience was tender. This, if it had been guided well, would have been worthy of Praise. I do not speak this to make as if Men may take upon them to meddle in what belongeth not unto them; yet there is difference between a Fault done of Zeal, and the same thing done out of Malice.

Next let us consider the Authority whereby he did it; and herein especially Mr. *Sherfield* had no Power. The Vestry had no Power, neither could they give any to another; it was therefore an Error in him to conceive, that because they used to meet and do Things for Repair and Ornament in the Church, that therefore they might do this, being a Piece of Reformation; I say it was his Error to do it without the Bishop of the Place. I would not be mistaken, as if I speak or did any thing against the Authority of the Reverend Prelates; for I take it, whensoever that Authority goeth down or decayeth, the Monarchy dieth with it, I think they are inseparably join'd together. But this was an Opinion of his, that it was their Lay-Fee; and if he repent him of his Opinion, recant it, and depart from his Justification, (tho' his Answer be otherwise) I shall not take upon me to destroy a Man for such an Offence.

Then in what Manner did he it? Privately and without Noise; and this I hold to be a Diminution of his Fault, for secret Evils are not so bad as when they are openly done; the same Evils done in Chambers, are not so bad as if they were done in the Market-Place.

And it cannot aggravate his Fault, that he is conformable: I say, in my Opinion it was very necessary for him to prove himself a Conformitant; and being charged in the Information to be otherwise minded, he did well and wisely to clear himself by Proof.

I come to my Sentence.

I shall not sentence him for three or four Papists, nor shall I forbear to sentence him for three or four Schismatics; the Reason why I shall not sentence him, is to avoid the Tumults of the rude ignorant People in the Countries where this Gentleman dwelleth, where he hath been a good Governour, as hath been testified,

and is well known, and no doubt hath punished Drunkenness and other Disorders; and then such Persons shall rejoice and triumph against him, and say, This you have for your severe Government: this I think would be no good Reward for his Care. The Reason why I shall sentence him, is because he hath erred in his Manner of doing this Thing, in going on his own Head without the Ordinary, to a Work of this Nature; and this I shall hold to be an Offence in this Defendant, or a Misdemeanour, but not a Crime. I would not have him to lose his Place therefore, nor to be bound to the good Behaviour; *I would notwithstanding have him make such Acknowledgment to the Bishop of Sarum, and in such Manner as he shall think fit; but I do not set any Fine upon him.*

Earl of *Pembroke* and *Montgomery*, Lord Chamberlain, he gave no Sentence at all.

Earl of *Arundel*, Lord Marshal. I find fault with this Gentleman for keeping close his Offence of Conscience, which he saith he had at this Window, by the space of twenty Years together: he should in all this Time have revealed his Mind to the Bishop, who had been able to direct him; but upon the Matter, he goeth on his own Authority to break down this Window. This being long kept in his Heart, breaketh out to deface the Image of God in a Man. Besides, he leaveth the Ordinary, who hath Power, and goeth to the Vestry who hath none; and in his fanatical Humour he proceedeth, and breaketh the Order of the Vestry. God gave him a Warning; he fell upon the Seat, and hath had Time enough to think of it since, and in all this Time he never came to acknowledge his Offence. *I agree therefore with my Lord Cottington.*

Earl of *Manchester*, Lord Privy Seal. In this Cause, my Lords, I shall propound two Things to be considered, The Fact it self, and the Circumstance of it: For the Fact, the breaking of the Window because of Idolatry, If this had been in a Man's Lay-Fee, then he had been bound to have pulled it down; but being in a parochial Church, it is to be done by the Ordinary, or by his Appointment. This therefore being done by Mr. *Sherfield*, upon some Opinion that he had in the Power of the Vestry, it was an Error in him, but pardonable. It doth not appear that this was done contrary to the Inhibition of the Bishop, *Non notum est Judici, quod non notum est judicialiter*, he had not therefore Notice of it: for my Lord of *London's* aggravating Circumstances, it is true, if the Thing were done, as it is charged in the Information, then those would be all against him; but we see there were Causes it should be taken down; it is proved some did adore it. How long soever Pictures and Images have been in the Churches, I hold it a very offensive Thing to make such a Picture, or Representation of God. I will mention but one Author, which was before all them who were named, the Prophet *Isaiab*, *What Likeness or Similitude will you make of me, saith the Lord?* Yes; but Idolatry lies in the *Worshipping* of the Image. Take a wise Man's Counsel, The painted Picture inticeth the Ignorant to Idolatry. I profess it would offend my Conscience to see it, I am of such a pure Conscience. But there are three other Things for which I shall censure him.

1. His pretending the Order of the Vestry.
2. That he would neglect Authority, which is near unto Contempt.

3. His

3. His Passion in doing it himself, and not by others.

This Cause and Sentence hath many Judges, even so many as hear it are Judges of it. All may take notice, that our Votes are to maintain Order and Government, yet not to uphold Superstition. I will be short, I will Sentence the Defendant, but not Fine him; *to make Acknowledgment to the Bishop*, not to disreorder him: the Fact deserves not a Fine.

Archbishop of York *. May it please your Lordships, this Gentleman, Mr.

* *Dr. Neale.* *Sherfield*, is inform'd against by his Majesty's Attorney-General, for entring with Force into the Church of *St. Edmond's*, in the City of *Salisbury*, and there undertaking, without the Ordinary of the Place, to be a Reformer of Idolatry, in breaking a Glass-Window in the same Church, which he did of his own Authority. In his Answer upon the Matter, he setteth forth a Justification.

First he saith it was the Lay-Fee of the Parishioners; but this will not help him, for it is a Parochial Church.

Next he had Warrant for what he did, as he pleadeth, That he did it by Order of the Vestry: I wonder what is the Vestry, and what Power and Authority they have? It is a Place where antiently the Ornaments of the Church were kept; since those Things were gone, there were Meetings by Parishioners to agree on Matters of Repair and Assessments, and Rates for the Church and the Poor; and they did meet sometimes in the Church, and sometimes in the Vestry, no Man of the Parish was excluded. Afterwards, to avoid Tumults and Multiplicity of Voices, some Bishops had appointed, by special Instruments under their episcopal Seals, that such and such, to a set Number, should be Vestry-men, and be so call'd, and shall order Matters for the Repair of the Church, for Bread and Wine for the Communion, and such like Things, as the Charges about Bells, &c. And here I shall make bold to remember a Story to your Lordships of what pass'd between my Lord *Burleigh*, my self, and *Dr. Bancroft*, the then Bishop of *London*, when I was Vicar of *Chestbunt*. I was then a young Man, and I had an Opinion that there was somewhat in a Vestry; and had a Purpose which I acquainted my Lord and honourable Patron withal, to have some Authority deputed us in our Vestry, by the Bishop of *London* our Ordinary; I had my Lord *Burleigh's* Letter of Commendations, and special Request to the Bishop for the same. His Lordship's Answer which he gave me was thus: *If you have Occasion to repair the Church or the Bells, to make Rates for the Poor, and such like Things, this you may do; but if you think otherwise, or aim at any other Power, it shall not be allowed you, and you smell of the Presbytery; therefore, I pray you, commend me to my Lord Burleigh, and tell his Lordship I will not incur a Premunire, for I have somewhat to lose.*

I conclude; The Vestry hath no Power to make Reformation, nor can the Defendant derive any Power from them: Therefore, as for the Matter of Offence, the Picture of God the Father, no Man ever took upon him to paint the Essence of the Deity. But the Question is, whether it be lawful to express God the Father by any Representation? I think it not unlawful in it self. The Eternity of *Alpha* and *Omega* doth appear in Christ, and Christ is the Image of his Father. As for

those divine Homilies of the Church, set forth in King *Edward's* Days, and that in special against Idolatry, we know the Times did not bear them; nor are they to be taken or understood, as not to allow any Manner of Pictures or Images (tho' it may seem so) of Christ upon the Cross; but it is like the forbearing of Food for a Time, as *St. Paul* saith he would, for fear of giving Offence or Scandal unto others, who are weak; I say that for the Crucifix, there may be a very good Use made of it. As for the Purpose, he that shall look upon a Crucifix not to adore it, or give any divine Worship thereunto, he must needs think with himself, how can I but grieve and mourn for these Sins of mine, which could not be expiated but by my Saviour's Blood upon the Cross? And then I cannot but think of the great Love of our Lord Jesus Christ to Mankind, that vouchsafed to die for my Sins. And then, it serves to increase my Confidence in him, by considering that he has given himself for me, and promised that I shall not want any thing that is good for me; and that he will not deny me my Prayers in any thing which I ask agreeable to his Will; so that this must needs work a deep Impression on my Heart. I thus think; but when it cometh to be Superstitious, or that some make it a Cause of Idolatry, I must confess, I would then rather want the Thing, and all the good Uses of it, than incur the danger of propagating Idolatry. That reverend *Jewel*, Bishop of *Salisbury*, in his Time had a Commission, and he took down all idolatrous Windows in the Churches, and set in place thereof clear Glass, but he left alone this Window; and surely, if he had thought it to be idolatrous, he would have reformed it. And we have the Creed of *Athanasius* which hath these Words, *That Christ is of one Substance with the Father*; therefore the Image of the Son is the Image of the Father, and therefore it cannot be Idolatry simply to make it. But grant that it was a Cause of Idolatry, might Mr. *Sherfield* or the Vestry take it down? He saith in his Answer, that himself and four others of the Vestry are Justices of the Peace, and not altogether private Men. I would ask him this Question, whether as Justices of the Peace, they are to meddle with Reformation in the Church? It is plain they are not; yet, as a private Man, he hath undertaken to break this Window; whereas the Agreement of the Vestry was to take it down: neither was it meant that he should do it himself, but by the Glazier, and set up new Glass in the room of it; but he hath not followed this neither. My Brother, that sitteth by me, hath very well and learnedly spoken of the Authority by which these Things ought to be done. I cannot add to what hath been said by him; I shall therefore (because much Time hath been already spent) only insist on one Thing in the Defendant's Answer, and so conclude my Sentence. He saith, the Authority which the late Queen had to reform and set forth those her Injunctions, were given to her by the Parliament. This is not well spoken. The Statute of 1 *Eliz.* is but an Act Declaratory, not to be taken as if without it the Queen had no Power to meddle with those Things of the Church; for this Authority was invested in the Crown, and is still without the Parliament. He that said *per me Reges regnant*, giveth this Authority to the King. It is good to meet with growing Evils, we know not how great a Fire may be kindled with a small Spark. I cannot therefore do otherwise, but agree

agree to Fine and Censure him highly, having offended with so many Circumstances of Aggravation, as have been well opened by divers of your Lordships before me; therefore my Sentence is, that *I concur with my Lord Cottington in all the Parts of his Sentence.*

Lord Coventry, Lord Keeper of the Great Seal of England. This Cause, my Lords, I doubt not will produce a good Effect; for this great Audience consisting of Gentlemen from all Parts of the Kingdom, cannot but be satisfied that we think it not fit nor lawful to represent the Deity by Picture, and consequently we condemn *Romish* Superstition; and on the other side, that we are resolutely bent to maintain the Government by the reverend Fathers of the Church, the Bishops. And all this I think fit to be carefully expressed in drawing up the Sentence. This I must premise, that when I speak my Conscience I be not mistaken, I am no Worshipper of graven Images; nor on the other side, am I of that peevish turbulent Humour with others. For the Charges in the Bill, if they had been proved, I should for my part have trebled the Fine set by any of your Lordships. There was never Cause worse prosecuted, yet we are to consider how much standeth proved against the Defendant. The Prosecutor causeth the Information to be exhibited against this Defendant and ten others; but those ten are not so much as pressed to answer. First, to speak to those Things that are not proved, but only charged upon him.

First, He is charged with Inconformity, therefore it was necessary for him to discharge himself of it by his Proof, which he hath done, and no doubt remaineth in me to the contrary; for the Prosecutor, tho' apt enough to charge him with this, yet he exhibiteth not a Witness or Interrogatory to prove it.

Secondly, That he did this in Contempt of the Ecclesiastical Power, and contrary to the Lord Bishop's Act of Inhibition; but it is not proved he had any Notice of it before the Act was done, and therefore the Oath of the Party is to be believed: nay, there was no Endeavour to prove it, so far as I see. And I like not so well Mr. Chancellor's moving the Bishop to make an Act to continue this Window, if it were for any other Cause than to preserve the Ecclesiastical Jurisdiction. Mr. Chancellor should have done well to have declared this Dislike and Scandal to the Window to my Lord Bishop of *Sarum*, and he no doubt, would have removed it. I do not say the Bishop or Ecclesiastical Judge is bound to give Notice of his judicial Acts in their ordinary Proceedings in Course of the Ecclesiastical Laws, and their own Jurisdictions: But if you will charge a Man upon a Contempt in a criminal Court, as here you must, then prove he hath Notice of the Inhibition: for else it is but *Ignorantia Juris*, which in the ordinary Way will not excuse; and yet if it were *Ignorantia Juris*, I do not see but in so high a Course of Prosecution as in this Court, it might in some Cases diminish a Fault: but this is *Ignorantia facti* in this Case.

Thirdly, That he did profanely demolish this Window, containing a Representation of the Creation. This giveth Occasion to look a little into the Nature of these Pictures; I conceive them to be unlawful and irreligious Pictures of God the Father. Two of the Witnesses say they were Idolatrous, and made to represent God the Father; that it is God the Son's Picture, there is no Proof.

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I think that Opinion of making the Image of God according to that of *Daniel* (calling God the Ancient of Days) in the Form of an ancient Man, is (as my Lord of *London* hath said) erroneously grounded; and also to bring God as he appeared unto *Daniel* to be presented in the Creation, which was long before, is somewhat improper.

Fourthly, Then that Mr. *Sherfield* boasted of it, it is not proved that he did, and it is evident that he doth not boast of it.

Now for what is charged upon him, and sticketh, that under Colour of the Vestry's Order, he did the same, and without the Bishop of *Sarum*. And for an Answer what Vestries are, I read not of a Vestry in our Book of Common-Law; I read much of Church-wardens, and their Doings. If it be a Meeting of the Minister, Church-wardens, and Parishioners, it is a good Meeting, and they may well deal in Matters of Reparation, not Reformation: and this is not derogatory from the Authority of the Bishop, but subordinate to it. But it may be thro' the Neglect of the Prelates, the Vestries do incroach upon their Government; and will be more disorderly, if they be not regulated. My Lord of *London* did, in the beginning of this Cause, well declare, that the Archdeacon is *magnus Oculis Episcopi*; it were fit for these to do their Duties, and so such Things should not be left to be done unto these Men of the Parish, I mean to these Vestry-men. Now, in the Vestry they make an Order that this Window may be taken down by Mr. *Sherfield*. I do not say nor believe they have Power to Reform; yet he proveth by way of Prescription for sixty-nine Years they have made Reparations and Meetings. But howsoever he doth not pursue his Order; and this indeed was not Discretion in him. But if he had taken down white Glafs, I do not see any Reason why I should sentence him; this being not prosecuted in an Ecclesiastical ordinary Course. The Council on both sides have carried themselves in the Cause extremely well; and for their yielding it to be a parochial Church, it is well done, and no Fault is to be put on the Party for his Protestation; for I cannot think but when he made his Answer, he was of Opinion it was a Lay-Fee, he sweareth it; and being he now confesseth it to be subject to the Bishop, his Fault is a great deal the less, in as much as it now appeareth, he doth not oppose the Ecclesiastical Authority.

I am glad to hear what I have heard this Day from my Lords who have spoken, and from my Lords the Reverend Bishops. I say, it appeareth that nothing hath fallen from them or any here present, to allow the Picturing of the Deity, or the Worshipping of Images.

I am much inclined to that Opinion of Mr. Secretary *Cooke*, That he be sentenced by way of Reprehension and Admonition; I hold fit that he make his Acknowledgment before my Lord Bishop, and repair this broken Window in decent Manner. I am loth he should be put to any heavy Fine, the rather because he hath not been prosecuted in an Ecclesiastical Course; therefore I give no Fine at all.

The Votes of the said Lords and others of his Majesty's Privy-Council, were thus disposed.

Nine agreed to set 1000 l. Fine upon Mr. *Sherfield* the Defendant, and he should be put out of his Place of Recorder, be bound to the good Behaviour, and make open Acknowledgment of his Fault in the Church of St. Edmonds, where the Offence was done, and likewise in the Cathedral Church of *Sarum*, before

H h h

fore

fore the Bishop there, and the Deans and Prebends of that Church.


And Nine others (my Lord Keeper's Voice being one) agreed that he should not be disrecorded, that he should make Acknowledgment in private to the Bishop of Sarum of the said Offence, and in such Manner, and before such Persons as the said Bishop of Sarum should think fit. And for the King's Fine, these were again divided; four (whereof my Lord Keeper was one) gave no Fine at all, and five did give their Voices to set a Fine; four of them set 500 Marks, and one of them, viz. my Lord Chief Justice Richardson set 500 l. which Fine of 500 l. was taken for the King, because according to the Rules and Orders of the Court of Star-Chamber, when there is difference of Fines in an odd, the King is to have the middle Fine. Therefore the Sentence of the Court was (and is thus entred:)

' The Defendant being troubled in Conscience, and grieved with the sight of the Pictures which were in a Glafs-Window in the Church of St. Edmond in New Sarum, one of the said Pictures,

' to his Understanding, being made to represent God the Father; did procure an Order to be made by the Vestry (whereof himself was a Member) that the Window should be taken down; so as the Defendant did, at his own Charge, glaze it again with white Glafs: and by colour of this Order, the Defendant, without acquainting the Bishop, or his Chancellor therewith, got himself into the Church, made the Doors fast to him, and then, with his Staff, brake divers Holes in the said painted Window, wherein was described the Creation of the World; and for this Offence committed, with neglect of episcopal Authority, from whom the Vestry derive their Authority, and by colour of an Order of Vestry, who have no Power to alter or reform any of the Ornaments of the Church, the Defendant was committed to the Fleet, fined 500 l. and ordered to repair to the Lord Bishop of his Diocese, and there make an acknowledgment of his Offence and Contempt, before such Persons as the Bishop would call unto him.'



XXXIV. Proceedings against WILLIAM PRYNN Esq;* in the Star-Chamber, for Writing and Publishing a Book intitled, *Histriomastix*, or a Scourge for Stage-Players, &c. against MICHAEL SPARKES for Printing, and against WILLIAM BUCKNER for Licensing the said Book; the 7th of February, 163²/₃. 9 Car. I.

 HE 7th of February Mr. William Prynne, Utter-Barrister of *Lincolns-Inn*, was brought to the Star-Chamber; together with Michael Sparkes, William Buckner, and four other Defendants, upon Mr. Attorney Noy's Information; which being opened by Mr. Hudson of *Grays-Inn*, did set forth, That about 8 Car. Reg. Mr. Prynne compiled and put in Print a Libellous Volume, entituled by the Name of *Histriomastix*, against Plays, Masques, Dancings, &c. And altho' he knew well, that his Majesty's Royal Queen †, Lords of the Council, &c. were in their publick Festivals, and other Times, present Spectators of some Masques and Dances, and many Recreations that were tolerable, and in themselves sinless, and so published to be, by a Book printed in the Time of his Majesty's Royal Father; yet Mr. Prynne, in his Book, hath railed, not only against Stage-Plays, Comedies, Dancings, and all other Exercises of the People, and against all such as behold them, but farther and particular against Hunting, Publick Festivals, Christmas-keeping, Bonfires, and Maypoles; nay, against the dressing up of a

House with Green-Ivy. And to manifest his evil and mischievous Design in publishing of this Libel, he hath therein written divers Incitements, to stir up the People to Discontent, as if there were just Cause to lay violent Hands on their Prince; and hath expressed in many Speeches against his Majesty, and his Household, infamous Terms unfit for so sacred a Person. He hath cast an Aspersion upon her Majesty the Queen, and railing and uncharitable Censures against all Christian People. He hath commended all those that are factious Persons, that have vented any thing in any Book against the State, as the factious Book of Dr. Leighton, *Jo. Mariana* a Jesuit, to draw the People from his Majesty's Government, which is of most dangerous consequence to the Realm and State. His Book is of above 1000 Pages: and he dealt with one Michael Sparkes for the Publishing, Licensing, and Printing thereof, who is a Person that is a common Publisher of unlawful and unlicensed Books; and dealt also with Mr. Buckner, another Defendant, for the allowing of it for the Press; and with the other four Defendants to print part of it, and publish the same:

* Clar Hist. Fol. Edit. Vol. I. p. 73, 158. Rush. Col. Vol. II. p. 220.

† The Queen had acted a Part herself, in a Pastoral at Somerset-House: and this Book of Prynne's was show'd her as level'd at her, there being a Reference in it, Women-Actors notorious Whores; tho' in truth the Book was publish'd six Weeks before the Queen's acting. Whitlock's Mem. p. 18.

and by this means this Volume was allowed and published, to the great Scandal of the whole Realm. And to have this punished according to the Demerit of the Cause, is the end of Mr. Attorney's Information.

Mr. Atkins of *Lincolns-Inn* (afterwards a Judge in the Court of Common-Pleas) opened Mr. Pryn's Answer; That he the said Mr. Pryn taking into his serious Consideration the frequent Resort of sundry sorts of People to common Stage-Plays about the City of *London*; and having read divers Councils, Laws and Statutes of this and other Realms, against the frequenting of common Stage-Plays, and the Judgment and Opinion of several Divines, and other antient Authors, and divers *English* Writers allowed by publick Authority, and his own Judgment running with those; not intending to reflect, or to have relation to the King, Queen, State, or Government, or your Lordships, did about seven Years ago, compile this Book entitled *Histrionastix*; which is no more but a Collection of divers Arguments and Authorities against common Stage-Plays. That about four Years since, he did commit the same to *Michael Sparkes*, one of the Defendants, to be commended to such Persons as then had Authority to license Books for the Press. *Sparkes* did carry it to Mr. King, belonging to the late Archbishop of *Canterbury*; and before he had perused this Book, Mr. Buckner had Authority to allow of the Books, to the Press: *Sparkes* brought this Book to Mr. Buckner, who kept it by him three Months, in which time he did fully peruse it. In the interim, he gave part of the Book to *Sparkes* to print, and kept the rest till he had perused it, and said, that he should have that also to the Press. In *October* following, he carried this Copy with the Licence, and caused them to be enter'd into *Stationers-Hall*, and did compound with those that had Authority for the printing of this Book. It was printed publicly, and not secretly; and because there were some of the Copies close written, he caused those to be brought again to peruse, to the intent that he might not be deceived in them; and as he saw cause, corrected them accordingly. That in *Easter-Term* was Twelve-month, the Epistle, and the whole first part of the Book was printed; and he had time to examine it between *Easter-Term* and *Trinity*, and then he did make such Alterations as he saw cause, viz. in Page 711, &c. And afterwards the Second Part, and two Sheets of the Index of the Book was likewise printed, and these were likewise brought to Mr. Buckner; so that the whole Book, with the Index, was bound up about *Christmas* following, which was *Christmas* was a Twelve month. Mr. Buckner sent for Mr. Pryn, and the Stationer was desirous that the Book might be published, and that he might send some Volumes to him: but Mr. Buckner said, he could with the word (*Pity*) in such a Page might be left out; and I wish with Mr. Buckner, that *Pity* may be added to every Page of the Book. So when Mr. Pryn saw all this from him, that had Licence to allow printed Books, he conceived it a sufficient Warrant for his Proceedings. And for that which is alledged in the Information, of Mr. Pryn's commending Dr. *Leighton*, for which the Doctor receiv'd a Censure in this Court, in the Quotation whereof, viz. his Book, and of others, he adhereth to their Meaning so far as, and wherein they are agreeable to the Law: and this Book was

printed long before Dr. *Leighton* was question'd in this Court. And as for encouraging of others to be factious or seditious, he saith upon his Oath, That he was so far from Disloyalty, Schism, or Sedition, or Neglect of the King, State, or Government, that he hath with much Joy, Chearfulness, and Thankfulness to God, ever acknowledged his, and the rest of the King's Subjects Happiness, by the Peace we have under his Majesty's happy Government; and this Answer and Intention is sincere, tho' other Construction be made thereupon. He saith, he hath taken his Oath of *Supremacy* and *Allegiance* in the University and Inns of Court where he hath taken his Degrees. That it never came into his Thoughts to approve of Schism or Sedition: and if any thing in his Book, contrary to his Meaning, hath a Mis-construction towards his Majesty's Government, State, or your Lordships, he doth prostrate himself at his Majesty's Royal Feet, and crave Pardon and Grace. And he doth appeal to your Lordships Interpretations of those Parts of his Book; and doth withal desire your Lordships Favour, and to take it into your Consideration, that he hath been a year Prisoner in the *Tower*: And this is the Substance of his Answer.

Mr. Jenkins of *Grays-Inn* opened the Answer for four of the Defendants. First, for the poor Widow he saith, For any manner of Combination, or Knowledge of this Book, or of the Contents of it, &c. she knoweth nothing. For the rest, they all say, They being illiterate, were not able to judge whether it were fit to pass the Press, or not; that the Book was licensed to be printed, allowed after it was printed, and before it was published, and it was entred in the *Stationers-Hall*, and the Warden there allowed and subscribed it to be a Book passable. The Book hath been three Years in the Press. All this time was spent before it was printed: there were Searches made during this time, and they came unto the Press. They saw the Book there in a publick way, and not in Corners, or privately printed, as is alledged in the Information; and it was printed and published, and some of the Books sold by *Sparkes*: and *Sparkes* saith, the printing of this Book cost him almost 300 *l.* and saith upon his Oath, he sold not many Books.

And for the Charge upon him, of being a common Printer of unlawful Books, he saith, He hath prospered in his Calling; and some other Stationers having an eye upon him for his Thrift, have envied him in publishing of Books: and leaveth it to my Lords the Bishops, to know what Success he hath had in the High-Commission.

Mr. Lightfoot of *Grays-Inn* opened Mr. Buckner's Answer. He saith, That he was Chaplain to the late Archbishop of *Canterbury*, and doth approve of the Church without any scruple, and of all the Ceremonies of *England*. Church-Musick he doth allow of; bowing at the Name of *Jesus*: Plays, Musick, and Dancing, he doth esteem them just and lawful. And for those Censures against Ecclesiastical Persons in this Book, he doth, and ever did abhor and detest them. He confesseth he licensed part of the Book, but never gave order to disperse the Book; but when he heard it was published, he did endeavour to suppress it: and to the rest of the Information pleadeth *Not Guilty*.

Then Mr. Noy, Attorney-General, spake as followeth: This Volume of Mr. Prynne's is written by himself, without the help of any Man. There are Passages in it that reflect upon the King, State, and Government, &c. other things reflect upon the Church and Clergy; but for that there is no Charge in the Information, which I did conceive fitter to be left out, and withal I received a Command for the same: Therefore finding the Church so deeply wounded by Mr. Prynne, I do leave her to avenge herself of him, and to inflict such Punishment on him as he deserves. I shall be an humble Suitor to the Court, that they would be pleased to commend the Prosecution of those things that concern the Church to the High-Commission. There are divers Particulars wherewith he is not charged within the Information by way of Crime, and to it is not proper now to bring him into question for them. As for mentioning of Ceremonies, &c. of Dedicating *Paul's* to *Diana*; of the Discipline of the Church; the Complaint of new-erected Altars: I wonder what Altars he means, I hope the Church will examine in due time; as also who he means by his *modern Innovators* in the Church, and by Cringing and Ducking to Altars, a fit Term to bestow upon the Church; he learned it of the Canters, being used among them. The Musick in the Church, the charitable Term he giveth it, is not to be a Noise of Men, but rather a *Bleating of brute Beasts*; *Choristors bellow the Tenor*, as it were *Oxen*; bark a *Counter-point*, as a *Kennel of Dogs*; roar out a *Treble*, like a sort of *Bulls*; grunt out a *Bass*, as it were a number of *Hogs*: His Complaint for suppressing Repetitions by way of Conventicles; all his general Censure of all the Bishops, and of all the Clergy; they scorn to feed the Poor; the *Silk and Sattin Divines*; very charitable Terms upon them of the Church! *Christmas*, as it is kept, is a *Devil's Christmas*; nay, he doth bestow a great number of Pages to make Men affect the name of *Puritan*, as tho' Christ were a *Puritan*, and so he faith in his Index. Then concerning the Images in the Church, he speaketh against them, and putteth that now in Print, which was contained in an Answer in this Court. Also for the *Sabbath-day*, whether to begin on *Saturday Night*, and end on *Sunday* at six of the Clock. These are things proper to the Examination of the Church; and whatsoever becometh of the rest of the Cause in this Court, yet I commend these things to the Consideration of the Church. I wonder what the Man means to bring these things under the Title of *Stage-Plays*; *Pluralities* under the Title of *Stage-Players*. He had an End in it, he had an End in it.

Now concerning the Book itself: This Book, said Mr. Noy, it is the Witness, it doth testify what was his Intention, and by the Book he is to be judged. If it had been found in the Street, and of Mr. Prynne's compiling, and brought to this Court, and Consideration taken of it, the Court would proceed without a Party against Mr. Prynne. And here Mr. Attorney recited a Precedent of one that wrote a Book, and it was brought to the Council. It was demanded, who was the Accuser? Answer was made, The Book was the Accuser: Shall the Heretick go unpunished? This Book it is Mr. Prynne's doing, he doth put his Name to it, he swears that he did write it all.

Then for the time of compiling it; seven or eight Years ago it was compiled, and it is grown

seven times bigger than at the first. Mr. Prynne, about eight Years since, shewed it to Dr. Goade, who told him so good Causes of Dislike, that might make any reasonable Man give it over. About seven Years ago he came to Dr. Harris, to desire his Opinion of the Book; and he told him, it was unfit and unworthy to come to the Press. In the Parliament-time, before the Year 1630, he gave some part of it to be printed; but it came not to Mr. Buckner till long after. Sparkes said, he would print any thing in Parliament-time.

Now we are to consider two things, from the first compiling and printing of this Book, to the last: First, how it grew in Volume; for after it was deliver'd to the Press, it hath grown up with divers things, which then were impossible to be known at that time, when it was deliver'd to the Press; which appeareth by this. In 1628 was the Parliament, and in 1631 St. George began to look abroad into the World. This Man bestows eight whole Pages upon St. George, for being so bold to look out. He faith, That St. George the *Arian* was a *Cappadocian*, tho' born in *Cilicia*, a Part or Province of *Cappadocia*, &c. and that St. George's Advocate was an *Englishman*, born in *Gloucester*; and that St. Basil the Great was Bishop of *Cæsarea* in *Cappadocia*, the native Country of St. George the *Arian*. Certainly he could not tell that St. George would then remove himself abroad, or in the Country of *Gloucester*, &c. at that time: but this Man did go on according to the Occasion in 1628. A Woman, in 1628, acted a part of a Stage-Play at *Blackfryers*; he spends many Pages about this.

We all know what time the Dearth was, three Years ago; he taketh occasion not to pass it over. He maketh a long Discourse of Plays, Masques, &c. in the late penurious Times, how they were as expenceful as the Wars were. This is to shew how by pieces it did grow bigger from time to time.

All Stage-Players he terms them Rogues: in this he doth falsify the very Act of Parliament, for unless they go abroad, they are not Rogues. The same Term he giveth unto Scholars acting. Mr. Prynne had a Purpose, not only in this to fall upon Stage-Plays, but upon the Body of the Commonwealth; and to infuse it into Men's Minds, that we are now running into Paganism and Gentilism. He falleth upon those things that have not relation to Stage-Plays, Musick, Musick in the Church, Dancing, New-year's Gifts, whether Witchery, or not. Witchery, Church-Ceremonies, &c. indistinctly he falleth upon them; then upon Altars, Images, Hair of Men and Women, Bishops and Bonfires. Cards and Tables do offend him, and Perukes do fall within the compass of his Theme. St. George never offended him; but all this is to the end to bring a Belief among the People, that we are returning back again to Paganism. His end is therefore to persuade Men to go and serve God in another Country, as many are gone already, and set up new Laws and Fancies among themselves. Consider what may come of it.

It may be fit enough and lawful to write against Plays, by Men that have a Mission; and they must do their Errand in mannerly Terms, and in the same Terms as other Men expect to bear with them.

Mr.

Mr. *Prynn* had no Mission to meddle with these things, to see whether Men should not return to Gentilism; the Terms which he useth are such as he finds among the Oyster-Women at *Billingsgate*, or at the common Conduit. He hath raked up all the vile Terms that could be found.

Now to prove that this is Mr. *Prynn's* Book, read Mr. *Prynn's* Examination, Inter. 5th, (which being read, was to this effect,) That Mr. *Prynn*, without the help of any other, did write, pen and compile the whole Book, called *Histrion-mastix*, and the Epistle before the Book, and the Index and Table following,

Now for the publishing of this Book, it doth appear by the Deposition of Dr. *Goode*, that about eight Years since, Mr. *Prynn* did bring a Book to him in Writing, of about a Quire of Paper, concerning Stage-Plays, to have the same licensed, but he held it unfit to be allowed; and doth well remember, that as to his Argument of the Unlawfulness for a Man to put on Woman's Apparel, he put Mr. *Prynn* this Question; Suppose, Mr. *Prynn*, your self, as a Christian, were persecuted by Pagans, think you not, if you did disguise your self in your Maid's Apparel, you did well? Who answered, That he thought himself rather bound to yield to death than to do so.

Dr. *Harris* also deposed, That about seven Years ago, Mr. *Prynn* came to him to license a Treatise concerning Stage-Plays, but he would not allow of the same. So this Man did deliver this Book when it was young and tender, and would have had it then printed; but it is since grown seven times bigger, and seven times worse.

Noy. We shall now prove when it went to the Press. Read *Austin* the Stationer to Interrogatory the 28th, which being read, was to this effect; That the said Book called *Histrion-mastix*, was given to this Deponent, in or about the last Parliament, at which time seven Sheets thereof were printed at this Deponent's House; which this Deponent so printed, at the request of Mr. *Prynn* and Mr. *Sparkes*, upon Mr. *Prynn's* Information, that it was licensed, and that he would bring the hand of the Licenter unto it: But this Deponent did refuse to print any more of the same.

Read *Joseph H.* to prove, that *Sparkes* would set upon it unlicensed in Parliament-time, to Inter. 26. who saith, That the Defendant *Sparkes* did, in the time of the last Parliament, print, or cause to be printed, divers Books without Licence; whereof some were Mr. *Prynn's*, some were Mr. *Burton's* Works: and this Deponent hath heard *Sparkes* say, he durst print any thing in Parliament-time.

Another part of the Charge was managed by Mr. *Mason* of *Lincoln's-Inn*, reckoning up the number of *Epithets* wherewith Mr. *Prynn* had aspersed all sorts of People: and he said, that it was a Libel, not only against the State, but against every particular Person; and proved the Charge by divers Passages contained in the Book, *Fol. 201, &c.*

Afterward Mr. *Noy* proceeded in the farther making good of his Charge against Mr. *Prynn*.

May it please your Lordships,

As he hath fallen foul upon all Things, all Persons, all Sexes; upon the Magistrates, upon the Household of the King; so he hath not spared the King himself. I am sorry I shall have occasion to

‘ speak any thing of it; but there is a great deal too much in his Book. My Lords, After he hath made all these Complaints as intolerable, he falleth upon all indistinctly, and never taketh upon him to discern, to make a Distinction, that there may be a Toleration; but falleth foul upon every thing, that we are falling into Paganism; Men and Women are naught: he spareth not the King himself, but takes upon him to teach a Remedy; the Remedy is worse than the Disease. What hateful Comparisons he bringeth with other Princes? as *Nero*: and speaketh of the consuming of the Treasure of the Realm with Masques, and of the late penurious Times; a base Word! A Declaration of Infamy upon Princes, with such-like Conclusions as these are. When all this is done, he teacheth the Remedy not by way of Precept, but by way of Example; invites Men to read *John Mariana*, and two grave Authors more, he saith Men not censured. I am very sorry I am to speak any thing wherein the King should be named, but he would not forbear it when the Pen was in his Hand; some of the Words are so nasty that I will not speak them.

After Mr. Attorney General had spoken, he called for these Passages, amongst others, in *Histrion-mastix*, to be read, viz.

To his Much-honoured Friends, the Right Worshipful Masters of the Bench of the Honourable Flourishing Law-Society of Lincolns-Inn.

‘ HAVING, upon my first arrival here in
‘ London, heard and seen in four several
‘ Plays (to which the pressing Importunity of some
‘ ill Acquaintance drew me, while I was yet a No-
‘ vice) such Wickedness, such Lewdness as then
‘ made my penitent Heart to loath, my Consci-
‘ ence to abhor all Stage-Players ever since; and
‘ having then likewise observ'd some woful Ex-
‘ periments of the lewd, mischievous Fruits of
‘ Plays, of Play-houses, in some young Gentlemen
‘ of my Acquaintance; who tho' civil and chaste
‘ at first, became so vicious, prodigal, incontinent,
‘ debauched (yea so far past all hopes of Amend-
‘ ment) in half a year's space or less, by their
‘ resort to Plays, where Whores and lewd Compa-
‘ nions had inveigled them; that after many Essays
‘ of their much desired Reformation, two of them
‘ were cast off and utterly disinherited by their
‘ loving Parents; whom I heard oft complaining,
‘ even with Tears, that Plays and Play-houses had
‘ undone their Children, to their no small Vexa-
‘ tion, (a good Caveat for all young Students to
‘ keep themselves from Play-houses, by these two
‘ Youngsters Harms:) Hereupon I resolved, out
‘ of a desire of the publick Good, to oppugn these
‘ common Vice-fomenting Evils: for which pur-
‘ pose about seven years since, recollecting those
‘ Play-condemning Passages, which I had met
‘ with in the Fathers and other Authors, I di-
‘ gested them into one entire written Discourse;
‘ which having since that time enlarged beyond
‘ its intended Bulk, because I saw the number of
‘ Players, Play-Books, Play-Haunters, and Play-
‘ houses still increasing; there being above Forty
‘ thousand Play-Books printed within these two
‘ years (as Stationers inform me) they being now
‘ more vendible than the choicest Sermons; two
‘ old

old Play-houses being also lately re-edified, enlarged, and one new Theatre erected: the multitude of our *London* Play-Haunters being so augmented now, that all the ancient Devils Chappels (for so the Fathers style all Play-houses) being five in number, are not sufficient to contain their Troops; whence we see a sixth now added to them: whereas even in vicious *Nero's* Reign, there were but three standing Theatres in *Pagan Rome*, tho' far more spacious than our Christian *London*, and those three too many. Hereupon I first commended it, being thus augmented, to the Licensor, and from him unto the Preſis, where it hath linger'd longer than I did expect; which being now at last brought forth into the World, in such a Play-adoring Age, that is like to bid defiance to it; I here bequeath it to your worthy Patronage, to whom it was first devoted, not caring how it fares abroad, so it may do good and please at home.'

In the next place Mr. Attorney *Noy* caused to be read out of the Book of *Histrio-mastix*, such Passages, as were scandalous to the King and Government, as *Fol.* 312, &c.

Mr. *Atkins*, in defence of Mr. *Prynne*, said, That the Eloquence of those Gentlemen who argued against Mr. *Prynne*, made an Exposition which was no part of his Intention, in which point he would endeavour to clear him; and the way was by letting their Lordships know, that many Passages in that Book are only relatively spoken, and not positive, and most of them are but the Affirmations of other Authors of several Kinds and Professions: as where it is said, that *such incarnate Devils as frequent Plays*, &c. he speaketh by the way of common frequenting of Plays, lest they prove incarnate Devils; and so of Ladies that cast off their Nature and Modesty, that is relatively spoken by frequenting Plays, lascivious Dancing, &c. and when he speaketh of those in a continual Proposition, his Argument is thus:

'That which doth ordinarily (if not always) defile the Eyes, the Ears, and Souls both of the Actors and Spectators, by ingendring, by exciting meretricious, lustful, lewd, adulterous Desires and Affections in their Hearts, or by instigating, by preparing, by inducting them to actual Uncleanliness, must needs be abominable and unlawful unto Christians; but these Stage-Plays, &c. therefore they must needs be abominable.' And there is none but Whores, Panders, or foul incarnate Devils, who dare controul that minor Truth.

My Lords, He doth not condemn New-years-Gifts, but acknowledges them to be as Tokens and Testimonies of Favour and Respect from Superiors to their Inferiors; and for Dancing (under favour) he doth not condemn it at all; he hath commended the same as single, and dancing the Measures. And for dancing in great Men and Princes, he doth protest it was far from his thought to compare these Times to *Nero's*, under so pious and religious a Prince as we have, and by whom we receive so much Happiness. That had been so impious and unworthy, that he could by no means make any Apology; but as well his Person as his Pen should have been detestable, if he had made any such Comparison.

And where he doth speak, that Dancing and Masquing have been near as expenceful as the

Wars, in that he means in *Henry* the VIIIth's Time, and not in these Days; as I take it, he speaks there of a History, that doth express the great Charge in that time.

I shall desire, as I did begin in the opening of his Answer, that he may lay fast hold upon the Rock of the King's Favour and Mercy, and Compassion of this Court; and what his Intentions are, they are best known to his own Heart, his Expressions known to your Lordships. I cannot condemn his Heart, I will not excuse his Pen.

This, if your Lordships will give me leave, I shall say; I have long known him in a Society of Inns of Court, where he has lived; and for his ordinary Discourses (except the Matters in this Book) they have not been factious or seditious. But now he is before your Lordships, truly for my part, I compare him to the Condition of an Astronomer, who fixed his Eyes so much upon the Stars, that he did not look to his Feet, and so fell into a Ditch: for his Eyes were so fixed upon this Subject, upon the common Resort to Stage-Plays, and the great Abuse that comes by them, that he forgot to look down to his Hand that guided his Pen, which now bringeth him under your Lordships Censure.

That I may not offend the Patience of this Court, (the Court is full, and the Expectation is great) I will conclude with all Humility, and wish and crave, that he who is the supreme Judge, may be with your Lordships in this Matter, and may be over all your good Thoughts, Judgments and Sentences this Day, in this Cause of this poor Gentleman. And this is all I humbly offer in Defence.

The next Day of Hearing, Mr. *Holbourn*, of Counsel with Mr. *Prynne*, spake thus:

My Lords,

I am assigned Counsellor with Mr. *Prynne*. The Information is for publishing in Print a Libel or Volume of Libels against King, Queen, State, &c. My Lords, for Mr. *Prynne*, he doth humbly cast himself at your Lordships Feet. For the Book, I must say, he doth humbly submit himself to your Lordships; yet, my Lords, his Heart will not give him leave to say, that he is guilty of those gross Offences that are laid to his Charge. He confesseth himself to be justly brought before your Lordships for his ill Expressions, which may prove an occasion of Scandal by Misconstruction, and so some dangerous Principle may be infused into the Subjects: And he beggeth your Lordships to consider of them, according to the Intentions of his Heart, which were fair and honest, tho' harsh in Expression, that he may receive a favourable Construction for that he citeth his Authors, and their Words, and not his own. And for that he meddled with Matters not proper to Stage-Plays, as in mentioning the Sabbath, his Meaning was, Stage-Plays upon the Sabbath-day: his mentioning Habits and Recreations, was in relation to Men putting on Womens Habits, and unlawful Recreation at Plays, and so he conceives them not altogether impertinent.

For the Manner of his Writing, he is heartily sorry, that his Style is so bitter, and his Imputations so unlimited and general; yet in this he was led thereunto by Authors in the like case, which he offers for his Excuse: he hopes his Passion against these Abuses by Plays may a little plead his Excuse.

Now

Now for the Manner and Matter alledged against him out of his own Book, in that he hopes your Lordships Favour: He saith, that those that are Judges of the Book for Licencing, they are guilty of the Matter, and he hopeth that this Book doth differ from all the Books brought into this Court; for here are none brought but such as are unlicensed, and this is licensed: and he submitteth thus to that Point.

My Lords, as to the general End and Intention of his Book, he sweareth, that the general Refort unto Plays was the first Occasion; and his End was for the Reformation of the Abuse of it, and no otherwise: and then, my Lords, he hopeth he shall not incur your Lordships severe Censure. He did not send the Book beyond the Seas to be printed, but printed it here; and it was three Years in the Press, and licensed and publish'd.

And, my Lords, the Declaration to the Information of this Court, speaketh something to his Intentions, viz. to whom he dedicated this Book, and he dispersed it himself to Men of known Integrity; and certainly if his Heart had been guilty of those foul Crimes, he would not have presented one of these Books to Mr. Attorney Noy himself. He did not absent himself, as one guilty of such Offences would have done; he was so far from having Disloyalty, that he doth commend the King and State, and that could not be with an Intention against King and State. And all the Charges that lie upon him for his foul Intentions, are but Inferences upon his Book, and Consequences, and such of them only that be strained, and not of necessity.

The next thing charged upon him is Perjury, for that he said, he shewed no part of this Book to any before it was shewn to Sparks; yet it was proved by Dr. Harris and Dr. Goade, that they saw it many years ago. As to this he saith, they speak only of his Book concerning Plays, containing a Quire of Paper; and that it is true, he did shew them such a Book; but that Book was not this Book; tho' they be of one Subject and Matter, yet they differ much in Form and Frame.

Then Mr. Hern spake on his behalf as follows:

My Lords,

We that are assign'd Counsel for Mr. Prynne, do come with great Disadvantage, both in Number and Judgments, considering the great Ability of the King's Counsel, who have spoken against us. If the Construction they have made be theirs, then clearly we are (as they would have us) to fall deep by your Lordships Sentence.

The Weight of this Cause, and the Aggravations upon it by the King's Counsel, made me the last day (without desire of my Client) to crave farther Time, for we durst not then give any Answer. All that I can now say, is, That your Lordships would look upon the Intentions of his Heart, in that he hath explained himself as fair as any Man can do by his Oath: How is it possible to make other Proof of the clear Intentions of his Heart, than by his Oath? His Oath is admitted as Proof against him, in the Acknowledgment of his Book; and shall it not be admitted to him, to clear the Integrity of his Heart? We beseech your Lordships to look upon him, as not writing these things out of Perverseness of Spirit, but out of the abundance of his Heart transported with Zeal against the growing Evils, which have befallen many of

this Nation, and some of his own Acquaintance, by their frequenting of Stage-Plays. We that know him must say, as far as our Knowledge will give us leave, that in all Passages that have fallen from him to us, he hath expressed himself full of Devotion and Duty to his Majesty and the Queen; and shall humbly take leave to offer some Passages out of his Book, which do bear evidence, that he doth speak well of both their Majesties, and of the State; and that by Inferences and Distinctions there made: and what is it but Inferences made out of other Passages of his Book, which doth reflect upon him? Which Passages were opened by the Counsel, but not read.

Three Star-Chamber Days having been spent in the hearing of this Cause, the Lords sat the fourth Day to proceed to Sentence, which held till four of the Clock in the Afternoon; and they passed such Sentence on Mr. Prynne, as is expressed in the ensuing Speeches, which in effect comprehend all that was said by others.

The first was of Francis Lord Cottington, Chancellor of the Exchequer, whose turn was to begin first to speak, as being in the lowest degree of Quality by his Place. And commonly he that beginneth, as he openeth the matter at large, so he inclineth thereby many Lords to forbear making of Speeches, and only to declare themselves to concur in Sentence with him that began first, or with some other Lord that spake before, as their Judgments lead them.

My Lords (said my Lord Cottington) His Majesty's Attorney-General hath brought Mr. Prynne before your Lordships, with other Defendants, Thomas Buckner, Michael Sparkes, &c. It is for publishing a Libellous Book, or Volume of Libels, to the Scandal of his Majesty and the State. To my understanding it may be more properly said, the great and high Malice of Mr. Prynne, published and declared in that Libellous Book; a Malice expressed in a manner against all Mankind, and the best sort of Mankind, against King, Prince, Peers, Prelates, Magistrates and Governors, and truly in a manner against all things. But that which hath been more remarkable, is, his Spleen against the Church and Government of it; therefore for that I will not sentence him, (because Mr. Attorney doth forbear to prosecute against him, for that which belongeth to the Church) yet it is an argument of his great and high Malice: and when I consider of that, which hath been so often repeated, that he writ this Book alone, surely he was assisted immediately by the Devil himself, or rather he hath assisted the Devil. He hath written a Book against the due Reverence and Honour, which all Christians owe to our Saviour Jesus, this doth convince my Judgment against him; but the Book (as Mr. Attorney saith) declares the Man, it is the Witness: And if your Lordships observe the Particulars and Style of it, you will say it is a strange thing; the very Style doth declare the Intent of the Man, and that is (as Mr. Attorney said) to work a Discontent and Dislike in the King's People against the Church and Government, and Disobedience to our gracious Sovereign the King. If Mr. Prynne should be demanded what he would have, he liketh nothing, no State or Sex; Musick, Dancing, &c. unlawful even in Kings; no kind of Recreation, no kind of Entertainment, no, not so much as Hawking, all are damned. The very truth, Mr. Prynne would have

have a new Government, he would have a new Church, he would have new Laws, new Entertainment, God knows what he would have; a new King he would have, and have all the People of his Mind, to be discontented with their King and Government.

Mr. Prynne confesseth he did write the Book, and it's true he did endeavour the printing of it, and the publishing of it, this is proved very well; yea, but Mr. Prynne had no other Intention but a Tenderness of Conscience, he meant no hurt to the King or State, (as his Counsel said :) but Mr. Attorney answered them, that he is not the Declarer of his Intentions, he must be judged by the Book, by his Words, more certainly by the effect; for all good Men do receive Scandal by this Book, and all of Mr. Prynne's Humour were glad of this Book. When I consider what kind of Libel it is, it is not like other Libels: other Libels have been by Persons discontented, some poor Rogues, scattered up and down; but here's a Libel in *Folio*, and in Print, and justifieth it self by Authors with an high hand, *That is there, and that is there.* And (my Lords) when I consider those high Passages in his Book, I protest unto you, they are things to be abhorred; they are not spoken relatively (as his Counsel would have it) but positively, That *our English Ladies, shorn and frizled Madams, have lost their Modesty; that the Devil is only honoured in Dancing; that Plays are the chief Delight of the Devil; that they that frequent Plays are damned, and so are all that do not concur with him in his Opinion, Whores, Panders, foul incarnate Devils, Judas's to their Lord and Master, &c. Princes dancing in their own Persons,* his Censure of them is infamous, &c. But the foulest of all is, *That this was the Cause of untimely Ends in Princes.*

My Lords, Shall not all that hear these things think, that it is the Mercy of the King that Mr. Prynne is not destroyed? Have we not seen Men lately condemned to be hang'd and quarter'd for far less Matters? One *Pinchman*, I was my self employed with others in the examining of him; he confessed, that the Writing for which he was questioned, was a Sermon, that he did intend to preach: the Words were against the Person of the King, yet he never preached it; yet because he had written it with an Intention to preach it, he was brought upon this Point and condemned to die. But this Book is in Print; it is against all Magistrates, and particularly against the King our Sovereign, and his blessed Comfort. And yet, my Lords, it pleaseth his Majesty to let Mr. Prynne have his Trial here. I will not trouble your Lordships with any more parts of the Book: Mr. Attorney noted unto your Lordships, that you should see how necessary it was, that Mr. Prynne should be clean cut off, as one that hath a long time endeavoured to move the People to Disobedience against the King, &c. So I say with Mr. Attorney, it is high time that Mr. Prynne may be cut off, so far as may go with the Censure of this Court. My Lords, Mr. Prynne is better dealt withal, than he would have Princes dealt with; he hath had very fair Trials.

For his Defence, I took notice of it likewise: I do remember that all those Gentlemen, that were employed and assigned as Counsel for his Defence, every one of them began to crave Mercy of the Court; yet they came with a Defence and Justification, so far as their Cause would bear. Mr. Holbourn said, That for *Players they were*

Rogues by the Statute: yet Mr. Attorney said, *They are not Rogues by the Statute, unless they wander, &c.* My Lords, he said, his Intention was against publick and common Plays; yet seek all his Book thorow, and you shall find it is against Plays in Princes Palaces. His Intention now must be understood by his Book, and by his Words; and that which he doth apply of any Author is his own. And I think his Defence did aggravate his Offence. As to his Defence against the Ladies, he saith, he speaketh it relatively and not positively; yet he saith, *Our English Ladies are so and so whorish, &c.* And for that part of his Book, wherein he condemns Murder, Mr. Prynne will have Murder unlawful; but Execution of Princes is not Murder, and therefore that is a lawful Act. Mr. Attorney said well, the End of this Man and *John * Mariana, &c.* they are all one, *A * Jesuit.* they all cry Malice against Princes.

I shall humbly crave Pardon, and discharge my Conscience, and shall let your Lordships see, how I understand the Sense, and that so I am to judge; and I conceive it to be as your Lordships see, that the Malice of this Book is against King and State: and, my Lords, with this I sentence Mr. Prynne.

I do in the first place begin Censure with his Book; I condemn it to be burnt, in the most publick manner that can be. The manner in other Countries is, (where such Books are) to be burnt by the Hangman, tho' not used in *England*, (yet I wish it may, in respect of the Strangeness and Heinousness of the Matter contained in it) to have a strange manner of burning; therefore I shall desire it may be so burnt by the Hand of the Hangman.

If it may agree with the Court, I do adjudge Mr. Prynne to be put from the Bar, and to be for ever incapable of his Profession. I do adjudge him, my Lords, That the Society of *Lincolns-Inn* do put him out of the Society; and because he had his Offspring from *Oxford* (now, with a low Voice, said the Bishop of *Canterbury*, *I am sorry that ever Oxford bred such an evil Member*) there to be degraded. And I do condemn Mr. Prynne to stand in the Pillory in two Places, in *Westminster* and *Cheapside*; and that he shall lose both his Ears, one in each Place; and with a Paper on his Head, declaring how foul an Offence it is, *viz. That it is for an infamous Libel against both their Majesties, State, and Government.* And lastly (nay not lastly) I do condemn him in 5000 *l.* Fine to the King. And lastly, perpetual Imprisonment.

There are other Defendants, *Thomas Buckner*, whom I conceive to be the Chaplain charg'd with the Licensing of the Book. I observe, that Mr. Attorney hath little or nothing prosecuted against him. It is said, he did combine with the Writer and Stationer for this infamous Libel. It doth appear that he did license it, or at least 64 Pages thereof; I think it be also true, that Mr. *Buckner* did see the Book after it was printed. It is said, for his Excuse, That Mr. *Buckner* was cozen'd and surpriz'd by Mr. Prynne and Sparkes; but it's plain he licensed it, or at least 64 Pages: therefore I shall judge according to the Proof, as it is the usual Custom of this Court. I must judge Mr. *Buckner* to be worthy of a very sharp Sentence, for certainly there is a very great Inconvenience fallen upon the State, for want of due Examination: To what purpose is there an Examination of Books, if there shall be a connivance and winking at the Party that doth it; I shall think Mr. *Buckner* not only

only worthy of a severe Reprehension, but I shall censure him first to have Imprisonment according to the course of the Court, and 50 l. Fine to the King.

Now, my Lords, the next is *Michael Sparkes*, and he is the third; and he is the Printer of the Book, and Binder, and Publisher thereof. In his Defence he hath shewed your Lordships a piece of the Book licensed by Mr. *Buckner*, and saith, it was all licensed, but that he proves not; but that it was entered in the *Stationers-Hall*, that he proves. But I do find, that he persuaded Men to buy this Book after it was prohibited; and before it was prohibited he persuaded Men to buy it, saying, *It was an excellent Book, and it wou'd be called in*, and then fell well. I do fine *Sparkes* 500 l. to the King, and to stand in the Pillory, without touching of his Ears, with a Paper on his Head to declare his Offence, and it is most necessary in these Times; and for the Pillory to be in *Paul's Church-yard*. (It is a consecrated Place, saith the Archbishop of *Canterbury*.) I cry your Grace's Mercy (said my Lord *Cottington*) then let it be in *Cheapside*. For the other three, I find that Mr. Attorney doth not prosecute them; therefore, my Lords, I do not censure them.

The next in course that spoke after the Lord *Cottington*, was the Lord Chief Justice *Richardson*.

My Lords,

Since I have had the Honour to attend this Court, writing and printing of Books have been exceedingly found fault withal, and have received a sharp Censure, and it doth grow every day worse and worse; every Man taketh upon him to understand what he conceiveth, and thinks he is no body except he be in Print. We are troubled here with a Book, a Monster, (*Monstrum Horrendum, Informe, Ingens*!) It hath been a Question who is the Author of this Book; Surely I am satisfied in my Conscience he is the Author of it: but truly, give me leave, I do not think Mr. *Prynn* is the only Actor in this Book, but that there were many Heads and Hands therein besides himself. I would to God in Heaven, the Devil, and all else that had their Heads and Hands therein besides Mr. *Prynn*, were, &c. for I think they are all ill-willers to the State, and deserve severe Punishment as well as Mr. *Prynn* doth. This Book is the Subject of this Day's Work, and it is annexed, by Mr. Attorney, to the very Information it self.

For the Book, I do hold it a most scandalous, infamous Libel to the King's Majesty, a most pious and religious King; to the Queen's Majesty, a most excellent and gracious Queen; such a one as this Kingdom never enjoyed the like, and I think the Earth never had a better. It is scandalous to all the honourable Lords, and the Kingdom it self, and to all sorts of People. I say, Eye never saw, nor Ear ever heard of such a scandalous and seditious thing as this mis-shapen Monster is. How scandalous a thing it is, hath appeared already to your Lordships, by the King and Queen's Counsel against Mr. *Prynn*; I will not for my part repeat.

Yet give me leave to read a word or two, where he cometh to tell your Lordships of the Reasons why he writ this Book: Because he saw the Number of the Plays, Play-Books, Play-Haunters, and Play-houses so exceedingly increased, there being above forty thousand Play-Books, being now more

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vendible than the choicest Sermons. What saith he in the Epistle Dedicatory, speaking of Play-Books? *They are so big a Price, and are printed in far better Paper, than most Octavo and Quarto Bibles, which hardly find so good vent as they; and then come in such abundance, as they exceed all number, and 'tis a year's time to peruse them over, they are so multiplied: and then he putteth in the Margin, Ben Johnson, &c. printed in better Paper than most Bibles. Now if this be not a Tax upon the Kingdom, to print these Books in better Paper than the Bible it self; for my part I leave it to your Lordships.* This Monster, this huge mis-shapen Monster, I say it is nothing but Lyes, and Venom against all sorts of People. It is a strange thing what this Man taketh upon him: He is not like those Powder-Traitors, they would have blown up all at once; this throweth all down at once to Hell together, and delivereth them over to *Satan*. I beseech your Lordships to give me leave: *Stage-Plays, &c.* (saith he) *none are gainers and honoured by them but the Devil and Hell; and when they have taken their wills in Lust here, their Souls go to eternal Torment hereafter, And this must be the end of this Monster's horrible Sentence.* He saith, *So many as are in Play-houses, are so many unclean Spirits; and that Play-haunters are little better than incarnate Devils.* He doth not only condemn all Play-Writers, but all Protectors of them, and all beholding of them; and dancing at Plays, and singing at Plays, they are all damned, and that no less than to Hell. I beseech your Lordships to give me leave but in a word to read unto you what he writes of Dancing, &c. *It is the Devil's Profession; and he that entreteth into a Dance, entreteth into a devilish Profession; and so many Paces in a Dance, so many Paces to Hell: This is that which he conceiveth of Dancing. The Woman that singeth in the Dance, is the Prioresse of the Devil, and those that answer are Clerks, and the Beholders are the Parishioners, and the Musick are Bells, and the Fiddlers are the Minstrels of the Devil.* I said it was a seditious Libel; this point of Sedition is the only thing that troubles me, and it is that which I shall offer to your Lordships: For I do know it, the good Opinion, Heart, Will and Affections of the King's People and Subjects are the King's greatest Treasure. Now if this be so, then for any Man cunningly to undermine these things, to take away the Hearts of the Subjects from the King, and to bring the King into an ill Opinion among his People, this is a most damned Offence; and if I were in my proper place, and Mr. *Prynn* brought before me, I should go another way to work. I protest unto your Lordships, it maketh my Heart to swell, and my Blood in my Veins to boil (so cold as I am) to see this or any thing attempted which may endanger my gracious Sovereign; it is to me the greatest Comfort in this World to behold his Prosperity.

Much hath been spoken concerning these things, and something by my Lord *Cottington* before me; but good my Lords, give me leave to remember you one or two Passages, not yet spoken of. He writeth thus: *That Nero's acting and frequenting Plays, was the chiefest Cause that stirred up others to conspire his Death.* Would any Man think, that his acting and frequenting of Plays was the chiefest Occasion?

He writeth in another place worse than this. *Fol. 464. Trebellius Pollio relates, That Martian, Heraclius, and Claudius, three worthy Romans, conspired together to murder Gallienus the Emperor,*

(a Man much besotted, and taken up with Plays, to which he likewise drew the Magistrates and People by his leud Examples) as Flavius and others conspired Nero's Murder for the self-same Cause, &c. Now, my Lords, that they should be called three worthy Persons that do conspire an Emperor's Death, (tho' a wicked Emperor) it is no Christian Expression.

If Subjects have an ill Prince, marry what is the Remedy? They must pray to God to forgive him, and not say they are worthy Subjects that do kill him: If they were worthy Acts, Mr. Prynne, I can tell what you are, (Mr. Prynne standing during the Censure behind the Lord Chief Justice Richardson, and Archbishop Neal.) No Man will conspire to murder a King that can be a worthy Actor; for the very Thought of it is High-Treason. He speaketh of these three, that they were three worthy Romans that did conspire to murder Nero. This is most horrible, and here can be no manner of Exposition, but in the worst Sense: for his Excuse, he hath made none at all, only it was not his Intention.

Good Mr. Prynne, you are a Lawyer. Intention! I know where the word standeth equal, as that you may take the Intention this way, or that way, with the Right-hand or Left-hand, there in that Case you may speak the Intention; but where the Words are plain and positive, as in your Books, here is no help of Intention in the World: your Words are plain and clear, therefore you can never make any Defence at all out of that. Not to hold your Lordships any longer, my Lords; it is a most wicked, infamous, scandalous, and seditious Libel. Mr. Prynne, I must now come to my Sentence, tho' I am very sorry, for I have known you long, yet now I must utterly forsake you; for I find that you have forsaken God, and his Religion, and your Allegiance, Obedience, and Honour, which you owe to both their excellent Majesties, the Rule of Charity to all noble Ladies, and Persons in the Kingdom, and forsaken all Goodness. Therefore, Mr. Prynne, I shall proceed to my Censure, wherein I agree with my Lord Cottington, as he began very well: First, for the burning of the Book in as disgraceful a manner as may be, whether in Cheap-side or Paul's Church-yard; for tho' Paul's Church-yard be a consecrated place, yet Heretical Books have been burnt in that place. And because Mr. Prynne is of Lincoln's-Inn, and that his Profession may not sustain Disgrace by his Punishment, I do think it fit, with my Lord Cottington, that he be put from the Bar, and degraded in the University; and I leave to my Lords, the Lord Bishops, to see that done: and for the Pillory, I hold it just and equal, tho' there were no Statute for it. In the case of a high Crime it may be done by the Discretion of the Court, so I do agree to that too. I fine him 5000 *l.* and I know he is as well able to pay 5000 *l.* as one half of 1000 *l.* and perpetual Imprisonment I do think fit for him, and to be restrained from writing, neither to have Pen, Ink, nor Paper; yet let him have some pretty Prayer-Book, to pray to God to forgive him his Sins; but to write, in good faith I would never have him: For, Mr. Prynne, I do judge you by your Book to be an insolent Spirit, and one that did think by this Book to have got the name of a Reformer, to set up the Puritan or Separatist Faction. I would not have Mr. Prynne go without a Recognition of his Offence to the King and Queen's

Majesty. I agree to the Sentence on Buckner and Sparkes.

Secretary Cook. By this vast Book of Mr. Prynne's, it appeareth he hath read more than he hath studied, and studied more than he hath considered; whereas if he had read but one Sentence of Solomon, it had saved him from the Danger he is now like to fall into. The Preacher saith, *Be not over just, nor make thy self over-wise, for why wilt thou destroy thy self?* My Lords, it is a Sentence requireth much Study and Consideration. It is most certain, that Righteousness and Wisdom are such Virtues, as they help forward Justice; but when Wisdom is mixed with a Man's own Humours, as for the most part it is with Flesh and Blood, there is danger of straining it too far, and that will tend to the Destruction of him and others. Examples are too pregnant of this, and he may take it from a good Author, even from Christ himself. When his Apostles, out of Zeal to their Master, would have called for fire from Heaven against the Samaritans that refus'd to entertain him, the Answer was, *You know not of what Spirit you are.* I would Mr. Prynne would have considered this.

There is a good Spirit that is meek, tempered with Modesty and Humility, with Mildness and with Equity; and such a Spirit is always tender, not to destroy, root up, overthrow, but to bind, repair and preserve. But there is another fiery Spirit, which is always casting of Fire, nothing but Damnation and Destruction; certainly such a Spirit ever tends to his own Confusion. And if this be well observed, every Man shall find it true, that such a Spirit ever cometh before Destruction. I wish Mr. Prynne were not an ill Example of this. Certainly, my Lords, Vice and Corruption ought not only to be reprehended, but to be punished severely, and that sharply too where it is; but Mr. Prynne should have considered, every Man is not a fit Reprehender. He had no Invitation, nor Office, nor Interest to employ a Talent which doth not belong unto him. If Magistrates and Princes should inveigh against all things, and tolerate nothing, we must live no longer among Men; and certainly, if we will be thought to live with them that are wholly virtuous, we must go out of the World; we have a good Author for this. But, my Lords, a Toleration must be used, and that Mr. Prynne would have found, if he had considered his own Body: Shall a Man upon every slight Distemper and Disorder in his Body take Physick? Or shall ill Humours be purged 'till he purge all out? Certainly he will purge Spirit, Life and all away with it. And as it is in the Natural Body, so it is in the Politick, there must be a Toleration and Connivance; it cannot be govern'd without it, and we have a Warrant for it. Did not Christ himself forbid the cutting out of the Tares, lest they should pluck Corn, and destroy that too? I think, if Mr. Prynne should have been asked the Question that Naaman did to the Prophet, he would not at all have bid *go away in Peace*, he would have threaten'd Hell and Destruction. There is a Christian Wisdom, and there must be a Toleration in all States. And certainly the Faults that have been tolerated in all times were greater than modest Plays, or modest Dancing. It is not my Intention, neither do I think it is the Intention of any of your Lordships, to apologize for Stage-Plays, much less for the Abuse of them; I wish, and so

I think doth every good Man, that the Abuse of them were restrained; but, my Lords, not by Railing, Cursing, Damning, Inveighing, &c. not only against the Faults and Players themselves, but against all Spectators, and those that come to them, and that of all degrees, and with such Bitterness and Acrimony, that in all the Authors alledged, which are infinite, there is not to be found an Example. My Lords, I am very sorry he hath so carried himself, that a Man may justly fear he is the *Timon* that hath a Quarrel against Mankind. But I love not much to aggravate Offences, which of themselves are heavy enough.

He calleth his Book *Histrionastix*; but therein he sheweth himself like unto *Ajax*, *Anthropomastix*, as the *Grecians* called him, the Scourge of all Mankind, that is, the Whipper and the Whip. I cannot but concur with the Censure already begun by my Lord *Cottington*, given against Mr. *Prynn*, *Buckner* and *Sparkes*.

Afterwards the Earl of *Dorset* spake to this effect:

Such Swarms of Murmurers as this day disclose themselves, are they not fearful Symptoms of this sick and diseased Time? Ought we not rather with more Justice and Fear apprehend those heavy Judgments which this minor Prophet, Prophet *Prynn*, hath denounced against this Land, for tolerating indifferent things, to fall upon us for suffering them, like those Mutineers against *Moses* and *Aaron*, as not fit to breathe? My Lords, it is high time to make a Lustration to purge the Air. And when will Justice ever bring a more fit Oblation than this *Achan*? *Adam*, in the beginning, put Names on Creatures correspondent to their Natures: The Title he hath given this Book is *Histrionastix*, or rather, as Mr. Secretary *Cook* observed, *Anthropomastix*; but that comes not home, it deserves a far higher Title: *Damnation*, in plain *English*, of Prince, Prelacy, Peers and People. Never did Pope in *Cathedra*, assisted with the Spirit of Infallibility, more positively and more peremptorily condemn Hereticks and Herefy, than this doth Mankind. Left any partial Auditor may think me transported with Passion, to judge of the base Liveries he bestoweth upon Court and Courtiers, I shall do that which a Judge ought to do, *viz.* assist the Prisoner at the Bar. Give me leave to remember what Mr. Attorney let fall the other day. I will take hold of it for the Gentleman's Advantage, That this Gentleman had no Mission; if he had had a Mission, it would have qualified the Offence. Our blessed Saviour, when he conversed in this World, chose Apostles, whom he sent after into the World, *Ite, predicate, &c.* to shew the way of Salvation to Mankind. Faith, Hope, and Charity, were the Steps of this *Jacob's* Ladder to ascend Heaven by. The Devil, who hates every Man upon Earth, play'd the Divine, cited Books, wrought Miracles; and he will have his Disciples too, as he had his Confessors and Martyrs. My Lords, this Contempt, Disloyalty, and Despair, are the Ropes which this Emissary lets down to his great Master's Kingdom for a general Service. My Lords, as the Tenour of their Commission was different, so are the Ways: These holy Men advanced their Cause in former times by Meekness, Humility, Patience to bear with the Weakness and Infirmities of their Brethren; they taught Obedience to Magistracy, even for Conscience-sake; they divided not their Estates

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into Factions; they detracted from none, they fought the Salvation of Men's Souls, and guided their Bodies and Affections answerably; they gave to *Cæsar* the things that were *Cæsar's*; if Princes were bad, they prayed for them; if good, they praised God for them; however, they bore with them: This was the Doctrine of the Primitive Church, and this they did. I appeal to my Lords that have read this Book, if Mr. *Prynn* has not with breach of Faith, discharged his great Master's End. My Lords, when God had made all his Works, he looked upon them and saw that they were good. This Gentleman, the Devil having put Spectacles on his Nose, says, that all is bad: No Recreation, Vocation, no Condition good; neither Sex, Magistrate, Ordinance, Custom, Divine and Human, things animate, inanimate, all, my Lords, wrapt up in *Massa Dam-nata*, all in the Ditch of Destruction. Here, my Lords, we may observe the great Prudence of this Prince of Darkness, a Soul so fraught of Malice, so void of Humanity, that it gorgeth out all the Filth, Impiety and Iniquity that the Discontent of this Age doth contract against the Church and State. But it may be some Follower of his will say, It was the Pride and Wickedness of the Times that prompted him to this Work, and set his Zeal, thro' Tenderness of Conscience, to write this Book. My Lords, you may know an unclean Bird by his Feathers; let him be unplum'd, unmask'd, pull off the deceitful Vizard, and see how he appeareth: this brittle Conscience Brother, that perhaps starts at the sight of the Corner-Cap, sweats at the Surplice, swoons at the Sign of the Cross, and will rather die than put on Woman's Apparel to save his Life; yet he is so zealous for the advancement of his *Babel*, that he invents Legions, coins new Statutes, corrupts, misapplies Texts with false Interpretations, dishonours all Men, defames all Women, equivocates, lyes; and yet this Man is a holy Man, a Pillar of the Church. Do you, Mr. *Prynn*, find fault with the Court and Courtiers Habit, Silk and Sattin Divines? I may say of you, you are all Purple within, all Pride, Malice, and all Disloyalty; you are like a Tumbler, who is commonly squint-ey'd, you look one way, and run another way: tho' you seemed by the Title of your Book to scourge Stage-Plays, yet it was to make People believe, that there was an Apostacy in the Magistrates. But, my Lords, admit all this to be venial and pardonable, this Pigmy groweth a Giant, and invades the Gods themselves; where we enjoy this Felicity under a gracious Prince with so much Advantage, as to have the Light of the Gospel, whilst others are kept in Darkness, the Happiness of the Recreations to the Health of the Body, the blessed Government we now have: When did ever Church so flourish, and State better prosper? And since the Plagues happen'd, none have been sent among us such as this Caterpillar is: What Vein hath opened his Anger? Or who hath let out his Fury? When did ever Man see such a *Quietus est* as in these Days? Yet in this Golden Age is there not a *Shimei* amongst us, that curseth the Ancients of the Lord? so puffed with Pride, nor can the Beams of the Sun thaw his frozen Heart, and this Man appeareth yet. And now, my Lords, pardon me, as he hath wounded his Majesty in his Head, Power and Government, and her Majesty, his Majesty's dear Consort, our Royal Queen, and my gracious Mistress; I can spare him no longer,

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I

I am at his Heart. *Ob! quantum! &c.* If any cast infamous Aspersions and Censures on our Queen and her Innocency, Silence would prove Impiety rather than Ingratitude in me, that do daily contemplate her Virtues; I will praise her for that which is her own, she drinks at the Spring-Head, whilst others take up at the Stream. I shall not alter the great Truth that hath been said, with a Heart as full of Devotion, as a Tongue of Eloquence, the other day, as it came to his part, (meaning Sir *John Finch*.) My Lords, Her own Example to all Virtues, the Candor of her Life, is a more powerful Motive than all Precepts, than the severest Laws: no hand of Fortune nor of Power can hurt her; her Heart is full of Honour, her Soul of Chastity; Majesty, Mildness and Meekness are so married together, and so impaled in her, that where the one begetteth Admiration, the other Love; her Soul of that excellent Temper, so harmoniously composed, her Zeal in the ways of God unparallel'd; her Affections to her Lord so great, if she offend him, it is no Sunset in her Anger; in all her Actions and Affections so elective and judicious, and a Woman so constant for the Redemption of all her Sex from all Imputation, which Men (I know not how justly) sometimes lay on them; a Princess, for the Sweetness of her Disposition, and for Compassion, always relieving some oppressed Soul, or rewarding some deserving Subject: were all such Saints as she, I think the *Roman Church* were not to be condemned: on my Conscience she troubleth the Ghostly Father with nothing, but that she hath nothing to trouble him withal. And so when I have said all in her Praise, I can never say enough of her Excellency; in the relation whereof an Orator cannot flatter, nor Poet lye: yet is there not *Doeg* among us, notwithstanding all the Tergiversations his Counsel hath used at the Bar? I can better prove, that he meant the King and Queen by that infamous *Nero*, &c. than he proves Players go to Hell: but Mr. *Prynn*, your Iniquity is full, it runs over, and Judgment is come; it is not Mr. Attorney that calls for Judgment against you, but it is all Mankind, they are the Parties grieved, and they call for Judgment.

(1.) Mr. *Prynn*, I do declare you to be a Schism-Maker in the Church, a Sedition-Sower in the Common-wealth, a Wolf in Sheep's Clothing; in a word, *omnium malorum nequissimus*. I shall fine him Ten Thousand Pounds, which is more than he is worth, yet less than he deserveth; I will not set him at liberty no more than a plagued Man or a

mad Dog, who tho' he cannot bite, he will foam; he is so far from being a sociable Soul, that he is not a rational Soul; he is fit to live in Dens with such Beasts of Prey, as Wolves and Tygers, like himself: Therefore I do condemn him to perpetual Imprisonment, as those Monsters that are no longer fit to live among Men, nor to see Light. Now for Corporal Punishment, my Lords, whether I should burn him in the Forehead, or slit him in the Nose; for I find that it is confessed of all, that Doctor *Leighton's* Offence was less than Mr. *Prynn's*, then why should Mr. *Prynn* have a less Punishment? He that was guilty of Murder was marked in a place where he might be seen, as *Cain* was. I should be loth he should escape with his Ears, for he may get a Perriwig, which he now so much inveighs against, and so hide them, or force his Conscience to make use of his unlovely Love-Locks on both sides: Therefore I would have him branded in the Forehead, slit in the Nose, and his Ears cropt too. My Lords, I now come to this Ordure, I can give no better term to it, to burn it, as it is common in other Countries, or otherwise we shall bury Mr. *Prynn*, and suffer his Ghost to walk: I shall therefore concur to the burning of the Book; but let there be a Proclamation made, That whosoever shall keep any of the Books in his hands, and not bring them to some publick Magistrate to be burnt in the fire, let them fall under the Sentence of this Court: for if they fell into wise Men's hands, or good Men's hands, there were no fear; but if among the common sort, and into weak Men's hands, then Tenderness of Conscience will work something. Let this Sentence be recorded, and let it be sent to the Library of *Sion*, (meaning a College in *London*) whither a Woman, by her Will, will allow Mr. *Prynn's* Works to be sent.

(2.) For Mr. *Buckner*, I believe that he had no Intention at all this Work should come abroad; he is said to be a conformable Man to the Church of *England*: I shall hardly censure him, he deserveth Admonition.

(3.) For *Sparkes*, I concur in all things: The Feodary had his Office taken away from him by this Court; I see therefore no reason but that he may be barred from printing and selling of Books, and kept wholly to binding of Books.

The * Sentence against Mr. *Prynn* * Rush Col. was executed the seventh and tenth Vol. 2. Days of *May* following. p. 248.



XXXV. *The Trial of JOHN Lord BALMERINO* *, *in Scotland, for a Libel; the 3d of December, 1634. 10 Car. I.*



URIA Justiciaria S.D.N. Regis tenta in Pretorio de Edinburgh tertio die mensis Decembris, 1634. per nobilem & prapotentem Comitem, Willielmum Comitem Errolie, Dominum Hay, Magnum Constabularium Scotiae, ac Justiciarium Generalem ejusdem, hac in parte ac in criminali processu subsequens. contra Joannem Dominum de Balmerino, virtute Commissionis S.D.N. Regis, sub Testimonio sui Magni Sigilli specialiter constitut. Curia legitime affirmat.

Assessors to my Lord Justice General, Sir Robert Spotswood of Dunnypace Knight, President of the College of Justice; Sir John Hay of Barro Knight, Clerk Register; Sir James Learmouth of Balcomy Knight Baronet.

Intran. John Lord of Balmerino, delated of Airt and Part, (*i. e.* of his being Contriver and Partner) of the penning and setting down of a scandalous Libel, and divulging and dispersing it amongst his Majesty's Leiges; at the least of concealing and not revealing of Mr. William Haig, and not apprehending of him the said principal Author of the said infamous Libel, as is at length contained in his Dittay (*i. e.* Indictment) following.

Pursuer, Sir Thomas Hope of Craighall Knight, Advocate to our said Lord, for his Highness's Interest.

Procurators in Defence, Mr. Roger Mowat, Mr. Alexander Pearson, Mr. Robert Macgill, Mr. John Nisbet, Advocates.

My Lord Kildryame, Master of Elphinstoune.

The Master of Frazer.

Sir Thomas Ker of Cavers.

Michael Elphinstoune of Quarrel.

George Dundas Fiar of that Ilk, (*i. e.* of Dundas.)

Robert Drummond of Meidhope.

My Lord Advocate produced his Majesty's Letter, commanding him to pursue the Pannel (*i. e.* the Person indicted) for the Crimes contained in his Dittay (*i. e.* Indictment) following; together with an Act of Session, nominating the Assessors foresaids to be Assessors to my Lord Justice-General: and therewith produced the said Dittay or Indictment, with the Executions thereof, of the which the Tenour follows. And first the Tenour of his Majesty's Letter, directed to his Majesty's Advocate.

To our Right Trusty and Well-beloved Counsellor, Sir Thomas Hope of Craighall Knight and Baronet, our Advocate for our Kingdom of Scotland.

CHARLES Rex,

Trusty and Well-beloved Counsellor, we greet you well. After due Consideration having

resolved to cause the Lord Balmerino be put to the Trial of an Assize, (*i. e.* Jury) and to this purpose it being necessary that you inform yourself of such Particulars, as concern your Charge in the legal Prosecution of that Business; it is our Pleasure, that with all convenient diligence you insist therein, by preparing of an Indictment fit for that purpose, and that you carefully go on in every other thing touching the Prosecution thereof, as you will answer to us upon your Trust: And that by the Advice of the Chief Justice you prefix a Day for the same, for which these Presents shall be your Warrant. Given at our Mannor of Hampton-Court, the 14th of October, 1634.

Follows the Act of Session, nominating the said Assessors, at Edinburgh, the second Day of December, the Year of God 1634. the which Day the Lords of Council and Session nominate, appoint, and elect Sir Robert Spotswood of Dunnypace Knight, President of the College of Justice; Sir John Hay of Barro Knight, Clerk of our Sovereign Lord's Register Council and Rolls; and Sir James Learmouth of Balcomy Knight Baronet, Senator of the said College of Justice; to be Assessors to William Earl of Errol, Great Constable of Scotland, and having Commission from his Majesty to be Justice-General in the criminal Pursuit intentit and depending before the said Justice against John Lord of Balmerino.

Extractum de Libro Actorum per me Magistrum Alexandrum Hay, Scribam Consilii ac Deputatum honorabilis Domini Joannis Hay de Barro Militis, Clerici Registrari ac Consilii S. D. N. Regis, sub meis Signo & Subscriptionem manualibus, sic subscribitur A. Hay.

Follows the Tenour of the Dittay:

CHARLES by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith; to our Lovit (*i. e.* Beloved) James Currie, Ormond Pursuant, Messenger, our Sheriff in that part conjunctly and severally, specially constitute, Greeting. Forsuameikle as it is complain'd and humbly meant to us by our Trusty and Well-beloved Counsellor Sir Thomas Hope of Craighall Knight Baronet, our Advocate for our Interest upon John Lord of Balmerino, That where albeit by the Common Law, as also by the Laws and Acts of Parliament of this Kingdom, and specially by that Act and Statute of Parliament made by our umquile (*i. e.* late) dearest Father King James VI. of happy and blessed Memory, Par. 10. chap. 10. it is statute and ordained, That all our Subjects continue themselves in Quietness, and dutiful Obedience to Us and our Royal Authority, and that none of them presume or take upon hand publickly

* Burnet's History of his own Times, Vol. I. p. 22, &c. Rush. Col. Vol. II. p. 183.

to disclaim, or privately to speak or write any purpose of Reproach or Slander of our Person, Estate, or Government; or to deprave our Laws and Acts of Parliament, or misconstrue our Proceedings, whereby any Mifliking may be moved betwixt us and our Nobility and loving Subjects in time coming, under the pain of Death; certifying them that does in the contrair, they shall be reputed as seditious and wicked Instruments, Enemies to us and the Commonweal of this our Realm: And the said Pain of Death shall be execute upon them with all rigour, in example of others. Likeas by the 205th Act of the 14th Parliament of our said umqhile dearest Father, in the Month of *June*, 1594. the former Act of Parliament, with divers others, against Leasing-makers and Authors of Slanders and Calumnies, is ratified and approven, and ordained to be published of new again, and to be put to execution in all time coming; with this addition, That whosoever hears the said leasing Calumnies, or scandalous Speeches, or Writs to be made, and apprehends not the Authors thereof, if it be in his power, or reveals not the same to Us, or to any of our Privy-Council, or to our Sheriff, Steward, or Baillie of our Sheriffdom, Stewartry, or Bailliary, Stewarts in Regality or Royalty, or to the Provost, or one of the Baillies within our Burrows, by whom the samen may come to our knowledge, or to the knowledge of our Privy-Council; whereby the saids Leasing-makers and Authors of scandalous Speeches, may be called, tryed, and punished, according to the said Acts: the Hearer and not Revealer, and not Apprehender, (if it lie in his power) and Concealer and not Revealer of the saids Leasing-makers, and Authors of the saids scandalous Speeches and Writs, shall incur the like Pain and Punishment as the principal Offender, as in our saids Acts of Parliament at length is contained. Notwithstanding whereof, it having come lately to our knowledge, in the Month of *March* last by-past, that there was a most scandalous, reproachful, odious and seditious Libel, found in the hands of one Mr. *John Dunmure*, Notary in *Dundee*, and divulged and dispersed in the hands of several of our Subjects; whilk scandalous, odious, infamous, and seditious Libel, did not only seditiously, reproachfully, and outrageously tax our Sacred Person in our Behaviour at Parliament; but also contains many Points and Purposes of false Calumnies, publick Scandals and Reproaches against Us, our Estate and Government, depraving our Laws and Acts of Parliament, and misconstruing our just and glorious Proceedings in our first Parliament, holden by us in Person in the Month of *June* of before, as doth manifestly appear in the hail Tenour of the saids infamous Libel; and particularly in the particular Passages hereof after following: Insuafar as albeit by the Law of God and Laws of all Nations, the Person of the supreme and sovereign Prince is and ought to be sacred and inviolable, and he ought to be revered, honoured, and feared, as God's Lieutenant on Earth; and that all Subjects are bound and tyed in Conscience to content themselves in humble Submission to obey and reverence the Person, Laws, and Authority of their supreme Sovereign: yet the said unhappy and infamous Libel, in the first entry thereof, begins with an outrageous upbraiding and taxing of our sovereign Lord's Majesty of a point of Injustice or Indiscretion in our Behaviour at Parliament, for putting of Notes (as the saids infamous Libel alledges) upon the Names

of a number of our Subjects, who did vote contrair to the Acts of our Church-Government, past in Parliament. Whilk is ane fearful thing in ane Subject to pry into the Gesture of his Sovereign in his supreme Court: And upon a Gesture, without Speech, to infer a ground of Exprobration and Reproach to the sovereign Prince. Next, the said infamous Libel reproaches Us for refusing to receive from some of our Subjects their Reasons for dis-assenting from the said Acts, before their publick Hearing in Parliament: whilk is a Point no ways compatible with the humble Obedience of a good, quiet, and peaceable Subject; but carries with it the Signal and Token of Discontentment, and rubs upon our Sacred Person and Proceedings Matter of Reproach and Scandal, tending, if it were possible, to diminish the glorious Opinion and Estimation of our Royal Person, Equity, and Justice, in the Hearts of our Subjects. Thirdly, the malicious Heart of the Penner, not content with the first Asperision laid upon us for putting Notes upon these who dis-assented, does ingeminat the samen in ane most bitter Invective and viperous Style, in affirming that such a thing was never of before censured by a Prince of so much Justice as our Sacred Majesty: whilk in effect is to reproach us of manifest Injustice, for doing of that, the like whereof was never done by a just Prince. And the Libeller, not content with these Reproaches, most villanously and despitefully belcht and vomited furth against our Sacred Person, proceeds to a most fearful and dangerous undermining of our Honour, Credit, and greatest Happiness, in affirming that there is now a general Fear of some Innovation intended in Essential Points of Religion: albeit (blessed be God) it be certainly known to all our good Subjects, that We are, and in all our Actings have shoven Ourselves to be a most devote and religious Prince, hating and abhorring in Heart and Affection all Papistical Superstition and Idolatry. And the Libeller, (out of a devilish Humour) not content to restrain his Pen within the Limits of this our Kingdom of *Scotland*, as if it were too little for the compass of his curious and furious Brain, he enters to pry into our Estate of *England*, and assures that there is Reports of allowance of reprinting of Books of Popery and Arminianism in *England*, and of the restraint of Answers made to them: and then returning to *Scotland*, most falsly affirms, that Arminianism is preached there without Censure. After that, he goes to the Estates of the Parliament, and affirms most falsly and calumniously, that divers Papists were admitted to Parliament, and upon the Articles, who by the Law of the Realm can be no Member of any Judicatory. Albeit it be constant and nottour, that none of these who were admitted to Parliament and upon the Articles, was professed Papists, as will appear by the Roll of the Names of these who were upon the Articles. And farder, the unhappy Penner of that cursed Libel proceeding to ane higher Point of taxing and misconstruing of our Proceedings, he affirms that the Grievances allowed to be proponed in Convention in *Anno* 1625, were altogether slighted in this our first Parliament: which is a manifest Lye and Untruth, there being nothing concerning the Publick moved at Parliament, which was not either determined by our Estates, or remitted to our Council. And thereafter it is as falsly affirm'd, that the Meetings of the Gentry, which were appointed

appointed for representing the Grievances of the Country in the Matter of Coin and Increase of Theft, were interrupted in our Name: which is a manifest Lye and Calumny. Likeas thereafter it is most scandalously and seditiously affirmed, that we denied Liberty to our Nobility to meet and convene with the Lords of the Articles, against the Constitution of a free Parliament under such a just and lawful Prince: albeit it be notoriously known, that our Nobility did enjoy all the Privileges of a free Estate, which pertained to them and their Predecessors. And sicklike thereafter it is affirm'd ignorantly, foolishly, and falsely, That against the Custom of this our Kingdom, the Bishops did chuse the Articles of the Nobility; albeit before the Parliament in *Anno 1609*, the Nobility did ever chuse the Articles themselves: which is notoriously false, and contrair to the fundamental Laws and Practices of all preceding Parliaments, whereby it is constitute, that ever the Clergy did chuse the Articles of the Nobility. And thereafter he affirms, That the Bishops did chuse such of the Nobility on the Articles, as either were Popishly affected, or had small Knowledge of the Estate and Laws of this our Country: which is an impudent malicious Calumny and Falshood; these who were chosen on the Articles (as will appear by their Names) being of the most antient of the Nobility, and most expert in the Laws and Customs of this our Kingdom. Thereafter the cursed and unhappy Libeller returns to his nipping and checking Style; and most presumptuously challenges our Sacred Self upon our Speeches in Parliament, and upon our Proclamations made upon our Revocation; which was intended for Augmentation of our Patrimony, and for disburdening of our Subjects of Taxation; and that yet nevertheless huge and great Taxations were imposed, against the Counsel given by our umquile dearest Father of blessed Memory, in his *Basilicon Doron*, and against the Practice of our dearest Predecessor King *James I.* who remitted to his Subjects a great part of the Taxation granted for his Ransom: which is a peart and mischievous Exprobration to our Sacred Person, who out of the Love and tender Affection which We bear to this our antient native Kingdom and Country, vouchsafed that Grace and Favour to visit it in our Royal Person, without sparing of Cost and Charges for our Journey, and other Necessaries belonging to our Coronation; which is well known far to exceed the Taxations voluntarily offered to Us by our Estates, in testimony of their humble and thankful Gratitude for so great a Blessing as the personal Presence of us their Sacred Lord and Sovereign, within this our native Soil and antient Kingdom. And as we did never enjoin nor urge any Taxation, so the same being voluntarily and humbly offer'd to us by our loving and faithful Subjects, as the Mite of their humble Affection, far within and beneath the Respect of so glorious a Benefit, yet we were pleas'd out of our Love to accept it graciously. And yet this so gracious Acceptance cannot pass the Pen of this unhappy Libeller, but must be casten up (*i. e.* reflected upon) with a false and despiteful Exprobration, as done against Promise, Proclamation, and the Practice of King *James I.* which is falsely and villanously affirm'd. And when the infamous Libeller has spent his unhappy Breath and Pen in reviling and maledicting the glorious Name of Us, his gracious Sovereign, in our Person and Proceedings, he there-

after challenges us for applying our former Taxations to a wrong use, in bestowing the samen upon Parties and Persons, whose Waitfrie (*i. e.* Extravagance) and Wants, our Subjects are not oblig'd to supply. And with this besides, by the way, he upbraids our Servants and Counsellors for Malversation, in the guiding and employing thereof: And is so peart and impudent in his devilish Style, that he spares not the Name of our ever-glorious dearest Father King *James* of blessed Memory; but most falsely casts up (*i. e.* mentions) a Promise alledg'd to be made by his Majesty or his Commissioner, in the Parliament holden in *Anno 1621*, for discontinuing of the extraordinary Taxation in all time to come. And then in the end, as a venomous Wasp, he closes with an impudent Reproach towards us, in that which is most commendable in a Sovereign Prince, by taxing us in our Beneficence and Liberality to the Lords of our Session, in providing honourable Maintenance to them, and in bestowing Pensions upon our Officers; and leaves nothing within this our Kingdom, which is not drawn in within the Scourge of his devilish and malicious Pen and Tongue: So that it is not to be wonder'd and admir'd, that any Person, living under such a gracious, pious, and just Prince, could degenerate into so monstrous a Contempt of our Government, as to dare and presume upon to think, let be (*i. e.* much less) to speak and write such devilish, reproachful, scandalous, and seditious Thoughts, which infest the very Air, and can have no other end but the breeding in the Hearts of our good and loving Subjects, a fearful Jealousy and Dislike, and in the end Contempt of our just Government. And albeit all our good Subjects be bound in Conscience, as also by the Laws of this our Kingdom, to crush this Cockatrice in the Egg, and to abhor it as a pestilentious Clout; yet the said devilish Libel was found in the hands of the said Mr. *John Dunmure*, Notary in *Dundee*, and was divulg'd and dispers'd amongst our Subjects about the foresaid Month of *March* last past: which coming to our Notice and Knowledge, we then gave power for examining of the said Mr. *John Dunmure* how the same came to his hands; who deponed, That he had the samen from the said *John Lord of Balmerino*. Which *John Lord Balmerino* being also examin'd, he granted the samen to be of Verity, and therewith affirm'd, that he had the said Libel from one Mr. *William Haig*, whom he thought also to be the Penner and Author thereof. Of the which scandalous Libel, the said *John Lord Balmerino* himself was, and is, Author, Deviser, Consulter, Adviser, Airt and Part (*i. e.* Contriver and Partner) in the penning, writing, and drawing up thereof; at the least is guilty of the hearing thereof, and of the concealing and not revealing of the said Mr. *William Haig*, whom he affirms to have been Author of the same; and also is most guilty of the not apprehending of the said Mr. *William Haig*, it being in the said *John Lord Balmerino* his power to have taken and apprehended the said Mr. *William*; and, lastly, is guilty and culpable of the divulging and dispersing of the said scandalous and seditious Libel amongst our Subjects, in so far as the said *John Lord Balmerino* knew of the penning of the said scandalous Libel by the said Mr. *William Haig*, and advised and gave his Opinion anent (*i. e.* about) the making of the samen; and in token thereof, interlin'd a part of the said infamous Libel in divers Parts thereof with his own hand, which is yet extant to be seen by ocu-

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lar Inspection; and which interlining the said *John Lord Balmerino* has confess'd to be his own Hand-writing. Likeas immediately after the forming of the said most infamous Libel, the said *John Lord Balmerino* receiv'd the same from the said *Mr. William Haig*, and deliver'd it to the Earl of *Rothes*, of purpose to have the same presented to us, and caus'd *Mr. Robert Dalgleish* his Servant copy the said infamous Libel; which Copy he deliver'd to the said *Mr. John Dunmure*, in whose hands the same was found, by occasion whereof the said infamous Libel was divulg'd and dispers'd amongst our Subjects, and openly read and expos'd to their view; to the Prejudice and Derogation of our sacred and glorious Name, by the infamous, scandalous, and seditious Passages and Articles contain'd therein. Likeas the said Lord of *Balmerino* kept and detain'd the said infamous Libel in his hand continually, from the time of the closing of the Parliament about the end of *June*, 1633, until the 9th of *June* 1634. last past, at which time he was challeng'd for the same, and did exhibit the said infamous Libel, in presence of the Lords appointed by us for his Examination. Likeas the said *John Lord Balmerino* having conferred with the said *Mr. John Dunmure*, after his first Examination, which was in *March* 1634. and avowing that which he had done concerning the delivering of the said infamous Libel to the said *Mr. John Dunmure*, and dispersing thereof, desir'd the said *Mr. John Dunmure* to go and tell the Earl of *Traquair*, one of the Examinators, that better Men than the said *John Lord Balmerino* himself would set their Faces to (*i. e.* justify) the said Libel, at the least knew of the same. And albeit the said *John Lord Balmerino* be a Nobleman of good Learning and Understanding, and so presum'd to have the knowledge of the Laws and Acts of Parliament of this our Kingdom, was bound in all Duty, after receiving of the said infamous Libel from the said *Mr. William Haig*, and reading thereof (which in the hail Strain and Tenour of the same was of the nature of a scandalous and seditious Libel, prohibited by our Acts of Parliament) as he would have eschewed the Danger of our Laws and Punishment therein contained, as Author thereof, to have revealed the same to us, or to some of our Privy Council: And also to have apprehended the said *Mr. William Haig*, whom he affirms himself to have been the Author and Penner thereof: yet the said Lord *Balmerino* did no ways apprehend the said *Mr. William Haig*, nor yet reveal the said scandalous Libel, it being in his power to have apprehended the said *Mr. William Haig*, who was but a single Person, and the said Lord *Balmerino* being a Nobleman of Power and Credit: But the said Lord, notwithstanding thereof, did still haunt and converse with the said *Mr. William Haig*, and did keep, detain, and retain the said infamous Libel in his hands. Likeas the said Lord *Balmerino*, after he was cited to compare before the Lords appointed for his Examination, which was upon the 7th of *June* last; he comparing before the said Lords Examinators upon the said 7th of *June*, being Saturday, he craved early of the said Lords to have his Examination anent (*i. e.* about) his Knowledge of the Authors of the said infamous Libel, to be continu'd (*i. e.* delay'd) till Monday next thereafter, which was the 9th of *June*; which being granted to him by the said Lords, and he thereupon being demitted from them upon the said 7th of *June*, being Saturday about twelve a Clock, he immedi-

ately thereafter met with the said *Mr. William Haig*, and shew'd to him the Warrant of his Citation. At which time the said Lord of *Balmerino* having the said *Mr. William Haig* in his own House, and so in his power, did not apprehend him, whom he knew and affirmed to be the Author of the said scandalous Libel: but by his shewing to him of his said Warrant of Citation, which bore the said Lord *Balmerino* to have been convey'd before the said Lords Examinators, to make answer anent the said seditious Libel, found in the hands of the said *Mr. John Dunmure*, he thereby gave occasion to the said *Mr. William Haig* to escape out of the Country, and become fugitive. Likeas the said *Mr. William Haig*, immediately after the sight of the said Warrant shewn to him upon the said 7th of *June*, being Saturday, escaped and fled out of the Country, and became fugitive, and remains out of the Country continually since syne, (*i. e.* since that time.) Likeas the said *John Lord Balmerino* being incarcerat (*i. e.* imprison'd) within the Castle of *Edinburgh*, after his first and second Examination, as Author, Airt, Part, or Accessory of the said infamous Libel, received several Letters from the said *Mr. William Haig* forth (*i. e.* out) of the Low Countries, and other Places to which he escaped; which Letters the said *John Lord Balmerino* kept by him, without acquainting the said Lords Examinators, until the time he was challeng'd. In the which Letters and in other Letters sent by the said *Mr. William*, and intercepted by the Lords, it is affirmed and avowed by the said *Mr. William*, that he had the Approbation and Allowance of the said *John Lord Balmerino* to the making and penning thereof. By the which particular Deeds, Circumstances, and other vehement Presumptions particularly above expressed, it is clearly evinced, that the said *John Lord Balmerino* was Author, Deviser, Outsetter (*i. e.* Publisher) Adviser, Airt and Part of the penning and forming of the said infamous Libel, at the least Concealer and not Revealer thereof; and is also culpable of the not apprehending of the said *Mr. William Haig*, whom he affirm'd to be the Author of the said infamous Libel: As also of the dispersing and divulging of the said infamous Libel, in manner particularly above-declar'd; incurring thereby the Pain and Punishment of Death, specified and contained in our said Acts of Parliament, which ought and should be inflicted upon him with all Rigour, in example to others to attempt the like. Our Will is herefore, and we charge you straitly and command, that incontinent thir (these) our Letters seen, ye pass, and in our Name and Authority, lawfully summon, warn, and charge the said *John Lord Balmerino* presently in Ward, within the Castle of *Edinburgh*, to compare before our Justice and his Deputs within the Tolbooth of *Edinburgh*, the 3d Day of *December* next to come, in the hour of Cause (*i. e.* when the Court is met) and there to underly our Laws for the Crimes above-written: To the effect that upon his Trial and Conviction, as culpable thereof, Justice may be ministred upon him conform to the Laws of the Realm; and that ye summon an Assize (Jury) not exceeding the number of 45 Persons, whose Names ye shall receive in a Roll subscribed by our Advocate, ilk (each) Person under the pain of 200 Marks, according to Justice. Given under our Signet at *Edinburgh* the 11th Day of *November*, and of our Reign the 10th Year, 1634. *Ex deliberatione Dominorum Consilii, sic subscribitur John Bannatine.*

Follows

Follows the Execution of the said Summons.

UPON the 14th Day of November 1634, I *James Currie*, Ormond Purfevant, and one of the Sheriffs in that Part within constitute, past at Command of thir (these) our Sovereign Lord's Letters within written, and by virtue thereof charged the within written *John Lord Balmerino* personally apprehended in the Castle of *Edinburgh*, and delivered to him a just and authentick Copy of these his Majesty's saids Letters, to compare before his Majesty's Justice and his Deputs in the Tolbooth of *Edinburgh* the 3d Day of *December* next to come, in the Hour of Cause, and there to underly his Majesty's Laws for the Crimes within written; to the effect, that upon his Trial and Conviction as culpable thereof, Justice may be administred upon him, conform to the Laws of this Realm: And this I did after the form and tenor of our Sovereign Lord's Letters in all points, before these Witneses, Mr. *Archibald Geddes*, Constable of the said Castle of *Edinburgh*, and *John Malcome*. Herald. And for the further Verification of this my Execution subscribed with my Hand, my Stamp is affixed. *Sic sub. Ja. Currie*, Ormond Purfevant.

Thereafter my Lord Advocat produced with the Summons above-written, the Copy of the infamous Libel which was found in the hands of Mr. *John Dummure*, Notary in *Dundee*; bearing in the end thereof, that the said Mr. *John* being examined thereupon, he, by his Deposition has granted it to be the samen Libel which was in his hands: of the which Copy, the Tenour follows.

To the King's most excellent Majesty, the humble Supplication of a great number of the Nobility and others Commissioners in the late Parliament.

Humbly sheweth,

THAT the Notes which your Majesty put upon the Names of a number of your Supplicants in voting about these Acts, which did imply a secret Power to innovate the Order and Government long continued in the Reformed Church of *Scotland*; and your Majesty's refusing to receive from some of your Supplicants their Reasons for dissenting from the saids Acts before your Majesty, and in your Hearing in Parliament, to breed a Fear of our becoming obnoxious unto your Majesty's Dislike, if your Highness should still remain unacquainted with the Reasons of our Opinions deliver'd concerning the saids Acts: Seeing your Supplicants are confident, that your Majesty vouchsafing to take notice of the saids Reasons, would be pleased to acknowledge that no want of Affection to your Majesty's Service, but a careful Endeavour to conserve unto your Majesty the hearty Affections of a great many of your good Subjects that are tender in these Points of Novation, covertly thrust upon this Church, did induce our Wishes and Voices to appear in opposition to the saids Acts; and that a predominant Desire in us to have all your Royal Designs here to prosper without Interruption, did absolutely command us to forbear any Reasons that could have been propounded against many of the Conclusions in the late Parliament.

We do therefore humbly beseech your Majesty graciously to ponder the Considerations after-written, so shall we be encouraged (as in Duty bound) to continue our humble Prayers for your Majesty's long and happy Reign.

VOL. I.

First, we humbly beseech your Majesty to consider, That tho' these Acts, as they are conceived, and may concern your Majesty's Prerogatives, and the Liberties of the Church, had never been moved or concluded (as they are) your Majesty would have suffer'd no Prejudice in your Benefit, Honour, nor Power: That your Supplicants are much more free from all Suspicion of private Ends in dis-assenting, than the Contrivers of the saids Acts, in offering them to the hazard of Contradiction, or solliciting an Assent thereto: That in deliberation about matters of Importance, either in Councils or Parliaments, Opinions do often differ; and they that have been of contrary mind to a Resolution carry'd by the Plurality of Votes, have never hitherto been censured by a Prince of so much Justice and Goodness as your Majesty.

We do also most humbly beseech your Majesty to believe, that all your Supplicants do, in most submissive manner, acknowledge your Royal Prerogative in as ample manner as is contained in the Article 1606, made thereanent (thereabout;) and withall do consider, that the long Experience and incomparable Knowledge your Royal Father had, in matters of Government, as well in Church as in Common-wealth, is the very Cause expressed in the Act 1609, for giving Power to his Majesty to prescribe Apparel to Kirk-men, with their own Consent. And since in all the time of his Life and Government, for the space of sixteen Years thereafter, he did forbear to make any Change upon their former Habits; we are bold to presume, that in his great Wisdom he thought fit, that the Apparel used in time of Divine Service ever since the Reformation of Religion till his Death, and to this Day, should be continued, as decent in the Church, and most agreeable to the Minds of his good Subjects in this Nation. We do also beseech your Majesty to consider, That under the Act entitled, *A Ratification of the Liberty of the Church*, the Acts ratifying the assembly of *Pertb* in Parliament 1621, were declar'd to be comprehended: That most part of us being then in Parliament, did oppose the same; that Experience hath shewed how much these Articles of *Pertb* have troubled the Peace of this Church, and occasioned innumerable Evils and Distractions in it: That there is now a general Fear of some Novations intended in essential Points of Religion; and that this Apprehension is much increased by the Reports of Allowance given in *England* for printing Books of Popery and Arminianism, and the Restraint of Answers made to them; and by preaching Arminianism in this Country, without Censure; by the Admission made of divers Papists to the Parliament and upon the Articles, who by the Laws of this Realm can be no Members of any Judicatory in it: That the Minds of most of your good People being in this perplexity, your Supplicants have great reason to suspect a Snare in the subtle Junction of the Act 1609, concerning Apparel, with that of 1606, anent your Royal Prerogative; which by a sophistical Artifice should oblige us either to vote undutifully in the sacred Point of Prerogative, or unconscionably in Church Novations, [* A.] which blessed King *James* would never have confounded, as appeared evidently in the Parliament 1617, honoured with his gracious Presence; where his Majesty, by the Bishops

* The Panel's interlinings you will find in the other Copy hercof.

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Instigation, tried, urged, and past in Articles a Ratification of his Royal Prerogative enacted in the Parliament 1606, with addition of an Article authorizing all things that thereafter should be determined in Ecclesiastick Affairs by his Sacred Majesty, with the Consent of a competent number of the Clergy, to have the Strength and Power of Law. When this Act came to be heard in open Parliament, his Majesty gave order to read only the Rubrick of the Act; which being done, he was then pleased in his fatherly Compassion over the tender Affections of his loyal Subjects (well known to his Majesty, as fluctuating betwixt Love and Fear) publickly from his own mouth to declare his princely Love and Pleasure, for Reasons known to himself, to have that Act suppress'd, tho' past in the Articles: Because his Royal Prerogative being of itself inviolable, was already established sufficiently; and in the depth of his Wisdom he would absolutely prefer the Peace of the Church to the Appetite of Church-men. And since we are fully persuaded of your Majesty's unfeigned Affection to the true Religion, and so do presume

* Interlined
[B of Religion C.] in the
other Copy by
the Penman.

that none of these things lawfully rejected at the Reformation [*B—C—] thereof in this Kingdom, should be introduced again without Consent of our Clergy lawfully assembled; and fearing that a forcible and colourable intruding thereof, would diminish in the Hearts of many of your loyal Subjects that Affection which is founded on their Opinion of your Majesty's Goodness and Wisdom:

We do therefore dissent from the forefaids Acts, as importing a Servitude upon this Church unpractised before, and giving ground for introduction of other new indefinite Devices.

We do further offer unto your Majesty's Consideration, that albeit our just and heavy Grievances allow'd of in the late Convention of Estates 1625, and 1630, to have been represented to your Majesty, in hopes of Refreshment to the Country's Sufferings, have been altogether slighted in this your first Parliament; albeit your Majesty denying your Nobility their Freedom by Authority to meet with the Lords of the Articles, may seem against the Constitution of a free Parliament (under such a just and lawful Prince, and contrair to the Custom of your Ancestors) which before the Parliament held in Anno 1609, did always elect and chuse the Lords of the Articles from among them of their own Rank and Quality; there having been no Parliamentary Bishops from the Reformation of Religion till then, nor were they such as now do cull and single out such Noblemen either Popishly affected in Religion, or of little Experience in our Laws, as having had their Breeding abroad, and so none of the ablest to be upon our Articles, but fittest only for the Clergy's mystical Ends. Whereas the former Practice was such, as seemeth most agreeable to Reason, and what every Estate should do, that so they may communicate their Minds with the rest of their Body; since none but Men very presumptuous of their own Knowledge, or senseless in themselves, will adventure to trust their first Conceptions in Matters of so great Importance as are the Conclusions of Parliament. Albeit the humble Supplications of the Ministry to your Majesty and Estates of Parliament, deliver'd to the Clerk Register, (and that your Majesty was in all due Humility petition'd by the Ministers of

this Kingdom, both Conformists and Nonconformists, to give them a Hearing) have been suppress'd: albeit the Meeting of the Gentry, and happily of the Burrows too, in a joint Purpose to have represented to your Majesty our unspeakable Sufferings by the Abuses of the Coin (the Mastery of the Mint being a thing merely Regal) and Increase of Theft and Oppression of divers Parties, and other things worthy your Majesty's Consideration, were in your Majesty's Name interrupted: and finally, albeit your Majesty was graciously pleased by your former and later Speeches in the Parliament-House to declare (answerable to your several Proclamations, bearing that the Course taken by your Revocation for settling the Patrimony of your Imperial Crown, was, that ye should not be burdensome to your People) that your Majesty had no purpose at this time to lay any Burden upon this Nation, according to the wise Counsel of King James in his *Basilicon Doron*, treating of the right Use of Subsidies: albeit that the present Condition of your Subjects is worse, and the Patrimony of the Crown greater, than when King James I. remitted to his People a great part of his Taxations, granted even for that good King's Ransom; yet have we all as one Man consented to all your Majesty's Demands, and more, even to have Taxations multiply'd, without representing how the former have been, or these may fall to be, bestowed upon divers Parties, whole Wastes and Wants your good Subjects are not obliged to supply; without objecting that some of them have been granted extraordinarily for Supplies of the *Palatinate*, which being now by the Mercy of God in a better Condition, they might have pleaded in reason to be thenceforth discontinued; without foretelling that some of the Subsidies are like to be means of more Processes (or Suits) betwixt your Majesty's Subjects and the Treasurer, than matter of Profit to your Treasury; without putting your Majesty in remembrance of the Impertinencies you have suffer'd by Men's Ambition after the publick Places of Judicatories, which none have heretofore refused by reason of the small Fees due to them; without contradicting the Exceptions of your Officers Pensions, or alledging their Fees to be as sufficient for maintaining the Dignity of their Places now, as they were before your Majesty's Father succeeded to the Crown of *England*. And all this have we done implicitly, only to testify our ingenuous Affection to your Majesty, and our obsequious Resolutions to give you full Content in every thing that makes not a Breach in our Religion and Laws, or occasioneth not Offence to the weaker sort in the way of God's Worship here established; and albeit we were not acquainted with any of these Statutes before the publick voting of 'em in Parliament. Therefore we are confident that your Majesty finding such a Harmony in our Affections to your Service in preserving our Religion and Liberties, will be unwilling, upon any Suggestion of such as are (or hope to be) Sharers of our voluntary Contributions, to introduce upon the Doctrine or Discipline of this your Mother-Church, any thing not compatible with your Majesty's Honour, your good Peoples Consciences, or that hath been rejected by Acts and publick Practice of this Reformed Church.

Follows

Follows the said Mr. *John Dunmure's* Deposition, written upon the end of the said Copy.

Apud Edinburgh xiv Martii 1634. convened
St. Andrews, Traquair, Bishops of *Edinburgh*, *Ross*, Clerk of Register.

I Mr. *John Dunmure*, Notary in *Dundee*, being examined in presence of the Lords of his Majesty's Secret Council above-written, depone and confess, That this Supplication within written, is all written with my own Hand, and is that which I delivered to Mr. *Peter Hay* of *Naughtoune* about *Lambas* last. And farther I depone and confess, That this is the just and true Copy of the Paper delivered to me by *John Lord Balmerino*, shortly after the end of the late Parliament, within *Edinburgh*; and that then my Lord of *Balmerino* (I being with him) said to me, *Because ye have given me many Papers, I will let you see this, and have your Judgment of it; but let it be tibi soli, as ye respect my Credit.* And that I kept it four or five days, and copied it, and then delivered the same back again. I further depone, That the Paper contained the Supplication within written, in the same Words and Sense: and it is not by my Lord *Balmerino's* Hand, but by some other Hand.

Sic subscribitur, Joan. Dunmure.

Written on the back of the said Copy, *For the Kirk and Country in the Parliament, 1633.*

My Lord *Balmerino* produces two Warrants of the Lords of Session, by their Lordships Deliverance of the several Dates under-written, ordaining the Procurators therein contained, to compare and defend my Lord in the criminal Process above; and the said Lords by their Deliverance, of the Date the 19th of *November 1634*. The Lords having considered the Desire of the Supplication, &c. and appointed the Persons therein condescended on by my Lord to be his Advocats for his Defence, *viz.* Sir *Lewis Stewart*, Mr. *Thomas Nicolson*, *Walter Hay*, and Mr. *John Nisbet*. And by the Deliverance on the end of another Supplication given in by my Lord to the said Lords, craving (upon some of the former Advocats refusal) more Advocats, they by their Deliverance thereon, of the Date the 25th of *November 1634*, appoint and ordain Mr. *Roger Mowat*, Mr. *Alexander Pearson*, and Mr. *Robert Macgill*, Advocats; and ordains, &c. Upon the production and reading of the which Warrants, the said Lord *Balmerino* took Instruments.

Thereafter it was objected by my Lord's Advocats, that my Lord Register could not sit as an Assessor to my Lord Justice-General in this Process, because not only my Lord Register has been one of the Judges of the particular Committee appointed for Trial and Examination of the Pannel, before whom he has oftentimes appeared and been examined; but also my Lord Register has given partial Counsel, and has been upon the Counsel of the advising and libelling of the Dittay now produced and read, and has assisted in the same at several occasions: and so by giving Information and Advice in that kind, has behaved himself as Party in effect, and therefore cannot be Judge nor Assessor to the Justice-General. And after Answers and Replies, the Lords by their Interloquitor repelled the first part of the Al-

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leadgance, bearing that my Lord Register cannot be Assessor, because he was a Member upon the Committee: And as to the second Member thereof, declares that they will have my Lord Register to make his Judicial Declaration, and that judicially thereupon, in presence of the Pannel, before any Answer be given thereto; which accordingly my Lord Register does.

The Pannel, in respect of my Lord Register's Declaration Judicial, is content that my Lord Register remain Assessor to the Justice-General: whereupon my Lord Advocat asked Instruments.

Thereafter the Pannel produced a Supplication to the Lords of Privy Council, with Deliverance thereupon, craving the Depositions made by the Earl of *Rothes*, Mr. *John Dunmure*, and Mr. *Robert Dalgleish*, from the Clerk, to be seen by his Procurators; and their Lordships, by their Deliverance thereon, dated at *Edinburgh*, 28 *November 1634*: the Lords remit to the Justice the answering of the Desire of this Supplication. *Sic subscribitur, St. Andrews.*

Accordingly my Lord Advocat, at the Justice Ordinance, (*i. e.* by order of Court) gave up to Mr. *Roger Mowat*, one of the Pannels Procurators, two Depositions of Mr. *John Dunmure*, one of Mr. *Robert Dalgleish*, one of the Earl of *Rothes*, one of Mr. *Peter Hay*; together with four missive Letters, sent by Mr. *William Haig* to the Pannel, to be reproduced Friday next, at which time they were accordingly reproduced.

Thereafter upon the said *Decemb. 5.* the Dittay and infamous Libel was read, as specified in the Dittay.

It is first alledged by Mr. *Robert Macgill*, as the Pannel's Procurator, under Protestation for himself and the rest of his Brethren, with an Apology that he nor they allows not the least sort of inordinate Speech against his Majesty, but only to free the Innocent, as they who are commanded by the Lords of Session, and take Instruments upon the first Article of the Acts imprinted in our Sovereign's first Parliament, anent the surveying of the Laws; does alledge the Dittay cannot be inferred against the Pannel, upon the first Act specially and at length set down (therein:) because it has not been the Mind of the Legislator there to inflict the Pain of Death upon such Reproaches as are contained in the Dittay, and alledged to be contained in the Supplication or Petition styled by the Dittay *Calumnious*. For the main cause of making that 20th Act, Parl. 10. holden in *December 1585.* (our dread Sovereign, and his Honour, being ever proposed) was not only to ratify the Grace given and extended to these Noblemen, who a little before became in at *Stirling*, as may be seen by the particular Acts of Parliament unprinted anent the restoring of those Noblemen, with their Followers; but much more to strengthen the Nobility (as reason was, and the time required) against Captain *James Stewart*, who then had fled, and was the cause of their former Banishment; and feared by them, that he might wrong them again, if he had regained his Majesty's Ear, because that they came in such a manner. And to strengthen also the Nobility against any other, who should take in hand the like, as to come in betwixt the Tree and the Rind; I mean, betwixt his most Sacred Majesty and his Favour & suos Comites, for his Nobles are so called, and has their Names as they who should be ever accompanying his

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his most Sacred Person. For the Deeds done *contra aliquem & Comitatu vindicantur ut Crimen Læse Majestatis, Leg. quisquis, Cod. ad Legem Juliam Majestatis*, by the time.

The Strain of the Act carries also this, to wit, Reproaches of his Majesty's Estate or Government, or depraving his Laws and Acts of Parliament, or misconstruing his Proceedings: but answering to the Question, *In quem finem* should these Reproaches have been written, whereby any Mifliking may be moved betwixt his Majesty and his Nobility and loving Subjects? Where the word *his Nobility* is very emphatick, and the two last words expounds the samen, being exegetick of the former by a gracious Praise, testifying by the word *loving* the forgetting of the former Slip, which had been more by misreport than in verity. Compare also this Act with that which was made during the said Captain James his Grandeur, a little more than a Year preceding, *Parl. 8. cap. 134. Jac. 6.* in the which, as it were *consulto Consilio*, the Noblemen are omitted *ibi*; to the Reproach of his Majesty's Council and Proceedings, to their great Prejudice who were then put away by his [*i. e.* Captain James's] Counsel, and holden away by his Detractions, until they peartly enough (yet encouraged by their own Innocency) came in at *Stirling*: and incontinent did procure that tenth Parliament to be holden, in which was made the said tenth Act, no more Days intervening betwixt their Return and its Sitting but the Days of Citation. And is yet more clear by the words, *Deprave his Laws and Acts of Parliament*: meaning *Act 25 Jac. 2. Parl. 6.* against the Apprehenders of his Majesty's Person, as the Act bears; the literal Sense whereof might infer a Dittay against the Committers, if it were not to deprave the Laws, if the Mind of the Legislator were not look'd unto. So that this tenth Act cannot well be understood as convenient to infer the Dittay, especially seeing he was not the Author or Penner of that alledged infamous Libel; but Mr. William Haig, who has clearly taken it upon him by his own Letter, as was constant (*i. e.* evident) to the Lords of the Committee, and is acknowledged in the Dittay by these words, *At the least guilty of the Hearing*: wherein the Pannel's part was not much worse than others who heard it, and yet not revealed the same. As also altho' that Remonstrance by way of Supplication be now alledged to be scandalous, but then to be preferred to his Sacred Majesty, and was offered to be given; *ergo* the Dittay cannot be inferred in this Act.

And as to the second Act libelled expressly, *Jac. 6.*

*Parl. 14. cap. * 209.* containing divers Acts anent Leasing-makers;

we repeat the forsaide Protestation, and say, If all sorts of inordinat Speeches (whilk let it be spoken with all Humility and dutiful Reverence, as not allowing any, but to shew the Pannel's Innocency) against his Majesty our dread Sovereign and his Government, even those which by Interpretation or Misconstruction may be inferred upon a Man's Speech, (*i. e.* contrary to) his Mind; and not only the Author of the same, but also the Hearers, not Revealers, and not Apprehenders, are understood to be punished with Death in our Law, in the Addition of that Act, and so are all to be comprehended therein: then we should make our Law to commit an Absurdity, which no municipal Law ought to do; but rather an Interpretation should be taken out of the Com-

mon Law and Reason. *Gailus ad Longum, lib. 2. Observatione trigesima tertia, quo modo Statutorum Interpretatio facienda sit.* The Absurdity is, that there should be Equality of Pains, and so Equality of Crimes, committed in Speeches (in most submissive manner be it said) against his most Sacred Majesty, not only by the Authors, but also by the Concealers and not Apprehenders, whatever the scandalous Speech be. But he that hears and not reveals a higher Speech, shall be punished as he who hears Treason. The Connection is cleared by this, *Quod Delictum majus a parvo dignoscitur ex Pena qualificata. Tractatu incerti Authoris de Læse Majestatis Crimine, quest. 11. num. 5. Et passim in Jure, ut comprobatur Baldus in Capitulo primo, prima Nota ad Titulum 38. lib. 2. Feudorum de Vassallo qui contra Constitutionem Lotharii.* And the Opinion of the Civilians is exploded long since, *ut sententia dignum horribili flagello.* For there are sundry sorts of inordinat Speeches and Contumelies against the Prince and the Estate; as these that are spoken against his Majesty's Person and Blood outrageously, or in a Conspiracy against the Country, understood in some manner by *Clarus, paragrapho Læse Majestatis, num. 1. in fine.* And here it is only that the Lawyers find the Hearers and not Revealers, and not Apprehenders, to be punished by Death: *Clarus, paragrapho ultimo, quest. 87. num. 2. Punctus in fine.* And yet he requires *ut adsit Tractatus.* Such were the Speeches uttered betwixt *Catiline* and his Complices; *Et non nuda Verba ab Authoris Animo detorta.* In which case it is well said, *Quod Crimen Majestatis a Judicibus non in occasionem ob principalis Majestatis Venerationem habendum sit, Leg. 7. § 2. F. ad Legem Juliam Majestatis.* The second sort are where *directis verbis Animo injuriandi viciis impropertat*, to a Prince for lack of Virtue. Where the Lawyers remit the Author, *Lege unica Cod. si quis Imperatori maledixerit*; (it not being yet condescended fully amongst them, what is meant by the word *Remittendum*.) But anent the Hearers, nor Revealers, and not Apprehenders, not a mum, but on the contrary, *quod nulla Pena teneantur*: As in *omni delicto nisi Casibus dictis*, *Clarus* says, *num. 3. Versiculo quod tamen, dicta questione 87.* Far less can the Hearers, not Revealers, and not Apprehenders of the Authors of the third sort of Speeches be concluded under Death with the first; and that third sort (in all Humility I say) where Vice and Lack of Virtue is not *improperat directis verbis*, (*tantum abest ut sit animus injuriandi.*) But as a Flower or flourishing Weed may afford both Honey and Venom, so Speeches written to ane good End, by ane misconstruing Illation may be interpret in ane evil Sense; as the Informer of the Dittay makes the alledged Supplication to be a contumelious and infamous Libel: which cannot be done (in all Humility and Submission I say it) to infer the Dittay against this Pannel, upon the said Addition in the Act 205, as Hearer, not Revealer, not Apprehender, without a manifest Absurdity against the Law and Reason, as said is. For even in Speech, *quomvis dixit Dominum suum esse Dominum Hominum & Bestiarum, quod non debet Author puniri*; concluded remissive. *Cæsar Orcellus in advocacione ad decisionem Mathei de afflictis 265. num. 68, 69. & idem advocacione in decisionem 307. num. 15. Quod verba sunt civiliter capienda & ad bonum moderanda; itidem in dicto Tractatu incerti Authoris dicitur distinguendum inter verba narrativa & simpliciter enunciata quasi prætereundo, ac alia verba dispositiva seu positiones*

positiones affirmatas, ut ex illis non liceat Argumentum sumere, ex his vero liceat. Quæst. 6. num. 13. ibi nunc videndum. But of the Particulars, and even of this General, more falls to be said hereafter.

Only against Delators of Speeches, called *Frummentarii* & *Otacustai*, let it be remembred to the Justice, that some good Emperor (*quos infinitis illusterrimus & sacratissimus Imperator noster præcurrit parasangis*) used these Folks to know what the People thought of them, and how to amend any Slips, if any were. *Capitolinus in Antonino Philosopho* says, *Erat famæ suæ curiosissimus, requirens ut verum quisque de se diceret, emendans quæ bene reprehensa viderentur, & passus se impune cavillando perstringi, dicitur civiliter se egisse.* *Xiphilin* reports the same of *Titus*; *Imo Tiberius deprecatus est apud Senatum nimis præcipientes verborum penas.* Yea, to this tendit King *James V.* of worthy Memory, his disguising himself for such another Inquiry; as also *Goran*, one of our dread Sovereign's most worthy Progenitors, is commended for the same by *Hector Boyes*. In respect whereof, the Dittay is not relevantly inferred upon the two Acts of Parliament libelled.

It is farther alledged by Mr. *Roger Mowat* for the Pannel, That the saids two Acts of Parliament mentioned in the Dittay, and whereupon the samen is founded, can be no ground in Law for this criminal Pursuit; in respect the saids two Acts, and many others of that kind, but especially the last of the saids two Acts, and the Additions subjoined thereto, have never been in Observance, Custom, or Practice heretofore, against any alledged Contraveeners thereof: and therefore cannot now receive a beginning against this Pannel, being a Nobleman, known by the hail Course of his bygone Life to have been ane strict obsequious Keeper and Observer of his Sacred Majesty and his most noble Progenitors their Acts and Statutes; in such sort, that it can never be verified that ever the Pannel has been so much as once denounced Rebel, and put to his Majesty's Horn, (Outlawry) for any Action or Cause, Civil or Criminal, whatsoever; and so is not presumed to have contravened any of the said two Acts, albeit the same had been in custom and practice, as they have not. And that the said two Acts, specially the said Addition of the last Act, are fallen in desuetude, and never heretofore practised, is clear and evident, because the contrary cannot be shoven: And it has been received as a most laudable and warrantable Custom amongst wise and judicious Politiques, that Laws in desuetude and out of custom are not to be introduced at an instant, without some new Intimation thereof, when necessity is found for re-establishing of the said Laws; but specially such Laws and Acts, as carry with them the Pain of Death, Forfaulture, or such-like: Likeas some strict Acts of Parliament of this kind, containing the like or more grievous Pains, being ratified by subsequent and posterior Acts, the said posterior Acts have ordained Intimation to be made to the Leidges of the said former Acts, Pains, and Severity thereof, before the said Pains should be inflicted upon the Contraveener. And it is clear, that not only the said two Acts mentioned in the Dittay are not of custom, and have not been practised, but many more, containing some less and some greater Pains, in the most part of all preceding Parliaments: For which I will only adduce some few,

to verify and instance this part of my Alleadgance, (Allegation.) And first I alledge the 105th Act of the 7th Parliament of King *James V.* of worthy Memory, intituled, *Pains of them committing Fraud in Alienations*; which bears, about the end of the said Act, That the Person, Seller or Giver shall be declared infamous, and shall be punished in his Person and Goods at the King's Will. And it cannot be denied, but that this Act hath been many times contravened, by many of good sort, in points of double Alienations, and yet was never heretofore practised against the saids Contraveeners.

There is another Act of Queen *Mary's*, of happy Memory, *Par. 5. cap. 16.* made against them that swears abominable Oaths; whilk Act is ratified by King *James VI.* of ever-blessed Memory, *Par. 7. cap. 103.* both the said Acts bearing in express words, That for the fourth Fault, Prelats, Earls, or Lords contraveening, shall be banished or put in Ward Year and Day, at the Will of the Prince. These Acts have been contraveened, yet no Pursuit for the saids Pains has followed thereupon.

The 2d Act of the 16th Parliament of most blessed King *James*, bears, That the slaying of Salmond, Smolts, Kipper or Black-Fish, shall be a Crime of Theft in time coming, and to be punished as Theft in every Quality. Which Act, if it shall receive force, and be put in practice upon a landed Man, (as questionless it may) it shall import him, or any landed Man Contraveener thereof, no less than Tinsel (Loss) and Forfaulture of Life and Goods; because by the 50th Act of the said 11th Parliament, landed Men convict of Theft or Receipt thereof, commits Treason: ergo landed Men, Slayers of Salmond, Smolts, &c. in forbidden time, commits Theft, and consequently Treason; which (as the Act bears) is declared to be Tinsel and Forfaulture of Life, Lands, and Goods.

These and many other of this kind, every where to be found amongst the said Acts, does evince, that with reason the said Acts libelled in the Dittay, and others of that kind, which never have been practised of before, cannot be received against the Leidges (Subjects) without a preceding Intimation; whereby good and loyal Subjects may be in *mala fide*, in case they be found after the said Intimation to have contraveened. And so the said two Acts, specially the said Addition mention'd in the last Act, cannot be found nor sustained as warrantable Grounds in Law against this Pannel; being a Nobleman, not only known to be ane Observer and not Breaker of his Sacred Majesty his noble Progenitors their Laws, Acts, and Statutes, to draw upon him for alledged hearing, concealing, and not revealing and not apprehending of the Authors of the alledged infamous Supplication, the Pains contained in the said Acts and in the said Dittay, which is the Tinsel and Loss of his Life.

It is alledged farther by Mr. *Alexander Pearson* for the Pannel, in fortification of the Exception propounded, *Quod Leges per desuetudinem tacito consensu censentur abrogatæ, expressa Lege 32. § 1. F. de. Ita ut secundum ipsas non firmatas judicare non liceat, firmanur autem Leges cum moribus utentium approbantur, Canone in istis tertio distinctione 4ta. Et si hoc obtinet in Civilibus. quanto magis in Criminalibus, ubi tanto cautius agendum est, quanto magis periculum vertitur? Unde illud Papæ qui decrevit ut generaliter Clerici*

Clerici in Quinquagesim. a carnibus & deliciis jejuniunt, quia moribus utentium approbatum non est, aliter agentes transgressionis reos, non arguit Canone supra citato. And therefore the Acts of Parliament whereupon the Propositions of the Dittay are founded, none of them, at the least the last thereof, never having been in observance at no time since the making thereof, now by the space of forty Years, even since the last Act; the Acts foresaid, specially the last, cannot sustain the Dittay, nor infer the Pains therein mentioned.

It's answered by my Lord Advocat, That all the Alledgances ought to be repelled, in respect of the Acts of Parliament, whereupon the Dittay is founded; and that there runs no Prescription against Laws, and specially against Laws prohibitive of Crimes, which are also prohibit and punished by the Common Law; of the nature whereof are these two Acts whereupon the Dittay is founded. And the Alledgance, *Quod Leges tacito consensu abrogantur*, is only *per contrariam Consuetudinem idque in contradicito Judicio*, which is that which the Law calls *tacito Consensu*; and all the Arguments adduced in the contrary, are *ab Incommodo quod non solvit*. And the Indulgence of the Prince in the overseeing the Punishment of Crimes in bygone time, cannot be adduced to warrant a Crime when it is pursued; and specially when the Crime is of the Nature of Rebellion against the Prince, in his Person, Estate and Government. And albeit this be a clear and found Answer, and that no more is necessary; yet it is constant and nottourly known, that these Laws has been put in Execution this 34 Years bygone; as namely, against *Francis Tennant*, in the Year of God 1600. and against *Mr. Thomas Rosse* in Anno 1618. and lately against *Mr. George Nicol* his infamous Libel.

It is duplyed (said again) for the Pannel by *Mr. Alexander Pearson*, That where it is alledged by my Lord Advocat, that Desuetude cannot be obtruded against Acts of Parliament, which has Warrant from the Common Law; it is answered, that the Acts anent Crimes by Desuetude rather loses their Vigour than Acts of Civil Business, because in Acts Criminal there is greater Hazard, as Loss of Men's Honour and Life. As to any Precedent in Civil Law giving Warrant to the Addition of the last Act of Parliament, it cannot be alledged, *Quia non est Lex statuens penam mortis, contra Hearers, Concealers, and not Revealers*, which is the Addition of the Act. And where it is alledged by my Lord Advocat, that Desuetude of Laws is only *per contrariam Consuetudinem in Judicio Contradicto*; it is answered, That Desuetude of Laws is clearly expounded otherwise by the Citations above-rehearsed: so that *Leges quæ nunquam in usum forensium productæ sunt & quæ moribus utentium approbantur*, are become in Desuetude, *licet non sit Consuetudo in foro contradicito in contrarium*.

It is further duplyed by *Mr. Robert Macgill*: Not to dive any further into the Acts of Parliament, but respecting the Distinction already said, I alledge, that the Addition of the Act 205, cannot be thought to be *in viridi observantia* in this our Case; because if so ought to be, it should much more have been practised against the Havers, Hearers, Readers and Seers of any using *Mr. George Buchanan's* Books: But this hath never been

used yet, Act 134, Parliament 8th, albeit there has been many. But so it is, that this has not been used in its own Case; ergo it ought not to be begun to be put in use against this Pannel, who let be his other Virtues, has been ever a Patron of dutiful Obedience to his and our most gracious and sacred Sovereign. The Connection is clear, because that Book, as sundry reports it who has read it out of the Country, *ipsum regiminis Cardinem nititur convellere, & impingit in Regiam Prerogativam*. Further, if all sort of Speeches (let me say it in all due Reverence) against his Majesty and Government, come under the Acts ratified here, with the Addition against Havers, Hearers, Revealers, and not Apprehenders, and were *in viridi observantia*, who should not be brought before this Judicatory, and under the compass of the said Act? for as we live all in one Family, every Man in his own, and talk thereof, so live we also in a Commonwealth, whereof to talk sometimes bitterly (which is not to be allowed) tho' foolish: And so the most part thinks that they have their own Interest, and will force as it were the Wiser, nill they will they, to hear them. And anent that which my Lord Advocat says, *quod non valeat Argumentum ab incommodo*, it ought to be repelled in respect of the Place alledged out of *Gaius, Libro secundo, Observatione 33*. where he concludes, that the Argument is good against the Municipal Law to make it to be ruled according to the Civil Law, and to common Reason. And farther, that our own Municipal Laws ought to receive Limitation according to Reason. I repeat the foresaid 25 Act Jac. 2. Item by the said Act 134. Par. 8. Jac. 6. it is made capital to meddle in his Highness's Affairs and Estate, either present, bygone, or to come; saying further, That none of his Subjects of whatsoever Function, Degree, or Quality, presume in time coming to meddle as said is, without any Exception: then shall a Nobleman, who is born as it were by our Laws to meddle in such Affairs as concern the Commonwealth and Country, not have so much Liberty as to petition his Majesty most humbly in Matters of Government, for the Weal of all, as may seem to him, while his Reasonings be discussed, no not in Parliament; yea, even *extra Parliamentum* his sacred Majesty was petitioned after his Majesty's Revocation, howsoever it was conceived, and in whatsoever Terms: So that Punishment of Speeches anent Government, and the Laws, must receive their right Sense. Wherefore 'till they be surveyed (which has been most royally begun long since by his most sacred Majesty, and now enacted in his first Parliament) the Rigour of the said Addition ought not to be practised upon this Pannel; *Pars enim præcipua Legis est voluntas, & verborum dicitur Prærogativa, Lege non dubium. Codice de Legibus*. And *Menochius passim de arbitrariis Judiciis*, gives exception from Municipal Laws, according to Equity and Reason.

It is farther duplyed by *Mr. Roger Morvat*, to that part of my Lord Advocat's Answer anent the Instances and Practices alledged for proving of the Custom and Consuetude of the said two Acts of Parliament, to wit, *Francis Tennant*, *Mr. Thomas Rosse*, and *Mr. George Nicols*; That the said Practices or Instances cannot be respected, because they are not produced: and if they were produced (as they are not) it should be clearly shoven, that they met not in (did not suit) this Case, either because

because they are not founded upon the said Acts of Parliament, and specially upon the said Addition contained in the said last Act, or else because the Crimes are not alike: for the first Crime of *Tennant's* was ane Cokiland (Libel) bearing and propoing exprefs positive Scandals and Reproaches, whereof he was condemned to have been the Actor and Author. And so whether he was pursued and convicted upon the Acts or upon the Common Law, his Dittay was most relevant. As for Mr. *Thomas Ross*, his Crime was also a most abominable Speech written by himself against the hail Nation *directis verbis*, whereof he confessed himself (being upon Pannel) to be the Penner, Former, Devilser, and Divulger; and Copies of his most infamous Libel affixed upon publick Places with his own hand: and so cannot be obtruded as a Practick or Precedent in this Case. As for Mr. *George Nicol* his Crime, it needs not to be answered, because he was not pannelled nor convicted; and so his Process intended against him cannot be adduced as ane Practick to rule the like Cases thereafter: and the Pain inflicted upon him was by Warrant of Council, and so none of the saids Practicks can be respected. In respect whereof, the Argument founded upon the Desuetude of the said two Acts, and the Danger that may follow hereafter upon other Acts of that kind, &c. which have not heretofore been practised, stands relevant. And it's craved, that the Dangers which may ensue to good Subjects upon the Practice of the Acts before alledged, may be adverted unto, und the dangerous Sequels prevented.

Secundo, It is alledged for the Pannel by Mr. *Alexander Pearson*, under Protestation forsaid, That the Writing whereupon the Subsumption of the Dittay is foundit, is not an infamous Libel *quoad accusatum*, neither in the Pannel's part in the Particulars libelled against him seditious and calumnious; neither can he be presumed to have had any such Intention. First, not an infamous Libel *quoad accusatum*, but an humble Supplication of some Lords and Commissioners of the late Parliament, offered to his Majesty himself; whereunto the Supplicants were induced in love and tendering of his Majesty's Honour, and in fear of their Offence to his Majesty by their voting anent some Acts of the late Parliament. For removing whereof, and for satisfaction to his Majesty, they did humbly beseech his Majesty to be graciously pleased to ponder their Reasons for dis-assenting from the saids Acts; and to consider the Supplicants hearty Obsequiousness to his Majesty in other matters of the said Parliament, wherein they did forbear to represent any thing to the contrary thereof, for testification of their ingenuous Affection to his Majesty. This doing of the Supplicants is no Crime, *sed de natura boni*; and far from any culpable Commission, in meddling with things not belonging to them. And it is hard, that any Supplicants deprecating humbly his Majesty's Offence, should by so doing incur his Majesty's Offence, and the Crime of Capital Punishment: specially the Supplicants having no private Respects, but for the Publick, wherein they had Interest and special Charge; and for Conservation of themselves in his Majesty's good Favour, the Loss whereof, or the Fear of Loss, should be most grievous to any loyal Subjects; *Cujus Reipublice tantus ubique favor ut proclamant Leges quod Reipublice venerande causa secundum bonos mores sit, etiam ad Contume-*

liam alicujus privati pertinet, quia tamen non ex mente Magistratus facit ut injuriam faciat, sed ad vindictam Majestatis Publice respiciat, actione injuriarum non tenetur. Leg. 13. F. de Injuriis & famosis Libellis.

Est ergo quoad accusatum Libellus supplex, & si Libellus supplex postulat Juri contraria, hujusmodi postulata ab omnibus Judicibus refutari precipiunt Leges & Supplicantem iterum super eadem causa non audiendum. Leg. 3, 5, & 7. Codice de precibus Imperatori offerendis. Sed non ideo supplicans reus est sceleris, quia Libellus continet refutanda; nec Libellus supplex ideo famosus, cum hæc fuit interpretatio.

Non Libellus famosus quoad accusatum, quia non ad infamiam, sed favoris conciliationem, ut supra: Item non clanculum & secreto, sed professo & reapse domino Regi oblatum. Atque ideo nullo modo quoad accusatum detractorius aut calumniosus, cum detractio sit seminatio mali occulte, & calumnia sit adversus absentem; neutrum autem committitur cum is cujus interest proponat querelam coram eo cujus partes sunt de ea cognoscere; de eo cujus interest Reipublice ejusque salutis causa duntaxat.

Non Libellus famosus quoad accusatum, quia non constat directis assertionibus in quibus venit verum aut falsum, quod omnino requirit Libellus famosus. Leg. unica, Codice de famosis Libellis. Sed postulatis in quibus considerandum venit bonum, justum, & qui verum & falsum non agnoscunt cum non fuit enunciatio.

Farder, the Pannel cannot be presumed to have had any other Intention than the Strain and Tenour of it, as a Supplication does imply, and which is most befitting thereto; to wit, to the Voice of ane humble Suppliant. *Ea sententia accipienda est semper, quæ rei gerendæ aptior est, & in ambiguis orationibus maxime sententia spectanda est ejus, qui eas protulit. De Regulis Juris.* And it is always disagreeing to a humble Suppliant to tax or calumniate, and therefore it cannot be so expounded, but should be interpreted the best way the words may admit: *Quia de Jure in dubiis & obscuris, quod minimum & benignius est sequimur. Leg. 9. F. ibidem.*

Item, The Writing aforesaid, as in form of Supplication, was used also as a Supplication, and so delivered by the Pannel to the Earl of *Roths*, to be presented to his Majesty, as affirmed by the Dittay itself, and indeed offered to his Majesty: which, howsoever his Majesty did not accept of then, and take the samen to his Consideration; yet the Supplicants did think that the very Presentation thereof did seem to assure the Nature of the Writing to be a Supplication: and scarcely even could the wisest conceive so of the Pannel's having the Writing, as it is now interpret, against his Majesty; but think that his Majesty had past all Offence thereof, as the Law speaks of Action of Injury, whereof the present Accusation is a kind. *Leg. 2. §. 1. F. de Injuria, Verba Legis injuriarum, actio ex bono & æquo est & dissimulatione abolitur, si quis enim injuriam dereliquerit, hoc est statim passus ad animum suum non revocaverit, postea ex penitentia remissam injuriam non potuit recolare.* By the which it appears, that the Pannel had no such Mind or Intention, as the Dittay would rub (fix) upon him in all the Progress of the Matter libelled against him. And I suppose that none will think, that by the Presentation of the Supplication at the first to his Majesty by the Supplicants, that they then by so doing were culpable of a Capital Crime, if the same had been immediately thereafter destroyed, and never more seen nor heard. And if they then

were not culpable, shall any supervenient Act make them culpable, or more culpable? *minimè nunquam enim crescit ex post facto præteriti delicti æstimatio. Leg. 130. § 1. de Regulis Jur. Multo minus ex post facto oritur novum delictum, quod ab initio non fuit quoad accusatum, aut ubi offensa si qua fuit dissimulatione abolita sit.*

It is eiked (added) by Mr. Robert Macgill, If it had been leifome (lawful) to this Pannel, as a born Counsellor, in that great Council and Parliament, and other Noblemen, to propound to his most Sacred Majesty the things contained in that Supplication alledged to be scandalous; which are not Affirmations, but as it may seem, Grievances, Remonstrances, and Expedients: then it was also leifome to the Pannel, and others, to represent even out of Parliament to his most Sacred Majesty, our dread Sovereign, what they could have propounded then, but did abstain (therefrom) for the Reverence they carried to his Majesty: specially when they did it in most submissive manner, as the hail Strain thereof bears, and out of a most loyal Affection. *Et prius est verum, ergo & posterius.* The Verity of the Minor is plainly embraced by Bodin, *qui est acerrimus Regiæ Majestatis propugnator, Cap. 1. Lib. 3. ubi de Senatu & quod Senatori de Republica loquendum sit, præsertim de omnibus ferè capitibus in Supplicatione hac contentis.* As to the Connection, it depends first on the Duty of a good Counsellor here, to whom as God has given to be endowed with Reason, so our most sacred Sovereign and his Progenitors have given to be a wise Man and Counsellor even from his Birth. That he may learn to exercise his Reason from his Birth, for the Benefit of the Commonweal; which is the first Place of Honour, as Cicero says, and is that which we call Nobility; shall he not have as it were a Magazine of Reasons, as may seem to him good, and even communicate them with others, for trying of the same? specially at this time of surveying of the Laws, that according to the Time, and other Circumstances, he may furnish to his Majesty his best Counsel in every thing that he thinks may concern the Weal of the Country wherein he lives, as by Duty even from his Birth he is bound: like to the Labourer, to whom in a rainy Day, *quæ mox Cælo properanda sereno maturare datur.*

Next, it depends upon the good Mind to the Commonweal, whereof his most Sacred Majesty is the Head; *ut non teneatur injuriarum qui quicquam Reipub. causa faciat.* Neither is that thought to be an Injury, *Lege Injuriarum 13. § 1. Lege quod Reip. F. de Injuriis juncti Leg. neminem 9 Cod. ex quibus causis irrogetur infamia, & Lege ex varia quarta de Delatoribus, Lib. 2. Cod.*

Thirdly, it does depend upon the Conception of the Words, which is by way of most humble Supplication. *Et verba propter adjunctam mutant naturam suam, Carvetta ad decisiones: afflicti neque tam refert qualia sunt quæ intra nosmet composuimus quam quomodo efferantur. Ac Quintilianus, Lib. 2. Et ut in aliis rebus ita in sermone, forma dat essentiam sermoni;* for even good Words may be used in an evil sense, *ut, Heus bone vir!* But this is worthy of all Praise: *Et si non dederis Cæsar, perimite rogari, offendunt nunquam thura precesque Deum,* Kings are Gods on Earth; and albeit by Bodin *extrema Provocatio* be counted *inter Jura Majestatis*, that from a King himself there is no Appellation (Appeal;) yet he commends the sort of Appella-

tion a Philippo ad Philippum, and alledges it to be the Opinion of Baldus, *ad Legem primam & ultimam Cod. de Relationibus, & Leg. 1. § 1. F. de Appellationibus, viz. to his Majesty.*

For seeing the alledged scandalous Petition was offer'd to his most Sacred Majesty to be read, but not received nor read, nor after due Consideration condemned by his Majesty; it was not thought so dangerous (let me speak it with Reverence) as to come under the compass of the Acts of Parliament, and so as it ought not to have been divulged: I mean, in that quiet manner, as it might not be imparted to Mr. John Dunmure. *sub Sigillo Taciturnitatis*, and not to have been copied. And farther, the Pannel ought to be excused and assailed (absolved) from the Dittay, *si delictum dici debeat, quod cum loquimur in delictis in quibus dolus est de substantia delicti, tum credulitas & sive justa sive injusta sit causa, excuset, nam videtur cessare animus delinquendi. Clarus § final. Quæst. 60. num. 22. Et in delictis voluntas non finis attenditur. Gailus Lib. 2. Obser. 99. num. 6. At hic nullus exitus nisi bonus, idem Observatione undecima, quod in delictis principium non finis attenditur, num. 18. Ubi de homicidio perpetratur & consilium convitia tenditur. Lege finon, quinta Cod. de injuriis, & causatur hæc actio ex affectu inferentis, Pharma. Quæst. 105. Inspect. 3. num. 3. ex Lege illud tertia, § 2. Leg. non solum 2. in princip. si quis servum 26. de injuriis ubi Pharmaci, Quod lata culpa his dolo æquiparetur & locutis multa de præsumptione doli in utramque partem, & de juramento purgationis subdit. Num. 118. dicta Inspectione quod verba debent impropriari ad fugiendum delictum & malum animum, præsertim cum in publico dicta sunt.* Which we say, when it was not concealed, but offered to be given to his most Sacred Majesty; neither is it presumed that any Man has a mind to defame his Neighbour. *Pharm. dicta Inspectione 2. num. 418, et sequent.* And were he not to be thought more than mad, who would draw up, instead of a Supplication, a Libel full of Detractions against his Sacred Sovereign Lord, or who would keep the same beside him, let be to offer to give it to his dread Sovereign? And in the Crime of Lese Majesty, *Dolus malus est de substantia criminis;* it being ever said in the Digests, *Cujus opera dolo malo quid factum sit in Rempublicam.* What shall it not be *de substantia delicti*, in this alledged Crime of detraacting, not so evil as is alledged in the Dittay? But as the same agrees with a remonstrative Supplication (let me say it with Reverence) wrong glossed, as it may concern the Pannel, (where he had so many probable Causes inducing him thereto) *Quæ qualitates & circumstantiæ conjecturæ, cum nulla delinquendi Consuetudine probatæ relevant contra dolum præsumptum etiam propter prohibitionem. Carerius fol. 104, 105. viz.* That these things might have been propounded in Parliament; That he was a Counsellor of Estate; That other Noblemen thought then also (as) well of it as he; That it was for the Weal (at least so apprehended by them) of the Country, in this time of surveying the Laws; That it was offered to be given to his Majesty, and that under the form of a most humble Supplication; That other hard Supplications concerning the Estate had been received graciously by his Majesty; That it was not then taken notice of, nor upon Consideration condemned. And it might have been, that if any here had perchance lighted on it, they would have done worse with it than the Pannel. For, as Quintilian says, *Consilium & Ratio quædam acti, petita &*

Et plura perpendens, ac comparans latentibus rebus & dubiis adhibenda. Now no Right nor Virtue in itself can be seen but *quæst facies*, as *Plato* says; yea, Verity, Equity, and Utility, are lain hid in the Draw-well of *Democritus*: *Et ut quisque altissima mente est, ita ex altissimo Democriti puteo quasi submersas Veritatem, Æquitatem, & Utilitatem, nittitur haurire.* Yet so is the Reason of Man obfuscated (darken'd) since his Fall, that he cannot penetrate to that Deep, for the Darknèss; which by Disception of contrary Reasons, like two Flint-Stones stricken upon other, some Sparkles of Light flee out, for letting see to draw forth these Virtues. Wherein consider also the Pannel's Carriage and his Life by-past; and if any thing tending to Sedition was ever heard of him, or even what effect has followed. *Qualitas enim facti ex persona facientis præsumitur, Glossa finali Canone non omnis 5. Quæst. 5. & dicta Lege septima § 1. F. Ad Legem Julii Majestatis. Ubi ait Modestinus, nam & Persona spectanda est, an facere potuerit, an ante quid fecerit, & an cogitaverit justa, & jam causa excusat a seditione quæ jam erupit.* Boerius *Tractatu de seditionis præmissis* 4. num. 2. *Ubi utitur exemplo Moïsis & Israelitarum ad Aquas Miriba.* And shall the Pannel, who had so many Reasons for him, be thought punishable as one seditious in that mean Matter of divulging as said is, of a Remonstrative Supplication? whereof but by Illation and Misconstructing (*salva pace dixerim*) it is gathered, far from the Pannel's Mind, that Sedition might have been moved. No, no, that Man is only styled seditious, who, by direct Speeches, draws the People in Factions, and going madly before one of them, cries out the Word (*Vivat*) *scilicet hæc aut illa factio, Boerius dicto Tractatu Præmissis* 2. num. 2. *Et Cæcilius Fol. 10, 31. Pag. 2. num. 3. in fin. ubi etiam dicunt, Quod in iis quoque qui jam seditionem excitant puniendis requiritur, & studiose rumorem & tumultum conciliarent vociferatione.* Which things, seeing they are so far from the Nature of the Pannel, and from his Doings, his Intention and Mind ought to be justified, and consequently he ought to be absolved from the Dittay produced.

The 6th of December 1634.

It is alledged by Mr. *John Nisbet* for the Pannel, That the Dittay is no ways relevant, because nothing is libelled to infer a seditious and finistrous Intention of the Pannel, in contriving, concealing, or imparting of the Piece challeng'd; neither is it libelled, that the Pannel knowing the alledged Libel to be seditious and infamous, concealed or divulged the same: but to the contrair, it is libelled, That the Pannel, immediately after the receipt thereof, delivered it to my Lord *Rothes* to be presented to his Majesty, which clears the Candour of his Intention, and the Opinion he had of the Nature of the Piece, and of the use he thought might be made of it to propitiate his Majesty, and not to traduce his sacred Person or Government to his Subjects. And therefore, albeit he had concealed it, and divulged it, he cannot be obnoxious in the Pains of the Acts of Parliament, which are only against seditious Contrivers of slanderous Writings, and malicious Concealers of Writings, notoriously and to their knowledge seditious, expressly compiled by Incentives and Firebrands of Sedition, and exposed to the view of the Subjects for that effect. For the Words of the Acts of Parliament (*To the Reproach of his Majesty's Person, Estate and Government, steering up Sedition, tending*

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to steer up the Hearts of the Subjects to Hatred) implieth Intention. And the Civil and Canon Law requireth *dolum generale in omni actione injuriarum tanquam substantiale requisitum. Gailus Lib. 2. Observatione 99.* And expressly both in the compiling and divulging of seditious and infamous Libels, *Leg. Lex Cornelia §. 1. F. de Injuriis, Cum dolum non adest, nisi dolo malo quis fecerit, (viz.) Librum ad infamiam alicujus pertinentem scripserit, composuerit, velediderit. Leg. illud §. sane eodem titulo, Impubes & furiosus non possunt facere injuriam, quia neuter est doli capax; nam hi solent pati Injuriam, non facere: cum enim injuria ex effectu facientis non consistit, consequens erit dicere, hos sive pulsant, sive convitiis dicunt, injuriam fecisse non videri. Leg. 34. F. de Obligationibus & Actionibus, Injuria ex effectu sit, Institutionibus de Injuriis, §. 1. Leg. 5. §. ultima, F. ad Legem Aquiliam; Ubi dicit Julianus, Actionem injuriarum non competere, quia non faciendæ injuriæ causam fecerit, sed monendæ, & Injuriæ non factum queritur, sed causa faciendæ expressa. Leg. 39. de Furtis decreti secunda parte, Causa 5. Quæst. 1. Canone 4. Verba sunt (si vim Chartarum quæ famosæ sunt) scilicet dolo manifestaverit, si ad se quasi authorem hujusmodi delicti capitali sententia subjugandum. Turie-Cremata & alii Doctores in verbo dolo. Baldus consil. 230. in fin. Lib. 3. consil. 443. in fin. Lib. 5. Dolum in injuria requirit, sine quo illata dici non potest. Idem concil. 277. Num. 2. Volumine 5. Respondet totam culpam quæ alicui dolo æquiparatur non sufficere continet. Cravetta, concil. 419. num. 1. idem concilio, num. 36. Ait agens actione injuriarum debet allegari dolum & omnia jura clamitant, injuriam non fieri sine animo injuriandi. Leg. si non convitiis, Codice de injuriis; verba sunt, si non convitiis concilio probare potes, te aliquid injuriosum dixisse, fides veri a calumnia defenderit. Leg. 5. §. 1. F. de Furtis; Maleficia voluntas & propositum delinquentis distinguit. Leg. 14. F. ad Legem Corneliam de Sicariis; in maleficiis voluntas spectatur non exitus. Leg. unica Codicis, si quis imperatori maledixerit, ubi petulans & improbum mendacium, quo imperialia nomina laceffuntur, non statim injuria censetur, & eo nomine punitur; sed distinguitur an ex levitate processerit & sic contemnitur, an ex insania, & miseratione digna censetur, an ex injuria & sic remittenda declaretur. Sic injuria confunditur & reciprocatur cum animo injuriante. Omnes Doctores, Menochius concil. 197. Lib. 12. per totum. The Case debated by the Doctor is coincident with the present, but not so pregnant in favour. Arguebatur Senator scripsisse injuriose de principe in hunc sensum, quod cum Senatorum Numerus utili sanctione coarctatus fuisset, postea esset ampliatus importunitate & ambitione postulantium, mentem principis impellente; & cum rursus nova constitutione consultum fuisset, & numerus Senatorum imminutus, denique aut demum auctus fuit, & in immensum crevit magna cum supremi ordinis jactura & inutili intensa, totiusque status incommodo addiderat, hospitacionibus tota die Patriam maxime gravari & forenses nimis remanere gravatos. Menochius consultus num injuriose scripserit, respondet, Qui Injuriarum & Male-dicentie accusationem instituit, duo debet probari, alterum verba esse injuriosa, alterum prolata esse animo injuriandi. Et hæc Methodo ostendit verba non esse injuriosa, quia laudem ducis continent cum ejus Constitutio dicatur optima, & potius bono zelo & pro celsitudinis utilitate prolata videntur. Deinde arguit Senatorem penam non incidisse, quia verba injuriosa etiam de sua natura puniuntur, tantum cum animo injuriandi proferuntur, & præsumptio Juris stat pro eo qui protulerit aliqua verba quæ videntur injuriosa, ut dicatur ea dixisse absque animo injuriandi. Ergo,*

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Ergo, satis superque fundata est intentio Senatoris quod scripserit prædicta, non modo non animo officiendi injuria serenissimum principem, sed potius laudandi & similia verba a subdito bene merito de principe præsumitur prolata potius bono zelo. Secundo, quia quando verba sunt dubia, standum est declarationi ejus qui ea dixit; & quando sunt dubia, similiter Declaratio ab aliis verbis præcedentibus vel subsequentibus, vel ab utrisque. Et in casu dicit Senatorem principem laudasse, cum dixerit fuisse in arbitrio suæ celsitudinis, num Senatorum numerum auget. Addit, quod injuria requirit dolum, sine quo illata dici nequit, & in Casu constat omnem dolum abfuisse, quia dolus non præsumitur commissus contra personam benemeritam; non præsumitur in homine probo, non præsumitur in eo qui pro beneficio Patriæ aliqua verba protulit, quæ principis personam videntur officere; non præsumitur in subdito, quia nihil nuquam contra principem molitus est. Quæ præsumptio multo magis comprobatur, quando verba voce vel scriptis directæ sunt ad principem: & si hæc in homine privato vera sunt, quanto magis in Senatore gravi & illustri, qui alioqui ex his verbis conscisset sibi contingere grave detrimentum? Cravetta in simili casu dicit Judæos Christi inimicos, in dubio non præsumitur, aliquid dixisse ad injuriam Christi, quanto minus debet præsumi crimen injuriæ in subdito contra suum dominum? Idem ibid. num. 26. Conjunctus non præsumitur injuria, conjunctum animo injuriandi intra septimum gradum, Glossa in Leg. vestes, F. de injuriis. Multo minus præsumendum est subditum velle injuriare dominum suum: & Consil. 6. Non est simile quod vir facultatibus plenus adeo stultus fuerit, ut prodigus esset personæ & æris, & quod dolus non solet committi contra tantum principem sine causa. Idem ibid. Consil. 256. Absolvit quendam Paridem seditionis insimulationem, quum nullo animo injuriandi dixerit alta voce quod princeps quidam male faciebat, & facere non poterat, quia adita dicendum poterit bono zelo moveri, & in dubio præsumendum est ut delictum excludatur, & quia præsumptio delicti removetur propter bonam famam & opinionem Paridis. By all which Presumptions, more pregnantly concurring than in any Case extant in Law, the Pannel's Innocency is cleared abundantly. And nothing farder can be exacted but his Declaration by Oath, which he offers most willingly; and by the universal and uncontroverted Practick of all Nations, seconded with like Presumptions, importeth Absolution: Quia probatur animus non injuriandi, iuramento ejus qui injuriam intulit. Guido, Consil. 223. num. 2. in fine. Menoch. de præsumptionibus, Lib. 5. Præsump. 40. num. 32. Idem ibid. Consil. 256. Quia intentione reus verba dixerit ab ejus animo pendet, & ideo ejus declarationi cum iuramento standum est, quia dependentibus ab animo statuitur iuramento ejus de cujus animo dubitatur. Leg. 1. Codic. de Sicariis & aliis Legibus ab eo citatis. Godophredus ad Legem si non convicii, Codice de injuriis, Reo purgationis iuramentum causa cognita defertur habita ratione personæ, qui injuriosus natura sua verbis usa est. Gailus, Lib. 2. Observ. 106. Notum est injuriam absque animo non committi, & innocentiam cum animo constat iuramento probari posse, & ita in Camera judicatum refert. And therefore in respect of the Premises, the Dittay is no ways relevant, both because Dolus is not libelled, and because the Dittay bears that the Pannel gave the Piece challenged to my Lord of Rothes, of intention to be presented to his Majesty: Whereby the Innocency of his Intention is evidenced, and of his Accession in having or divulging the Piece aforesaid, since he was so far from thinking the Piece injurious to his Majesty, in that he had

ventured by my Lord Rothes's means, not only to acquaint his Majesty therewith, but to present it, as a fit Apology, to his Majesty; as is acknowledged by the Dittay, which we accept in that part.

It is farder alledged for the Pannel, That the Hearing, Having, and not Reporting, is not relevant to infer a Concealing after the Pannel's Knowledge that the King was acquainted therewith, because *celamus eum qui ignorat, Leg. 1. F. de Actionibus empti & venditi*. And the Reason expressed in the Act of Parliament why the reporting is enjoined, is, that seditious Pieces of that nature may come to his Majesty's knowledge. After which time, the Pannel was not obliged to importune his Majesty with superfluous Reports, seeing it is acknowledged by the Dittay, that immediately it was delivered by him to my Lord Rothes; and so acquitted himself of all that was incumbent to him in Duty anent the point of Revealing.

It is likewise alledged for the Pannel, That the Points of the alledged Libel quarrelled as outrageous to Churchmen, or to Noblemen, is not relevant to infer the Crime and Pain of infamous Libelling, because they are not challeng'd by the Parties interested, and of the Law: *Volenti non fit injuria, & injuria dissimulatione aboletur si quis deliquerit, & ad animum non revocaverit*. Secondly, There is no Act of Parliament irrogating capital Punishment upon the Authors of infamous Writings, reflecting against Subjects, but only against his Majesty's sacred Person, Estate and Government.

It was thereafter alledged, under Protestation *ut supra*, by Mr. Roger Morvat for the Pannel, That the Dittay is not relevant to infer the Pain libelled upon, because ane humble Supplication in Name of a Number of his Majesty's loyal Subjects, for removing of the Prejudices which his Majesty had or might conceive against them as Supplicants, and for conciliating his Majesty's gracious Favour towards them, is not such ane infamous Libel as falls under the compass of the Acts of Parliament upon which the said Dittay is founded: but the Supplication quarrelled, whereupon the Pannel is accused *quoad eum*, and the rest of the said Noblemen, is an humble Supplication in their Names, as a Number of his Majesty's most loyal Subjects, to remove his Majesty's Prejudices, and to conciliate his Highness's Favour; *ergo* no infamous Libel falling within the compass of these Acts, *quoad eos*, and the Pannel. The Major is clear by the Definition, Nature, and Qualities of ane infamous and scandalous Libel, (where there must be Maligning, Detraction, and Calumny) and by the Definition of an humble and submissive Petition and Supplication, which differs far from an infamous Libel, and altogether heterogeneous. The Assumption, *viz.* that the quarrelled Supplication, whereupon the Pannel is accused, is an humble Petition to remove Prejudice, and to conciliate his Majesty's gracious favour, is evinced in the said quarrelled Supplication itself, in the Inscription, in the Intention of the Supplicant; and lastly, in the humble Desire of the Supplication, which is the Substance, Life, and Quintessence of all Petitions: the Intention and End of the Supplicants being the Essence of the Petition, and the harsh or hard Expressions of the said quarrelled Supplication (being submissive and modest in the Inscription and Desire thereof, as said is) cannot infer Guiltiness against the Pannel, who is not Author nor Writer thereof. And also

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any Petition, formal by a Secretary, a Lawyer, or a Writer, to be given and presented to his sacred Majesty, leven tho' the Desire thereof might seem just) being hard and difficile, or containing hark (harsh) Expressions not easy to be understood by every Reader, shall infer Guiltiness and Punishment of Death upon the Supplicants mentioned therein, who perchance may be absent out of that part of the Kingdom where the Petition was founded. And if the Harshness of some Expressions, contained in the said quarrelled Supplication, can infer the Guiltiness libelled, and Punishment of Death, upon this Pannel, the Supplication and Remonstrance made and presented to his most sacred Majesty by a great many of the Nobility, who then were afraid at the large Extent of his Majesty's late Revocation and Reduction, would likewise fall under the compass of these Acts of Parliament. But that Supplication and Remonstrance was accepted by his Royal Majesty, and his Majesty was pleased with it. And since the same has tended to his Majesty's Honour and Benefit, in the Matters of Surrender, Annuity, and Plantation of the Kirks, with competent Stipends, the Connexion is proven, because the humble Supplication and Remonstrance was no less expostulative nor this, which may be easily cleared by perusing the said Remonstrance it self; *ergo, &c.*

It is answer'd by my Lord Advocate, That the second Alleadgance, and all the Members thereof, and Additions made to it by the Pannel's Procurators, ought to be repelled, in respect of the Dittay, which subsumes relevantly upon the two Acts of Parliament, Word by Word, as the same are conceived. And where it is alledged that the infamous Libel cannot be esteemed infamous or reproachful, *quoad accusatum*: because it is conceived under the form of a Supplication, and contains not *infamiam* or *Injuriam*, but tends to pacify his Majesty, whom the Supplicants supposed to be offended; and that it contains nothing *positive vel enunciativè circa verum vel falsum, sed via postulati circa bonum vel malum*: And likewise where it is alledged that the Dittay is not relevant, there being nothing libelled to infer the Libel quarrelled to be seditious, and that the Pannel knew the same to be seditious; and that there is no *Dolus* libelled: It is answered, That all these Alleadgances ought to be repelled in respect of the Dittay, which is qualified according to the Qualification of the Acts of Parliament. And the Designation of a Supplication alters not the Nature of the Libel in the Points where it is challenged as reproachful and scandalous; but these Points being of their own nature scandalous and seditious, cannot be excused under the Veil and Pretence of a Supplication, especially where the Reproaches are emitted against his Majesty's sacred Person: *Quia in minima pulsatione sacræ & supræ Majestatis nulla admittitur excusatio, ut ait Horoudus, Lib. 8. de Libellis defamatoriis: tanta est atrocitas Libellorum famosorum; & Imperator Augustus Libellos famosos in principem tractaverit sub specie læsæ majestatis. Et citat. Ciceronem, Lib. 4. de Republica, ubi ait nostræ duodecim tabulæ cum per paucas res capite sancivissent in his, hanc præcipue sancientiam putaverunt, si quis hoc tentavisset fore carmen condidisset quod infamiam facere flagitiumve alteri; & multo magis ubi quis modestiæ nescius, & pudoris ignarus, improbo petulantique stylo sacræ Majestatis nomen crediderit læcessendum.* And this Crime

is so odious and heinous that there needs no *Dolus* to be libelled, *quia dolus præsumitur*. And for the colouring of the Supplication, it is altogether impertinent; because that would elude the Law, seeing every Man who resolves to abuse the sacred Person of the sovereign Prince, has it in his power to give what Name he pleases to his scandalous and odious Conceptions, whether to design them by an Epistle, by an History, by a Petition, by an Admonition, and lastly, if he pleases, by a Vow, to cover his Crime under the Mask of Piety. And for Supplications, the Law is clear, That albeit they be offered to the supreme Prince, yet if they contain a Reproach and Scandal to a Subject, they are punished, *Lege apud Labionem, F. de Injuriis & famosis Libellis, §. 29. cujus hæc sunt verba; Si quis libello dicto principi famam alienam fuerit infectatus, tenetur Injuriarum*. And therefore much more, where a Subject dares presume to make offer to his sovereign Lord of a Supplication; and in it presume to tax or reproach his Majesty's Person, his Gestures, his Speeches, his Promises in his supreme Parliament, and to lay Aspersions upon his glorious Honour, Majesty, and Dignity; which, with the rest of the Points of the Libel, there repeated, are as many aggravant Qualities to infer the Atrocity of this infamous and seditious Libel. And *Pharma*, in his 30 *Concil. num. 34, 35, 37, & 62.* disputes at length this Question, *An sub specie voti Libellus famosus excusetur?* And concludes, *Quod quæsitus color infamie sub velamine petitionis magis aggravat & injuriam & animum injuriandi*. And no Man can be able to deny but the Definition of ane famous Libel is most competent to this particular Case, which is *ubi vel delictum, vel vitium, vel defectus impropertatur alieni personæ*. And not only one, but all these concur in the particular Qualifications contained in the Dittay; and of the Law, *Actus sumunt denominationem a potentiori, præcipue in actu mixto*. And read this infamous Libel, it shall be found in the Strain of it, and the most powerful Positions, to aim still at his Majesty's Person, Estate, and Government; which are so much more inexcusable, that they were needless; and not only needless, but contrary and destructive of the Narration and Conclusion, which seems to tend for pacifying his sacred Majesty. For if the Purpose of the Supplicants had been to propitiate his Majesty, their Sorrow and Grief for his Majesty's supposed Offence, and an humble Deprecation of his Majesty's Wrath, had been fit and useful means to procure their wished Desire: But in place of these, to enter irreverently and outrageously upon the Gesture of the Prince, upon his Acts and Gestures in Parliament, upon the censuring and misconstruing of his Proceedings, and drawing the hail Body of the Estate under the Asperity and Atrocity of their seditious Speeches; it is a Thing without Example. And where it is alledged, That this Petition was presented to his Majesty by the Earl of *Rothes*; and if any Injury was therein, it was removed by Dissimulation: it is answered, That Dissimulation never removes Injury, but upon preceeding Knowledge. But there is no notice thereof to his Majesty, because refused: And, as I am credibly informed by these who have heard it out of his sacred Majesty's most gracious Mouth, his Majesty has declared that his Majesty remembers well the time that the Earl of *Rothes* made offer of that Supplication to his Majesty; and that his Majesty's Answer to him was, *My Lord, ye know*

what is fit to you to represent, and I know what is fit to me to hear and consider; and therefore do, or do not, upon your Peril. And the Circumstance of presenting to his Majesty can have no place to extenuate, but rather to aggravate the Crime; because the Pannel in his own Depositions has declared, that after reading thereof by the Earl of *Rothes* and him, it was thought of such a Strain as was not to be represented to his Majesty; and therefore the representing, after it was disallowed, increases the Offence. And where it is alledg'd, if his Majesty had received it, that no Crime nor Punishment might have been inferred against the Presenter; 'tis formally contrair, in respect of the odious and seditious Conception thereof, which would have deserved the Punishment of Law in greater measure: in respect whereof, the said hail Alleadgances ought to be repelled.

It is duplyed by Mr. *Alexander Pearson* for the Pannel, That where it is replied by my Lord Advocate, that the alledged and infamous Libel, tho' under the Title and Form of Supplication, yet the same being indeed scandalous and reproachful, that it cannot escape under that Cover: It is answered, That the alledged Libel cannot be thought scandalous, *quoad Supplicantes*, neither doth it affirm the Particulars libelled by the Dittay *cum hoc in se non habent*; being a Supplication which of its own nature speaks not but as it seeks, and no more than it seeks: and whatever Reasons or Motives it reports to persuade, it ends in a humble Request for a gracious Answer from his Majesty: That it cannot be said to affirm directly, which an infamous Libel of its own nature requires, *Dicta Lege unica Codice de famosis Libellis*. The Words of the Law is, *si ejusmodi assertionibus fides veri opitulata non sit*: Therefore requires Assertions direct, which is not in the alledged Libel: but reports Reasons and Motives, laying out the same to the View and Consideration of his Majesty, if thereby graciously and favourably it may obtain its Desire. Where it is replied by my Lord Advocate, That *Dolus* needs not be libelled, *Quia delictum & injuria praesumitur facta animo injuriandi & sic dolo*; it is answered, That giving and not granting the same, *Injuria praesumitur animo injuriandi in dubio tantum, & nisi probetur contrarium. Clar. § Injuria, num. 17.* But to the present Case it is by the most evident Presumptions, above rehearsed in the Defences made for the Pannel, clearly manifested, That there was no mind in the Supplicants and Pannel of Injury or Wrong; therefore cannot be presumed to have offered any injurious and scandalous Libel to his Majesty, or done any thing thereanent with that mind.

And where it is replied by my Lord Advocate, That if the Supplicants had a purpose of deprecating his Majesty's Offence, and intreating his Majesty's gracious Favour, they had made choice and use of fit Means to come to that End, and not by scandalous Speaking or Reproaching:

It is answered, What fitter means can a Supplicant use for intreating of Favour, than by humble Supplication? And that which my Lord Advocate calls scandalous Reproaches in the alledged Libel, is Grievances, and Remonstrances thereof, humbly presented to his Majesty, and not assertive Reproaches, *ut supra*. And where it is alledged, That Dissimulation removes not Injury, but upon preceding Knowledge; and that his Majesty did not read nor take to Consideration the Supplication

foresaid presented: it is answered, That the Supplication offered to his Majesty, altho' his Majesty took not the same to Consideration, seems to assever the Nature of the Writing to be a Supplication, and was a great Inducement to the Supplicants to think that his Majesty had passed all Offence thereof conceived. And where it is alledged by my Lord Advocate upon the Pannel's Deposition, wherein it is alledged that the Pannel and the Earl of *Rothes* together, after the reading the Supplication; thought it not fit that it should be presented to his Majesty; it is answered, That the Pannel's alledged Deposition reports not the Earl of *Rothes* and his together reading of the Supplication; likeas it is of truth, that the said Supplication was offered to his Majesty by the Earl of *Rothes*, before the Pannel and the Earl of *Rothes* had any thoughts or purpose of suppressing of it: and howsoever the Pannel had had once a mind of suppressing the same, yet he thereafter knowing that it was indeed offered to his Majesty, was a great inducement to the Pannel to esteem and think of it as an Supplication.

It is further duplyed by Mr. *John Nisbet*, for the Pannel; Where it is replied by my Lord Advocate, That it is subsumed relevantly, and the Dittay is qualified according to the Qualifications in the Acts of Parliament; That Dole being essentially required in all Actions of Injury, albeit Acts of Parliament, by reason of their Shortness, are not specifick in the Expression thereof; they must be interpreted conform to the common Strain of Law, *Quia in Statutis penalibus aliquid delictum capitaliter, etiamsi quod de dolo non fiat mentio, dolo requiritur, & non sufficit lata culpa. Phar. Quest. 86. Num. 15, 25. pro qua opinione citat & quamplures doctores, qui aiunt se liberasse aliquos a pena mortis, & esse mente tenendum ad Confusionem Judicum Imperatorum, qui credunt non esse recedendum a verbis Statuti: & subjungit, num. 27. Ibid. Multo magis cum Statutum imponit penam pro eo quod de Jure communi non punitur.* As the present Case, the Points of not reporting, and not apprehending, are punishable by no other Law in the World; and that the Sinistrousness of the Intention is necessary to be libelled, it is consistent with Reason, because the Crime consists thereof; *Et ideo oportet ponere in Libello, quia non probat hoc esse quod aliquando contingit abesse. Codice de Probationibus Leg. Neg;* as the present Case. A seditious Concealing or Having, is not relevantly libelled by the having of a Piece alledged seditious, because a Man may have a seditious Piece, and yet not be a seditious Concealer, because he may be of opinion that it is not seditious. And it were hard in Law or Reason, upon the Errors of Opinion, to infer the Guilt of so atrocious a Crime, which, as all Crimes, requires an express Consent. And by the Law, *Nihil est tam contrarium consensui, quam error, F. de Jurisdictione omnium judicum Leg. si per errorem & errantis nulla est voluntas, Codice de Juris, & Facti Ignorantia.*

And where it is replied by my Lord Advocate, That the Designation alters not the Nature of the alledged Libel, it is duplyed, that the Designation of the foresaid Libel, joined with the Strain and Fashion of it, vindicates the Pannel's Innocency in the conceiving and using of it; because it would appear to any Man to be a Supplication, and not an infamous Libel, seeing it is addressed to his Majesty, whose royal and excessive Goodness excludes all Presumption of Injury, and

of the Law, *Subditi contra principem suum fraudem committi voluisse non presumitur. Menoch. concil. 404. num. 27. Cravetta concil. 309. num. 6.* It beginneth at ane humble Supplication of his Majesty, and concludeth with a hopeful Assurance, that his Majesty will listen thereto: And therefore, *cum ex ordine principii interpretemur fidem. Baldus in Leg. quinta Codice de Commissis. Multo magis ex principio & sine reliqua interpretanda sunt; & ex extremis mediis presumuntur. Menoch. de Præsumptionibus, Lib. 6.* It contains ample Elogies of his Majesty's Royal Goodness, and Justice of his blessed Father and their Predecessors. *Et ideo verba debent intelligi de Actu uniformi, non difformi; id est, uniformiter in Laudem, & Decus, & non partim in laudem, partim in vituperium. Cravetta concil. 9. num. 27. & Verba debent potius impropriari & intelligi secundum fictionem Juris, delictum fugiatur. Ibid. & Pharm. Quæst. 105.* So that it is clear, that the Supplication proves not a naked and transparent Veil of Designation, but probable Grounds resulting upon the Strain of the Piece it self. Whereas my Lord Advocat aggravates the Circumstance of the Person injured, being his sacred Majesty, the Laws adduced convinces the Odiousness of the Crime, when it is nottour; but extenuates the Presumption, that the Pannel should have been tainted therewith, because so sacrilegious a Crime is not presumed: *& maxime petens & improbum mendacium*, convinces not ane injurious Intention against a Prince. And the Emperors have left place to prove the Candor of Intention, notwithstanding the most exprefs and formal Injuries of Words. *Leg. unica Codice, Si quis Imperatori maledixerit.* And where it is replied by my Lord Advocat, that *Dole* is presumed; it is duplyed, *Quod animus Injuriandi non presumitur; & incumbit injuriato eum probare, Jacobus de Bello Visu, Lib. 1. Cap. 3. Actor habet necessarium ponere in Libello quod animus injuriandi intercesserit.* And all the Pretorian Edicts require formally *Dolum Malum, F. de servo corrupto, Lib. 3. & Edictum contra corruptentem album, F. de Jurisdictione omnium Judicum. Leg. 7. §. Doli Mali. Edictum de vi publica qui Dolo Malo, F. ad Legem Juliam de vi publica, Leg. 10. Et in Crimine Majestatis ad Leg. Juliam Majestatis. Et cessat Dolus quia non presumitur, Leg. Dolum, Codice de Dolo. Pharm. Quæst. 105. Inspektion 3. & 121. In Libello debet exprimi, Quod Injurians animo Injuriandi fecerit, quando sumus in Personis in quibus malus injuriandi animus non presumitur. Salicetus in Leg. si non convitii Codice de injuriis, Num. 4. distinguit utrum is qui injuriam fecisse dicatur, talis sit Persona qui Præsumptionem injuriæ faciat cessare, an vero talis qui non facit.* And far more when the Person that is injured concurs to exclude the Presumption of Injury. *Princeps qui transcendit omnem Injurie effectum & affectum. Cravet. concil. 9. Etiam Judeus non presumitur aliquid dixisse ad injuriam Christi.*

Whereas it is replied by my Lord Advocat, That if the Designation of a Supplication should be admitted to palliate ane injurious Intention, the Law would be eluded, *Quæstio Colore infamie sub velamine Petitionis*; it is duplyed, That the Inconveniency cannot be obruded in this Case, because the like Presumptions of Innocency will not be concurrent.

Where it is replied by my Lord Advocat, That the impudent Presumption in presenting a Piece of that Strain to his sacred Majesty, aggravates the Crime; It is duplyed, That the Citation adduced by my Lord Advocat, aggravates only the Intention,

& animum injuriandi, when it is constant; but infeeble the Presumption, That Noblemen of their Quality and Wisdom should have adventured to present a Piece that they thought of that nature; seeing it cannot be presumed, that they should have thought that the Name of a Supplication would have satisfied or eluded the King's Majesty's Sagacity, and make them to eschew due Punishment.

The Lord Justice-General continued the Court till Tuesday next the 9th. At which time, when it was replied by my Lord Advocat the last day of the Process upon the Law, *Item apud Labionem*, That the Nature of a seditious or infamous Libel is not compatible with the presenting to his Majesty, *Quia Libellus potest dare principi, & nihilominus in eo fama aliena lacescit*:

It is as yet duplyed thereto by the said Mr. John Nisbet for the Pannel, That the Case meets not, because the Law adduced is of a Libel presented to the Prince, and reflecting upon ane other Person than the Prince himself: and it has never been heard that any has been so inconsiderate as to present his own Dittay to a Prince.

Whereas it is replied by my Lord Advocat, That the most of the alledged Libel adduced by the Supplicants, to enforce their Intention in propitiating his Majesty, is impertinent and destructive of the Conclusion it self; and therefore, *Denominatio sumenda est a potentiori, præcipue in actu mixto*:

It is duplyed, That in Law, Words destructive of a Protestation, *Relevantur per Protestationem (Verbi gratia.)* The word *Mentiris, salvo honore, si subessent conjecturæ per quas talis protestatio adjuveretur, quod scilicet protestans non haberet animum injuriandi. Clarus, §. Injuria, num. 13.* And albeit in Matter of Notion and Form, *Conclusio sequitur deteriorem partem Syllogismi*; yet in *præctico Syllogismo*, the Conclusion being the Το πρακτικον, *transmittit ab intellectu præctico*, to be espoused and embraced by the Will, is most considerable; and the Impertinence of *Misdres* used to enforce the same, is acknowledged by all Moralists to be an Escape of Imprudency in the Pre-election, and not of Guilt in the Intention. And whereas my Lord Advocat contends, *Quod denominatio sumenda est a potentiori*; it is answered, *quod expressa Elogia* are more powerful than strain'd Consequences. And an exprefs Supplication contained in the hail Strain of the Piece, should preponderat some incident Glance: *Et quando verba injuriosa non principaliter, sed in consequentiam prolata sunt, etiam quando sunt de sua natura injuriosa* (as is not in this present Case) *presumuntur dicta vel scripta sine animo injuriandi. Mur. Conc. 107. num. 10.*

Whereas it is replied by my Lord Advocat, That the Definition of the infamous Libel, is quadrant against the Piece quarrelled:

It is duplyed, That albeit a Piece, *ubi delictum vel vitium vel defectus impropertur alicui*, be materially infamous; yet formally and in relation to a Guilt and a Crime, *Dolus malus* is necessarily required, as an essential Ingredient in the Definition of an infamous Libel. *Dambauderius in præctica, cap. 138. num. 1. Scriptis fit injuria cum dolose & maliciose componuntur & scribuntur Cantilenæ, Rythmi, Libelli, Comædiolæ aut Cantionculæ, quibus alterius laceratur nomen & fama; & libellus famosus & compositio facta in scriptis in infamiam alicujus, ejus quod quis probare*

probare non vult, & in publico jactat, vel in loco ubi invenitur. Phar. Quest. 105. Inspect. 2. num. 1. Et ad essentiam libelli famosi videtur requiri, quod fuerit positus in publice, vel loco ubi invenitur. Ibid. num. 485, & Canone, Caus. 5. Quest. 1. Qui in alterius famam publicè scripturam aut verba contumeliosa confinxerit, flagelletur. And albeit in Law calumniari materially est falsa crimina intendere, ad Senatus Consultum, Turpilianum, Leg. 1. §. 1. nevertheless non utique qui non probat quod intendit protinus videtur calumniari, nam ejus rei inquisitio arbitrio cognoscentis committitur, quireo absoluto de accusatoris conciliis incipit querere qua mente ductus ad accusationem processerit, F. ad Senatus Consultum, Turpilianum, Leg. 1.

Where it is replied, That the presenting of such a Piece aggravates the Crime, and the odious Conception thereof is punishable notwithstanding the Presentation; it is duplyed for the Pannel, That the presenting of it by so worthy a Nobleman put the Pannel, *in bona fide*, to think it not a Piece of that Nature whereof it is alledged to be, and to overpass, at the least to mistake the Odiousness of the Conception of it, if there be any.

It is eiked (added) by Mr. Robert Macgill for the Pannel, with Protestation, as set down from the beginning, not repeating that which I have said; but remitting the most honourable and wise Judges (*quia via jam est præmunita*) to these Things set down before by me, touching every Particular, as they have been worthily replied by my Lord Advocat.

And first, anent the Qualification contained in the Acts of Parliament.

It is answer'd, First, That the first Act libelled is only against Delators, as said is, and expounds the Act 83 Jac. 5. Parl. 6. as might be cleared by the Time wherein that Act was also made: But he remits it to the Consideration of the Judges. Secondly, It is answer'd, That there being no Qualification set down in this first Act of Parliament, but a general Law, that general Law ought to receive the Qualification according to the Distinction propounded by me, in all Humility, of inordinate Speeches against a Prince, in the last part of my first Exception, in respect of the Absurdity of the Parity of Crimes, and Pains which would follow, if it were not so limited: And remits, as before, to *Gailus*, anent the Interpretation of municipal Laws. And what shall the general Rules of the Law (miscalled by some *Regule Lesbie*) receive their own Exceptions according to Reason; and the municipal Laws, which even in the most substantial Points of the Commonweal, will alter three or four times in an Age, according to the Circumstances, (*nam ex moribus Legis*;) shall they, say I, stand good in a general Sense contrary to Reason? Which I count to be the Judgment of the Lawyers. See in the last part of my Duply, strengthening my first Exception; where it is shewn that the word *Government*, in the 134th Act, and so in this Act, ought not to be understood against Counsellors and Lords of Parliament: which is followed out largely in my second Exception, and so ought not to be understood in any other Act, to make them Contraveners, where they had *optimum animum*, and according to their Opinion only might be thought to have erred, *quod humanum est*, as was alledged by Mr. John Nisbet; *Neque id prius quam rationes ad veritatem eliciendam inter se conflegant.*

The Second is anent the Colour or Mask of Supplication; remits that to the Practicks alledged by Mr. John Nisbet out of the *Consultus* of *Menochius* touching Government, set down so rudely, *ut sit addita supplicatio*, and as it were, dropp'd out of the Gall of Bitterness. And yet notwithstanding the Lawyers Verdict was to absolve the Nobleman. Remits also to the last part of my first Exception in the end, anent the Exposition of Words and Sentences, taught likewise in the second Exception, and anent the Form of Speaking and Prayer, especially where *contra præsumptionem doli*. It is clearly evinced that the Pannel had not *animum dolosum*, but rather a very good Will and Intention, which he (as we say in a Proverb) wishes most humbly might be taken in part of Payment. And remits that anent Presumption of Dole, which my Lord Advocat said in the fourth Place to my second Exception, *Parte secunda*, That whether it be necessary to libel, or not, yet seeing it is *de substantia delicti, & credulitas a causa sive injusta excuset a delicto, quia abest animus delinquendi*, as *Clarus* has there alledged; *ergo*, to be foilized as Author, &c.

And to the Third, adduced by my Lord Advocat, anent the Definition of an infamous Libel, and the Punishment of Injuries against private Persons, and far more against Princes; we disallow altogether such inordinate Speeches, and say, That they ought to be punished as the Lawyers have defin'd according to the Mind of the Speaker or Penner. But that the Definition of an infamous Libel cannot agree herein, so far as concerns the Pannel, it is not to be thought; *quia directis & conceptis verbis, maliciose & perditissimo animo*, must Injuries be impropriat: which, in all Humility, the Pannel thinks not to be here; and remits to my second Exception. And that a capital Pain ought to be inflicted upon all sort of inordinate Speeches or Writings, and all sorts of Speakers and Writers, and upon the Havers, Hearers, and not Revealers, indistinctly, even against Princes; let me say it, with all Reverence, as my Lord Advocat would insinuate by the Places adduced, it is not the Lawyers Mind.

The fifth, alledged by my Lord Advocat, goes back again upon an alledged Disguising. But we deny that any thing adduced either anent Supplication or Vow agrees with our Case, where nothing can be said to be *improperat directis verbis*, (else the Pannel had been a mad Man:) But by a wrestling way (*salva pace dixerim*) may be thought by some to infer Injury. And here again remits to these parts of my Exceptions, *ut supra*, anent the Exposition of Words.

The sixth is anent our most sacred Sovereign his Refusal; wherein remits to that part of my Exception anent the appealing from a Prince to himself, especially by a Counsellor; *Donec intelligatur quid velit supplicatio, & rationes hinc inde adductæ, quasi ex adverso acies manum inter se conferant.* As to his Majesty's own Declaration, the Pannel seals his Mouth with the Finger of *Harpocritus*, and reverences his Majesty's Sayings as Oracles, and, in all Humility, receives them as an Acknowledgment of the Offer made.

The last, I think, are the Pannel's own Depositions; wherein distinguish the Disallowing and the Times, and all shall agree. He disallowed of it first, as that of the General; it was rejected by his most sacred Majesty: but the Pannel thought that

that it might have been kept till a more convenient Time, according to the Appellation also mentioned, and till *causa audita* it had been condemned. And the Pannel depones, That before ever the Principal came back, the Copy was surreptitiously purchased by Mr. John Dunmure, in falsifying his Promise.

It is triplyed (replied the third time) by my Lord Advocat, that the Duplies in the whole Parts and Members thereof are impertinent; because the Exception was founded upon the Form and Designation of the infamous Libel, That being designed a Supplication, it could not contain Matter of an infamous Libel; which Exception was answered with this Reply, That the Dittay is directly subsumed upon the Acts of Parliament, viz. That this, which they call a Supplication, is a Writing containing Reproaches and Scandals against the Person, State, and Government of our gracious Sovereign, as the Dittay bears; and no more was necessarily to be replied but upon the Acts of Parliament. And yet, for informing the Mind of the Judge, it was cleared both by the express Text of the Civil Law, and by the Judgment of the best Jurists, and versed in Criminals, That the Designation purges not the infamous Speeches conceived in a Supplication to the Prince, being to the Infamy of an Subject, much less to the Dishonour of the supreme and sovereign Prince. And this is not pertinently answered by no part of the Duply; but both the Acts of Parliament and Civil Law concurring, stand in full force to elide the Exception. And the Points urged by the Duply, has nothing to do with the Exception, but are Points extraneous, founded upon Intention, libelling of Dole, Presumption in favours of the Pannel, and others, in whose name it was alledged the said Supplication was drawn up; which I may justly term Presumption: For whatsoever distinction they have in their Quality from others, it is from the Bounty and Favour of their supreme Prince and Sovereign, who is the Fountain and Source of all Honour and Dignity. And good reason that they bruik (enjoy) all their Privileges, in all Causes with all Persons, except where they come in contestation with their supreme Sovereign: and there, as Godophred writes, *ad Legem Juliam Majestatis, ubi Majestas pulsata, defenditur nulla dignitas; nullum Culmen, nulla Fortuna est immunis*. And in this case, where Reproaches, Scandals, and Aspersions are laid upon our gracious Sovereign, the Excuse of Nobility, that it may be presumed that they did it not *malo Animo*, is rather an Accusation than an Excuse; because no Subject is so bound to know the true Respects of Humility, and Reverence, and Obedience due to the Sovereign Prince, as those to whom his Majesty hath communicated a Shadow of his glorious Honour. And as to the Instance adduced out of *Menochius*, we have nothing to do with it; for it is likely, he that answered so, had not such a Law as we have. And as to the Instance adduced out of *Lex Unica, si quis Imperatori maledixerit*, that by that Law there is no place left to the Accused to purge himself of his evil Intention, that is true in the Case of the Law, but has nothing ado with us, *ubi non est lubricum lingue quod facile ad pœnam non est trabendum*; but a malicious and seditious Writing, compiled of purpose to the Reproach of their Gracious Sovereign. And in Writings of this kind, as *Haroudus* expresses in his 18th Title,

Fol. 208. there are no worse Reproaches and *Convitia* (says he) than those which are done by Writing, than those which are done upon manifest Deliberation; because the same proceeds upon an evil and seditious Purpose, and pierces deeply, and abides longer than the Injury by Words. And for all the rest of the Instances and Authorities of the Civil Law, I oppose the two Acts of Parliament, which are the only grounds of this Libel; in so far as it concerns the Authors of the infamous Libel, the not apprehending the Authors thereof, the concealing and not revealing of the same. And as to the mention made in the entry of the Dittay of the Common and Civil Law, the same is wholly in respect of the divulging and dispersing of the said infamous Libel, whereof our said Acts of Parliament make no express mention. And where we have our own Laws, and Acts of Parliament, as we have in this Case, these must be the only Rule of judging. And the Exception and Duply, albeit they have many Quotations of the Common Law, yet all needless and impertinent; since they are not adduced to purge that part of the Dittay which is founded upon the Common Law. But in the Points disputed, we have good warrant to adhere to our own Acts of Parliament, (except in so far as we are forced by the Objections made by the Pannel's Procurators to clear the doubtful and ambiguous Terms of their Exception and Duply) because by Act of Parliament, made by King James I. Par. 3. cap. 48. and by King James IV. Par. 6. cap. 79. it is statute and ordained, That all the Leidges be governed by the King's Laws, and no others. And his Majesty's Advocat offers, whenever it shall please my Lord Justice-General to command him to clear any Speech that is founded upon the Common Law, that he shall do the same by word.

It is quadruplyed (pleaded the fourth time) by Mr. Alexander Pearson, for the Pannel, That where my Lord Advocat triplies a part of his Lordship's Reply to have received no Answer by the Duplies made for the Pannel; to wit, that part thereof, which bears, that the Writing quarrelled, altho' in Form and Title a Supplication, yet does contain reproachful Speeches, &c. it is answered, That the alledged infamous Libel, in so far as it concerns the Pannel, cannot be esteemed but as a Supplication, in respect of the Duply and the Reasons contained therein, which I need not repeat here.

Where it is triplyed by my Lord Advocat, That our Duply is impertinent; it is quadruplyed, That if there be any Impertinency, his Lordship is to be blamed therewith, for having occasioned it by an unnecessary Reply. And for the Points urged by us for the Pannel, to clear his Intention, and to vindicate him from the Presumption of Injury, in compiling or being accessory to the Piece quarrelled, not extraneous, both because the Acts of Parliament require Intention, by the intentional words to the Reproach, *steering of Sedition*, &c. And albeit they should contain nothing thereof, a sinister Intention being required in the Essence of the Crime, it must necessarily have been libelled conform to the Passages already cited in our Duply.

Whereas my Lord Advocat triplyed, That the Character of Nobility accused *non excusat* in this case; it is quadruplyed, That that is only where the Crime is constant, (*i. e.* evident :) And that eminent Quality

Quality ever wants the Presumption, than any invested therein should injure their sacred Prince; whereof they are not only a Shadow, but noble and mystical Members, as is cited already.

Where it is triplyed by my Lord Advocat, that the Case adduced out of *Menochius*, is not pertinently adduced here, because there was no Law; it is quadruplyed, That the Question resulted upon the Common Law, which ordains due Punishment upon the Authors of infamous Libels, and chiefly against Princes. And the Case was not so pregnant in favour of the Party whom he absolves, because he was the Author, and had exposed to the view of all the World the Piece there challenged. And we adhere to the Author's Opinion; and instances, how it has never been found to be an undutiful part in Jurisconsults and Advocats, to vindicate Pieces quarrelled to be injurious.

And where it is triplyed by my Lord Advocat, that the Instance *Lex Unica* quadrats not; it is quadruplyed, That the Instance of the present Case is more pregnant, because the Case of the Law adduced, *improba & petulantia Mendacia*, are challenged: And in the present Case the Piece challenged is not expressly injurious: and all that can be inferred upon the Pannel, is an indirect and imprudent Accession thereto.

And where it is triplyed by my Lord Advocat, that the Allegations of the Duply are impertinent, because not alledged for the Points of the Common Law not expressed in the Acts of Parliament; 'tis quadruplyed, That there are alledged in our Duplies for all, and refers ourself to our Duplies.

To the whilk it is quintuplyed (answered the fifth time) by my Lord Advocat, That the Words of the Act of Parliament has no respect to the Intention of the Person, but only expresses the Effect of the Reproaches which tend to move Dislike betwixt his Majesty and his good Subjects. And it is granted in the Quadruply by Mr. *John Nisbet*, That they are materially reproachful, and not formally.

It is sextuplyed by Mr. *John Nisbet* for the Pannel, that the Words *to the Reproach*, imply Dole and Intention; because the Crime prohibited by the Act of Parliament consists essentially thereof, and is cleared by all the Allegations adduced, and more expressly by other Acts of Parliament of that nature, as the 60th Act of Queen *Mary*, 6 *Parl.* whereof the Words are, *Tending to stir the Hearts of the Subjects to Hatred*, which are emphatically Words of Intention. And whereas my Lord Advocat would enforce an Acknowledgment of material Injury in our Quadruply, we disclaim it, and maintain that it cannot be evinced therewith; and albeit it were, there rests a relevant Defence in Law upon the Innocency and Candour of Intention.

Thirdly, It is alledged by *Roger Mowat* for the Pannel, for a third principal Defence to that part of the Subsumption of the Dittay, Qualifications, and Condescendings thereof, bearing that the Pannel himself was and is Author, Deviser, Consultor, Adviser of the infamous Libel, and Airt and Part of the penning, writing, and up-drawing thereof; at least is guilty of the hearing, and of the concealing, and not revealing the Author thereof; and most guilty of the not appre-

hending of Mr. *William Haig*, whom the Pannel affirmed to be the Author of the said Libel, it being in his power to have apprehended him; and also is guilty of the divulging and dispersing thereof, in so far as the said Pannel knew of the penning of the said Libel, gave his Opinion to the making thereof, and in token thereof interlined a part of the same in divers Parts with his own Hand, which by ocular Inspection is to be seen, and which the Pannel has also confessed by his Deposition under his Hand, as the said Dittay in that part bears, &c.

That the Pannel ought and should be *simpliciter* absolved (absolved) therefrom: And 1st, That the said Pannel cannot be criminally pursued as Author and Deviser of the said Libel; because by the Pannel's own Deposition, taken by the Lords of the Committee on the 9th of *June* 1634, the Pannel has deponed, That the said Mr. *William Haig* was the Author of the said Libel. Likeas the said Mr. *William* his missive Letter, all written and subscribed with his own Hand, dated at *Campbire* the 27th Day of the said Month of *June*, which Letter was directed to the Pannel, and exhibited by him before the said Committee, bears the said Mr. *William* his Grant that he was the Penner of the said Supplication or Libel; and takes the Crime upon him in soliciting his Friends by his other Letters and Missives, likewise produced to the said Lords of Committee, to deal for purchasing and obtaining to him a Remission for the said alledged Crime. And so the said Mr. *William* having not only confessed himself to be the Author, but having dealt with and solicited his said Friends for a Remission, as said is, the said Dittay can never be sustained against the Pannel as Author and Deviser thereof; which missive Letters are in the Pursuer's own Hand. *Item*, The said Pannel ought likewise to be absolved from that part of the said Dittay, bearing to be Consultor, Adviser, and Airt and Part of the penning, writing, and drawing up of the said quarrelled Libel; because the said two Acts of Parliament, whereupon the said Dittay is founded, make no mention of Consultors or Advisers. And Acts of Parliament, specially in this kind, are strictly to be taken, and suffer no Extension beside that which is expressly set down therein. 2dly, Giving (granting) the said Acts might be extended to Consultors and Advisers, (as they cannot) yet *Absolvitur* ought likewise to be granted from the alledged Consulting and Advising by the Pannel, and his being Airt and Part of the penning, writing, and drawing up of the said Supplication now quarrelled; because the said Pannel being examined by the said Committee upon the said 9th of *June* last, and being then interrogat who was Author and Penner of the said Libel, not only has deponed, *ut supra*, That it was the said Mr. *William Haig*, who gave the said Libel to him, and who (as he thought) was the Author thereof: but being thereafter interrogat upon another Interrogator the same Day, if the said Mr. *William* had any Command to draw up the said quarrelled Supplication or Libel, or if the Pannel or any of his Knowledge, was at the forming thereof, the Pannel has also deponed upon his said great Oath to the said Interrogators, That the said Mr. *William Haig* had no Warrant from him, nor knew he of any Warrant given to the said Mr. *William*, or that any was present at the forming thereof. Which clearly evinces and manifests that the Pannel was neither Author, Deviser, Consultor,

sulter, Adviser, nor Airt and Part of the penning and writing of the said Libel; seeing the said Pannel being brought before the said Committee, and urged by them to give his Oath upon the said Points, he has given the same, he has deponed, *ut supra*, denying all the said several Points. After the giving of the which Oath of Verity, and subscribing the same, as the same produced by my Lord Advocat bears, no Dittay or Pursuit, criminal or civil, can now or hereafter be sustained against the Pannel upon these Points, whereupon already he has given his said Oath; because no other manner of Probation can be receiv'd against him, to prove contrair to his said Oath, given before the said Committee in manner foresaid. And where it is libelled in the said Dittay, and Qualifications thereof, That the Pannel is Author, Consulter, Adviser, Airt and Part of the penning and writing, at the least guilty of the hearing, concealing, &c. not revealing, not apprehending, &c. In so far as the Pannel knew of the penning thereof by the said Mr. William Haig, advised and gave his opinion anent the making of the said Libel, and in token thereof interlined it in divers Parts with his own Hand, &c.

It is alledged, That the Pannel ought to be *simpliciter* absolved from the said Qualification libelled in these Words; in so far as the Pannel knew of the penning of it, advised and gave his Opinion anent the making of the same; because that is likewise directly contrair to the Pannel's Deposition foresaid, proceeding upon the said Interrogator, mov'd by the said Committee wherewith he was interrogat, If Mr. William Haig had any Warrant or Command from him to draw up the said Libel, and if the Pannel, or any of his Knowledge, was at the forming thereof. Whereunto the Pannel has made answer, and upon his said great Oath deponed, That Mr. William Haig had no Warrant from him, nor knew he of any given to him, or that any was present at the forming thereof. And so the Pannel by his Deposition, upon his said Oath, having deponed, That Mr. William Haig had no Warrant from him, nor knew he of any Warrant given to him, or that any was present at the forming thereof; the said criminal Pursuit can never be sustained to infer thereby that the Pannel is Author, Consulter, Deviser, Adviser, Airt and Part of the penning, writing and drawing up; because that is altogether denied by the said Pannel, as his said Deposition clearly bears. And being denied upon his great Oath, as said is, that part cannot be sustained upon the said Qualification and Inference libelled; it being impossible, *per rerum naturam*, that the said Dittay in these Points can any way be proven by any other Probation whatsoever, after giving his said Oath.

Court adjourn'd till to-morrow the 10th Instant.

Intrant, the said 10th Day.

The Pannel and Procurators (as before) compar'd the said Day.

Quarto, It was alledged by Mr. Roger Mowat for the Pannel, As for his fourth principal Defence against that part of the Dittay, bearing, That the Pannel knew of the said alledged infamous Libel, advised and gave his Opinion to the making of the same, and in token thereof interlined a part thereof in divers parts with his own Hand, as may be

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seen by ocular Inspection, and as his Confession in the Deposition bears; that *Absolvitur* should be granted from that part, bearing that the Pannel knew of the penning thereof, because that is directly contrair to the Pannel's Deposition, before repeated, which does contain an exprefs Denial of his Knowledge of the forming of the said Libel, or that any was present at the forming thereof. And to that part of the Qualification libelled, bearing, That in token that the Pannel knew of the penning thereof, he interlined a part with his own Hand; it is alledged, *Nullo modo relevat*, unless it had been relevantly libelled in the Dittay, that the Pannel interlined the said Lines the time of the forming of the said Libel, or shortly thereafter, which is not said: For mending and interlining to be a token against the Mender or Interliner of a Writing, that he knew of the penning thereof, and gave Opinion to the making of the same, must necessarily be libelled to have been at or immediately after the writing of the same. Which cannot be urged upon the Pannel in this Particular, because by his Deposition, given upon the 16th of June, 1634, upon an Interrogator wherewith he was interrogat, whether he had interlined some Lines in the said quarrelled Supplication, which was exhibited by him before the Lords of Committee, and whether he did the same before he shew'd it to Mr. John Dunmure, or to the Earl of Rothes, has deponed, That the said Mr. John Dunmure never saw the said interlined Libel, but only the Copy, which was cast in the Fire after the redelivery thereof; and deponed, That the said interlined Copy lying then before the said Lords, and now in my Lord Advocat his Pursuer's hands, was that Copy which was deliver'd by the Pannel to the Earl of Rothes, but was not interlined 'till long after the Earl of Rothes redelivered the same; and deponed, That never one saw it since the said interlining. And so it being that Copy which should have been presented to his Majesty, and which was offered to be presented, it is not likely nor probable, and with reason cannot be affirmed to have been interlined before the time of the said Offer of presenting. And so the said interlined Libel cannot be counted a Token (as the Dittay bears) of the Pannel's Knowledge of the penning of the said Libel, and of his advising and giving his Opinion to the making thereof. Likeas, *in rei veritate*, the said Interlining was after the said Mr. John Dunmure was first questioned in March last, by the space of nine Months, or thereby, after that the said Supplication was offer'd to have been presented to his Majesty. And so a private Interlining of the said Copy by the Pannel, by adding or mending some few Words, which neither in Matter nor Form can be quarrelled, being so long after the intended Offer thereof made to his Highness, cannot be a token against the Pannel, as is libelled, to make him to have been upon the Knowledge of the penning, and to have given his Advice and Opinion to the making thereof; *Hoc attento*, That the said interlined Copy was never seen by any, but by himself, after the said Interlining, which simply he produced the same to the said Committee, which in Law he could never have been compelled to do, if he had expected that any such Advantage had been taken thereupon, to his heavy Prejudice. For the Pannel did never fear nor suspect that the said Committee would have desired or induced him to have exhibit and produced before them a Paper, the Production whereof might have imported no

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less to him than the Probation of the alledged Crime, contained in the Dittay, to make him thereby guilty and punishable by Death. And it is noutour that the Pannel did, at the saids Lords Desire, produce the same to them, upon their Promise that it should not ensnare the Pannel, seeing in Law he was neither obliged to produce any Writing, nor to declare, nor to give his Oath upon any Interrogators demanded of him; neither would he have done it, if he had known (as now in Experience he finds) that it might and would have brought upon him the said alledged Crime and Punishment of Death.

It is added by Mr. *Alexander Pearson* for the Pannel, in fortification of the said fourth Exception propounded for the Pannel: First, For that Part thereof, bearing, That the Pannel the 9th of June last deponed, upon his great Oath, that Mr. *William Haig* had no Warrant of him for drawing up of the said Supplication, and that he knew nothing of the forming thereof; that the Pursuer cannot be heard now upon that part of the Dittay, to pursue the Pannel, because of the Pannel's Oath and Declaration foresaid, which cannot in Law and Reason be called again in question; *propter iurijurandi religionem, quod speciem transactionis continet majoremque habet auctoritatem quam res judicata, & dato jurejurando, non aliud queritur quam juratum sit. Leg. 1, 2, & 5. §. 2. F. de Jurejurando.* Where it is alledged by the Dittay, That by the Letters sent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig* that he had the Allowance of the Pannel to the making and penning thereof, *non relevat*, because Mr. *Haig* being Author and Penner of the alledged infamous Libel, by his own Grant in his missive Letter, dated 27 June, and also acknowledged so by the Dittay, Mr. *William Haig's* Declaration foresaid (no ways granting the same) can no ways be respected, or have force against the Pannel; *Quia de jure socius aut particeps criminis adversus socium fidem non facit, Leg. Quoniam, Cod. de Testibus. Leg. Si Filium, Cod. de Liberati Causa.*

It is alledged by Mr. *John Nisbet*, that the Dittay is not relevant, in so far as it qualifies the Pannel to be Author of the Piece challenged by the Interlining thereof; because the Interlining in one Point only, convinceth that he hath not been Author of the rest. *Secundo*, The Interlining has no Contingency with the Point challenged, but is a smoothing of some apparent Shrewdness in Conception. And in a word, the Dittay is no ways relevant in so far as it qualifies any Accession by the Pannel's Depositions; because it is affirmed by the Pannel, that he was induced to depone, upon assurance that he should not be ensnared. And of the Law, *Confessio emanata sub spe impunitatis non importat Condemnationem; Clarus, §. final. Quæst. 55. num. 8. & 9. Ubi assert opinionem Imola id asserentis, esse equiorem; Pharm. Quæst. 81. num. 280. Confessio emanata sub promissione impunitatis non sufficit ad condemnandum, nec in foro conscientie nec contentioso; & consistentem non afficit: Eadem Quæstione, num. 42. Hiplitus in §. Postquam, num. 15.*

It is answered by my Lord Advocat, That the Exceptions proponed against that part of the Dittay, bearing the Pannel to be Author, Adviser, Consultor, Deviser, and Airt and Part of the penning, writing, and drawing up of the infamous Libel, ought to be repelled in the hail Members thereof.

And first, where it is alledged, that my Lord is not Author, because that he has deponed, that *Haig* is Author, and *Haig* by his Letter has granted himself to be Author; because that is not a Defence, but a Denial: for both *Haig* and the Pannel might be Authors and Contrivers of an infamous Libel. And therefore the Dittay in this Point is relevant, and consequently must be put to the Knowledge of an Assize, (Jury) before whom the Probation and Verification of the Dittay is to be used; and before whom it is easy to shew and clear, that neither the Pannel's Deposition can liberat him, nor yet *Haig's* Letter, who in the Defence is granted by the Procurators to be *Socius Criminis*. And giving (granting) the Justice would take the Dispute of this to himself, which is proper to the Assize; yet if any Moment stood in *Haig's* Letter, it must be taken complex; for by the same Letter he affirms, that the Pannel was Adviser of the said seditious Libel.

And where it is alledged, that Deviser, Consultor, and Adviser, are not contained in the Acts of Parliament whereupon the Dittay is founded, ought to be repelled in respect of the Act of Parliament of K. *James VI.* his Majesty's gracious Father of eternal Memory, *Parl. 12. cap. 151.* wherein it is declared, That all criminal Libels shall contain the Parties complained upon to be Airt and Part of the Crimes libelled: which is in this Case *per expressum* libelled; and the words of Adviser, Consultor, Deviser, *sunt synonyma & ομοιογενεα.*

And where it is alledged, that the Pannel in his Deposition has denied that he was either Author or Adviser, that is a Denial *ut supra*, and not a Defence against the Relevancy. And where it is alledged, that the Pannel having deponed by Oath, that no other Probation can be used *contra Jusjurandum*; it is answered, That it is against all Law, Reason, and Custom, to oppose *Jusjurandum* in *Criminalibus*. For then after Examination by the Judge, which is ever taken upon Oath, no Criminal should pass the Knowledge of an Assize; and it were a Proclamation of universal Impunity if Oath should determine the Trial.

But that which is alledged by the Pannel and his Procurators *super Jurejurando*, has only place in *Civilibus* & in *Jurejurando delato per Actorem*, which cannot have any respect in this Case. And it is noutourly known, that *Anchidine* and *Garrarie* not only deny'd upon Oath, but abode by the Denial in the Torture and Question; and yet notwithstanding their Oath, and Denial by Oath, were put to the Knowledge of an Assize, and convicted. And where it is alledged, against the Specification in the Libel of this first Point of Author, that Knowledge, Advising, and Interlining, are not relevant; I declare that I adhere in the first place to the general Subsumption of the Dittay upon the Act of Parliament, whereby it is subsumed that the Pannel is Author, Adviser, Consultor, Deviser, and Airt and Part of the seditious Libel; and protest, that notwithstanding of whatsoever Defence is or shall be propounded against the Qualifications, (albeit the same might be found relevant, which cannot be in Reason and Justice) That the said General shall pass to the Knowledge of an Assize, as relevant *per se*. Under which Protestation, I proceed to make answer to the Defences made against the Qualifications.

And first, where it is alledged that this Clause, bearing the Pannel knew of the penning of the

the said scandalous Libel by *Haig*, and advised and gave his Opinion anent the making thereof; that the same is contrair to the Pannel's Depositions, given by him upon Oath, (as said is;) I answer, That this impugns not the Relevancy of the Dittay concerning the Qualification, and therefore must pass to the Knowledge of an Assize. And as to the Pannel's Depositions, whether they be conform or disconform to the Libel, *non est hujus loci*, because neither is the Dittay founded upon them, nor are they used by me as Pursuer, neither as a Part of the Libel or Proof of the Libel.

And where it is alledged, that that Part of the Qualification anent the Pannel's Interlining is not relevant, except it be condescended *quo tempore* interlined, if *in ipso actu vel statim post actum*; it is answered, That this part of the Qualification is used jointly with the rest. And there is no necessity of condescending, because *quocunque tempore* interlined, it is a sufficient Evidence of the Concurse, Consent, and Advising to *Haig*, Maker thereof; especially in respect it was drawn up by him, *viz. Haig*, in name of the Pannel, and others having Interest in that Writing, which is truly an infamous Libel, and termed in a sinister Notion by name of a Supplication: Likeas the Pannel his Procurators has in their second Defence maintained this Action of Law, That *Principium & Finis tanquam duo Extrema includunt Medium*. And therefore the Pannel's Knowledge, as the first Imitation of that infamous Libel, and his receiving the same from *Haig* immediately after the penning thereof, and receiving to be presented to be his Majesty to their use who were alledged Supplicants, and the Interlining thereof *ex post facto*, (albeit not interlined before the Delivery thereof to the Pannel) is relevant in Law with the rest of the Members of the Qualification *per se*, by and attour (over and above) the General, to sustain this Dittay, to make the Pannel Author, Adviser, Deviser, Consultor, and Airt and Part of the penning and drawing up of the said infamous Libel: specially seeing it will be constant (*i. e.* evident) by the Depositions, when the same shall be used before the Assize, that the same was not interlined *longo intervallo* after delivery thereof by *Haig* to the Pannel, but very shortly after *in tempore quasi continuo*. And where it is alledged, That this Interlining was not till after nine Months after the Receipt thereof from *Haig*, that is not, nor cannot be verified, nor has no warrant in the Depositions. And where it is alledged, That this interlined Libel cannot be used against the Pannel, because it was never deliver'd to *Dunmure*, nor never shewn to any, till the Pannel produc'd it before the Committee, and it was produced under Promises that it should not be used to the Pannel's prejudice; and that the Pannel was not obliged to answer, neither to have produced the same before the Committee: It is certain the Committee urged nothing from the Pannel but by good Warrant and to which the Pannel was obliged to Answer upon his Allegiance; and the Denial to give an Answer to his Majesty's Commissioners, who had Warrant under his sacred Hand and Seal, which was exhibited to the Pannel, would have inferred against the Pannel a more dangerous Crime than that he is now accused upon, by declining of his Majesty's Judgment, and of his Majesty's Commissioners. And for the Committee, they urged nothing from the Pannel but a

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plain, true, sincere, and speedy Declaration of his Knowledge of the Author and Contriver of the said scandalous Libel, which, as it was incumbent for the Committee in obedience to his Majesty's Warrant to them, so it could breed no Snare nor Prejudice farther, nor he did burden himself by his own Confession; in respect whereof, the Exceptions ought to be repelled.

It is duplyed by Mr. *Roger Mowat* to my Lord Advocat his Reply, made to the Defences proponed against that part of the Dittay whereby it is alledged, That the Pannel cannot be convened as Author, Consultor, Adviser, &c. but that the said Defence ought to be repelled, and the hail Members thereof. And first, That the said first part of the Defence is not a Defence, but a Denial of that part of the Dittay; and that the Denial must be referred to an Assize, and disputed there, and not here; and that the same is not relevant, because albeit the Pannel has alledged another Author, yet they might be both Authors of the said Libel. It is answered, That the said Alleadgance stands relevant, notwithstanding the Reply, because the said Defence in that part is not simply a Denial, but is a Denial very pregnant, instantly verifying that the Pannel cannot be said to be the Author, and so criminally to be pursued; because by his Deposition before the said Committee, he has not only denied upon Oath that he is the said Author, but has likewise instantly verified the same, condescended upon the true Author; and not only has simply condescended upon the said Author, but has likewise instantly verified the same: which Verification being proponed with the said Defence, is both relevant and competent now only to be decided before my Lord Justice, and not before the Assize, seeing it is a peremptor Exception instantly verified. And whereas the said Reply bears, That the said Author Mr. *William Haig's* Letter, bearing that the Pannel was Adviser, is to be taken complex, there is no such Speeches nor Words mention'd or contained in the said Letter, which must now be produced, because it has been seen by the Pannel, that it may say for it self. And whereas my Lord Advocat alledges, That the Assize is only Judges to the Probation, and that he prove before them that the Pannel was Author, Adviser, &c. of the said alledged infamous Libel; that ought to be repelled in respect of the Alleadgance proponed for the Pannel, founded upon his Depositions and *Haig's* Letter: which Depositions and Letter being already produced, and delivered to the Pannel, and used, and Liberty granted to propound his Defences thereupon, the Defence is so proponed, that it may be either found relevant or repelled. And it cannot but be found relevant, because a Pannel being pursued for a Crime, as Author thereof, this is a most usual and relevant Defence, that he cannot be convened as Author. But he must be absolved from that Point, because he offers him instantly to prove ane other Author: Upon whom he likewise instantly condescends; and not only condescends, but instantly verifies and proves. And so the Exception being relevantly proponed, and instantly verified, as said is, it must be here found relevant, and likewise proven, and cannot be referred to the Inquest. And where it is replied by my Lord Advocat, That that part of the Defence founded upon the Pannel's Depositions, bearing that he has confess'd ane other Author, and giving his Oath thereupon cannot be respected,

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being but his own Depositions and Declarations, and cannot work in his own favours; it is duplyed, That that part of the said Answer and Reply ought to be repelled, in respect of the said Defence founded thereupon; especially seeing the said Depositions were given before the said Committee, who were appointed by his Majesty for trial of the said Author. And the said Depositions being a part of the said Trial, the Pursuer cannot be heard to quarrel them, especially seeing they are used by the Pursuer against the Pannel, and are now as his Evidence. And if the Pursuer use them against the Pannel, it is lawful for the Pannel to make his use thereof, so far as makes for him, in respect whereof the Alleadgance stands relevant in that part founded upon the said Depositions. Which, together with the said missive Letter written by Mr. Haig, and which the Pannel propounds *conjunctim*, to prove his Alleadgance, verifies clearly that part thereof: And so being both relevant and proven, is sufficient to elide (quash) that part of the Dittay, That the Pannel should not be found convenable as Author. And whereas my Lord Advocat in his Reply answers, That the said first Defence, or first part thereof, is not relevant, bearing that it is alledged for the Pannel, That he cannot be convened as Author, seeing there is another Author condescended upon, and proven; because it is replied that they might both be Authors of the said alledged Libel: It is duplyed, That that part of the said Reply ought to be repelled, in respect of the Dittay it self, wherein it is not libelled that they are both Authors, but only that the Pannel is Author; and when it shall be so libelled, it shall have an Answer. And where it is replied by my Lord Advocat, That that part of the Defence, bearing that Consulters and Advisers are not contained in the Acts of Parliamt, upon which the Dittay is founded, ought to be repelled in respect of the 151st Act of the 12th Parl. of King James I. of happy Memory, wherein it is declared, that all criminal Libels contains Airt and Part: To that it is duplyed, That the Defence stands relevant notwithstanding of the said Answer; and that the Pannel can no ways be drawn within the compass of the said two Acts, except upon that which is specially contained therein; and Consulters and Advisers are not contained therein. And as to that contained in the other Act of Parliament, cited anent Airt and Part, it is answered, That they are different: And if they be alike, Airt and Part should only be mentioned in the Dittay, and not in the other with Consulting and Advising, which are clearly several Points, and must be severally elided; in respect whereof, that part of the said Alleadgance stands relevant. And where it is replied, That the Pannel's Depositions, alledged in the Exception, to verify that he was not Consulter, Adviser, &c. because that the said Depositions bears that he knew not of the penning, and gave no Advice thereto, that that Part of the said Alleadgance is likewise denied *ut supra*, and not a Defence: It is replied, That as my Lord Advocat repeats his Reply against the Denial, so for the Pannel the said Defence and Duply, made in fortification thereof, are here repeated; especially that part of the Duply founded upon the said Depositions, bearing that the said Depositions are used by my Lord Advocat against the Pannel, and therefore must work in his favour also. Where it is replied to that part of the Alleadgance, bearing that the Pannel cannot be convened as Author and

Deviser, because he has given Advice, and in token thereof has mended and reformed a part of the said Libel; that that cannot be respected, because of the Reason contained in the said Exception, bearing that it is contrary to the Depositions, and that it impugns not the Relevancy: It is answered and duplyed to the said Reply, That the same ought to be repelled, in respect of that part of the Alleadgance which is founded upon the Pannel's Deposition, and needs not impugn the Relevancy, because it is peremptor for that part; and as it is relevant, so it is instantly proven by the said Depositions, and elides that Member of the Dittay, being peremptorily proponed, and instantly verified and proven by the said Depositions. And albeit it be replied by my Lord Advocat, That the said Depositions are not used by him neither as Part nor Proof of the Libel, yet it is contrair, because they are mentioned in some part of the Libel, and so used. And as for Proof, they cannot be yet used as such, till the Relevancy be discussed. But albeit my Lord Advocat should not use them, yet the Pannel uses the same; and the said Depositions may be found a lawful Probation to him of any thing that he shall found thereupon.

And where it is alledged by my Lord Advocat in his Reply, That that part of the Defence used by the Pannel against the Interlining libelled, that the same is not relevant, because not libelled when interlined, as that part of the said Alleadgance bears; and it is answered by my Lord Advocat, That that part of his Lordship's Qualification is used jointly with the rest; and that *quocunque tempore* interlined is an Evidence of the Pannel's Concurse with Haig, in respect it was done by Haig in name of the Pannel and the rest of the Supplicants: To that it is duplyed, That that part of the Alleadgance proponed for the Pannel stands relevant, notwithstanding of that part of the Reply made thereto; and that it is yet contended for the Pannel, That it is no ways relevant to alledge *quocunque tempore* interlined thereupon, to infer against the Pannel that he was Author, Deviser, and Airt and Part of the penning: for common Sense evinces, that to be Airt and Part of the penning or devising of a Writing, must be done either the time of the forming of the said Writ, or very shortly after, otherwise Interlining can never infer Author, Deviser, or Airt and Part of the Penning. And it is clearly set down in the said Alleadgance, that great time intervened betwixt the Author's penning and devising of the said Libel, and the Pannel's interlining of it; for it is clear and nottous to my Lord Advocat and the Lords of the Committee, by clear Depositions before them, that the said interlined Libel was that same which was intended to have been presented to his Majesty by the Earl of *Rothes*, and that it was not interlined during the hail time the said Earl had the same, and for a long time after. And so that part of the said Dittay is no ways relevant to infer the said Pannel to be Author for the said Interlining, because the time of the said Interlining is not libelled *quando*, and that it was at the time of the Penning, or immediately after.

And where it is answered, That the said Libel was done by Haig in name of the Pannel and the rest, that part of the Answer ought to be repelled, as altogether irrelevant, not bearing that it was done at their Command; for to do any Deed in name of another Person, cannot be counted that Person's Deed in whose name it was done. And where it is replied, That the General is relevant, without:

without that part of the Qualification anent the Interlining after that the Pannel received it from *Haig*, especially seeing it will be constant by the Depositions, when they will be produced before the Assize, that there was no interlining *longo intervallo*, but shortly: To that it is duply'd, It ought to be repelled in respect of the Alleadgance, and the Qualifications therein contained, bearing clear and undeniable Circumstances of the time of the Interlining; and likewise in respect of the said Depositions, whereupon that part of the said Alleadgance is founded, and which now the Pursuer uses by propounding his Reply thereupon. And seeing both the Pursuer and the Pannel condescends upon the said Depositions as a Probation of that part, that part of the Dittay cannot be referred to the Assize, to be proven before them, anent the time of the said Interlining; but as the Defence is relevant, as it is proponed, and ought and should be so found, so the Depositions may be presently received as the Probation thereof, being instantly verified and proven, as said is. And where it is answered, That the nine Months, contained in the Alleadgance, alledged to have intervened betwixt the penning and interlining, is not verified; it is duply'd, That, first, Relevancy must precede Probation: *Secundo*, That the said Space and Time may be gathered out of the Circumstances contained in the said Alleadgance and Depositions: and lastly, The Pannel's own Declaration must be taken thereupon, seeing the Pursuer shews nothing in the contrary. And this Judicatory admits no Dyet to prove any thing that is found relevant, which is not proven *instante*. And where it is alledged against that part of the Pannel's Alleadgance, bearing, That the said interlined Copy was never seen before it was produced before the Committee; and that the Pannel had Promise not to be snared, and needed not to have produced it, except he had pleased; and that it is replied by my Lord Advocat, That all that was urged from the Pannel by the Committee was by good Warrant, whereunto he was obliged to answer upon his Allegiance; and that the Denial to answer before them would have interred against the Pannel a more dangerous Crime, if he had refused; and the Committee only urged a true Declaration anent the Author: It is duply'd, That the Pannel is not to dispute now anent the Warrants of the said Committee, and upon the Crime that might have followed if he had denyed to answer, and whether he might have declined them or not. But this he duplies in fortification of that part of the Alleadgance, That albeit he had neither declined the said Committee (as he did not) nor had opposed in any Case their Powers or Warrants; yet he might have lawfully proponed before them this Defence, which to his great and heavy prejudice he did omit, That of Law and Reason he was not obliged, nor could not been urged to have made any Depositions, nor given Answers to Interrogators anent any Demand concerning the said Libel quarrell'd; because his Answers and Depositions might have been the Ground of a Criminal Pursuit against him (as now it is.) And so with reason he might have been silent, and the saids Lords of Committee could have taken no exception against him for his said Silence. And therefore that part of the said Pannel's Alleadgance stands relevant, notwithstanding of the Answer bearing that he could not have been compelled to have made any Deposition either upon his Oath or Declaration, if he had remembred,

and had alledged the Danger that was to follow and ensue thereupon. In respect whereof, the said Replies, and every one of them, ought to be repelled, in respect of the said Alleadgances and Duplies made in fortification thereof.

It is farther duply'd for the Pannel by Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat to that part of the last Defence, bearing that Mr. *William Haig*, the Author and Penner of the alledged Libel, by his own Grant in his missive Letter, and also acknowledged by the Dittay, that his Declaration that the Pannel gave his Allowance to the penning and forming of the said alledged Libel, cannot be respected, nor have any Faith, *quia Particeps Criminis adversus Socium, fidem non facit*; whereupon my Lord Advocat infers a Grant against the Pannel, of his giving Allowance to Mr. *Haig* in the forming of the alledged Libel: To which it is answered, That the Inference and the Consequence is not good, and has no force; because the foresaid Defence does no ways inforce a Grant of Allowance by the Pannel to the forming of the alledged Libel, but does only import that Mr. *William Haig*, the Author and Penner thereof, that his Declaration (not granting any) bearing the Pannel to have given Allowance to him in forming the alledged Libel, cannot be respected, nor have any Faith at all against the Pannel, himself being clearly the Author and Penner thereof; *quia Particeps aut Socius Criminis adversus alium, fidem non facit*.

It is also farther duply'd for the Pannel by the said Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat, that it is against Law and Reason to oppone *Jusjurandum in Criminalibus*, and that the Opposition of an Oath given has only place in *Civilibus*; it is answered, that the contrair is true in Law, to wit, That Causes Criminal are sometimes even decided by Oath of Party by clear Law. First, *Leg. 25. § 5. F. de Jurejurando: Verba Legis, Si quis juraverit se non capuisse, non debet adjuvari hoc Jurejurando in actione Furti, quia aliud est Furtum fecisse, quod vel clam fieri potest. Et Leg. 6. § 5. F. de his qui notantur Infamia: Verba Legis, Sed & si Jurejurando delato juraverit quis non deliquisse, non erit notatus; nam quodammodo Innocentiam suam Jurejurando approbant, quibus luce clarius est. Et in Causis Criminalibus Juramentum deferri, ergo etiam Causas Criminales per Juramentum delatum decidi.* And it is alike, *utrum Jusjurandum a Judice an a parte delatum sit, utrumque enim decisorium est Litis; expressa Leg. 1. F. de Jurejurando: Verba, Maximum Remedium expediendarum Litium in usum venit Jurisjurandi Religio, quia vel ex pactione ipsorum litigantium, vel ex auctoritate Judicis deciduntur Controversæ: & Ratio quia Judex non desert Juramentum nisi in supplementum, & ubi res aliter probari non potest.* And therefore that part of the Defence foresaid stands good and relevant, notwithstanding of the Reply.

It is likewise duply'd by Mr. *John Nisbet* for the Pannel: Where it is replied by my Lord Advocat, that the opposing of the Pannel's Depositions, wherein he disavows that he is Author, Deviser, conscious or accessory to the framing of the alledged Libel, is not a Defence, but a Denyal; it is duply'd, That sundry Points of the Dittay being qualify'd, by the Pannel's Deposition, there results to him a relevant Defence in Law, upon the Indivisibility and complex Taking of his Depositions

tions, quia Confessio non potest pro parte acceptari, & pro parte sperni: Bartol. in Leg. Aurelius, §. Idem quaesit, num. 2. F. de Liberatione Legata. Pharm. Quast. 81. num. 168, & aliis numer. Quando est Presumptio quod qualificato confitente occiderit ad sui defensionem, ut parte si occidens sit vir probus, nullamque occidendi & offendendi causam habebat, & quia occisus erat homo rixosus; talis qualificata Confessio non potest dividi, nec pœna extraordinaria imponi, & sic confitens omnino absolvendus est.

Whereas it is replied by my Lord Advocat, that the Relevancy of the Qualification, and the Conformity and Disconformity of the Pannel's Depositions, is not proper to be debated here, but must be remitted to the Assize; it is duplyed, That all Dispute and Debate of Law must be decided by the Judge, and is not pertinent to be agitated before the Assize, who are only Judges Facti, & Quaestores to make inquiry into the Verity of the Deed.

Whereas it is replied by my Lord Advocat, that Interlining *vel in actu ipso, vel post actum quocunque tempore*, of a Piece drawn up for the use of the Pannel and others interested, evidences the Pannel's accessory Concourse in the forming and devising the Piece; it is duplyed, That it is most unreasonable, because it should follow, that interlining of any Piece or Book should import Concourse in the first framing of it, which is contrair to Reason.

Whereas it is replied by my Lord Advocat, That *Principium & finis tanquam duo Extrema Medium includunt*; as is acknowledged by us in the Use of that Maxim; and consequently that the first Intimation of the Pannel's Knowledge, and the immediate receiving of the Piece challenged, and Interlining *ex post facto*, are relevant to make the Pannel Author, or Airt and Part: it is duplyed, That that Maxim is used by us in the Interpretation of sundry Passages of a Piece done *unico Contextu*, which therefore must be presumed to be done *uno Animo & uno Stylo*, by the Analogy of the two Extremes interpreting the Midst; and can never be used to make disparat Acts, to join preposterously, to prove Accession in forming and devising, seeing the first Imputation alledged by my Lord Advocat is of Knowledge, which presupposeth a thing to be done.

Where it is replied by my Lord Advocat, that the Libel produced before the Lords of the Committee with the Pannel's Depositions, notwithstanding Promise and Assurance that they should not be used, may be used by my Lord Advocat, and that the Procedure of the Lords of Committee is most warrantable, that the Pannel was obliged to answer by his Alleadgance; it is duplyed, That the warrantable Procedure of the Committee is not contested, nor cannot be; and that the Pannel, albeit he could not decline his Majesty's Commissioners, might very well in Reason and Law have refused to depone his own Dittay. And we adhere to the former Citations, averring that the Assurance given by Judges should secure Pannels against any use that could have been made of their Depositions.

It is added to the Duplies by Mr. Robert Macgill, That where my Lord Advocat has replied, that the Oath of a Party to be indicted may be urged in Criminals. *quod hoc vix sit auditum in Jure*, Clarus §. ult. Quast. 63. & Quast. 45. num. 9. And if it hath been practised in some parts, as likewise

in this Country in the Examination of these who are to be indicted, *Consuetudo illa est vetustas erroris quæ non adeo suo momento valitura, aut ut Legem vincat aut Rationem*. Apud Gregorium, & Codice Justiniano, *quæ sit longa Consuetudo*. The Reason of the Law is, that the maintaining of our Life is so natural, that what will we not say for the defence of it? *Et supra omnia evitandum est Perjurium*. And the Reasons of the Practicians is nothing, which is lest Crimes should be unpunish'd: for upon Probation by Writing, Witnesses or other Confession, *quæ non est jurata*, or upon Presumptions *luc meridiana clariores*, an alledged Criminal may be put to the knowledge of ane Allyze; or otherwise the Question may be used *ad eliciendam veritatem*. And where Celerity of Punishment may be objected rather or a Man perjure himself, *vindictæ Tarditas Supplicii gravitate compensetur*. But accepting the Practique to be so, I say, that in *Confessione jurata nullo pœne metu propter Impunitatem promissam*. The Maxim of the Law must be here received, *quod approbo, non reprobo*; especially seeing the Pannel was so simple and careless in respect of his Innocency, that he remitted the forming of his Depositions to the Lords of Committee themselves, he being then removed the time of the dyting and writing of them, and did subscribe them *fide implicita*.

Where it is replied, that advising and devising may be attributed or qualified by any subsequent Deed to the alledged Crime; it is answered by that of Sallust, *Et antequam incipias consulto*, &c. and so it is in *Mandato*. And as to the Ratihabition, *est scitio Juris*; and it is to be understood in *Criminibus manifestis*, & non ubi queritur de nomine Criminis; as in our Case. And remits to the Distinction alledged in the hinder part of the first Exception.

It is duplyed by Mr. Roger Mowat to the two Practiques of *Auchindrane* and *Carrarie* alledged by my Lord Advocat, That they suit not this Case, saying that Depositions should not prove in favour of the Pannel, because if any Depositions were given by these two Persons (not granting the same) they were given after their Indictment for the Crimes of Murder; but here the Depositions are given before any Crime known. Secondly, If any Depositions were given, they were the voluntary Depositions of the Party, not demanded by the Judge. Thirdly, It is not replied, that these Delinquents proponed any Defence upon their Depositions, and craved their said Depositions to verify the said Dispute. Lastly, it was not there alledged and offered to be proven, That there was ane other Author of the said Murder, which was their Crime; whereupon if they had condescended and offered to prove the same, their Depositions would have been further respected. In respect of which clear Differences of these Delinquents from this Case, no respect can be had to the Practiques alledged.

The Dyet continued till to-morrow the 11th Instant.

Curia legitime affirmata, the said 11 of December 1634. Parties and Procurators as before.

The King's Majesty's Advocat having heard the Duplies made to his Lordship's Reply, declares that he finds nothing worthy therein to be answered, except one Point of Law moved very imperti-

impertinently anent the Division of Confession in Criminals, and another made in *facto* anent the Challenge made to the Committee in an alledged Promise made to the Pannel at the time of his Examination. And for the first, which is disputable *in jure*, if it had been pertinent to the purpose, his Majesty's Advocat declares he would have triplyed thereto in writing, and is ready, upon my Lord Justice's Desire, to clear it to his Lordship. And as to the other part *in facto*, 'tis more pertinent to be cleared before the Assize. And therefore he supersedes his Answer, except he be enjoined thereto by my Lord Justice-General.

Quinto, It is alledged by Mr. Roger Mowat for the Pannel against the second Alternative of the Dittay, That the Pannel ought to be assioized, and cannot be put to the knowledge of an Assize, for alledged hearing, concealing, and not revealing, and not apprehending of the Author of the alledged infamous Libel, and alledged divulging and dispersing thereof, as the Dittay bears: because giving, and not granting, that the foresaid Supplication quarrelled might be found scandalous against Mr. William Haig, the known Author thereof; yet *quoad* this Pannel, who is not, nor cannot be found the Author, it cannot be so declared, because the Addition of the Act 1594, militates only against such Writings as are manifestly, clearly, and without doubt or difficulty evident and seen, and known to be infamous Libels, and at the very first sight may appear such unto every ordinary Understanding. But the quarrelled Supplication being of a dutiful strain, and such as might be mistaken even by very understanding Readers and Hearers, the addition of the said Act can no ways be extended to the Hearers, Concealers, not Revealers and not Apprehenders. But so it is, that the said quarrelled Supplication was delivered by the said Author to the Pannel as an humble Supplication, and given by him to the Earl of Rothes as an humble Supplication, and returned to him under the same name: likeas the Pannel is content to make Faith anent his Knowledge and Conception thereof, that he received and retained the same *eo nomine*; and therefore cannot be put to an Assize upon these Points, seeing they are Points that cannot in reason be found capital by the Common and Civil Law, but by the said Addition, which was made in turbulent Times, and never took effect, but in continual desuetude, as has been said before. And it were very hard, upon such an Act, never practised heretofore, to make Noblemen and others his Majesty's good Subjects obnoxious to a Capital Crime. And albeit the said quarrelled Supplication might now be found to be infamous, yet the finding it now to be such, ought not, nor cannot be drawn back to infer the Pain of Death upon those who *bona fide* did not think it such, as now it is said to be by the said Dittay; they having *justam & probabilem Ignorantiam*, by doing that which truly they did, thereby not to have incurred the hard and rigorous Censure of the said Act of Parliament. Secondly, It is alledged, that *Absolvitur* ought to be granted *ut supra* to the Pannel, because the Supplication quarrelled was never declared heretofore infamous: and before it had been declared infamous and scandalous, and by the said Declarator the Pannel had been certified of the Danger, the alledged Having and Hearing thereof cannot be now sustained as a relevant Ground to infer this Criminal Pursuit

and Pains of Death against him. And with reason it should have been first so declared against him, that he, and others his Majesty's loyal and good Subjects, being lawfully warranted by the said Declarator, might have thereafter eschewed to have offended in that kind. Thirdly, *Absolvitur* ought to be granted, because the said quarrelled Supplication was intended and offered to be presented to his Sacred Majesty; which intended Offer of the said Supplication by the Earl of Rothes, put the Pannel *in tuto*, that he could never have suspected any Crime or Punishment for hearing, keeping, &c. to have followed after the said intended Offer: and so was thereby *in optima fide* to hear, keep, and not to reveal any thing thereanent. The making of the which Offer to his Royal Majesty, in the Pannel's Judgment, did then vindicate him that he thought nor conceived not the said Supplication scandalous or seditious; seeing it is presumed that no Man of Judgment or ordinary Sense and Reason, would be so foolish as to offer his own Dittay to his Prince.

And that the Pannel's Innocency may farther appear, and that his Opinion and Judgment of the said quarrelled Supplication, as he offers to declare the same then to have been, may be trusted above all other Presumptions that can be adduced in the contrair; it is to be remarked, and gravely and wisely considered by the Judges, that the Pursuer in effect has no other Evidence nor Probation of the said Particulars libelled in the said Dittay against the Pannel, but such as proceed from his own Depositions made before the said Committee: which Point is so considerable, that in reason no advantage should arise thereupon against him, seeing he was not obliged thereto, but of his own accord. And as in Law a Person accused criminally cannot be compelled either to depone or declare at the command of the Judge, so the Depositions given by this Pannel before the said Committee, should not be respected, in so far as the same may be made ane Ground of the said Dittay, which concludes and infers no less against the Pannel nor the Pain of Death. And for the Point of concealing and not revealing the said Writ, *de facto* the same was revealed by the Pannel to the Earl of Rothes, in so far as the same was appointed to be presented to his Sacred Majesty, and thereby to have been revealed to his Highness: likeas accordingly the Earl of Rothes did offer to present the same, as said is. In respect whereof, *absolvitur* from the said concealing and not revealing; *absolvitur* likewise for not apprehending, because, as is said before, the Pannel is ready to declare, that in his Judgment and Conception he did not think the said quarrelled Supplication to be such as it is libelled by the Dittay, for the Reasons before adduced. And in that respect it was hard for him as a private Man to take upon him to apprehend the Author of a Writing, which before he had not conceived to fall within the compass of the said Act of Parliament. For albeit in Matters of Treason all good Subjects are obliged in Duty under all highest Pain to discover and delate Authors and Practisers thereof; yet in other Matters, in Writing, and such like, wherein are doubtful and ambiguous Expressions, which may suffer divers Interpretations and Constructions according to the Humours, Capacities, and Conceptions of the Readers; there is no such Necessity posed by the said Acts of Parliament libelled, nor by the Makers of the same, that a Writing coming to a Man's

Man's hands, whereof he makes not the right Sense and Meaning as others do make thereupon; that the said Writing not rightly understood by him, shall thereupon be a Ground of a Criminal Pursuit to make him lose his Life for not taking; or not apprehending, or not revealing the Author of the said Writ. The Preparative seems dangerous and singular; it would therefore be carefully adverted unto, specially at this Time, and in this Case; whenas the putting of the said Act in practice, seems to have the first beginning upon this Pannel. And the taking and apprehending of Leidges has heretofore been dangerous to fundry Apprehenders; and is instanced by the Earl of *Queensbury* and the Laird of *Geichtis* Practices, for taking of Leidges at their own hands.

It is answered to that part of the said Dittay anent Mr. *Haig's* apprehending of his own Danger upon the simple sight of the Committee's Letter by the Pannel, that that cannot make the Pannel accessory to his Escape, no more nor his own Consent anent the penning of the said quarrelled Supplication can make the Pannel Airt and Part of the forming and penning thereof; seeing the said Pannel's second Deposition bears that he was neither upon the Counsel nor Knowledge of his Escape, and knew not of it till three or four Days after he was gone. That Part of the Dittay anent the Pannel's receiving of Mr. *Haig's* Letter, is no way relevant to infer the Pain and Crime libelled against the Pannel. First, Because this is not a Matter of Treason, wherein receiving and writing of Letters are prohibit. Secondly the Pannel was not prohibit by the Lords of the Committee to receive any Letters. Thirdly, the said Letters are produced and delivered to the saids Lords, which in Rigour of Law he needed not to have done. Fourthly, Being produced, they prove nothing against the Pannel, but are clearly in his favour; because Mr. *Haig* professes himself therein to be Author and Penner of the said Supplication. And where it follows in the said Dittay, that it is affirmed and avowed in some of the said Missives, That Mr. *Haig* had the Pannel's Approbation and Allowance to the making and penning of the said Supplication, that is altogether irrelevant, as having no Warrant from the said missive Letter, which contains no such Affirmation as is libelled. And the Pannel craves the Letter, bearing that Passage, presently to be read, seeing it is in my Lord Advocate's hands; which Desire should be granted, because the Pannel has seen it, with the rest of his said Missives, by Warrant from my Lord Justice and his Assessors.

It is added by Mr. *Alexander Pearson* to the Exception, That the Pannel is not guilty of concealing, not revealing and divulging of the alledged infamous Libel, because the Writing quarrelled being in form of a Supplication, and used as a Supplication by Offer made thereof to his Majesty, who then gave no Signification of any Offence therewith, the Pannel is not, nor cannot be counted formally a Concealer, not Revealer, or Divulger of an infamous Libel, there being no such Knowledge nor Opinion anent the Writing foresaid of the Pannel: *Quia injuriam potest facere nemo, nisi qui scit se injuriam facere. Leg. 3. § 3. F. de Injuriis. Sed accusatus non habebat hanc scientiam, sed justam causam credendi*, to think of it otherwise as a Supplication, for the Reasons above rehearsed. And as when any is accused of Theft, it is a good

Defence to say, *Quod domini voluntate & consensu rem contrahant, saltem putavit dominum consensurum, sive id falso, sive id vero putet; expressa Leg. 46. § 7. de Furtis, maxime dum suberat infra causa ita credendum*. So by the like Reason in the matter of meddling with the infamous Libel, it must defend the Pannel, That he had no Knowledge or Conscience of an infamous Libel, and that he had just and probable Causes to think of it as a Supplication, *sive id falso sive id vero putavit, & generaliter ubi de obligando queritur, propensiores esse debere nos (si habeamus occasionem) ad negandum, ubi deliberando ad liberationem, ait Arianus, Leg. 47. de Obligationibus & Actionibus: ergo in re presenti rapienda est occasio ad liberationem accusati*. Specially anent the Divulging, because this Point of Dittay anent Divulging, is not founded upon any Acts of Parliament, but only upon the Common and Civil Law, and therefore should be decided by the said Law: by which the Defence now alledged for the Pannel is very relevant. Farther, that part of the Dittay, bearing that the Pannel by showing to Mr. *Haig* of the Warrant of his Citation, did thereby give him occasion to escape furth of the Country, is not relevant; because that which of itself is good, may give occasion to Evil: And the Pannel's shewing the Warrant of his Citation, is no more nor if being verbally cited, he had told Mr. *Haig* of his Citation, which is no Crime.

It is added by Mr. *John Nisbet*, that the Dittay subsuming concealing of the Piece quarrelled, is contrary to itself, bearing the imparting of it to my Lord *Roths*, of purpose to present to the King's Majesty.

It is added, that the not apprehending the Author of an infamous Libel, is not relevantly qualified, by the not taking of *Haig*; seeing it is not libelled, that the alledged Libel was declared to be of that nature, or conspicuously or nottourly, at least to the Pannel's knowledge, an infamous Piece; and that it was in the Pannel's power to apprehend the Author, without incurring any hazard of Law, for the injurious Interpellation or Apprehending of any Person, whom he was not able to convince to be Author: specially seeing the not apprehending of the Author of a treasonable Piece cannot import any Guilt against the not Apprehender, who is not able to convince the Author of the Crime by lawful Probation, and therefore not obliged to apprehend, since he cannot do it without the danger of Retaliation, in case he succumb; *James VI. Par. 2. cap. 49. And in Law, Qui injuriose interpellit in judicio civili tenetur Injuriam, F. de Injuriis, Lege 19. Et si Liber pro Fugitivo apprehensus sit, apprehendens punitur*. And by the like Reason the Apprehender of a Party, whom he cannot convince by lawful Probation, is punishable: And in the Civil Law, he is obnoxious in the Pains of *Lex Julia de Vi publica*, and of *Lex Cornelia de Injuriis*.

Secondly, The apprehending enjoined by Act of Parliament is only subsidiary, when a Party is declared Author, and cannot be well apprehended by the Judge: And a Party that is ready to delate the Author of an infamous Piece, to the end that he may be apprehended by the Judge, he is not obliged to apprehend him summarily.

Thirdly, The not apprehending of the foresaid Author is excusable; because the Pannel was enjoined by the Lords of the Committee not to divulge the Business whereupon he was convened,

convened, and to keep all things secret until his Deposition.

It is farther eiked by Mr. Robert Maegill, anent the not apprehending, That the Pannel ought to be affoiled therefrom, because Freedom is so natural and favourable, that even amongst the Romans many of their Magistrates had not *Prehensionem*; and that which the Tribunes of the People had, it was also for the People's Freedom. Gellius, lib. 13. cap. 12. Wherein it is certain of the Law, *quod nec magistratibus licet aliquid injuriose facere, quin injuriarum teneantur. Leg. nec Magist. 32. F. de Injuriis. Unde etiam Captura debet esse ex decreto Judicis & Judicia, quæ resultant ex processu generalis Inquisitionis debent esse sufficientia ad Capturam, decerniturque Captura ex facti qualitate & debet processus esse informatus licet reus, qui capiendus est, non citatus sit: Clar. §. ultima, Quæst. 28. & Quæstione 20. num. 2. Quod in delictis enormibus id ita bodie servatur.* If then it be so, in *Magistratibus Capturam jubentibus*, can it be thought that any municipal Law can command Apprehension, *nisi in casibus de Jure, & ratione competentibus*? And so in *Criminibus Decorum enormitate jam satis constat* (where the Pannel professes before God) *& Jusjurandum purgativum de Jure recipitur. Leg. Lex Cornelia 5. §. 8. de Injuriis.* That he never remembred of such an Act, he could never have imagined at that time the Piece quarrelled to have been of such a sort, much less to be treasonable; and remits here to the Distinction of Crimes propounded in the last part of my first Exception, where Crimes and Pains ought to be ruled in Reason even in municipal Laws; and except in such seditious Speeches, which is the first sort of inordinat Speeches against a Prince, *Ubi & tractatus adesse debet, ut in Conjuratone Catilinæ*; no Lawyer did ever think the Haver, Hearer, and not Revealer, not Apprehender, to be punishable by Death; *& ut videtur absurdum.* All municipal Laws ought to receive their own Limitations according to Reason: and remits here to the second Part of my Duply, in fortification of my first Exception, grounded upon *Gailus, lib. 2. Observatione 33.* anent the Interpretation of municipal Laws; and to the Limitation expounding the Act 134. which forbids any Man, of whatsoever Quality, to speak in time coming anent the Government: which would be absurd, if it received not its own Limitation to speak (about it) in Council and Parliament. And repeats here again the gracious Acts of our dread Sovereign anent the surveying of the Laws.

It is answered by my Lord Advocat to the fourth Exception propounded against that part of the Dittay, whereby the Pannel is indicted, and is punishable by Death; and that by the Act of Parl. 94. for not apprehending of *Haig* the Author of the infamous Libel, and for not revealing of the same, ought to be repelled in the hail Members thereof. And notwithstanding the same, the Dittay in that part is severally and *per se* relevant, ought to be put to the knowledge of an Assize; because it is subsumed in the Dittay precisely, according to the Words of the Act, That the Pannel, who knew *Haig* to be Author, did not apprehend, but concealed him and it, and not revealed them; and also gave occasion to *Haig* of his Escape; and since his Escape, received divers Letters from him, which were concealed till the Pannel was interrogat thereupon by the Committee. And where it is alledged

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in the Exception, That the Dittay is not relevant in this point, not condescending that the infamous Libel was declared to be an infamous Libel; and in particular, that the Dittay in that part is contrair to itself, which bears the Pannel to be guilty of concealing; and yet bears also that he delivered it to the Earl of *Rothes*, to be presented to his Majesty: It is answered, That the Dittay is relevant, because it subsumes directly according to the Act of Parliament, which speaks not of an infamous Libel declared to be so, but of an infamous Libel of Speeches, which are so really in the self. And there is no Contrariety in the Dittay, because giving to the Earl of *Rothes* is concealing, except it were qualified that the Earl of *Rothes* were such a Person to whom the Act of Parliament ties the Hearer to reveal, which he is not, not being of his Majesty's secret Council. And where it is alledged that the true Meaning and Sense of the Act is only to be understood of Reproaches and infamous Libels, which are certainly, conspicuously, and not-tourly so, and not of such Speeches and Libels which are of a doubtful and ambiguous, or indifferent nature, which at the first View and Hearing could not appear to all Men to be infamous and scandalous: It is answered, That *ubi Lex non distinguit, nec nos distinguere debemus.* And seeing the Act comprehends Reproaches and scandalous Libels, which are so really, *& non opinione*, the Judge and Assize are obliged to judge and proceed according to the nature of the thing prohibited, as it's so really, and not to leave place to frustrate the Execution of the Law under the Veil of Opinion. And of the Law, *ignorantia juris neminem excusat ne quidem in delictis, licet sit ignorantia probabilis præcipue in atrocioribus*; of which nature this is. Neither can the Pannel pretend excuse upon the Incertainty, Obscurity, or Ambiguity of the infamous Libel; because this infamous Libel, by the first View, Reading, and Inspection thereof, might and should have appeared to him to have been of that nature. And no Nobleman, or whatsoever Subject of whatsoever Quality, being of the Pannel's Knowledge, Learning, and Understanding, can or could justly pretend any Doubt or Scruple; but that the said infamous Libel was, in the first View and Reading thereof, of the nature of a scandalous Libel, punished by death. And albeit in infamous Libels against Subjects there might be some Shadow of Excuse, by reading and looking upon the same, and receiving thereof either for Curiosity, or to learn the Quickness of a Wit evil set in the penning of such infamous Libels: But such Excuses are damnable in infamous Libels which touch with the least Aspersion or Blame the Honour, Credit, and glorious Estimation of our gracious Sovereign. Likeas the Pannel cannot pretend Ignorance, in so far as he granted in his Depositions, that after his receiving thereof from *Haig*, when he did communicate the same with the Earl of *Rothes*, that they found the same of such a Strain as ought not to be presented to our gracious Sovereign. And where it is alledged that this Act of Parliament 94. in the Points of the Addition anent not apprehending and not revealing, are not of Crimes punishable to death by the Common Law; and that the same has been in long defuetude, and out of use; that ought not to be respected, because we are ruled by the Laws of the Kingdom, by the Acts made by King *James* the First and King *James* the Fourth, before alledged; and there is no Prescription in Law. And where it seems to be adduced to infer

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probabilem ignorantiam, it is answer'd, *Quod omnis ignorantia juris est improbabilis & punibilis*. And where it is alledged the Pannel *habebat ignorantiam facti eamque probabilem quæ excusat in delictis*; in so far as albeit this infamous Libel was punishable to death in the Person of the Author, yet it cannot be punishable to death in the Pannel, not being Author, as he alledges, because it was delivered to him as a Supplication, to be presented to his Majesty; and that he presented it to the Earl of *Rothes*, who made offer thereof to his Majesty; and after returned it to the Pannel, which (as the Pannel alledges) put him *in tuto & in bona fide* not to apprehend *Haig*, nor to reveal it to any of his Majesty's Council as a scandalous and infamous Libel, because he did not conceive it to be so; and is content to depone upon his great Oath, That he did not know, nor apprehend the same to be an infamous Libel: It is answered, That the Nature and Strain of the infamous Libel must be the Rule of Punishment or Impunity, and not the Opinion of the Pannel; the Reproaches, Exprobrations, and scandalous Aspersions thereby put upon his Majesty's sacred Person, Estate, and Government, being so nottour, evident, and conspicuous, that neither the Pannel, nor none of his Knowledge and Judgment, could pretend Excuse or Ignorance in the reading thereof; *Et est ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt*: but specially in the Pannel, who adverted to it narrowly, and heard it not simply spoken, but had it delivered to him in Writing, which he kept, copied, and adviced with, and found the Strain thereof of that nature, as was not fit to be presented to his Majesty. And where it is alledged, That the Pannel cannot be punishable to death for not apprehending of *Haig*, and not revealing of him and his infamous Libel, except it had been declared to have been infamous, and *Haig* to have been the Author thereof; and that the apprehending of *Haig* in a matter so obscure and doubtful, would have been dangerous to the Pannel *per Tormentum* or Retaliation, ordained by the Act of Parliament of King *James*, his Majesty's blessed Father, of happy Memory, *Parl. 2. cap. 49*. It is answered, That Act of Parliament requires no other Declarator but the real Nature and Quality of the Speeches and infamous Libel; neither could there have been Danger in apprehending, being warranted by the Law. And where it is alledged, That all depends upon the Pannel's Depositions, which he made voluntarily for Satisfaction of the Lords of Committee, and that therefore he must have yet place to clear his own Depositions; and that for clearing thereof, he is ready to depone, by his great Oath, that at the Receipt of the said infamous Libel, he received the same as a Supplication, and so kept it, and retained it: It is answered, That the most substantial Part of the Dittay is founded upon the nature of the infamous Libel, and not upon the Pannel's Depositions; wherein his Denial of Knowledge upon Oath cannot liberat him from the Punishment of Death contained in the Act of Parliament.

And where it is alledged, that albeit the Justice should find this Libel to be infamous now, yet it cannot be drawn back to the time of his Receipt from *Haig*; it is answered, That it needs no Declaration of Judge, and consequently is not to be drawn back, but was so from the beginning.

And where it is alledged, that albeit in Matters of Treason all Subjects are obliged to delate, yet

not in Matters which are doubtful, but certain; it is answered, That this is certain, & *de jure & de facto*: *de jure*, because commanded to apprehend under the Pain of Death; *de facto*, because of the said infamous Libel, which is really and of the own nature so.

And where it is alledged, that *Credulitas in Furtis præbet causam probabilem*, for the which the Text of the Laws are adduced; it is answered, *Quod illa Credulitas probanda est aliter quam per Juramentum rei*.

And where it is alledged, that *promiores esse debemus ad liberandum*; it is answered, That this has no place in *atrocioribus*, and which are so clear and manifest as this.

And where it is alledged, that the Pannel ought to be affolized for not apprehending and not revealing, because he did reveal it to the Earl of *Rothes*, who did make offer of it to his Majesty; it is answered, *Quod nullo modo relevat*, in respect of the Act of Parliament which ordains the revealing to be to a Counsellor, which *Rothes* was not. And the Offer to his Majesty by the Earl of *Rothes* non relevat, except it be alledged, that the Earl of *Rothes* offered it to his Majesty as a scandalous Libel, to be punished conform to the Act of Parliament; which is not nor cannot be alledged. And supposing that this revealing by the Earl of *Rothes* to his Majesty might be sustained as lawful for procuring Impunity from the Act, which is not granted; yet the Pannel is punishable to death upon the other Member, for not apprehending of *Haig*, whom he in his Depositions declared to have been the Author thereof, and whom he might have apprehended, both at the time of receipt thereof, and also at the time when the Pannel shewed to *Haig* the Warrant of his Citation before the Committee, he having him then in his power. And where it is alledged, that he could not apprehend him then, in respect of the Command given to the Pannel by the Committee, to acquaint no Persons with the Causes of his Warning; that cannot be adduced for an Excuse, but rather makes the Pannel inexcusable, because he transgressed the Command of the Committee in showing of the Warrant to *Haig*, and yet did not apprehend him; but showing of the Warrant, gave him occasion to escape. And where it is alledged, that giving of occasion is not relevant, and also that receiving Letters from him (not being in a Matter treasonable) is not punishable; it is answered, That these Circumstances are not essential Parts of the Dittay *per se*, but used as Adminicles to aggravate the Pannel's Crime in not apprehending of *Haig*, and entertaining with him Correspondence after his flight.

And where it is alledged the Letters, if they were produced, would prove nothing against the Pannel, but in his favours, *non est hujus loci*, because now we are only upon the Relevancy of the Dittay. But when they shall be used in the proper Place before the Assize, it will be clear, that the same make rather against than for the Pannel, in respect whereof the said fourth Exception, and hail Members thereof ought to be repelled.

It is duplyed by Mr. *Roger Mowat*, in fortification of the Defence proponed for the Pannel, bearing, that giving and not granting that the foresaid Supplication quarrelled, might be found scandalous against *Haig* the Author; yet *quoad* the Pannel cannot be found, because the Addition of the Act 94 militats only against clear Writings, clearly

clearly known to be infamous ; and at the first this appears not so, being of a doubtful Strain, as the Exception bears.

Whereunto it is replied, that the hail Members of the Dittay, anent hearing, not revealing, not apprehending the Author, are severally relevant, in respect of the Act of Parliament ; whereupon it is subsumed, that the Pannel knew *Haig* to be the Author, and did not apprehend him, but concealed and revealed neither him nor the said alledged Libel, and sicklike occasioned his Escape, and received Letters from him since. It is duplyed, that the said fourth Alleadgance proponed for the Pannel, stands relevant in the hail Members thereof, notwithstanding of the said Reply founded upon the said Act of Parliament ; and the Pannel refers himself to the said Exception and hail Members thereof, to be judicially pondered and considered. And farther alledges, that the said Reply is not relevant, bearing that that Part of the Subsumption of the Dittay is founded upon the said Act, bearing, that the Pannel knew *Haig* to be the Author, and did not apprehend him : Because albeit the Pannel knew him to be the Author, as his Deposition bears in these words, that he took him to be the Author ; yet it followeth, not by good Consequence in Law or Reason, that he took him to be the Author of this as a seditious and scandalous Libel, as my Lord Advocat in his Replies bears hardly upon us, which were to take *Contraversum pro Confesso* : And so the Pannel still abiding by his former Defence, acknowledges, that if he had known the Libel to have been infamous, he was tied to the strict Observance of the Act of Parliament made against Libels of that nature and kind. But seeing the Pannel was still denied all such Knowledge as is inferred upon him by the Dittay and Reply, and that it is against Reason that any furdur Knowledge of a Writing should be enforced upon a Party, otherwise than he declares himself, and has declared *ab initio* ; for he has still affirmed, and yet does affirm, that he never conceived that quarrelled Writ to have been infamous, or to have carried or rubbed any Aspersions upon his sacred Sovereign ; which if he had perceived, he would rather have lost his Life before he had concealed one jot thereof, as he was bound in Duty. And so seeing the Gloss and Commentar of his Knowledge of the said Libel, must always be referred to himself, and not by the Gloss made in the Dittay, importing no less than the Loss of his Life ; the said Reply ought to be repelled, unless it were alledged that the Pannel, by his Knowledge and by his Understanding, had perceived the said Libel to be as the Dittay bears, which he professes he never did. For if this Ground hold, that all Men reading Writings should have a like Knowledge thereof ; and that any reading a Writing should understand all the Sense or Commentaries that could be made thereupon, or else to incur such Pains as might follow ; this Inconvenience might ensue, that Bairnes, or mere Ignorants or Fools, reading Writings of this kind and nature, might incur the self-same Dangers ; which is a great Inconvenience, for certainly they know no better : and by their Knowledge they apprehended not the Danger, which wiser and more learned Men prying more narrowly thereinto, did perceive and find out. For it has pleased God to give every Man his own particular Knowledge, and not all Knowledge to one. And except it were replied, that the Pannel either by

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Word or Writing had signified or expressed any other Knowledge or Conception of the said quarrelled Writing, which may verifys against him that he acknowledged the same to be scandalous, as the Dittay bears, the said Reply should be repelled as irrelevant. And the Conception and Knowledge of the said Writing must necessarily be referred to the Pannel's own Declaration, whose Life and Fortune cannot be taken away upon another Man's Exposition of a Writing, which the Pannel is content to make Faith that it never entered in his Judgment or Sense to know that to have been the Meaning ; which if he had known, he could not but at the first view have fulfilled and obeyed the Law set down in the said Acts, as his Disposition, and his Carriage, and his bygone Actions clearly evince, and needs no further questioning. In respect whereof, the said Reply ought to be repelled, as altogether irrelevant, for the Reasons before alledged.

And where it is replied by my Lord Advocat, That the giving of the said infamous Libel by the Pannel to the Earl of *Rothes*, is *de facto* concealing, except the said Earl were such a Person to whom the Act tyes the Hearer to reveal ; which he is not, because he is not ane Counsellor : to that it is duplyed, That the said Reply is no ways relevant, because albeit the said Act of Parliament expresses a number of kinds of Persons in place, to whom the Crimes prohibit by the said Act are to be revealed ; yet it excludes not other Persons, but that such Crimes may be revealed to them as well as to the Persons contained in the Act : and the revealing thereof to other Persons would be counted good Service, and not taken for a Fault in the Revealer. Secondly, The said Earl, to whom the said Writ was revealed, albeit he be not Privy Counsellor, yet by the Laws of this Country he is born a Counsellor, and was so at the making the said Act, as all the Earls in *Scotland* were then : and therefore the revealing to the said Earl may be estimat to have been done conform to the said Act. Thirdly, The said Earl is ane Sheriff, and by the Act of Parliament the said Crimes are ordained to be revealed to Sheriffs, as one of the Persons mentioned in the said Act : and therefore the Delivery of the said quarrelled Writ to the Earl of *Rothes* by the Pannel, is clear revealing, and not concealing ; at the least is such revealing, that in Law and Justice should liberat and free the Pannel from the Crime libelled in the Dittay, and from the heavy Pain that follows thereupon, being no less than the Loss and Tinsel of his Life.

And where it is replied by my Lord Advocat to that part of the said Defence, bearing that the Act of Parliament is of notorious and known seditious Libels, and not of doubtful and ambiguous Writs, which in reading may suffer divers Senses and Constructions, of the which last kind it is alledged that the Writ quarrelled is : to the which it is replied, *Ubi Lex non distinguit, neque nos distinguere debemus*. And seeing the Act comprehends Reproaches and scandalous Libels, which are really so, *& non in Opinione* ; the Judge and Assize should proceed according to the thing prohibited, and not leave place to the Veil of Opinion : To that part of the said Reply it is duplyed *ut supra*, That albeit the said Act comprehends reproachful and scandalous Libels, which are really so ; yet it follows not, for the Reasons adduced in the first Duply made to my Lord Advocat's first

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Reply.

Reply immediately preceding, which I here repeat *brevitatis causa*: for here is all the Controversy, Whether my Lord Advocat's Opinion in the Dittay, or the Pannel's Opinion in the Defence against the Dittay, shall carry the greatest force, seeing they are both different Opinions. And it seems most favourable and most reasonable, that a Nobleman's Life being quarrelled and drawn in question and hazard upon the Interpretation and Commentary, that the Pannel should have the preference anent the Interpretation, for preservation of his Life, Honour, and Estate; especially in respect that it is not only simply offered, that he should declare the true meaning, which he always knew and understood, of the said Writing, but likewise offers to make Faith thereupon. And as this is most reasonable, so it ought to be favour'd upon the Pannel's part in this Case, so heavy and so dangerous to him; for it is not denied, but the Act prohibits the hearing, having, concealing, &c. of infamous and scandalous Writings; but this Writing *quoad eum* cannot be called so: neither prohibits the Act, that Readers of such Writings should otherwise read, know and understand the same, nor according to the Knowledge that it has pleased God to give them.

And to that part of the Reply, bearing that the Pannel cannot pretend Excuse upon the Uncertainty and Ambiguity of the said quarrelled Writing, because by the first view it might and should have appeared to him to have been of that nature; albeit in Libels against Subjects there might be some Excuse by reading, retaining, and looking upon 'em; yet the Pannel cannot pretend Ignorance after the receiving thereof from *Haig*, and communicating the same to the Earl of *Rothes*, that they found it of such a strain, as should not be presented: It is duplyed, That this part of my Lord Advocat's Reply doth unwillingly force the Pannel to fall upon the Exposition of the Words of the said Libel; which cannot be eschewed, in respect of that part of the Reply, bearing that by the first View it might and should have appeared to him to have been of the nature of a seditious Libel: which the Pannel flatly refuses, and is formally contrair, because he never took it to be so; for the first words of the said quarrelled Writing are this, (these) *To the King's most Excellent Majesty, the humble Supplication of the Lords and others Commissioners of the late Parliament, humbly sheweth, &c.* And these being the first words of the said Writing, if in reason it may be affirmed that the Pannel cannot pretend Excuse, because by the first view that Writing containing these words; if, I say, it might and should have appeared to him to have been a seditious Writing, the Pannel remits himself about it to the wise and judicious Deliberation of the Judges and noble Auditors. For as it has been oft said before, and now not to be repeated, the Pannel declares that he never took the said Writing in his Opinion and Judgment for any other kind of Writing or Libel, but for a humble Supplication and Remonstrance, in all humility to have been presented to his sacred Majesty; and which accordingly was delivered to the Earl of *Rothes*, to have been presented and by him offered to his Majesty, and refused in manner contained in my Lord Advocat's own Declaration of his sacred Majesty's own Speech and Words uttered to the said Earl of *Rothes*, the time of the offering thereof: whereupon the Pannel takes Instruments. And so the said quarrelled Writing not being at the first view seditious, as is libel-

led in the Dittay, and contained in the Reply, but in the said first Words being a most humble Supplication; the Pannel most justly pretends Excuse, that seeing *de facto* the said first words are not seditious at the first view, that therefore he ought not to be convened by this Dittay, as Haver, Hearer, and Concealer of the said seditious Writing; but ought to be suffered and permitted to make his own Interpretation, that he never thought it so; and therefore cannot be pursued criminally upon his Life therefore, as the Dittay bears.

And at that part of the Reply, bearing that albeit in Libels against Subjects there might be some Excuse by reading, receiving, and looking upon the same; yet the Pannel cannot pretend Ignorance, in respect of his Depositions, after receiving from *Haig*, by communicating the same to the Earl of *Rothes*, that they found it of such a strain as should not be presented: to that it is duplyed, That the said Depositions make nothing against the Pannel; for the Pannel did never deny the Receipt of the said quarrelled Writing from *Haig*, nor that he did communicate the same to the Earl of *Rothes*, and that they found it of such a strain as should not be presented. But the Times being distinguished, the Doubt is soon solved: for the Depositions apparently express not the Times. For the Pannel did not depone, That before delivery of the said quarrelled Writing to the Earl of *Rothes*, and before the Earl of *Rothes* his intended Offer thereof to the King's Majesty, that they found it of such a strain as should not be presented: but that Conference betwixt the Earl of *Rothes* and the Pannel, was long after the intended Offer and Refusing. At which time, upon the occasion of the Harshness and Misconstruction of some Words, that Speech was uttered betwixt them; and from that time furth, nothing further followed. And therefore the Pannel's Deposition makes nothing for the said Argument, That the Pannel could not pretend Ignorance: in respect whereof, the said Reply, and hail Members thereof, out to be repelled.

It is farther duplyed by Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat, that the Pannel's Opinion of the Writing, and the alledged probable Cause of his Ignorance to be a scandalous Libel, adduced, cannot defend the Pannel from concealing, &c. because the Writing in itself is really scandalous, and at the first view might and should have appeared in that nature to any Man of the Pannel's Understanding; and who can pretend Opinion *nesciendo hoc quod omnes sciunt*? It is answered, That the Pannel's Opinion of the Writing, and the probable Causes of his Ignorance of the same to be scandalous, does defend the Pannel from the Crimes libelled, not only for the Reasons and Laws already adduced, in the matter of Injury and other Crimes, which are most pregnant; but also because no Capital Crime whatsoever is or can be committed *sine dolo*, whereof the Pannel is altogether free in all sorts thereof; *Et a dolo vero & a dolo præsumpto ex qualitate facti*. A *dolo vero*, which the Pannel's innocent Intention evinceth in the Defences proponed for him in the second Exception; and there he is purged abundantly, for the Reasons contained therein, which are here repeated *brevitatis causa*.

The Justice and Assessors continues this Dyet till tomorrow, the 12th Instant.

Curia

Curia legitime affirmata, the said 12th of December, 1634, &c.

It is alledged by the said Mr. *Alexander Pearson*, and duplyed by the Pannel, *Secundo*, That the said Pannel is free *a dolo præsumpto, quia tunc præsimitur dolus ex qualitate facti, ubi quis facit quod scit vel scire debet se non debere facere: At in proposito nostro nulla scientia nec conscientia criminis in accusato, nec ignorantia ejus quod omnes intelligunt.* But most just and probable Cause of Ignorance of the Writing to be scandalous, which would have affected even the wisest and most sagacious then; although now *ex post facto*, by Pregnancy and Vivacity of Spirit, the Writing quarrelled being searched unto exactly, the same being interpret by the Dittay, and urged upon the Pannel as seditious; which Interpretation now of it, cannot make damnable the Estimation and Opinion of the Writing quarrelled, which it had of before amongst Men of common Understanding, to make culpable of capital Crime: *Quia Injuriarum Estimatio non addit tempus quo judicatur, sed ad id quo facta est referre debet; Expressa Leg. 21. F. de Injuriis. Et nunquam crescit ex post facto præteriti Delicti Estimatio.* And it is hard that the Pannel, upon Error of Judgment, should incur capital Punishment.

Where it is replied by my Lord Advocat, That the Pannel cannot pretend Ignorance of the Writing quarrelled, because by his Deposition the 7th of June, he has declared that he thought it not fit to be presented to his Majesty; it is answered, That the Reply is not relevant, and that the Pannel then thinking it not fit to be presented, hinders not but the said Writing being thought fit by others to be presented to his Majesty, and indeed offered to his Majesty, the Pannel thereby was confirmed the more to think of it as a Supplication, and may make the Defences thereupon, upon his Credulity foresaid.

Where it is reply'd by my Lord Advocat, *Quod omnis Ignorantia juris est improbabilis & punibilis*, and that the Pannel can pretend no probable Ignorance thereof; it is answered, That the addition of the Act of Parliament 94, anent Concealers, whereupon this part of the Dittay is only founded, had never Strength nor Vigour of Law, (never being yet practised against any since the first making thereof) but being as it were by desuetude abolished, *ut supra* in our first Exception, shews that the Ignorance thereof is neither improbable, nor punishable against the Pannel.

Where it is replied by my Lord Advocat to that part of the fourth Exception, bearing *quod Credulitas in furtis præbet causam probabilem*, and that by parity of Reason it should have place also in the matter of infamous Libels; to the which it is replied, *Quod illa Credulitas aliter probanda est quam per Juramentum Rei*: It is answered, That the Pannel urges not his Credulity of the Writ quarrelled upon his own Declaration only, but also upon other Circumstances, Evidences, and Presumptions, already adduced in the said fourth Exception and former Defences; which clearly evinces the Pannel's Credulity, and the Justness thereof.

Where it is replied by my Lord Advocat to that part of the Exception, propoing the Words of the Law where it is said, *Ubi de obligando & liberando queritur, propensiores esse debemus ad liberandum*; to the which it is replied, That the Law cited has

no place in clear and manifest Crimes, as this is: It is answered, that the Reply takes *Controversum pro Confesso*, That the Crime whereupon the Pannel is accused is clear and manifest, which it is not; but in the Notion of a Crime (if any there be, which we do not grant) the same is most abstruse and obscure: and if any Clearness be, it is for the Pannel's Innocency; in respect whereof, the Exception stands relevant, notwithstanding of the Reply.

It is further duplyed by Mr. *Roger Mowat*, to the Reply made by my Lord Advocat to that part of the said fourth Defence, bearing that the Pannel is not punishable for not apprehending and not revealing, upon an Act become in desuetude, because the Leidges are ruled by the Laws of the Kingdom, as the Acts of K. *James I.* and K. *James IV.* bears; and that there is no Prescription in Laws, and that *omnis Ignorantia juris est improbabilis & punibilis*: It is duplyed, That albeit the Leidges are and should be ruled by his Majesty's Laws, yet where Laws are become in desuetude, and have never been practised, the Leidges ought to be certified thereof, and new Intimation ought to be made, as in the first Defence at length is contained. And neither of these can be alledged in this present Case; and therefore the dangerous Consequence of this and the like Laws ought to be prevented before the same be practised, which is the Mind of the Law-giver. And to that, bearing that there is no Prescription in Laws; it is duplyed, That Desuetude must be estimat equipollent to the Prescription of Laws obscure, or that are not in daily custom. And where it is replied against probable Ignorance, *Quod omnis Ignorantia juris est improbabilis & punibilis*; it is duplyed, That *Ignorantia juris in damnis vitandis non nocet*: and this is our Case. And where it is replied to that part of the said fourth Defence, bearing that the Pannel had probable Ignorance, the Defence ought to be repelled, because the Nature and Strain of the quarrelled Writing must be the Rule of the Punishment or Impunity, and not the Opinion of the Pannel; *Et quod est Ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt*: It is duplyed to the said Reply, That the Pannel still contends that the Nature and Strain of the Supplication quarrelled may be the Rule of his Punishment and Impunity, according to his Opinion of the right Meaning and Sense that he made thereof, for the Reasons already adduced in the former Duplies immediately preceding; wherein the Pannel contends, that with reason he himself must be the only Trucheman and Interpreter of the said Writing, in case any other Commentar or Interpretation be made thereof, containing such a Sense and Meaning, as being received and admitted, will bring upon him the Punishment of Death: which Duply is here repeated *brevitatis causa*.

And where it is replied, That the Reproaches and Exprobrations therein contain'd are so nottous, that the Pannel nor none of his Judgment could pretend Ignorance on the reading thereof; it is duplyed *ut supra*, That the Pannel refuses his having knowledge of any such Reproaches, and professes his Ignorance thereof; albeit he read the same, and others likewise of better Judgment than himself, who did never observe nor find out the like, according to their Judgment and Understanding. Which Reproaches and Scandals, if they had perceived and remarked, (as they did not) would have

have touch'd them as near as any other of his Majesty's Subjects whatsoever of their Quality or Degree : but seeing the Pannel, and the rest of the Hearers and Havers of the said quarrelled Supplication, pretend their Ignorance foresaid of any such Knowledge, as is now expressed in the said Dittay ; the Pursuer can never be heard to force any other Knowledge upon them, to that end that they may be found guilty of the Crime libelled, and Punishment of Death therefore.

And where it is replied, That it is *Ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt* ; it is duplyed, That my Lord Advocat will do well to apply that Rule to the present Case, and show *quid sit hoc quod omnes sciunt*. For if his Lordship means by his Dittay, then that Rule can have no place here, because no Man knew any such Glosses or Interpretation of the said Supplication, but the Pursuer himself, before the coming furth of the said Dittay. And if before that time many were of another opinion, concerning the meaning of the said Supplication ; then my Lord Advocat cannot be heard to say, that it was *Ignorantia maxime inexcusabilis* in the Pannel *nescire hoc quod omnes sciunt*, seeing no Man knew that which was set down in the said Dittay, but my Lord Advocat himself : and many knew, and yet know, that the said quarrelled Supplication in their Judgments and Conceptions carried with it no such Meaning or Construction.

And where it is replied, That the Pannel's Defence, founded upon his Depositions which he made voluntarily for satisfaction of the Committee, cannot be respected, because the most substantial parts of the Dittay are founded upon the said quarrelled Supplication, and not upon the Pannel's Depositions ; and that his Denial of Knowledge by Oath, cannot liberat him from the Pain of Death : It is duplyed, That albeit many substantial Points of the said Dittay be founded upon the said Supplication, yet they are founded upon the Pannel's Depositions also. And albeit the said Dittay quarrels and impugns the said Supplication in sundry Passages, which the Pannel doth not maintain as they are expressed in the Dittay, because when he and the other Supplicants read and heard the said Supplication, they found no such meaning in it ; and they leave the Defence of that Commentaay to the Author himself, and declare *ut supra* by their Judgment they found it not of such a strain as the Dittay bears : The Declaration ought now to be received, for clearing of the Pannel and remanent Supplicants from all Suspicion of such Knowledge as the Dittay bears upon them, for the Reasons foresaids, contained in the former Defences and Duplies. In respect whereof, the said Reply ought to be repelled, in respect of the saids Depositions already given, and of the Pannel's Declaration upon Oath, which he now offers to give.

Where it is replied to that part of the said Defence, bearing that albeit the said alledged Libel should be now found to be infamous, yet cannot be drawn back, That there needs no Declarator of the Judge ; consequently may be drawn back, because it was infamous from the beginning : it is duplyed, That the Defence stands relevant notwithstanding the Reply. Which Defence bears expressly that the Pannel and other Supplicants received the said Libel (now quarrelled) as an humble Supplication ; and in token of their said Knowledge addressed the same to be presented to his Sacred Majesty, as the said Defence bears. And

so what has been found out since to be therein by the Pursuers, and those of deeper Wit and Knowledge than the Pannel and other Supplicants, cannot be laid to their charge ; for whom all Presumptions are most clear and evident, that the Pannel had never so much as one Thought or Opinion, as is contained in the Dittay.

Where it is replied to that part of the Exception founded upon the Instance of Treason, as the same bears ; it is duplyed, That my Lord Advocat in that Answer takes *Controversum pro Confesso*, ever taking this for a ground that the Supplication is seditious and scandalous, and so to be reputed and holden against the Pannel and others in the like Case, which is still denied, for the Reasons before adduced. Where it is answered by my Lord Advocat, That that part of the said Defence anent the revealing to the Earl of *Rothes* is not relevant, in respect of the Act of Parliament ; it is duplyed, and ought to be repelled in respect of the former Duplies answering this Point, That Earls, the time of making the said Act, were born Counsellors ; and that the Earl of *Rothes* was a Sheriff, which the Act allows.

And where it is replied, That the Offer to his Majesty *non relevat*, except it were alledged that he offered it as a scandalous Libel ; it is duplyed, That the said Reply is no ways relevant, because it was sufficient by presenting it to his Royal Majesty to reveal the same in that manner : And it cannot be now known whether it would have been so thought by his Sacred Majesty, albeit he refused the same ; but it is certain that the Pannel and the Presenter would never have presented the same, if they had thought it scandalous. And that part of the Defence, bearing that it was revealed by the presenting, needs not to bear that it was offered to be presented as scandalous, for that was not their End, neither had they any such Meaning by the said presenting ; their Intention being, as is contained in the said Defence, to have it presented as an humble Supplication, to receive a gracious Answer, as other Remonstrances had gotten before. And so there is no necessity to alledge it was to be presented as a scandalous Libel.

And where it is replied, That (granting) the said Revealing to his Majesty might have been sustained as lawful, yet the Pannel is guilty of Death for not apprehending ; it is duplyed, That the said Reply is not relevant, because if the said revealing was lawful, *ergo* there was no necessity of apprehending ; for the words of the Act of Parliament anent the Prohibition are alternative. And albeit, as it is answered before, that the Pannel thought Mr. *Haig* to be Author, yet in respect of this Conception of the said Libel, he thought him not to be such an Author as merited Apprehension, because the said Libel in his opinion fell not within the said Act of Parliament. And repeats his former Answer, and the two Practicks about the apprehending of free Leidges ; adding thereunto the late Lord *Maxwell's* Practick, who having apprehended by virtue of a Commission, was notwithstanding foresaulted therefore.

To the Reply, bearing that my Lord Advocat granted that the Circumstances of the Receipt of *Haig's* Letter are not essential Parts of the Dittay *per se*, but used as Adminicles to aggravat the Pannel's Crime of not apprehending, and giving him occasion to escape, and entertaining of Correspondence with him thereafter : it is duplyed,

That the Pannel and his Procurators accept of the said Answer, and protest that no respect be had thereto, as ane essential part of the Dittay. And the alledged Correspondence is no ways relevant, not bearing that the Pannel did write Letters to Haig: for Correspondence must be mutual, otherwise it can be no Correspondence.

Where it is replied, *quod non est hujus loci* to produce Haig's Letter; it is duplyed, That 'tis *maxime hujus loci* to be produced, if that part of the Dittay founded upon it be found relevant, because they were already produced by Warrant of my Lord Justice; and being now produced, nothing shall be found in them to carry any Warrant for that part of the said Dittay. And being produced to the Pannel, and his Procurators for their Information and Defence, must yet be produced to be compared with the said Dittay. For if they shall find that the Dittay and the Letter do not agree, then that part of the said Dittay founded upon the said Missive will not be sustained, and so cannot be put to the knowledge of an Inquest. In respect whereof, the hail Replies and all the Members thereof ought to be repelled.

It is duplyed by Mr. John Nisbet; Where it is replied by my Lord Advocat, That the Dispute against the Relevancy of the Qualification is superfluous, because the general Subsumption conform to the Act of Parliament is *per se* relevant: it is duplyed, That the General is not relevant, *quia non oportet in Criminibus vagari, Leg. Libellorum, F. de Accusationibus: Et Locus, & Tempus, & Minutia Delicti exprimenda sunt; alioqui Accusatio ipso jure est nulla. Clarus, §. final. Quæst. 12. num. 8.*

Whereas it is replied by my Lord Advocat, That the Dittay is not contrair to itself, because of the acquainting his Majesty by my Lord Rothes's means does not expiat and purge the concealing, my Lord Rothes not being one of these Persons to whom the Delators of such Pieces, and Authors thereof, is appointed by the Act of Parliament: it is duplyed, That these Persons are only specified for receiving of such Delations *in subsidium*, where the Revealer knows not any other summar and secret way to acquaint his Majesty; and not to tye them to an unnecessary Circuit, where by a more compendious way his Majesty may be acquainted, and the Authors suppress. And we represent the Inconvenient to ensue, if Parties by whose means his Majesty has been acquainted with Pieces of that kind, shall be obnoxious to the Pains of the Act for not seeking a Bailly or Sheriff, to tell unto them that which by other and more direct means is shown to his Majesty.

Whereas it is replied by my Lord Advocat, That the Acts of Parliament require not a judicial Declarator of the nature of such Pieces, nor the former Knowledge of the Party challenged, but without distinction punish the not Revealers and not Apprehenders of the Authors of Pieces materially seditious; *Et ubi Lex non distinguit, nec nos distinguere debemus*: it is duplyed, That Statutes being particular Conclusions of Law, presuppose *Principia universalia & prima*, and imply intrinsically the common Notions of Law and Reason. And therefore seeing in Reason there cannot be a Crime of concealing, unless the Piece or Author alledged to be concealed were either declared to be, or to the Pannel's knowledge were such as he ought to reveal, because *celare* is relative to knowledge; it is not relevantly subsumed that Haig was

Author of ane Piece materially scandalous, and that the Pannel revealed him not, unless a former Knowledge were assumed likewise. And the Law itself furnisheth a Ground for this Distinction, because the Word *Concealing* importeth Knowledge: *Et statuta punientia delicta capitaliter non habent locum nisi dolo interveniente, etiam quod de dolo non fiat mentio. Paulus de Castro in Lege Nemo, num. 5. Codice de Episcopis & Clericis, Ubi perstringit imperitiam judicum qui verbis statutorum mordicus inberent, & multo magis cum dolo requiritur, vel expresse vel tacite, tunc enim nec lata culpa sufficit, tacite autem requiritur dolo, cum statutum utitur verbis, nullus audeat vel præsumat.* Which are expressly in the Act of the 10th Parliament; and must of necessity be considered to understand the Addition contained in the Act of the 14th Parliament; *Idque multo magis in delictis quæ de sua natura requirunt dolum prout est falsum injuria & similia. Phar. Quæst. 87. per totam.* Whereas it is replied, *Quod Judex debet procedere secundum naturam rei prohibita*, and should not leave place to elude the Law *sub velo opinionis*; it is duplyed, That by all Statutes of that nature Crimes are only obviated and prohibited: And the Judge should proceed to try whether Crimes be committed, or not, and not to condemn Escapes or Errors of Judgment, which are not arbitrary to the Will to shun, but depend upon the Disposition of Organs, and Representation of Fantasms, which are exhibited *ab intellectu agente*, and *necessitate intellectum patientem* to ane Assent, where it is furnished with no probable Grounds to elide the same; as is known even to the Novices in Philosophy by that trivial Maxim, *Intellectus per assensum præmissarum convincitur ad assentiendum conclusioni, saltem quoad specificationem.* And where my Lord Advocat would expose the Weakness of the Pannel's Judgment in not discovering the nature of seditious Pieces, to enforce the Punishment of a Crime, it is duplyed, That the Law is not eluded by the slender Pretence of Opinion; but the Pannel's Conception of the Piece, verified by his Oath, and by all possible Presumptions, which we have at length deduced, must liberat him from the Guilt and Pain of the Crime, seeing in Law *caerent animo injuriandi ex quo crimen consistit*, verified by the Oath of the Party; and any assisting Presumption imports *absolvitur*, as is already shewn by the forecited Laws, and the Harmony of Doctors. And whereas it is replied, *Quod ignorantia juris non excusat in delictis atrocioribus*; it is duplyed, That *ignorantia juris* being at the most *lata culpa, æquiparatur dolo, & non excusat in actionibus descendens ex contractu, vel quasi, sed excusat in criminibus vel delictis, quia voluntas, quæ maleficia distinguit, spectatur, non veritas vel exitus. Leg. Divus Hadrianus, F. ad Legem Corneliam de Sicariis. Phar. Quæst. 87. Ubi regulariter dolum requirit, & ubi abest dolo, pœnam asserit cessare, idque etiam in crimine Læsæ Majestatis, num. 10. & per totam.* And the Atrocity of the Crime excludes not a probable Excuse, *Quia causa quælibet, etiam levitas, credulitas excusat a dolo regulariter. Phar. Quæst. 90. num. 1. Et non solum si sit levis sed colorata & irrationalis imo etiam temeraria & bestialis. Idem ibid. num. 3. Ubi refert doctores concordantes Claudius Battandæ, Reg. Si fatua credulitas a dolo excusat cum vehementibus præsumptionibus probatur, num. 1, & 2. Et causa levis excusat in crimine injuriarum, & ad excusandum sufficit error verus vel præsumptus. Phar. dicta Quæst. num. 29. Et levis causa excusat etiam in crimine Læsæ Majestatis. Ibid. num. 26.*

Et

Et multo magis in iis qui de sua natura nec de jure civili reprobata sunt: As is the Points of not apprehending and concealing. *Ibi enim dolus non presumitur, & si quis sic egerit sine dolo & animo delinquendi creditur agentis assertioni ex quo habet pro se juris presumptionem.* Num. 14. & num. 90. *Et ignorantia juris excusat a dolo.* Num. 91. *Et crassa supina & affectata excusat ex opinione Baldi & Tiraquelli, quo citat Num. 99. Nisi sint circa ea quæ sint de jure naturali gentium & divina prohibita.* Whereas it is replied, That the Pannel cannot pretend Ignorance in respect of the Piece conspicuously infamous, and of the Pannel's Sufficiency and Qualifications, and in respect of the Person injured, being his sacred Majesty; and therefore excludes all Excuse upon Curiosity, or any other respects, excusable by the Law, and, at last, in respect of the Pannel's disapproving of the Piece in his own Depositions: It is duplyed, That the Piece is not nottourly infamous for the Reasons adduced. And here we protest, That my Lord Advocat's odious decyphering of the Piece, necessitates us to vindicate not itself, but the Conception that the Pannel had, and that any Man may have, that is not pre-occupied with the unnatural Glosses of the Dittay. And for the Pannel's Qualifications, it evinceth that he would not have delivered a Piece nottourly infamous to be presented to his Majesty, as is acknowledged by the Dittay, and so to have indangered his Honour and Life, if he had had any such Conception of it. And for the Pannel's disproving of the Piece, it convinceth not his finistrous Intention in using or having a Piece disprovable, because it is not deponed that he disproved it as seditious or infamous, but *quando verba confessionis sunt dubia, possunt & debent declarari & interpretari per consistentem, & in meliorem partem.* Pbar. Quæst. 81. num. 38. *Et confessio dubia & incerta interpretatur in bonam partem in favorem consistentis, & secundum illius intentionem.* Bald. in Leg. unica num. 23. *Codice de Confessis.* And the Pannel declares that he disproved it not as seditious, but fit to be suppress'd, in respect of his Majesty's Will expressed to my Lord Rothes anent Pieces of that Strain. Whereas it is replied by my Lord Advocat, That the Defect of the Common Law, in the Points of concealing and not apprehending, cannot be obtruded, and that there can be no Prescription of Laws; yet there is Antiquation and Desuetude, as we have before shewn: And the Defect of the Common Law is adduced as a probable Candour of the Desuetude in Points debording from the Common Law. Whereas it is replied by my Lord Advocat, That the nature of the Piece must rule, notwithstanding of the Pannel's Conception thereof, because it is only required that the Piece should be really seditious; it is duplyed, That in matter of Crime the Intention and Conception is most considerable, as is already inculcat; and when there is a Question anent the Credulity of the Party, his Credulity is probable by Oath, *Barad. §. Recte Lege inter omnes, F. de Furto*; especially where there concur some Presumptions. Whereas it is replied, That *ignorantia est inexcusabilis nescire quod omnes sciunt*; and that the Pannel's narrow Advertency and Canvassing of the Piece challenged, in reading, copying, advising, interlining, join'd with his Opinion anent the Presentation thereof, excludes all Presumptions of Ignorance: it is duplyed, That it cannot be said *quod omnes sciunt*, seeing my Lord Rothes, a Nobleman of eminent Quality and Sufficiency, made offer, at least mention thereof, as a Supplication to his Majesty, for the

Pannel's Opinion. It is already answered for his perpending of the Piece; it is so far from aggravating or convincing his Knowledge of the Piece to be of that nature, that he is confident that indifferent and impartial Judgments, the more they advert to the Strain of it, they will be the more edified of the Nature of it, that it is not so nottourly injurious. And therefore the Pannel protests that his Procurators may vindicate his Conceptions of it, and remonstrate the strange Inferences that the Dittay makes of it. Where it is replied by my Lord Advocat, That apprehending is warranted and enjoined by the Acts of Parliament, and therefore not dangerous; it is duplyed, That apprehending is warranted, when Parties are able, by lawful Probation, to bind upon the Persons apprehended the Guilt of the Crime for which they delate and apprehend them. And that even in the Crime of Lese Majesty there is no Warrant to apprehend Parties, albeit known to the Apprehenders guilty of the Crime, unless they be able to qualify and prove the Guilt under the Pain of *Towtowabiz* and Retaliation in case they succumb. Where it is replied, That the most material Parts of the Dittay are founded upon the nature of the Piece itself, and not upon the Pannel's Depositions; it is duplyed, That howsoever there results a relevant Defence in Law upon the Pannel's *Absentia animi*, which is probable by his Oath, assisted with Presumptions; and is admitted in the most strict Inquisitions, as is constant by the uniform and constant Harmony of all Criminalists. Whereas it is replied by my Lord Advocat, That there needs not a Declarator of the Judge to be drawn back; it is duplyed, That in all Countries where the concealing of Heretick Books is punished, a judicial Declarator is necessarily required; and the private Opinion and Mistaking of Parties before Declarator was never censured, much less punished.

Whereas it is replied by my Lord Advocat, That the Maxim, *Prioriores debemus esse ad liberandum non habet locum in atrocioribus & delictis contra Principem*; it is duplyed, That we retort this Answer, *ubi lex non distinguit nec distinguere debemus. Et non delinquit qui in dubio contra fiscum respondet, F. de jure fisci; & turpe est & principi injuriosum credere inventum qui principem omnibus beneficientem, neminem ledentem, injuria vellet efficere; & quavis excusatio etiam levissima & maxime fatua in criminibus atrocissimis admittitur.*

It is added by Mr. Robert Macgill to the preceding Duplyes, That where my Lord Advocat replieth, that *Juris ignorantia non excusat*; that the said Rule may be understood in *Jure, quod usu invaluit*: For even if in these petty Statutes anent the inflicting of pecunial Pains contained in the 9th Act, *Parl. 21. 1612.* a new Intimation of them is thought fitting to put the Leidges in *mala fide* before they be practised, what then in this Act, and some others, under the compass whereof sundry here may fall, shall there not an Intimation be required where Life, Honour, and Lands, are in danger, and a capital Pain to be inflicted for to put the Leidges in *male fide*? Item, Where it is replied, *Quod nec ignorantia facti excusat propter presumptum dolum*; it is answered, that the Pannel's *Ignorantia facti* is *ab omni doli presumptione aliena*; who could never think that under the general Law, contained in the Addition, could come in all sort of inordinate Speeches, and all sort of Hearers, Concealers, and not Apprehenders. And for the excusing of any Dole that can be presumed, he adduces the Knowledge of Law and Reason, which ought

ought to expone all municipal Laws, *ut evitetur absurdum*; which is, that all sorts of inordinate Speeches or Writs, even against a Prince, and all Concealers and not Apprehenders, should be punished alike: For the *Prætor* says, *Si quis adversus ea fecerit, prout quaque res erit, animadvertam. Leg. item apud Labionem 15. G. 251. 28. Ubi de panarum distinctione ex circumstantiis juxta Legem aut facta 16. in principio, F. de panis, quam consideratione affectus & animus facientis maximum habet momentum, Leg. illa 3. §. 1. dicta Leg. 15. §. 38. Lege si quis certum 26. in fine, F. de injuriis*. So that my Lord Advocate's Reply anent Credulity, that it excuses not, and that is is not a sufficient Warrant *ad juramentum purgativum*, and that it ought not to be here received; the same ought to be repelled, because *Credulitas sive justa sit Causa sive injusta excusat ubi dolus requiritur*, as in our Case. *Clarus, §. finali, Quæst. 60. num. 22. Et quod recipiatur juramentum purgativum concurrentibus aliis ad animi boni probationem indiciis constat per Pbar. Quæst. 105. Inspect. 3. post num. 111. Leva vero judicia sufficere, ait Alexander, Conc. 115. Columna penultima, Volumine quarto. Et à delicto etiam conventicula, & male congregationes, causam vel levem excusare ait Cravetta, Conc. 4. num. 26.* But so it is, there may be many good Reasons alledged, wherefore the Pannel had a good Mind, as that all which is in this quarrelled Petition, might have been proponed in Parliament. And the rest of the Reasons adduced in my second Exception, *adeo ut dolus non sit præsumendus* against the Pannel; neither is the Argument good that the Pannel disallowed it, or thought it not fit for a time, *ergo* he thought it seditious *negatur sequi*. And because my Lord Advocate, in all the Members almost of his Reply, returns upon this, That the Piece of it self is really seditious; and that Obscurity and Ambiguity of Words may receive Evasion and Excuse among Subjects, but not in the Case of the Pannel: I answer, That the Exception stands good, notwithstanding of the Reply, in respect of the Examples and Cases following. And, first, I confess that such inordinate Speeches and Writings as were uttered betwixt *Catiline* and his Complices against a Government, and against a Prince's Progenitors, or his Person, in that sort are punishable both in the Person of the Speaker and Penner, as also of the Hearer, not Revealer, and not Apprehender; wherein the Case of this Adition is verified: and no others are Hearers, not Revelers, and not Apprehenders. *Clarus, §. ultima, Quæst. 87. num. 2, & 3.* But mark in a second Case, *Quod nobilis qui directis verbis & assertionibus dixit, ait, scripsit, principem suum non habere animum remunerandi*; by *Matheus, De Afflictis, decisio 307. num. 27.* is not thought punishable by the ordinary Judge: but *remittendus, ut in Leg. unica, si quis principi maledixerit ubi tamen impropertur defectus liberalitatis, quæ est præcipua virtus in principibus*; as our Saviour himself affirms, *Luke Chap. 22. Εὐεργέται, Bountiful.* The third Case is of him who spake or writ that which by Interpretation might be misconstrued to an evil Sense, as was said in the second Part of my first Exception: And remits also to that Comment of *Menochius*, adduced by Mr. *John Nisbet*. And where my Lord Advocate would eschew, by saying that *Menochius* had not such a Law as we, and that we ought to be governed by our own Laws; remits to the end of my first Exception anent the Exposition of all municipal Laws, according to Reason. *Ubi Gaylus expones the Maxim, Ubi Lex*

non distinguit nec nos distinguere debemus, & ut vite-tur absurdum paritatis; our Laws may be so expounded. *Ergo* if the Authors of these last Speeches and Writings be scarcely punished, far less ought the Hearers, not Revelers, and not Apprehenders; for even in Apprehension, *quæ est captura oportet ut constet de criminis enormitate*, which is not here.

It is triplyed by my Lord Advocate, That he finds no necessity to triply. But if the Justice, and his Lordship's Assessors, require any thing to be explained in that which is duplyed, upon signification of their Pleasure, he shall be ready to expend all Doubts *verbo*, which he did.

The Justice-General continues this Dyet till to-morrow the 13th.

The said 13th of December, 1634. The Justice continued the Dyet till the 16th of December, 1634.

Curia legitime affirmata, &c. and Procurators in Defence, as before.

Mr. *Roger Mowat*, as Procurator for the Pannel, repeats only the former Defences, and Duplies of them, anent the revealing by the Pannel to the Earl of *Rothes* of the Supplication or Petition contained in the Dittay, and the Earl of *Rothes* his offering thereof to the King's Majesty; and that the Act of Parliament is satisfied thereby, which does not exclude the revealing to other Persons nor are mentioned in the said Act: But affirms positive all manner of revealing, whereby knowledge may come to his Majesty, which is the End of the said revealing, sufficient, as said is, in ane Act of this kind, which has never been in custom. And so revealing being clear, as said is, there needed no apprehending.

My Lord Advocate repeats his former Answers, That the revealing is not clear nor relevant; and albeit it were, that the not apprehending makes the Pannel guilty, and so to fall under the Punishment contained in the Act of Parliament libelled,

It is alledged by Mr. *John Nisbet* under Protestation, That the vindicating of the Libel challenged from the Glosses of the Dittay, shall not import any Approbation thereof, either by the Pannel or his Procurators; but in so far as they are necessitat, by my Lord Advocate's Replies, to vindicat the Pannel's Innocency in the hearing, or any other Accession to the said Libel challenged. It is first replied by my Lord Advocate in his Replies, bearing that the Nature of the Piece is so notoriously infamous, that at the first view it is apparent to the most shallow and ordinary Understanding, to be injurious to his Majesty in all the Points libelled: It is duplyed thereto, That the Points of the alledged Libel import no Reproach to his Majesty's Person, Estate, or Government, in the Pannel's Conception, for these Reasons: First, That Point anent Gesture is not reproachful, because *subiecta sunt talia qualia prædicata demonstrant, Bartolin. Primario Leg. 3. F. de Instrueto vel Instrumento Legato*. And there is no injurious Attribute enumerated, to defame his Majesty's Gesture; but it is only affirmed, that his Majesty's Notes bred a Fear, which is ane Attribute of Causality, and not of Quality. Secondly, The Intention of his Majesty's Noting could not be conceived by the Pannel to be ane taxing of his Majesty of any Point

of Indiscretion or Injustice, unless the Act of Noting had been qualified in the alledged Libel to be unjust or indiscreet ; which were sacrilegious to think of a Prince estranged from his Country, and from the Occasions of Knowledge and Knowing of his Subjects : for he may in Justice and Wisdom remark the Opinions of the Lords of Parliament, and thereby probably to found a Conjecture of their Inclinations to his Majesty's Service. Thirdly, The alledging the Noting of the Names of the Dis-senters could not at the first be conceived to imply an officious prying into the Gesture of the Prince, but rather a loyal Fear of incurring the King's Displeasure ; taking hold of a simple Gesture, whereby his Majesty might have seemed to have taken notice of their Untowardness to his Majesty's Service. Fourthly, There is no ground of Reproach inferred upon his Gesture, as the Dittay bears. It is duplyed to that Point anent his Majesty's Refusal to hear the Reasons of some Dis-senters, That the first part of the Answer to the former Point quadrats here. Secondly, The alledged Refusal of his Majesty to hear the Reasons of the Dis-senters, cannot be so readily conceived to rub matter of Reproach upon his Majesty's sacred Person or Proceedings ; but in the contrair argues his Majesty's Royal Goodness in not accepting the scrupulous preposterous Anticipations of Reasons before voting in Parliament, as being derogatory from the antient and hereditary Liberty of Noblemen's Votes, and from his Majesty's Royal Bounty, ready to acquiesce in the free Opinion of his Estates ; and far from a previous and partial espousing of either part of any debatable Point, before the final Decision in Parliament. And as for the Inference of Fear to become obnoxious to his Majesty's Displeasure, it is not an Inference of an Reproach, but rather of a dutiful Love, which debords (runs out) oft-times into a needless Fear.

It is answered to that Point of the Dittay challenging that Passage, *viz. That the opposing of Resolutions carried by plurality of Votes, was never censured by a Prince of so much Justice*, contains no Subject of Reproach ; but on the contrair, an ample and due Acknowledgment of his Majesty's undoubted Goodness and Justice, used as an Argument to deprecate his Majesty's Censure, as incompatible with his Majesty's Goodness, and the Example of other Princes like to his Majesty.

It is answered to that Point of the Dittay bearing that his Majesty's Honour is undermined by the affirming a general Fear of Innovation in essential Points of Religion, That his Majesty's Honour is not stained, because there is nothing affirmed to have been done by his Majesty, which might occasion any such Fear ; and the Panick and groundless Fear of Subjects, reflects no Reproach upon a blameless Prince. Secondly, It is affirmed that there is Fear of Novation intended, but not by his Majesty, as is clear by the Motives of that Fear adduced by the Supplicants, *viz. That there is Allowance of printing Arminian Books* ; which is not positively affirmed, but upon report, and the Impunity of Arminian Preaching, which reflects upon Churchmen only, to whom it is incumbent to advert to the Printing and Preaching of Orthodox Tenents. And therefore albeit it were false, cannot fall under the compass of the Acts of Parliament, as seditious and reproachful to his Majesty, his Estate, Person, and Proceedings.

It is answered to the Point of Admission of Pa-

pists upon the Parliament and Articles, That in the Pannel's Conception it reflects not against his Majesty, and therefore is not relevant to infer the Crime of seditious Libelling, or Accession thereto.

Item, It is answered to that Point of the Dittay, bearing the King's Majesty's Proceedings to be misconstrued in the alledged Prohibition of the Gentry to meet, That his Majesty's Royal Procedure is not taxed as unjust ; but without dyving upon the words of Justice or Injustice of the Interruption of those Meetings, it is only insinuat, that albeit in Parliament they might have objected against the Interruption of those Meetings, and had occasion to oppose his Majesty's Will, as they thought, that these Meetings should be interrupted, they contented themselves and were not refractory. And herein, and in the hail Strain of the following Points, (in the Pannel's Conception) it is only an Endeavour to shew that the dis-senting from some Acts, was not from any Faction and Waywardness to oppose his Majesty's Will, as they feared he might have been possessed with ; seeing in other Points, wherein they had occasion, and probable grounds in their opinion to oppose it, they were silent. Moreover, it is answered for this Point, and all others following, *Quod in causa criminali quando verba possint interpretari ad bonum vel malum, in dubio debent intelligi ad bonum, & excludetur presumptio delicti. Cravetta, Concil. 9. num. 21. Et secundum subjectam materiam, Leg. Protullus, F. de Usufructu : Et quando verba dubia sunt, non debent intelligi captiose in damnum proferentis, sed secundum ipsius mentem ; & convenit animadvertere, qua mente quid dicatur, & multo magis quid concipiatur. Leg. penult. F. ad exhibendum. Et quando verba sunt dubia, ut videntur injuriosa, vel non, standum est declarationi ejus qui ea dixit vel scripsit. Menoch. Concil. 197. lib. 12. Multo magis ejus qui imprudens & bona fide iis usus est. Et quando verba sunt dubia, declaratio sumitur a verbis precedentibus vel subsequentibus, vel utriusque. Menoch. Concil. citat. num. 7.* And therefore if the Strain of the Words, the Nature of the Subject being a Supplication, the Declaration of the Pannel's Conception of them, and other ensuing words which declared them, be adverted unto ; it will be found the Pannel is excusable, if in this Conception they import no Reproach to his Majesty : for the hail last part of the Supplication resolves in an Enunciation *de possibili praterito*. We might have represented *quo verificatur ratione presentis* ; and therefore if at the time of the Parliament they had Power to represent these things, the Enunciation of that Power cannot import Calumny or Reproach to his Majesty. And seeing the actual Representation of these things could have imported no Injury to his Majesty, *quia ubi licentia loquendi nisi in dando Consilio & Senatu?* Menoch. Concil. 107. num. 2. far less could the affirming of their Forbearance from an Act not injurious in itself, have been conceived or interpreted to be reproachful to his Majesty. And whereas it is libelled, that the Prohibition of the Nobility and Gentry to meet amongst themselves, or with the Lords of the Articles, is false ; *non relevat*, because it is not positively affirmed that they were prohibit, but only that they might have represented the Prohibition of these Meetings. For the Verity of the which Enunciation, and the Defence of it from being reproachful, the Power of representing is sufficient with any probable ground to believe that these Meetings were prohibit, whether upon Surmises, or upon any other occasion. And lastly,

it is declared afterwards, that they forbore to make use of these Reasons, which they might have probably represented, to give his Majesty full Content in every thing that in their opinion maketh not a Breach in our Religion or Laws; whereby the Justness and Lawfulness of all they consented to or forbore to oppose, is clearly acknowledged: And that it appeared to the Pannel, and may appear to any, that they might have opposed the King's Procedure. 'Tis not to traduce it as unjust in Points which they both by their Silence acquiesced unto, and expressly acknowledge that they import no Breach in our Religion and Laws, but to show how probably they might have opposed divers Points thereof, if they had been possessed with a seditious Spirit of Opposition, and thereby carried to dissent from other Acts, as they feared his Majesty might have been moved to believe.

It is answered to the Point of slighting the Grievances of the Country, That his Majesty's Proceeding is not taxed, because it is not said that they were proposed in Parliament, and rejected or slighted; but only whereas in the Convention of the Estates the Person chiefly intrusted by his Majesty undertook to acquaint his Majesty therewith, and to procure Redress, nevertheless no notice was taken thereof, and they were slighted not by his Majesty, but by those who undertook to acquaint his Majesty, and therefore reflects only upon them.

It is answered to that Point of the Dittay bearing the ignorant and false Affirmations, that before the 1609 Year of God, the Noblemen made choice of some of their Rank to be on the Articles, the Supplicant's Ignorance, in the Pannel's Conception, lays no Aspersions upon his Majesty or his Proceedings.

It is answered to that Point of the Dittay, bearing the taxing of the undutiful Choice made by the Bishops, of Noblemen insufficient, or unexperienced, to be upon the Articles, That it is not injurious in the Pannel's Conception to his Majesty, in his Person, Estate, or Government. Secondly, Repeats the general Answer, that it is not positively affirmed of the Bishops, that they did undutifully, or that the Noblemen elected upon the Articles were Popish or Ignorant; but that they had probable grounds in their opinion to think so, and to represent.

It is answered to the Point of reproaching of his Majesty for the Acceptance of the Taxations, That in the Pannel's Conception his Majesty is not challenged upon his Speeches in Parliament, nor upon the Narrative of his Proclamations, nor by the Antitheses of King James I. his Practice: But his Majesty's Speeches in Parliament, his Proclamations, King James I. his Practice, and the Parallel of the Estate of the Country, and the End of Taxations under either King, and his Majesty's Father of worthy Memory, is adduced in the Pannel's Conception as specious Reasons where-with they might have opposed the granting of the Taxations, if they had had ane disloyal Intention to mar his Majesty's Ways and Benefits.

It is answered to the Point of challenging of his Majesty for Employment of his Taxations, and for his Liberality in rewarding his Officers, That in the Pannel's Conception it is not spoken positively and by way of Reproach, as the former Points, shewing how far the Dissenters were from Averseness or Tepidness in his Majesty's Service; seeing without expatiating on the common Head usual on such occasions, against the granting

Taxations without inquiring of the Reasons and Causes of granting the Taxations; without representing the Inconvenience to ensue, they all unanimously favoured his Majesty's Benefit.

It is added by Mr. Robert Macgill, That the Remedies apply'd to a Disease, must be thought both by the Physician, and the Patient or sick Man, meetest and most fitting for the curing of the Disease. But so it is, that the Pannel and Supplicants were sick of a Disease; and therefore they in curing by the Remedies as were thought fittest and most helpful by them, contained in the Supplication, must be thought therein to have had a good Mind, and that they thought and used the Remedies according to the nature of the Disease, as being most fit. Their Disease was Fear of Displeasure from his Majesty; for we must not think according to the Stoicks, That only *vires animi quas phantasias Philosophi appellant, quibus mens hominis prima statim specie rei ad animum accedentis pellitur, non voluntatis sint, neque arbitrii*: But that also *assentiri & co-opinari incidunt in virum sapientem*. But so it is, that this Disease was filial, *erga Patrem Patriæ*: And like Bairnes who are dung (*i. e.* Children that are beat) go back again to their Father, so the Pannel and other Supplicants having by chance looked upon the Piece quarrelled, did think it a very good Remedy to appease his most sacred Majesty, their Father. As it is reported of the Spear of Achilles, that he who wounded them with Fear, might cure the same Wound, in shewing that they might have represented Grievances, which are Diseases, to the only Physician. And in our Acts of Parliament, Declamations are forbidden *ad Plebem*: so it must be thought of Writings also, in the Conception of the Pannel, *quæ per Plebem distribuuntur atque ita divulgantur*, which is not in our Case; *ergo, &c.*

It is answered by his Majesty's Advocat, That all ought to be repelled, in respect of the Dittay, and of the particular Points of Reproaches, which not so meikle (much) as by the Conception or Meaning of the Pannel can be justified. And all which is opposed, is either against the relevancy of the Dittay, which is remitted to the Justice; or against the Verification thereof, which is proper to the Assize. And if the Justice and Assessors desire a more special Answer to be made to the Particulars, the King's Advocat offer'd to clear the samen by word in hearing of Parties.

It is last alledged by Mr. Roger Mowat for the Pannel, That that part of the Dittay anent the Pannel's alledged divulging and dispersing of the said alledged Libel, is not relevant to infer the Crime and Punishment concluded in the said Dittay; because divulging and dispersing are not contained in the Acts of Parliament whereupon the Dittay is libelled, and so cannot be the Ground and Warrant thereof. Secondly, In so far as the Dittay bears, that the said Libel was divulged by giving the said Copy to *Dunmure*; giving, and not granting, that divulging is warranted by the said Acts, or can be sustained as a Warrant against the Pannel to infer the said Crime and Pain, that cannot be called divulging, because *Dunmure's* own Depositions bear not, that he received the said Libel from the Pannel to copy or divulge, but that he took it up only to read upon very strict Conditions; which being the true manner of his Receipt there-

of from the Pannel, cannot be called properly divulging: because to divulge, properly is to affix *in loco publico*, as Mr. *Thomas Ross* did, whom my Lord Advocat cited; who affixed his seditious Pasquils, and Invectives against his Nation, whereof he was the confessed Author, upon the publick parts and places of the Town and University of Oxford. Or to divulge is to tyne, (drop) and cast down Papers in Kirks, Tolbooths, or High-Streets, as did *Francis Tennant*, likewise cited by my Lord Advocat; who left and of purpose tynt (dropt) his infamous Missives in the Kirks. And it is universally maintained, that the delivering of a Libel or Writing to one only, cannot infer divulging; albeit it is not granted that the Pannel delivered the said Writ to *Dunmure*.

To that Part of the said Dittay bearing that the said Libel was divulged by delivering thereof to the Earl of *Rothes*; it is answered, That that was not divulging, because it is confessed in the said Dittay, that it was delivered to the Earl of *Rothes* to have been presented to his Sacred Majesty: And it is contended, as before, That that which is affirmed in the said Dittay to be divulging, is more properly to be called revealing, as indeed it was. So that it is retorted, to free the Pannel not only of divulging, but of all Crime for hearing or not apprehending; because if the Pannel delivered it, as the Dittay bears, to have been presented to his Sacred Majesty, *ergo* not as infamous, reproachful, or scandalous: which must be presumed by all manner of Presumptions in favour of the Pannel, that he did not consent to the presenting thereof to his Highness, as being in his least Thought or Imagination scandalous, or otherwise as the Dittay bears; but only to have been revealed to his Sacred Majesty as a Piece which he and the other Supplicants did think and conceive might have been graciously accepted, as others of that kind had formerly been received by his gracious Majesty.

To that part of the Dittay bearing the copying thereof by Mr. *Robert Dalglish*, the Pannel's Servant; it is answered, *Quod non relevat* to infer divulging, because the said Mr. *Robert* his Deposition bears, that he did only deliver the Copy to my Lord his Master, and did no farder. Neither depones he, that my Lord did any farder but took the Copy from him; which in no sense can be properly called divulging, for the Reasons before adduced.

To that part of the said Dittay bearing Mr. *John Dunmure's* keeping the said Copy in his hands, by the space and in manner libelled; it is answered, *Non relevat*, because it is not, *ut supra*, that the Pannel gave him the Copy, but that he took it, as the Deposition bears. And what he did thereafter, without any Warrant, Command, or Allowance of the Pannel, cannot be laid to the Pannel's charge, but to his own; seeing the manner of his receiving and divulging thereof, is notoriously known to have been against his Promise, or without the Knowledge or Consent of the Pannel, by abusing his Trust given to him by the Pannel, tho' innocently, who was free of all his subsequent Proceedings. And there being no Fraud or Malice in that point upon the Pannel's part, who was wronged by *Dunmure*, tho' innocently; that cannot be called the Pannel's divulging: for who lives, and may not be deceived and abused in that manner as he was, tho' innocently, on *Dunmure's* part?

To that part of the Dittay anent Mr. *John Dunmure* his Answer to the Earl of *Traquair*; it is answered, That the same cannot be respected as relevant to infer divulging, because the Pannel's Deposition bears that he gave no Warrant nor Direction to *Dunmure* to return answer to the said Earl: but that in discourse with *Dunmure*, the Pannel answered not those words, *That as honest Men would put their Faces thereto* (i. e. justify it) as the Pannel himself; but the Pannel's Answer only was in these words, *That as honest Men as the Pannel himself knew of it*: meaning of the Earl of *Rothes* and other Supplicants, who had intended to cause make offer of the same to his Royal Majesty, and accordingly did make offer thereof by the said Earl of *Rothes*.

And to that part of the said Dittay, concluding that the said Pannel being a Nobleman of good Learning and Understanding, should have revealed, should have not concealed, should have apprehended the Author; it is alledged, *Non relevat ut supra*, and *Absolvitur* ought to be granted from that Conclusion, for the Reasons mentioned before in the Defences and Duplies made for the Pannel, who still contends that as he never did conceive or understand the said Supplication, as the Dittay infers and bears the same upon him; so his own Commentary and Declaration anent his Meaning and Sense thereof, ought only to be received, to free and vindicate him from the Crime and Pains libelled. In respect whereof, the said Dittay anent the Point of divulging can no ways be respected as relevant, but *Absolvitur* ought to be granted to the Pannel therefrom.

It is added by Mr. *Alexander Pearson* to this last and fifth Exception, That the Point of Dittay anent divulging is not relevant, and cannot infer the Pains concluded by the Dittay, because the said Point of Dittay is not founded upon any Act of Parliament mentioned in the Proposition thereof, but only upon the Civil Law, which the Leidges cannot nor are obliged to know in all the Sanctions thereof; specially seeing by divers Acts of Parliament, to wit, King *James I. Parl. 3. cap. 48.* King *James IV. Parl. 6. cap. 79.* by the which it is statute, That all the King's Leidges live and be governed under the King's Laws and Statutes of the Realm only, and not by any Laws of other Countries: And therefore cannot infer the Pains concluded by the Dittay.

Farder, The Pannel ought to be affoiled from that Point of the Dittay of divulging, because the Pannel is not nor cannot be counted formally Divulger of the alledged infamous Libel; he not having Knowledge or Opinion of the Writ quarrelled, that it was infamous: but having just and probable Cause to think of it otherwise, *ut supra*. And as Credulity by the Civil Law defends in Theft, so by the like reason it ought to defend the Pannel here, anent divulging, as is confirmed in the fourth Exception proponed for the Pannel, which I here repeat, and which Defence is most relevant by the Civil Law, whereupon only this Point of Dittay is urged, and therefore should elide the same.

Item, Farder, The Civil Law does not make any to be Divulger of an infamous Libel, but after Knowledge of the same to be infamous; which is clear by the Ordinance of the Law set down in *Lege Unica, Codice de famosis Libellis*, which commands the Finder of an infamous Libel presently to

to destroy it ; which the Finder cannot do, but after knowledge of the Writ to be such. And 'tis also clear by the Prohibition of the said Law, bearing, *Si vim earum manifestaverit* ; which requires divulging of an infamous Libel, in the form and strength thereof. In respect whereof, the Pannel ought to be assoilized from that Point of divulging.

It is added by Mr. *John Nisbet*, That divulging is not relevantly qualified in Law, by the imparting of the alledged Libel to my Lord *Rotbes* and to Mr. *John Dunmure* ; because it was imparted to neither of them in quality of an infamous Libel, but to my Lord *Rotbes* in the contrair quality of ane Supplication, to be presented by him to his Majesty, as is acknowledged in the Dittay ; and to Mr. *John Dunmure* as a Confident of the Pannel's, under Promises of Secrecy : which Proceedure and Qualities of imparting are far from the nature of divulging ; for the word itself implieth a publick Dispersion, and the expresse Law requireth *manifestationem publicam & dolosam publicationem* ; Canone *qui in alterius, Causa 5. Quest. 1. Dolosum. Canone 4. eadem Causa & eadem Quest. Et Libellus famosus dicitur Pasquillus, quod in Urbe Roma ad truncam Pasquini cujusdam statuam affigi solet. Harprechtus in tractatu Criminali, §. Injuria. Sectione de famoso Libello, Et qui Libellum famosum ab alio acceptum vicissim alii, & uni tantum secreto tradidit, Libelli famosi pœna non est plectendus, quia ex traditione secreto facta non obscure colligitur animus non diffamandi ; & quia Libellum famosum non dicitur publicasse, nisi qui cum pluribus impertitus est. Harprechtus, ibidem.*

It is added by Mr. *Robert Macgill*, That the divulging qualified in the Dittay is not relevant according to the Civil Law, where a Publication and Out-setting is required : *Pharm. Quest. 105. Inspect. 11. num. 485, 487.* And the reason is, *quod Convicium dicatur quasi Convolutum, Leg. Item, apud Labionem 15. §. 4. F. de Injuriis, ubi §. sequenti ait dici vociferationem in unum collatum : additis §. 8. & 11, & 12. Quod oportet in Cœtu dici, & cum vociferatione vulgare, etiam Nænio Marcello est in vulgus dare, & quasi multis audientibus ac non taciturnus dicere.* Then ei dispersionem & divisionem superaddunt, *ut sit in plurium manus sparsio ab una eademque facta, & maxime si in Plebem distributio fiat, unde sævitque animis ignobile Vulgus. Quippe ut Cicero pro Plancio, non est consilium in vulgo, non ratio, non discrimen, non diligentia.* And even in that title of the ninth Book of the *Code. de Seditiosis*, it is added, *Et his qui Plebem contra Republicam audent colligere.* And so have I said not long since, that these private Writings, and the dispersing of them, must be understood in our Acts of Parliament, as the Declamations therein mention'd, that is, to the meanest and commonest sort ; and that to ten at least, *quia non dicitur notorium nisi per decem saltem transeat ; Boerius Tractatu de Seditiosis, Præmiss. 7. quippe quod populus dici non posse, nisi sint decem : Ibidem Præmiss. 3.* And remits here what I have said *de Seditiosis*, in the end of my second Exception. But so it is, that the communicating of the Piece quarrelled to Mr. *John Dunmure*, in that mean sort as is contained in the Deposition, and consequently in the Dittay, cannot be thought a divulging in manner above expressed ; ergo the Pannel ought to be assoilized from that Part of the Dittay.

It is answered by my Lord Advocat, That the Alleadgance ought to be repelled, in respect of the

Dittay, which in this part anent divulging is founded upon the Common Law, *Leg. Unica de famosis Libellis.* And which Common Law, in the case where we have no particular Law nor Statute of our own, is obligatory against the Leidges. And the Acts of Parliament cited by the Defenders, That the Leidges shall be ruled by the Laws of the Kingdom allenarly, (only) and not by the Laws of other Kingdoms, excludes only the particular Laws of particular Kingdoms ; but excludes not neither the Laws of God, neither the Laws of Nature, neither the Laws of Nations, nor the Common Law : Otherwise, odious Crimes against which there are no Municipal Laws, as *Sodomia, Plagium, privati Carceres, &c.* should be unpunishable. And as to the Exception proponed against the Relevancy, and the Alleadgance of the Civil Law anent divulging *uni* ; opposes the Dittay, bearing the divulging thereof to three particular Persons in manner therein libelled.

It is duplyed by the Pannel and his Procurators, That the Point of divulging being founded only upon the Civil Law, if it were sustained, is only relevant to infer the Pain of the Civil Law, which is not capital, *Nisi non libellus famosus continet delicta capitalia in alium impropertata. Secus in eo impropertetur delictum non capitale, aut alia quævis Culpa. Glossa in Leg. unica. Codice de famoso libello, in verb. si quis famosum. Pbar. Quest. 105. num. 11.* And of the Canon Law, which has ever had more Force with us : *Pœna etiam atrocissimi Libelli est tantum flagellatio. Canone, Qui in alterius, Causa 5. Quest. 1.*

It is farder duplyed by Mr. *Roger Mowat*, to that Part of my Lord Advocat's Reply, bearing, That the Alleadgance made against divulging ought to be repelled, in respect of the Dittay, bearing the divulging by the Pannel to three several Persons : It is duplyed thereto, That the said Reply ought to be repelled, in respect of the said Alleadgance proponed against the said Member of divulging, and hail Qualifications thereof, to the saids three Persons ; whereunto there is no Answer given by my Lord Advocat. And therefore remits the said Alleadgance, and hail Members of it, as yet unanswered, to be considered by the Judge as most relevant in it self. In respect whereof, the said Alleadgance, and hail Members thereof, stands relevant, notwithstanding of the Reply.

It is triplyed by my Lord Advocat, That the Pain by the Common Law is capital ; and the Quotation by Mr. *John Nisbet* is a Gloss, without Warrant. And albeit some respect might be had to an infamous Libel against a Subject, yet none in that which concerns our Sovereign, tending to the Disturbance of the Estate and publick Peace.

It is quadruplyed by Mr. *John Nisbet*, That we oppose the Glosses aforesaid acknowledged and followed by all the Doctors, and founded upon the Equity of Retaliation ; and oppose likewise the foresaid Citations out of the Canon Law it self, and the hail Title of the Canon Law *de Maledictis*, where Detractors of the Pope himself are only obnoxious to the Pain of Flagellation.

The Justices continues till to-morrow the 17th Instant.

Curia legitime affirmata, the said 17th of December, 1634, &c.

My Lord Advocat, after some Speech delivered by the Pannel's Procurators, *verbo* declared to my Lord Justice-General, That what was spoken was only a summary Recapitulation of that which is at length set down by the Pannel's Procurators in their Defences; and offered to his Lordship, if it were his Lordship's Pleasure that he, as Pursuer, should clear by his Answer *verbo*; and otherwise, that my Lord Justice, with Consent of his Assessors, would close (put an end to) all farther Writing, and declare that no more should be added, but that *Interloquitor* may be pronounced of that which is proponed and written already. To the which my Lord Justice made Answer, That there was no Necessity to answer farther than is said and written already.

It was thereafter humbly craved by the Pannel and his Procurators, That if any thing should occur to be demanded whereupon he desired to be heard before *Interloquitor*, that my Lord Justice would be pleased to hear him, he proponing the same, *verbo* in his Lordship's Audience.

My Lord Justice-General, with Advice of his Lordship's Assessors, declares that all farther Writing in this Matter shall cease before the Dittay be found relevant, and referred by *Interloquitor* to an Affize; and continues *Interloquitor* upon the Exceptions proponed in this Process, and Answers made thereto, till Friday next, the 19th of December instant.

The said 19th of December it was continued till the next Day, the 20th.

The said 20th of December, 1634, *Curia legitime affirmata*, &c. Pannel and Procurators as above.

My Lord Justice-General and his Lordship's Assessors having read and considered the Dittay, hail Exceptions, Replies, Duplies, with all that is proponed for the Pannel by his Procurators in this Process, and my Lord Advocat's Answers made thereto; by *Interloquitor* repel the first Exception proponed by the Pannel and his Procurators against the Relevancy of the Dittay, in respect of the Acts of Parliament standing unrepealed. Repel the second Exception in respect of the Dittay, and Acts of Parliament whereupon the same is founded. Repel the third Exception in respect of the Dittay, and that there may be more Authors than one; and likewise sustain these Words of the Dittay, *That the Pannel is Adviser, Deviser, and Consultor*, in respect they all signify one thing with Airt and Part. And as to the Qualification of the Interlining, set down therein, remit the same to the Affize, as proper to be cognosced by them, with the hail remanent Qualifications and Presumptions contained in the said Dittay, to be proven to the said Affize. Repel the fourth Exception in respect of the Dittay, and scandalous and reproachful Libel mentioned therein; which my Lord Justice, with Advice of his Lordship's Assessors, find to be of that nature, notwithstanding of any thing propounded in the contrair in the Pannel's favour. As to the last Exception, repel the famen, and sustain that Point of the Dittay anent the divulging of the infamous Libel, to be tryed and

proven *conjunctim* with any one of the rest of the Articles of the said Dittay found relevant, as said is, to infer the Punishment prescribed by the Act of Parliament; and declare, That if it shall be only proven *per se*, to be punished *per penam arbitrariam*. And in respect of the former *Interloquitor*, ordain the Dittay to pass to the Tryal of an Affize. And for that effect, continues this Matter to the 11th Day of February next to come; and ordain the Pannel to be returned to his Ward within the Castle of Edinburgh.

Curia legitime affirmata, the said 11th of February, 1635.

John Lord Balmerino delated of the Crimes contained in his Dittay, contained in his preceding Process.

The Justice Deputs (being Alexander Colvill of Blair, and Mr. James Robertoun, Advocat) forefaids, with Advice of the Assessors, before mentioned, continue this Dyet, anent the Trial of the said John Lord Balmerino, for the Crime specified in his Dittay, to the 11th of March next to come. The Persons of Affize are warned, &c.

The said 11th of March, it is continued till the 18th of March, 1635. And the said 18th Day, in respect of the Absence of Mr. Roger Mowat, the Pannel's principal Procurator, by reason of Sickness and the Gout, the Justice continued the Dyet till the 20th of March thereafter, 1635.

The said 20th of March, 1635. Pannel and Procurators as before.

The Names of the Persons of Affize (Jury.)

William Earl Marefchal.
James Earl of Murray.
William Earl of Dumfreis.
Mungo Viscount of Stormond.
John Earl of Lauderdale.
John Earl of Traquair.
George Lord Forrester of Corstorphine.
James Lord Johnston.
Sir Alexander Strachan of Thornton Knt.
Sir Robert Grier of Lagg.
Sir John Charters of Amisfield.
Sir Alexander Nisbet of Westnisset Knt.
Sir Patrick Agnew of Lochnair, Knt.
Sir James Baillie of Lochend.
John Gordon of Buskie.

It is alledged by the Pannel and his Procurators, That the Earl Marefchal cannot be admitted upon the Affize, because he has received Information and particular Instruction of the Pannel's Guiltiness of the Crimes given up in the Dittay, and particular Direction what to do in case he pass upon the Affize; which they refer to the Nobleman's own Oath and Declaration: who being sworn, declared that he received no such Instruction or Information of any Person. Whereupon, being purged of partial Counsel, the Justice admits him upon the Affize.

It is alledged against the Earl of Dumfreis, that he cannot be received upon the Affize, because he has given out his prejudged Opinion against the Pannel, affirming, before any Probation led, that the Pannel is guilty of the Dittay; which the Pannel referred to his Lordship's Oath, alledging that

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in Law a Declinator is only to be proven against an Affizer by his Oath: And farther affirms, that the said *William* Earl of *Dumfreis* has been solicited and dealt with by Prayer to find the Pannel guilty of the Dittay. Which being referred to the said Earl his Oath, he denied any such Matter, that he either gave out Speeches of the Pannel's Guiltiness, or that he was solicited or dealt with by Prayer, or otherwise; the Justice admits him, in respect of his Declaration.

It is alledged against my Lord *Blantyre*, that he cannot be upon his Affize, because he has publicly reported to sundry, that the Pannel to his Judgment is guilty of the Dittay, and cannot be cleared thereof; which they refer to his Lordship's Oath: who being sworn, declared that he could not deny that he had spoken such Speeches. Whereupon he was repelled, and ordained to stand aside.

It is alledged by the Pannel and his Procurators against my Lord *Johnstoun*, the Laird of *Lag*, the Laird of *Amisfield*, the Laird of *Thorntoun*, the Laird of *Westnisbet*, that they cannot be received upon the Affize, because they have all been solicited by Prayer and Request to find the Pannel guilty; and that the Lord *Johnstoun* has declared to sundry, that if he were on his Affize, he could not but find him to be guilty: likewise, affirmed by *Thorntoun*, that as the Dittay is founded upon the Acts of Parliament, the Pannel must be guilty, and none can acquit him thereof; and that *Westnisbet* had affirmed in publick Conference, by his bewrayed Opinion, that he would file (convict) the Pannel, and do his Endeavour cause others file him of the Dittay. Whereupon the forenamed Persons having by their Oaths denied the Premises, the Justice thereupon having purged them of partial Counsel, admits them upon the Affize. Whereupon my Lord Advocat asked Instruments. Likewise admits my Lord of *Traquair*, notwithstanding of the Declinator proponed against him *verbo*, by the Pannel's Procurators.

My Lord Advocat, for verifying of the Dittay, 1st, Repeats the Acts of Parliament whereupon the Dittay is founded, (*viz.*) the 10th Act of the 10th Parliament of his Majesty's dearest Father, King *James* the Sixth, holden at *Linlithgow* the 10th Day of *December*, 1585; the other Act being the 205th Act of his Majesty's 14th Parliament, holden at *Edinburgh* upon the 8th Day of *June*, 1594.

2dly, Produces his Majesty's Warrant or Letter, direct for examination of Mr. *John Dunmure*, whereof the Tenour follows:

To the Right Reverend Father in God, our Right Trusty and Well-beloved Counsellor; To our Right Trusty and Right Well-beloved Cousins and Counsellors; To the Reverend Fathers in God, our Trusty and Well-beloved Counsellors; and to our Trusty and Well-beloved Counsellor, the Archbishop of St. Andrews, Primate and Metropolitan of all Scotland; the Earl of Mortoun our Thesaurer, the Earl of Traquair our Deputy Thesaurer, the Bishops of Edinburgh and Ross; and to Sir John Hay of Baro, our Clerk-Register of our said Kingdom.

CHARLES Rex.

RIGHT Reverend and Reverend Fathers in God, our Trusty and Well-beloved Counsellors, Right Trusty and Right Well-beloved Cousins and Counsellors, and Trusty and Well-beloved

Counsellors; We greet you well. Having seen the Copy of a Petition, which hath been in the Hands of Mr. *Peter Hay* of *Naughtoun*: And he being required by us to declare from whom he had the said Petition, hath done the same by naming one *Dunmure*, dwelling in *Dundee*, a Notary there: It is our Pleasure, that you call them before you; and having received the said Mr. *Peter Hay* his Information, and examined the said *Dunmure* concerning the Author of that Petition, and who may be any wise accessary unto it, you inform yourself so far as you can in all things concerning it, and certify us what ye find thereanent, that we may cause take such further Order with these that shall be found to have had hand therein, as we shall think fitting. And for your so doing, these Presents shall be your sufficient Warrant. From our Court at New-Mercat, the 3d of March, 1634.

3dly, Repeats the infamous Libel produced by Mr. *John Dunmure* before the Lords of the Committee upon the 14th Day of *March* 1634, with his Deposition made in presence of the Committee that same Day; which infamous Libel, with his said Deposition, is produced by his Majesty's Advocat upon the 3d Day of *December* 1634, before my Lord Justice, and is registrat in this Process that Day.

4thly, Produced the Double (Copy) of the infamous Libel, interlined by the Pannel, whereof the Tenour follows.

[This is exactly the Double of the former, only with the Addition of the Pannel's Interlinings, which are these; First, at Letter A, on the 14th Page (or 411 of this Vol.) there is interlined by his Lordship these Words, which are not mentioned in the former Double, viz. In such a Case as this, it hath not been unworthy to have represented to your Majesty's Observation, that. And at this Mark also these Words are wanting in this Double, which the former has, viz. Which blessed King *James* would never have confounded. And betwixt Letter B and C, on the same Page thus, B of Religion C, is interlined in this Double. And the last interlined Words in this Double are to come in as marked on the 412th Page, betwixt C and D, these Words, viz. To suffer to be introduced.]

Item, Produces Mr *John Dunmure*'s two Depositions, made the 15th of *March* 1634, and the 7th of *June* after, whereof the Tenour follows:

I Mr. *John Dunmure* confess and declare, That the Copy of the Petition, remonstrat to the King's most sacred Majesty, to have been delivered by me to Mr. *Peter Hay* of *Naughtoun*, was intrusted by me to him upon his Faith and Promise never to have been imparted or divulged to any other, and that he should redeliver to me the same, after the Reading and Consideration thereof: And that I extracted the said Copy with my own Hand against the Direction, and by (without) the Knowledge of him from whom I had the first Copy and Warrant thereof. So help me God. And this for Amplification of my Confession of the said Matter, made in Presence of the Lords Commissioners, Receivers thereof, the 14th of *March* instant, by thir Presents written and subscribed with my Hand at *Edinburgh* the 15th of *March*, 1634.

Sic subscrib. Joan. Dunmure.

At

At *Edinburgh*, 7 June, 1634. Sederunt, *St. Andrews*, the Earl of *Roxburgh*, *Traquair*, *Breckin*, Clerk-Register, Advocat.

THE which Day Mr. *John Dunmure*, being deeply sworn upon his Knees, ratified and approved his former Deposition of the Date the 15th of *March*, 1634; and declares, That at the time he received his said Supplication of my Lord *Balmerino*, the said Lord *Balmerino* desired him that he would take it, and give him his Opinion thereof; and as he loved his Credit, he would keep it, and shew it to no Man living, but only give his own Opinion there-aneant: And declares that there was nothing spoken about the copying thereof; but is persuaded, if that my Lord *Balmerino* had known that he would have copied it, he would never have given the same out of his hand. And depones, after the Receipt thereof he abode three Days in *Edinburgh*, and during that time copied the same, and did return the same to my Lord *Balmerino*; but no ways told him that he copied the same. And depones, he shewed the same to no Person, nor had no purpose to divulge it, but did take it home with him to *Dundee*, and did keep it close and secret by himself by the space of six Weeks, till the Laird of *Naughtoun* came to him in his own Chamber in *Dundee* of purpose to ask his Advice in some Affairs, in respect he was his ordinary Writer, as his Custom was: And depones, that after some Conference with the Laird of *Naughtoun*, he took the same out of his Pouch (Pocket), and said to the Laird, He knew that he was a Man of Judgment, and well-acquainted with the Affairs of the Kingdom; and said, Here is a Paper whereof he would be glad to have his Judgment, providing he would keep it secret, and return the same back again: Which the Laird faithfully promised. Whereupon the Deponer gave the said Paper to the Laird. Whereupon he began to read: And before he had ended it, he said to the Deponer, Mr. *John*, I intreat you heartily that I may have this Paper to *Naughtoun*, that I may read it, and consider it at leisure. To the which the Deponer answered he would, providing he would keep it secret, and shew it to no Man, as he had promised; which the Laird of *Naughtoun* faithfully promised to do. And declares upon his great Oath, That if he had known the Laird would not have kept it secret, he would not have given it for all the World. As also depones, That within a Month or five Weeks after the Deponent went to the Laird of *Naughtoun*'s House, as he was going through *Fife*, and craved the Paper back with great Earnestness; who answered, Tritle, trattle, ye need not be so curious; that there was a Gentleman at his own Table told him that there was three Copies thereof going through *Fife*, and my Lord *Balmerino* had given one thereof to Mr. *William Scot*, another to Mr. *Alexander Henderson*, and the third that the Gentleman would not name. And the Deponer declares, After that time he met *Naughtoun* divers time in *Dundee*, and asked the Paper back, which he ever shunned. And declares, About *October* last *Naughtoun* came to the Deponer's Chambers in *Dundee*, and told him that he had given the Paper to my Lord *St. Andrew*; at which the Deponer was mightily moved. Item, depones, After his first Declaration he went to my Lord *Balmerino*, who after Conference with him, my Lord *Balmerino* desired him to go to the Earl of *Traquair*, and tell him that better Men nor my

Lord *Balmerino* himself would set their Faces thereto.

Sic subscrib. Joan. Dunmure.

St. Andrews, *J. Morton*,
Roxburgh, *Traquair*,
Da. Episc. Brechin,
J. Hay, *Tho. Hope*.

5thly, Produces three Depositions subscribed by the Pannel and the Lords of Committee, one dated the 9th of *June* 1634; the second the 16th of *June* 1634; and the third the 1st of *August* 1634. Of the which three Depositions the Tenour follows, viz.

Apud Edinb. the 9th of *June* 1634. Sederunt *St. Andrews*, Thesaurer, *Roxburgh*, *Traquair*, *Breckin*, Clerk-Register, Advocat.

THE which Day *John Lord Balmerino* being examined upon his great Oath, depones as after follows: *Imprimis*, depones, That the Libel produced is the just Copy of the Libel given by him to Mr. *John Dunmure*, so far as he remembers. Item, Being interrogat to what use he gave him the same, and upon what occasion, depones, That Mr. *John Dunmure* having given to him the Copy of my Lord *Breckin* his Sermon preached at his Majesty's Coronation, and Mr. *John* having seen the Paper, he gave it to him to look upon, but to keep it to himself alone, and to show it to no other, as he respected his Lordship's Credit: And depones, That he never knew that Mr. *John Dunmure* had copied the same. Item, Being interrogat from whom he had the Paper he gave to Mr. *John Dunmure*, depones, As he remembers he received the principal of the same from Mr. *William Haig*. Item, Being interrogat who was Author and Penner of the said Libel, depones, That it was Mr. *William Haig* who gave it him, and, as he thinks, was the Author thereof. Item, Being interrogat to what use Mr. *William Haig* gave his Lordship that Paper, depones, That Mr. *William Haig* said he thought it a fit Supplication to be presented to his Majesty; which he had made out of some Collections which he had gathered upon some Conferences which he had with sundry Persons the time of the Parliament. Item, Being interrogat what he did with the Paper which he received from Mr. *William Haig*, depones, he received two of them from Mr. *William Haig*, whereof one was to be presented to the King, if it had been thought expedient, which he delivered to my Lord of *Rothies*; and the other he caused his Man Mr. *Robert Dalgleish* copy; and gave Mr. *Haig* his own back again, which he thinks he destroyed. And the Paper which he shewed Mr. *John Dunmure*, was it which his Man wrote, as he remembers. Item, Being interrogat if Mr. *William Haig* had any Warrant or Command to draw up the said Supplication, or if any Lord or any of his knowledge was at the penning thereof, depones, That he had no Warrant from him, nor knew of any Warrant given to him, nor that any was presented at the forming thereof. Item, Declares that the Earl of *Rothies* and the Deponer having read the Supplication, thought it no ways fit to be presented to his Majesty, but to be absolutely suppressed. Item, Being interrogat if he had any of the saids Copies, declares, After the receipt of Mr.

Mr. *John Dunmure* his Copy, he cast the samen in the Fire; and for the other, he did diligence to seek the samen out and find it, and exhibit the samen to the Lords: and declared, that he had no more concerning that purpose. *Item*, Being interrogat if he gave any Copies of the said Supplication, or shewed it to any Person, depones, That he neither gave Copies thereof, nor shewed it to any except to the Earl of *Rothes* and Mr. *John Dunmure*.

Sic. subf. Balmerino.

*St. Andrews, Morton, Roxburgh,
Traquair, Da. Ep. Brechin,
J. Hay, Thomas Hope.*

Follows the Tenour of the second Deposition.

Apud Edinb. decimo sexto Junii, 1634.

THE whilk Day *John Lord of Balmerino* being examined upon his Oath if he knew any thing of Mr. *William Haig* his going out of the Country, depones, That he knew nothing of his away going till Wednesday last; that a Man of the Lady *Yeaster's* told him, when he was going to *Balcleugh's* Burial, that Mr. *William Haig* was gone out of the Country. *Item*, Being inquired anent that part of Mr. *John Dunmure's* Deposition, That after his first Declaration he went to the Deponer, who after conference with him desired him that he would go to the Earl of *Traquair*, and say, *That better Men than the Deponer himself will set their Faces thereto*; the said Lord *Balmerino* depones, That he never gave Mr. *John Dunmure* such a Commission, but only told him in conference, That there were better Men than the Deponer himself who knew of that matter. And being inquired what these were that he meant of, depones, That it was the Earl of *Rothes*, to whom he delivered the Supplication, conform to the former Deposition. *Item*, Being inquired whether he had interlined some Lines in the said Libel which was exhibited by him to the Lords, and whether he did the same before he shewed it to Mr. *John Dunmure*, or to the Earl of *Rothes*, depones, That it was the Earl of *Rothes* to whom he deliver'd the Supplication, conform to his former Deposition. *Item*, Being inquired whether he had interlined some Lines in the said Libel which was exhibited by him to the Lords, and whether he did the same before he shewed it to Mr. *John Dunmure* or to the said Earl of *Rothes*, depones, That Mr. *John Dunmure* never saw this interlined Libel, but only the Copy which was cast in the Fire after the redelivery thereof: And depones, That the Copy interlined lying before the Lords was the Copy delivered by him to the Earl of *Rothes*, but was not interlined while the Earl of *Rothes's* redelivery thereof to him; and depones, That never any saw it since the interlining thereof.

Sic. subf. Balmerino.

*St. Andrews, Morton, Roxburgh,
Traquair, Da. Ep. Brechin,
J. Hay, Thomas Hope.*

Follows the Tenour of his Lordship's third Deposition.

*Apud Edinb. the first Day of August 1634. Se-
derunt, St. Andrews, Thesaurer, Roxburgh,
Stirling, Traquair, Bishops of Edinburgh,
Ross, Clerk-Register, the King's Advocat.*

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THE which Day *John Lord Balmerino* being asked upon his great Oath, if he shewed to Mr. *Haig* the Warrant of his Appearance before the Lords upon *Saturday* the 7th of *June*, depones, That after Dinner Mr. *Haig* came to his House, and asked by what Warrant he was convened before the Lords; and the Deponer took the Warrant out of his Pocket, and shewed the same: And adheres to his former Deposition, anent Mr. *Haig* his parting, or to the purpose thereof. *Item*, Being interrogat if he received any Letters from Mr. *Haig* since his parting, depones, That he received at his back coming from *Balcleugh's* Burial a Letter from his Lady, direct from Mr. *Haig*, but without either Date or Place, which he produced: as also received from *Thomas Haliburton* a Letter direct from Mr. *Haig*, with some Note concerning my Lord *Jedburgh's* Business. And sicklike depones, he received a Letter from *Adam Watt*, which concerned some Business betwixt my Lord *Yeaster* and Mr. *Haig*; and in the end desired the Deponer to assist Sir *Lewis Stewart*, and other Friends that he had written unto for procuring of him a Remission: which Letter, after the Deponer had dealt with the Lord *Yeaster*, he cancelled and burnt. And last grants he received a Letter from *Campbire* the 27th of *June*, which he received from Mr. *Robert Bruce*; which he exhibits, and which Letter bears Mr. *Haig* has granted that he was the Penner of the said Supplication, and therefore protests that the same may be delivered up and given to him. And being asked anent that part of the said Letter, which bears that the Earl of *Rothes* and such other honest Men that did once approve the said Supplication, if the Deponer did ever allow and approve the samen; answers, that he did never allow nor approve the samen to be presented to his Majesty, but thought it fit to be suppressed. And in the rest adheres to his former Depositions.

Sic. subf. Balmerino.

The same Day, in presence foresaid, it being asked whether he did allow and approve the same himself, in the Matter and Substance; he declared, that he neither allowed nor allows the samen, and declares he condemns the same both in Matter and Form.

Sic. subf. Balmerino.

*St. Andrews, Morton, Roxburgh,
Stirling, Traquair, Da. Ep.
Edinb. Jo. Ross, J. Hay,
Thomas Hope.*

6thly, Produces Mr. *Robert Dalgleish*, Servitor to the Pannel, his Depositions, dated *July 3, 1634*. whereof the Tenour follows.

Apud Edinb. 3 July 1634.

THE which Day Mr. *Robert Dalgleish* being sworn upon his Knees, and the Libel being shewn to him, denies that he knows the Handwriting or the Writer: grants that my Lord *Balmerino* being in his place of *Barnetown* shortly after the Parliament, and being to go to *Edinburgh*, about Four after Noon delivered to the Deponer a Paper to be copied, which he did copy that same Night, and sent it with the Copy thereof to his Master inclosed in a Paper, the next day in the Morning. And being asked if that he had copied

P P P

another,

another to himself, grants that he had made another Copy which he kepted to himself, which he did without the command or knowledge of his Master; which Copy he exhibited presently in presence of the Lords. *Item*, Being demanded if he did communicat that Copy which he kepted to himself to any other, depones upon his great Oath, That he did neither show nor give the Copy thereof to any other: but grants, while he was copying the same in *Barnetown*, Mr. *William Colvill* Minister of the Parish came in and read the same, but got no Copy thereof. As also depones, That since the beginning of the Trial about *Pasch* (Easter) last, the Lady *Balmerino* asked of the Deponer if he had kepted a Copy of the foresaid Libel to himself, and desired a sight thereof; and when she heard the same read, she said that he was a Fool in keeping, and bad him cast it in the fire.

Sic subsc. Mr. Robert Dalgleish.
St. Andrews, Mortoun, Roxburgh,
Stirling, Traquair, Jo. Rossen.
J. Hay, Thomas Hope.

7thly, Produces *Mark Cals* his Deposition, dated *apud Edinb.* the 31st of July 1634.

Sederunt, *St. Andrews, Roxburgh, Stirling, Traquair, Roffe*, Clerk of Register, Advocat.

THE whilk Day *Mark Cals*, Writer, being examined upon his great Oath, depones, That about eight or ten days before Mr. *Haig* his going away furth of the Country, he being in Mr. *Haig's* Chamber, Mr. *Haig* asked him what News: to whom he answered, he had no News, but that he heard that my Lord *Balmerino* was troubled for a Petition that had been written. Likeas Mr. *Haig* asked him if he knew who was Writer thereof, whilk he depones that he answered him he knew not, neither did he know. Thereafter Mr. *William Haig* told him that he was the Penner thereof, and took out the Paper and read it over to him, and said that *Rothes* and *Balmerino* knew the Paper, because it should have been presented to the King. *Item*, Being asked if he knew of Mr. *Haig's* away going, depones, That upon Sunday the eighth of June the Deponer being in *Newbottle* Kirk at the Communion, Mr. *Haig* sent a Boy to him before the ending of the Sermon in the Afternoon, and desired him to come out to him; who came out and met with him in the Hall of *Newbottle*, but spake nothing with him there. And then they went out together to the Green of *Newbottle*, where he told the Deponer that he was to go to the South Country, and that he had received for his comprizing of *Maxwellbeugh*, disposed by him to the Earl of *Roxburgh*, the Sum of Twenty Thousand Marks, which he had paid to Mr. *John Sharp* and others; and that there rested yet Eight Thousand Four Hundred and some odd Marks: And that he had taken the Deponer his Name to the Bond thereof to his own use, and that he would trust him with it till his Return; and then delivered to him the Bond thereof, and said to him that he would return shortly. *Item*, Depones, that he received a Letter from Mr. *William Haig* from *Yarmouth*, in which there was inclosed a Letter direct from Mr. *William Haig* to *Thomas Haliburton*, which he sent to the said *Thomas*: And the Contents of the Letter to himself was, that he desired the Deponer to assist his Nephew, the said *Thomas Haliburton*, to get a Trunk carried to *Holland* by

the Address of Mr. *Robert Bruce*; and that he should make the said *Thomas* forbear to do it, if I should find by Sir *Lewis Stewart* the appearance of the quitting of this Service. And depones, That he shewed this Letter to *Thomas Haliburton*, who was then present in *Edinburgh*, and declared to the said *Thomas*, that he would not speak the said Sir *Lewis Stewart* in such a business; and rave (tore) out so much of the Letter as concerned Sir *Lewis Stewart*, and desired the said *Thomas* that he would take it to him, because Sir *Lewis* knew Mr. *Haig* his Hand-writing: which the said *Thomas* refused, and said that Sir *Lewis* would believe him but (*i. e.* without) the Letter: And immediately after he read the hail Letter in presence of the said *Thomas*. *Item*, Remembers that the Letter did bear that he was presently going aboard. *Item*, Remembers that he receiv'd from Mr. *William Haig* since his parting in all three Letters, whereof the said Letter was one, and the other two which he exhibited to the Lords.

Sic subsc. Mark Cals, with my Hand.

At *Edinb.* the 31st of July 1634. Sederunt, *St. Andrews, Theafurer, Roxburgh, Traquair, Edinburgh, Roffe*, Clerk-Register, Advocat.

THE foresaid Deponent depones, That the 20000 Marks paid to Mr. *William Haig* upon the Saturday, was employed as after follows, *viz.* Eight Thousand Four Hundred Marks to Mr. *John Sharp*; then rested Eleven Thousand and Six Hundred Marks, whereof there was lent to the Earl of *Lothian* Seven Thousand Six Hundred Marks, and Four Thousand Marks to the Lord *Balmerino*; wherefore (for which) the Deponer received Bonds which are blank in the Name, in the Deponer's hands. *Item*, The Deponer produced two Letters from Mr. *Haig*, one of the Date *nono Junii* from *Bimerside*, with a Command to him to receive a Packet to be delivered to my Lord *Balmerino*; which Packet to his knowledge and memory *Adam Watt* delivered to my Lord *Balmerino*. *Item*, The other Letter of the 23d of June, dated from no place, which the Deponer received from *Adam Watt*, who had in hand a Letter to my Lord of *Lothian*, which he received: and delivered a Letter to my Lord *Balmerino*, and another to the Earl of *Traquair*; which Letters were received by *Adam Watt* from Sir *Lewis Stewart*. *Item*, Depones upon his great Oath, That he never opened the little Coffe, nor Trunk; but once that he opened the little Coffe, and took out the Keys of the Trunks, but never stirred the Papers, nor none others to his knowledge: but that he heard that *Thomas Haliburton* had looked in the Coffe before, but knows not whether he took any Papers out or not. *Item*, Declares that since Mr. *William Haig* his away going, there came a Trunk of his home, which is in *William Dick* his hands, whereof he has the Key; and that he never opened the same, but allenarly (only) once at the desire of Mr. *Alexander Johnstoun* Advocat, who alledged he had some Clothes and other Gear therein, which he had put in Mr. *Haig's* Trunk when Mr. *Haig* and he was at *London* the last Vacance. And the Deponer grants he received the Key of the Trunk from *William Frier*, inclosed in a Letter from *London* written by the said *William Frier*, and dated before Mr. *Haig's* going away out of the Country. *Item*, The Deponer remembers, that Mr. *Haig* told him that the Pamphlet was written by a Man

Man employed by the Lady *Limplum* for that effect.

Sic subf. Mark Cafs, with my Hand.

*St. Andrews, Mortoun, Roxburgh,
Traquair, Da. Ep. Edinb.
Jo. Rossen. J. Hay.*

8thly, Produces four Letters from Mr. *Haig* to the Pannel, dated 27 *June*, 1 *July*, 10 *July*, and 1 *August*, 1634. Of the which four Letters, the Tenour follows.

To the Right Honourable my singular good Lord my Lord Balmerino, These, at Barnetown; to be sent to him by Mr. George Lawson, or Adam Watt Writer in Edinburgh.

My Lord,

NOW that it has pleased God to bring me safely through the Seas, though slowly (in three Days and three Nights from *Yarmouth*) to this place, I begin with these to pray your Lordship either to use your Talent to get me home otherwise, or to give vigour to that way I wrote to your Lordship from *Yarmouth*. I thought it fit to be taken, to get a compendious way to an end of my Troubles by their means, who for private respects have given the name of a Crime to that Supplication, which tho' I cannot deny the penning of, yet would not have brought to me any Inconvenience, if it had either been used as once intended, or, after changed of purpose, kept from those base Bodies that put it into the hands of such, as have been able to make hard Constructions of it. And seeing for whatsoever I now suffer in my private Fortune, in my weak Body, or in my Name, by the Contrivance or Knavery of Mr. *John Dunmure*, I may justly blame your Lordship; I do here adjure your Lordship, by the Persuasion I have of your own Integrity, of your honourable Mind and Good-will to me-wards, and by your Knowledge of the Pains I have been ever willing to take for an ingenuous Furtherance of all that concerns my Lord of *Somerset* amongst us; even to take pains to obtain to me a Remission, for doing that which is termed a Crime, and that by means of these that have termed it so; and make them sensible, that it shall be more for their credit so to make an end of the business, than to drive me to such Defences and Apologies as the publishing of will gall them, more than the blazing of the Supplication. Withal it may please your Lordship to represent to my Lord of *Roths*, and such other honest Men, as I know did once approve that Supplication, that since a hard Character is made of it by these that have wrested in the King's Ire the Sense of it, they should do right both to themselves, their Prince, and Country, by another Petition to represent that whereas they intended to have delivered to his Majesty the foresaid Supplication by such as did dissent to that Church-Article, and changed purpose, because the Paper could not hold all their Subscriptions, and other good Respects, very compatible with their most humble Duties to his Majesty; yet since the foresaid Supplication has come to his Majesty's hands by such as have made wrong Constructions of it, therefore to conclude craving humbly that his Majesty would give them leave to be Interpreters of their own Language, and the Desire of their Petition, (for the Reasons it containeth) which is,

that no private respect, but mere Affection to his Majesty, did rule their whole Carriage in the late Parliament. But in this I submit my Desire to your Lordship and their Judgment and Pleasure. Howsoever, since I suffer for that which truly had their allowance, I think they are in honour bound to use discreet means to relieve me off this Cross, at least to help my poor Estate in some measure to bear out the burden of it. I suffer enough in the Toil of my Body, and Wounds given to my Name, though your Lordships amongst you free me of all the Charges that will be inevitable to me in this Course: a little Help from each honest Man that will possibly pity me, would do this business. Thus your Lordship may see there lieth a heavy Burden on my Stomach, when it is brought so low as to beg; yet I shall rather starve than discover so much to any other than your Lordship, to whom only I can lay open the silly and low Thoughts that Misery, and the Fear of it, may bring to,

My Lord,

Camphire, 27

June, 1634. Your Lordship's most Respecting Servant,

William Haig.

Postscript. Whatsoever Bonds are in Moneys to my behoof, I do not think one Groat thereof mine, till my Lord *Yeaster* be satisfied; which will be easily done, (upon the grounds I have sent a Note of to *Mark Cafs*) if your Lordship move him to a Submission, (wherein *Mark Cafs* and *Thomas Haliburton* shall take burden for me) but we will never end otherwise. Pray my Lord of *Roths* to help your Lordship to induce him to a Submission to any that your Lordship and he can condescend upon; and tell him of his old Letter to my Lord of *Anchram*, That he should settle with me at any Man's sight I liked. But get him to a Submission in writing for his good as well as mine; for if God please to call me, he will find that he shall not make so good a Condition, as he may do now.

The Second Letter.

My Lord,

JUST as I had done closing of my Letters written to your Lordship with others at *Camphire*, the Conservator newly arrived here from *London* came to my Chamber in an Inn kept by his Mother-in-Law; and hearing I was arrived there from *Scotland*, was very curious to ask News. And because I could tell him nothing, at last wondering, asked me by way of question, If I heard nothing of a Petition, which a number (35) said he of Lords had resolved to give to the King, craving a Relief of the Act made in the Church-business, and a Discharge of any further Payment and Taxations. I laughed, and told him that I durst assure him there was no such matter. That cannot be, said he, for I have this from such as has best Intelligence about the Court; and have seen a Letter, bearing under the hand of one of the Commissioners, That they had had my Lord *Balmerino* that day before them, who had behaved himself very modestly, and was to be before them the next day, where they hoped to get good Satisfaction in all they were about. Then I answered, I heard your Lordship was called for by some of the Council, but had not learned, nor so much as asked for what: and that the Council might have many things

things ado with your Lordship that I was ignorant of, and could not in good manners inquire. I protest, said he, that is a business in all Men's Mouths about Court; and I wonder, said he, you have not heard of it. I have not truly, said I: And so we left that Theme, and drunk together, and within a quarter ane hour after I left that Town, and to one *Alexander Speir*, a Factor in it, a Packet to Mr. *Robert Bruce*; under whose Cover there is a Letter of the 27th of *June* to your Lordship, the Contents whereof I will not repeat here, but beseech your Lordship to have respect unto it, as well in so far as it beseecheth your Lordship to use your Talent for shortning my Troubles, as in the care I humbly beseech your Lordship to take to induce my Lord *Yeaster* to a Submission, without which there is no hope of any Conclusion with him. I will long to hear from your Lordship what posture this business works itself unto, and what success I may expect in the way I am contented be taken to end my Troubles, by their means that has occasioned them. Thus having nothing to say but what I have formerly written, and beseeching your Lordship not to be slow (slow) in writing to me, (under Cover to my Lord of *Auton*, *James Howstoun* or *James Wright* Merchants in *Amsterdam*, or to *Alexander Speir* in *Camphire*, or to *William Murehead* by the way of *London*) I crave leave, and rest,

My Lord,

Amsterdam, Your Lordship's most Respecting Servant,
July 1, 1634.

William Haig.

Directed to the Right Honourable my singular good Lord, my Lord Balmerino, These, at Barnetown.

The Third Letter.

My Lord,

I know that Repetition of my Desires exprest in my Letters to your Lordship from *Tarmouth*, *Camphire*, and *Amsterdam*, were enough to accuse me of Distrust of your Lordship's either Memory or Good-will to me-wards. Wherefore these are only to beseech your Lordship to let me know what posture that business is in, which occasioned my Voyage hither; and what Issue I may expect by your Lordship's means, and such others as I have written unto there, as well of the Troubles I am now under, as of that Business I prayed your Lordship to manage with my Lord *Yeaster*. I intend to fix about *Delft* before the 27th Instant, and stick there till I hear from *Scotland* or *England* what I may expect. So your Lordship may put all you write to me under Cover to Mr. *John Forbes* a Minister (tho' now silenced by Order from *Canterbury*) of the *English* that are about their Staple in that place, Mr. *Robert Bruce*, or Mr. *Alexander Colvill*, by *David Junken*'s means; and otherwise also will get them sent to Mr. *Forbes*, and he will make them find me: so will *William Murehead*, if your Lordship please write that way too.

My Lord,

Croning, 10

July 1634. Your Lordship's most Respecting Servant,

William Haig.

Directed, on the back thereof, to the Right Honourable my singular good Lord, my Lord Balmerino, These, at Barnetown.

The Fourth Letter.

My Lord,

I Send here to your Lordship my Lord *Jedburgh*'s Discharge for the Crop 1633, and his Daughter *Mary*'s Receipt for 100 *l.* with a Protection for my Lord *Jedburgh*, to be made use of, as your Lordship has occasion. His Lady was speaking to me to procure her a House near *Newbottle*, called *Bryankirk*; which cannot be, because my Lord of *Lotbrian* has lent it to his Uncle Sir *John Murray*. But I intend to speak to *Mark Cass*, and try if he can spare *Cockpen*; which being near *Coal*, and out of *Tiviotdale* way, I think were very convenient for my Lord *Jedburgh*, since he suits some House in *Lotbrian*, to be free of the Importunity of his *Tiviotdale* Creditors, and other Inconveniencies his dwelling at *Jedburgh* makes him obnoxious unto. There is also within this Packet Mr. *Lewis* his Discharge of 600 Marks to my Lord *Jedburgh*, and a Note of Mr. *Lewis* his Writings, with an Assignment to be subscribed by my Lord *Jedburgh*, for Recovery of some Moneys he paid for Mr. *John Home*: I intended it for Mrs. *Ann*'s help, before your Lordship and I went to *Tiviotdale*; and when his Brother Captain *Home* was assisting his Chief's Process, and was likely to have adventured to pay that Sum for Mr. *John*, if he had found him pressed (being then in *Edinburgh*) by some good Caption. It shall be well done to make the best use of it yet that can be. I have also inclosed in this Packet Mr. *Cornelius Aneslie*'s Discharge for 200 Marks for the Interest of his Money preceding *Whitsunday* last: I was not able to pay the Principal till the 7th of *June*, and then he refused; I hope to do it honestly at *Mertimas*, before which time I hope to return armed against all Inconveniencies that Cost or Power shall be able to put upon me, by evil interpreting what was well meant. I have left to my Nephew *Thomas Haliburton* the Key of my Chamber and Trunks, with direction to be given to your Lordship to be made use of during my absence; whereof I shall write to your Lordship the reason at more length by the first occasion. I rest,

My Lord,

Your Lordship's most Affectionate

and Respecting Servant,

William Haig.

Direction on the back, To the Right Honourable my singular good Lord, my Lord Balmerino, These, 1 August 1634.

Produced to the Lords Examinators by my Lord Balmerino.

9thly, Produces three Extracts of Parliament, whereof two containing the Names of the Earls and Lords present at Parliament 1633, together with the Names of the Articles at that same Parliament; of the which three Extracts, the Tenour follows.

The Names of the Lords of the Parliament.

Archbishops; *St. Andrews*, *Glasgow*. Bishops; *Dunkell*, *Murray*, *Rosse*, *Brechin*, *Galloway*, *Dumblaine*, *Caithness* by *Dunkell* his Proxy, *Isles*, *Argyle*, *Orkney*. Duke of *Lennox*. Marquiss of *Hadintoun*, Marquiss of *Huntley* by the Duke of *Lenox* his Proxy, Marquiss of *Dowglas*. Earls; *Argyle* by *Mortoun*

Mortoun his Proxy, Erroll, Mareschal, Sutherland by the Duke of Lennox his Proxy, Mar by Hadingtoun his Proxy, Buchan by the Marquiss of Hadingtoun his Proxy, Rothes, Elingtoun, Cassiles, Glencairne by Rothes his Proxy, Murray by Lauderdale his Proxy, Nithsdale, Wintoun, Linlithgow, Perth, Dumfermling, Wigtoun, Kingborne, Abercorne, Tillebarne, Keille by Kinocoll his Proxy, Galloway by Traquair his Proxy, Seaforth, Annandale, Lauderdale, Carrick by Traquair his Proxy, Lotbrian. Viscounts; Falkland by Stirling his Proxy, Dumbar by Traquair his Proxy, Stormount, Drumlanerk. Lords; Lindsay, Gray by Mortoun his Proxy, Yeaster, Semple, Sinclair, Herries, Elphinstoun by Balmerino his Proxy, Ogilvy, Torphichen, Spynie, Lindores, Loudon, Kinlofs by Mortoun his Proxy, Balmerinock, Burlie, Halyrood-house, Cowper, Cranstoun, Deskfoord by Cranstoun his Proxy, Melvill, Carneige, Ramsay, Naper, Cameron by Traquair his Proxy, Newburgh by Stirling his Proxy, Weemes, Corstorphin, Forfar, Rae by Viscount of Air his Proxy, Dalzell.

Commissioners for the Burroughs; Sir George Forrester of Corstorphin, and Mr. Patrick Hamiltoun of Little Prestoun, for Edinburgh, Principal; Sir Patrick Murray of Elebank, and Sir John Hamiltoun of Prestoun, for Hadingtoun; Sir Alexander Nisbet of that Ilk, and John Home of Rentoun, for Berwick; William Dowglafs of Cavers, and Sir Walter Riddell of that Ilk, for Roxburgh; James Murray Fiar of Philliphaugh, and James Pringle of Whitebank, for Selkirk; James Hay of Smithfield, and James Naswith of Posso, for Peebles; Sir James Lockhart Younger of Ley, and Gawn Hamiltoun of Raploch, for Lanerick; Sir Robert Grierson of Lagg, and Sir John Charters of Amisfield, for Dumfries; Sir Patrick Agnew of Lochnair Knight Baronet, for Wigtoun; Sir William Cunninghame of Cunninghamehead, and James Chalmers of Gaitgirth, for Air; Sir Lodovick Howstoun of that Ilk, and James Muribead Younger of Lachope, for Dumbarton; Hector Bannatyne of Keymes, and John Stewart of Escoke, for Bute; Sir Archibald Stewart of Blackball, and Patrick Fleeming of Barreichine, for Renfrew; Archibald Edmington of Duntreath, for Stirling; Sir Walter Dundas of that Ilk, and William Drummond of Richartoun, for Linlithgow; Sir Archibald Ogilvie of Inchmartin, for Perth; Sir Robert Grabame of Morpie, for Kincarden; Sir Alexander Irvine of Drum, and Thomas Crombie of Kemno, for Aberdeen; Sir John Machenzie of Tarbit, for Inverness; John Campbell Fiar of Calder, and John Dunbar of Moyne, for Nairne; Sir Thomas Urquhart of Cromartie, for Cromartie; Sir John Scrimger of Duddope, and Duncan Cambel Fiar of Anchinbreck, for Argyle; Sir Laugblane Maclane of Morvere, for Tarbet; Sir John Leslie of Newtoun, and Thomas Myretoun of Cambo, for Fyfe; Sir Harry Wood of Bonnitoun, and Sir William Grabame of Claverhouse, for Forfar; John Gordon of Innermarkie, for Bamff; Sir Patrick Macgie of Large, for the Stewartry of Kirkubright.

Sic subs. J. Hay, Cl. Regist.

The Lords of the Articles.

Pro Clero; Archb. St. Andrews, Archb. Glasgow. Bishops, Murray, Rosse, Dumblaine, Brechin, Isles, Argyle. *Pro Nobilibus;* Duke of Lennox, Marquiss of Hamilton, Marquiss of Dowglafs, Earl of Mareschal, Earl of Wintoun, Earl of Roxburgh, Earl of Lauderdale, Viscount of Air. *Pro Baronibus;* Sir George Forrester of Corstorphin, Sir Patrick Murray of Elebank, Sir Patrick Ogilvie of Inchmartin, Sir

John Leslie of Newtoun, William Dowglafs of Cavers, Sir James Lockhart Younger of Ley, Sir Robert Grierson of Lagg, Sir John Scrimger of Duddope. *Pro Burgis;* John Sinclair and Gilbert Kirkwood, Andrew Gray, Mr. Alexander Wedderburne, Paul Menzies, Gabriel Cunninghame, Mr. James Cockburne, Mr. John Hay, Andrew Bell.

Sic subs. J. Hay, Cl. Regist.

And last produced ane Note of Articles in Parliament in annis 1600, 1606, 1607, 1617, and 1621. whereof the Tenour follows.

IN the Parliament held at *Edinburgh* the Year of God 1600 Years, the Noblemen after named were chosen to be of the Lords of the Articles, viz. The Duke of Lennox, the Earl of Mareschal, the Lord Seaton, the Lord Newbottle, the Earl of Erroll, the Earl of Mar, the Lord Levingstoun, Lord Fyvie.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1606, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Marquiss of Hamiltoun, Marquiss of Huntley, Earl of Argyle, Earl of Erroll, Earl of Mar, Earl of Glancairne, Earl of Linlithgow, Lord Glames.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *March* 1607, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Earl of Argyle, Earl of Angus, Earl Mareschal, Earl of Mar, Earl of Kingborne, Earl of Lotbrian, Lord Elphinstoun, Roxburgh, Blantyre.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *May* 1617, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Duke of Lennox, Marquiss of Hamiltoun, Marquiss of Huntley, Earl of Argyle, Earl of Montross, Lord Ogilvy, Lord Sanquair, Lord Scoone.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1621, the Noblemen after named were chosen to be Lords of the Articles, viz. the Earl of Angus, the Earl of Mortoun, the Earl of Nithsdale, the Earl of Wigtoun, the Earl of Roxburgh, the Earl of Balcleugh, Lord Scoone, Lord Carnegy.

Sic subs. J. Hay, Cler. Regist.

After the Production whereof, his Majesty's Advocat affirms, That the Writs now produced for Verification of the Dittay, the said Dittay is thereby verified in the hail Points thereof, referred to the Assize; and in respect thereof protests, if they cleange (clear) upon so clear Probation, for wilful Error.

Thereafter it was alledged by the Pannel, That the Earl of Rothes's Deposition ought to be produced and read.

To the which it is answered by my Lord Advocat, That he uses not the same as a Point of his Probation.

To the whilk it is duplyed, That it will serve (being read and produced) for clearing of the Pannel's Innocency; and that by *Interloquitor* of before, the said Deposition was by the Justice's *Interloquitor* produced and given up to the Pannel; and therefore it is most necessary to be produced to the Assize, and cognosced by them.

Thereafter my Lord Advocat, for eschewing of Delays, did produce the Earl of *Rothes* his Deposition, with this Protestation, That he uses not the samen as a Verification of the Dittay, but only for satisfying of the *Interloquitor* given out by the Justice before, and to cut off all occasion of Clamour that any part of the Process were withdrawn; and when the Pannel shall found any Alleadgance or Objection thereupon, he shall have a sufficient Answer. Of the which Deposition the Tenour follows.

At Edinburgh, the 3d of July, 1634.

THE which Day *John* Earl of *Rothes*, being sworn upon his great Oath, and the Libel being shewn to him, grants that this is the Libel that was shewn to him by or from my Lord *Balmerino*; which he took and read till about twenty Lines in the beginning, and no farder, in presence of the Earl of *Cassiles* and the Lord *Yeafter*, being with him in Coach, going to *Dalkeith*: who finding it of such a Strain, and having told them that his Majesty had given him an expresse Command to suppress all that was of that nature, the Deponer and they, all in one Voice, thought it should be suppress'd; and the Deponer did put it in his Pocket. And having occasion that same Day to meet his Majesty at *Dalkeith*, and his Majesty falling in Conference with him anent Information made to his Majesty against him, he purg'd himself clearly to his Majesty; and having received from his Majesty of before strait Commandment for suppressing all Petitions of the nature of that which was moved in the time of the Parliament, he shewed to his Majesty that he had faithfully done the same ever since, and added thir Words; *Sir, there is a Petition given me presently to be looked upon and considered, which I have in my Pocket, which I have according to your Majesty's Command suppress'd; if your Majesty be pleased to look upon it.* Which his Majesty answered, *It is no matter: I have no leisure: I am going to the Park.* And declares, that it remained in his Pocket unlooked upon by him, or any other, by the space of eight Days, or thereabouts: After the which he returned the same back again, inclosed in a Paper, which was sealed, to my Lord *Balmerino*, to whom before he had told his Judgment of it, that it was altogether to be suppress'd. And depones upon his great Oath, That he neither shewed it to any, nor gave any Copy thereof to any; but remembers before he sent it to my Lord *Balmerino*, he caused copy it by his own Servant, which is yet extant, uncommunicated to any, and whereof he had no memory at all, till he heard that Mr. *Peter Hay* of *Naughton* had shewn it to others; and then he searched the same, and found it out. *Item*, Being interrogat if he knew the Hand-writ of the Libel, or who was the Author or Penner thereof; depones, he knows not the Writer thereof, and knew not certainly who was the Author and Penner thereof, till he heard that Mr. *William Haig* was bruiet, (*i. e.* named) for the penning thereof, of whom he had ever Suspicion, because he has ever been busy upon such idle and foolish Toys. And being asked if he gave his Ad-

vice anent the penning thereof to Mr. *William Haig*, or any other; depones upon his great Oath, that he neither gave his Advice to him, or any other, anent the penning thereof, but ever thought it fit to be suppress'd; and declares, that he never knew any Consultation either before or after anent the same. And the said Earl of *Rothes* promised with all diligence to send the Copy which he has inclosed to the Lords; and promised upon his Oath and Honour not to copy the same.

Sic subs. Rothes.

My Lord Advocat declares that he uses not the last Part of *Mark Cais* his Deposition.

It is objected and alledged by Mr. *Alex. Pearson* against the Probation of the Dittay adduced, First, To the Probation of the first Part thereof against the Pannel, as Author, Consultor, &c. that the Pannel's alledged Interlining does not prove him to be Consultor with Mr. *Haig* in the penning and first drawing up thereof, because the alledged Interlining is long after, yea, after the Offer made thereof to his Majesty, to whom no Subject can be presumed to represent a Supplication interlined. And opposes to that Point of Dittay, the Pannel's Deposition the 16th of *June*, which bears the Interlining not to have been made while after the Earl of *Rothes*'s Redelivery of the Writing to the Pannel, which was more than six or seven Months after. Oppones also the other Copy of the Writing quarrelled, produced by my Lord Advocat, which wants the Interlining, and which evinces the Interlining not to have been at the penning and forming thereof, and consequently the alledged Interlining proves not the Pannel's Advice in the penning and first drawing up thereof.

Item, The alledged Interlining proves not the Pannel to be Consultor anent the scandalous Libel, because the said alledged Interlining is not of any matter of Reproach or Scandal, whereupon the said Libel is now challenged, or can be challenged, and so has no Accession thereto as scandalous; and therefore proves not the Pannel's Advice anent the scandalous Libel.

Item, The alledged Interlining proves not that Point of the Dittay, because by the Pannel's Deposition, 16 *June*, never Man saw it since the Interlining thereof; and therefore nothing can be enforced or concluded thereupon, and is alike as if the same had never been interlined: For even an infamous Libel found with a Party in secret, who did suppress the same, and never manifest it to another, does not make or prove him guilty of the infamous Libel.

That part of the Dittay, bearing, That by Letters sent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig* that he had the Allowance of the Pannel to the penning of the Writ quarrelled, is no ways proven by the missive Letter, nor by any of them. And where the said Missives, or any of them may seem to concern any purpose of Allowance of the Writing quarrelled, that is no ways of the Pannel's Allowance, nor can be so expounded; for the Letter from *Campbire*, dated 27 *June*, directed to the Pannel himself, and which speaks of their Allowance in the third Person, extends not to the Pannel, and makes not the Allowance therein mentioned (if any be) to be the Pannel's Allowance.

Farder,

Farder, Altho' the said Missive affirmed as the Dittay bears, yet the same can no ways be respected, nor make Faith against the Pannel for his Conviction; because Mr. *Haig* being guilty as Author, his alledged Declaration, if any be, (no ways granting the same) can be no Probation at all against the Pannel; because it is an undoubted Maxim in Law, *Quod socius aut particeps Criminis adversus alium fidem non facit*: Accomplice in a Crime's Declaration cannot make Probation against any other whom he alledges to be guilty.

To the first part of the Dittay, and Probation thereof, opposes the Dittay it self, which bears Mr. *Haig* to be Author, and which makes point of Dittay against the Pannel for not apprehending of Mr. *Haig*, Author thereof. Opposes also Mr. *Haig's* Grant that he was Author and Penner thereof, contained in his missive Letter, 27 *June*. Opposes also Mr. *Haig* his fleeing furth of the Country for the same Cause; and since his Flight, his intreating of his Friends for procuring to him a Remission for it, as is reported in the Pannel's Depositions the 1st of *August*. Opposes also the Pannel's Oath and Declaration the 9th of *June*, wherein he has deposed, That Mr. *Haig* had no warrant from him, and that he knew nothing of the forming of it. Opposes also *Mark Cals* his Deposition, which bears Mr. *Haig* to have confessed to him that he was the Penner thereof.

It is alledged by Mr. *John Nisbet* against the Verification of the Dittay, That the Pannel's Depositions cannot be used to verify the Dittay, inferring capital Guilt and Punishment upon the Pannel, because the Pannel was induced to depone under Promise and Assurance of Impunity: And in Law, a Confession elicited upon Promise of Impunity, cannot inforce capital Guilt, as is abundantly astrusted in the Dispute. It is likewise alledged by him that *Dunmure's* Deposition, *Dalgleish's* Depositions, and *Haig's* Letters, cannot be used against the Pannel, because they being all involved in the same Acts whereupon the Pannel is indicted, they cannot prove against the Pannel to disburden themselves; seeing in Law these with whom scandalous Pieces are found are presumed to be Authors, unless they condescend upon the Author or Deliverer of these Pieces to them.

It is alledged by Mr. *Alexander Pearson*, That the second Part of this Dittay against the Pannel, as guilty of hearing, concealing, not apprehending, divulging of an infamous Libel, &c. is not proven, because there is nothing adduced against the Pannel, to prove the Pannel's Knowledge of the Writing quarrelled to be scandalous or seditious, without which the Pannel is not, nor cannot be counted guilty of the Crimes libelled. And opposes thereto the just and probable Cause contained in the second Exception, and remanent Defences proponed for the Pannel, which the Pannel had moving him to think otherwise of the Writing quarrelled; to wit, The Writing it self in Title, Form, Strain, Beginning and Ending, and in all, an humble Supplication; the same being first deliver'd to the Pannel as a Supplication to be presented to his Majesty. [The Pannel's Deposition 9 *June*.] Next was deliver'd by the Pannel to the Earl of *Rothes* of purpose to be presented to his Majesty. [The Pannel's Deposition foresaid; and also affirmed by the Dittay it self.] Last it was offered by my Lord of *Rothes* to his Majesty; as the Earl of *Rothes's* Deposition bears, 3 *July*:

Whilk Offer of my Lord of *Rothes* to his Majesty is acknowledged by my Lord Advocat, conform to his Lordship's Answer in the Defences proponed for the Pannel. Opposes also the Pannel's Quality, Life, and Conversation, which is in such a far distance from the Crimes libelled, that it excludes all Presumption and Probability thereof against the Pannel.

To that Point of the Dittay aggravating the Pannel's not apprehending Mr. *Haig*, by the Pannel's shewing to him the Warrant of his Citation before the Committee, and thereby giving him occasion to escape; opposes the Pannel's Deposition of the 16th of *June*, which bears that the Pannel knew nothing of Mr. *Haig* his going off the Country before the third Day after Mr. *Haig's* Escape.

That Part of the Dittay bearing the Pannel to be guilty of divulging and dispersing of the alledged infamous Libel, is not proven. 1st, The Pannel his causing Mr. *Robert Dalgleish* his Servant copy the same, proves not the Pannel's dispersing thereof in publick; Mr. *Robert Dalgleish* being the Pannel's Household Servant, and he having copied the same *infra privatos parietes*, which proves not dispersing in publick. 2dly, The Delivery of the Writ quarrelled to the Earl of *Rothes* of purpose to be presented to his Majesty, proves no ways divulging of a scandalous Libel: But the Delivery thereof, qualified as said is, and followed with an real Offer thereof made to his Majesty, cuts away its being offer'd as a scandalous Libel, and divulging thereof; both because of his Majesty's sacred Person, which is far transcendent above all presumed Injuries, and also *quia calumnia est adversus absentem*. Farder, since in Law and Reason, Intention of Law and Reason differences Crimes by the Purpose of the Party, let the Purpose of the Pannel difference now this his Act, which does make the same to be presentation of a Supplication, and not divulging of an infamous Libel. 3dly, The Delivery of the Writ by the Pannel to Mr. *Dunmure* proves not divulging; and opposes thereto the Pannel's Deposition of the 9th of *June*, which bears that the Pannel gave the Writ to *Dunmure* to look upon to himself alone, and to shew it to no other, and that he never knew that *Dunmure* had copied the same, till *Dunmure* was called in question for it. Opposes likewise Mr. *Dunmure's* Deposition, which bears in this same manner. Opposes also the Law *Quod in maleficiis voluntas spectatur, non exitus*; and that the Pannel's purpose is declared by his Deposition foresaid.

It is answered by my Lord Advocate, That the Interlining is not found relevant *per se*, but with the remanent Circumstances; and so far as Interlining is libelled, (which is indefinitely, without respect of time, whether before or after shewing of it to *Dunmure*) it is clearly proven by the Pannel's own Deposition, and by ocular Inspection of the scandalous Libel produced by the Pannel, which is interlined with his own Hand in two divers Places. And for proving the Pannel to be Author, Adviser, &c. his receiving it immediately from *Haig*, delivering it to the Earl of *Rothes*, interlining of it *quocunque tempore*, dispersing of it to *Dunmure*, and giving the Power of it to *Dalgleish* his own Man, is sufficient to verify that part of the Dittay. To the whilk is added *Haig* his Confession in his Letter, which in two Passages thereof bears, that it was allowed by them in whose Name the same was framed, of the which Number the Pannel was one. Where it is alledged that the not apprehending is

not

not verified, or concealing of *Haig*, &c. because it is not proven that the Pannel had Knowledge that it was a scandalous Libel; it is answered, That the Pannel knew *Haig* to be Author, which is proven by his Depositions; and the Justice by *Interloquitur* has found it to be a scandalous Libel, and there is no necessity to prove his Knowledge. And as to divulging, it is not found relevant *solo*, but being conjoined with any part of the Dittay; and it is proven *in terminis*, as it is libelled by the Pannel's Depositions. And as to the Pannel's Intention, it is not a Part of the Dittay, the Pannel being verified to have been Author or Deviser, not Apprehender of *Haig*, or Concealer of him, or Divulger of the scandalous Libel; which is clearly proven by the Writs produced. And therefore alledges that the Affize, notwithstanding of their Objections proponed, ought to find the Dittay clearly proven; otherwise, protests for wilful Error and Remeid of Law.

It is duplyed by Mr. *John Nisbet* for the Pannel, Whereas it is replied by my Lord Advocat, that the Receipt of the Piece from the Author immediately after compiling of it, joined with Interlination, and the Author's Testimony of the Pannel's approving of it, verifies the Pannel's Concourse with the Author in framing the Piece found scandalous; we oppone the Pannel's reiterat Depositions, bearing that he had no Accession in the framing, and gave no previous Warrant to the Framer, and disclaiming Knowledge of the framing of it, which must elide all the Presumptions adduced by my Lord Advocat; seeing it is in contraverted in Law, that a qualified Confession cannot be disjoined, as is clearly proven in my Dispute, chiefly since the Pannel has deponed so ingenuously, without any Obligation in Law, and upon Assurance foresaid.

Whereas it is replied by my Lord Advocat, That the Pannel intrusting of his Man Mr. *Robert Dalgleish* with the Piece, his imparting of it to *Dunmure*, and to my Lord of *Rotbes*, verifies divulging, oppones our Dispute, and the Authorities of the Laws cited by us, requiring a publick Exposing, and a fraudulent Intention to defame. And we oppone the Condition of the Pannel's Delivery of it to *Dunmure*, that it should be *illi soli*; *Dunmure's* copying of it without the Pannel's Knowledge; then of the Pannel's Delivery of it to *Dunmure*, to found his Opinion in Judgment; all clearly verified by *Dunmure's* Deposition.

Where it is replied by my Lord Advocat, That *Haig's* Evasion, the Pannel's Knowledge that he was Author of the Piece now found scandalous, verifies the Point of not apprehending the Author; and that it is not necessary to prove the Pannel's Knowledge of the Piece: It is duplyed, That we oppone the uncontraverted Practick of all Countries where apprehending of Parties is enjoined, and resetting is prohibit; that Declarator should precede, as in Authors of heretical Books, forbidden to be received by the Law; because every Man is not able to discern those Pieces, which are debated and contraverted amongst the learnedest. And we oppone the Pannel's own Depositions, bearing that he knew not assuredly *Haig* to be Author thereof, but thought only he was Author; and therefore not obliged to apprehend summarily and abruptly. In respect hereof the Affize can no ways find the

Pannel guilty of the Dittay, and alledged Crime specified therein.

The Affize, by Plurality of Votes, elects and choises *John Earl of Traquair* Chancellor, (Foreman.)

Whilks Persons of Affize being received, sworn, and admitted, after Accusation of the said *John Lord Balmerino* by Dittay of the Crimes foresaids, mentioned and set down therein, and Production, and reading judicially of the Writs, and Probation used and produced by his Majesty's Advocat for verifying thereof, they removed all together, furth of Court to the Council-House of *Edinburgh*; where first, by Plurality of Votes, they elected and chused the said *John Earl of Traquair* Chancellor. Thereafter received and voted upon the hail Points of the said Dittay; and being riply and at length advised therewith, and with the Writs and Probation used and produced by his Majesty's Advocat for instructing of the same, and with the Objections made by the Pannel and his Procurators thereagainst, and Answers made by his Majesty's Advocat to the said Objections, all read in their Presence, and Audience re-enter'd again in Court; where they by Report and judicial Declaration of the said *John Earl of Traquair*, Chancellor of the said Affize, found, pronounced, and declared the said *John Lord of Balmerino* to be cleared and acquit of the first part of the said Dittay, wherein he is indicted as Author, Deviser, Consultor, Adviser, Airt and Part of the forming and penning of the infamous or scandalous Libel mention'd therein: As also of not apprehending of Mr. *William Haig*, whom he affirms in his Deposition to have been Author of the said Libel: And likewise to be cleared, assilzed, and acquit of the divulging and dispersing of the said scandalous Libel amongst our sovereign Lord's Subjects, in manner specified in the said Dittay. And last, found, pronounced, and declared the said *John Lord of Balmerino* to be allenarly filed and convict of the Hearing of the said infamous Libel, Concealing and not Revealing of the said Mr. *William Haig*, affirmed by him to be the Author thereof.

The Justice-General upon consideration of the said *John Lord Balmerino* his Conviction by the fore-named Persons of Affize of the foresaid Point of Dittay, anent the Hearing of the infamous Libel therein contained, Concealing and not Revealing of Mr. *William Haig*, Author and Penner thereof, found and declared, by Advice of his Lordship's Assessors, That the said *John Lord of Balmerino* has therethrough incurred the Pain of Death contained in the Acts of Parliament; suspending always the Execution thereof, until the Time his Majesty's gracious Will and Pleasure be shown and declared thereanent: to whose sacred Majesty the Manner, Time, and Place of the Execution of the said Sentence is remitted by the Justice; and the said *John Lord of Balmerino* ordained in the mean time to be returned to Ward within the Castle of *Edinburgh*, to remain therein while his Majesty's Pleasure be signified*.

The King being informed hereof, was pleased to grant him a Pardon.

* Rush. Col. Vol. II. Pag. 281.



XXXVI. *Proceedings in the Star-Chamber against Dr. John Bastwick, Mr. Henry Burton, and William Prynne Esq; * for several Libels, the 14th of June 1637. 13 Car. I. Wrote by their Friends.*

AN Information was exhibited in the Star-Chamber by the Attorney-General, against *John Bastwick* Doctor in Physick †, *Henry Burton* Bachelor of Divinity, and *William Prynne* Barrister at Law, Defendants, for writing and publishing seditious, schismatical and libellous Books against the Hierarchy. They prepared their Answers, but the Counsel being backward for fear of offending the Court, they petition'd they might sign their Answers themselves, which was denied; and the 28th of *April* the Court order'd them to put in their Answers by *Monday* sevennight under their Counsels hands, or else the matters of the Information to be taken *pro confesso*. Mr. Prynne, *May* 5. again petition'd them, that having been for above a Week debar'd access to his Counsel, and his Servant who should solicit for him being detain'd close Prisoner in a Messenger's Hands, and it being difficult to get his Counsel to repair to him during the Term; he having been a Barrister at Law, pray'd he might (according to former Precedents in that Court) have liberty to put in his Answer by the Day prefix'd, under his own Hand, and not under his Counsels, who refused it out of Fear and Cowardice; for which he alledg'd these Reasons.

1. *Close*, Dr. Layton, and others, had been allow'd this, and there is but one Precedent against it; where, upon a special Reason, and in case of a Woman, not of a Man, much less of a Lawyer, it was denied.

2. Upon an *ore tenus* in this Court, in many Cases at the Council-Table, in Parliament, and in the King's-Bench upon Indictments and Informations (especially in Cases of Felony or Treason) the Defendants make their Defence without Counsel.

3. Counsel is allow'd not of Necessity but Favour, as a Help to the Defendants; but when they find them no help, but that they advise them to their prejudice, why may they not answer without them?

4. Every Answer in the Eye of the Law, is the Defendant's, not the Counsel's.

5. Shall an innocent Man suffer without Conviction, thro' the Want, Fear, Neglect, Ignorance, Diversity of Opinions, or Treachery of Counsel?

6. The Law of Nature teacheth every Creature, Man especially, to defend himself, and in the present Case the Defendant's Answer resteth upon Books, matters of Divinity, and other Points, wherein Counsel have little Skill: How can they defend him in a Cause they understand not?

7. At the General Day of Judgment, every Man shall be allow'd to make Answer for himself, much more should earthly Judges allow the same, where others will not or dare not.

8. By the judicial Law among the *Jews*, and by the civil Law among the *Pagan Romans*, every one might answer for themselves: *Naboth*, *Susanna*, *Christ*, and others, tho' unjustly condemn'd, yet were not condemn'd as guilty for not answering by Counsel.

9. *St. Paul* when he was slandered and accused by *Ananias* the High-Priest and *Tertullus*, and several times before *Felix*, *Festus*, and King *Agrippa* (three Heathen Magistrates) was suffer'd to speak for himself without any Counsel assign'd.

The Defendant therefore hopes, he being accused in this Court, by the *English* Prelates and High Priests Instigations, of Sedition and other such like Crimes, as *St. Paul* was, shall enjoy the same Privilege and Freedom before *Christian* Judges, as *St. Paul* had among *Pagans*; which his Adversaries will not be against, unless they will be deemed more unreasonable than *Ananias* himself: especially the Defendant having been a Barrister and Counsellor at Law formerly, and admitted in this Court to put in Answers under his Hand in other Men's Cases.

Upon reading this and a Petition from Dr. *Bastwick* to the same purpose, alledging his Counsel refused to sign his Answer, the Court adher'd to their former Order, that they should by *Monday* put in their Answers under Counsels hands, or else to be taken *pro confesso*. Prynne and Bastwick thereupon left their Answers under their own Hands at the Office, and tender'd another Draught thereof to the Court.

Before this Petition of Mr. Prynne, he and the two other Defendants put in a Cross-Bill under all their Hands, against the Archbishop of *Canterbury* and others of the Prelates, wherein they charg'd them with usurping upon his Majesty's Prerogative Royal, with Innovations, licensing Popish and Arminian Books, &c. and set forth the Substance of their Answers. The Bill being ingross'd and sign'd by them, Mr. Prynne tender'd it to my Lord Keeper, praying it might be accepted without Counsels Hands, who durst not sign it: The Lord Keeper upon reading the Cross-Bill refused to admit it, but delivered it to the King's Attorney. The Archbishop nettled thereat, demanded the Opinion of the Judges, whether they could not be punish'd as Libellers; who all but one answer'd negatively: for it was tender'd in a legal way, and the King's Courts

* Clar. Hist. Vol. 1. p. 73. 158.

† Rush. Col. Vol. 2. p. 380.

are open to all Men. The Archbishop then apply'd to the Court of Star-Chamber, and inform'd them, That in some Books and Pamphlets lately published, his Grace and the other Bishops are said to have usurped upon the King's Prerogative, and proceeded in their Courts contrary to Law. He pray'd the Court would require the Judges to give their Opinions therein; and the Court accordingly desir'd their Opinions in the Points following:

1. Whether Process may not issue out of the Ecclesiastical Courts in the Names of the Bishops? The Judges answered affirmatively.

2. Whether a Patent under the Great Seal be necessary for keeping Ecclesiastical Courts, and for Citations, Suspensions, Excommunications and other Censures? Whether Citations must be in the King's Name, and under his Seal of Arms? The like for Institutions, Inductions, and Corrections of Ecclesiastical Offences? They answer'd that a Patent under the Great Seal is not necessary in any of these Cases; nor is it necessary that Summons, Citations, or other Process Ecclesiastical, or Institutions, Inductions, or Corrections of Ecclesiastical Offences should be in the King's Name, or with his Stile, or under his Seal, or that their Seals of Office have in them the King's Arms, the Statute of 1 Edw. 6. Ch. 2. being not now in Force.

3. Whether Bishops, Arch-Deacons, &c. may keep any Visitation, without Commission under the Great Seal? They answer'd they may. Which Opinion of the Judges being certified into the Star-Chamber under the Hands of eleven of the twelve, the Court, at the Prayer of the Attorney-General, order'd the said Certificate to be recorded there, and in the other Courts at Westminster, the High-Commission and other Ecclesiastical Courts; and afterwards the original Certificate to be deliver'd to the Archbishop of Canterbury, to be preserv'd among the Records of his Court.

Dr. Bastwick having left his Answer at the Office as aforesaid, the Court taking notice that it was five Skins and a half of Parchment close written, and (as was alledg'd) contained much scandalous defamatory matter, order'd, That all the Matters of the Information, wherewith he was charged, should be taken *pro confesso*. Dr. Bastwick notwithstanding petition'd again, that his Answer might be accepted under his own Hand, but to no purpose: And Mr. Prynne in a second Petition desiring of the Court not to require Impossibilities of him, his Counsels Hands not being at his Command (for thus the most innocent Man may be betray'd and condemn'd, through the unfaithfulness, wilfulness, fear, corruption, or default of Counsel) he pray'd them to deal with him as they would be dealt with themselves, were they (which God forbid) in his Condition, and as they would have Christ proceed with them at the Day of Judgment. He craved only so much Favour and Justice as Christ found before Pilate, and Paul before Felix, Festus, and Agrippa, or as every Traytor or Felon enjoys in the Court of Justice, to answer for himself, when his Counsel will not, cannot, or dare not; especially in this weighty Cause highly concerning his Majesty's Royal Prerogative, the Safety of Religion, and the Good of the whole Realm. He pray'd the Cross-Bill and Answers of him and the other Defendants against the Prelates late dangerous Encroachments, Innovations, Practices and Oppressions, may be accepted under the Defendants own Hands; and the Pe-

titioner (upon granting his Petition) should ever pray for their Lordships, &c. The Court hereupon commanded Mr. Holt, one of Mr. Prynne's Counsel, to repair to him in the Tower, and take Instructions for his Answer; and the Lieutenant of the Tower was sent for and check'd by the Lords for suffering Mr. Prynne to dictate such a Petition; and one Gardener who writ it from his Mouth by the Lieutenant's Licence, was the same Evening, by a Warrant from the Archbishop and others, apprehended by a Pursuivant, detain'd about fourteen Days, and not released till he had given Bond to appear when call'd.

Mr. Prynne upon Mr. Holt's repairing to him, gave him his Fee, and Instructions for drawing his Answer; and the same being agreed on and settled by Mr. Holt, and Tomlins his other Counsel, Mr. Holt's Clerk ingross'd it, but Holt then refused to sign it, saying he had express Order to the contrary, and would not do it for 100 l. and in the mean time Tomlins went into the Country. Mr. Prynne thus deluded, requested the Lord Keeper, the Chief Judge of that Court, to command Mr. Holt who had drawn it, to sign it; but the Lord Keeper answer'd, he had no Power to command Counsel to sign an Answer. And the Court May 19, positively ordered that for their Contempt in not putting in their Answers, the matters against Bastwick and Prynne should be taken *pro confesso*, and the Cause against them should be heard the first Sitting of the next Term. As for Mr. Burton's Answer, it was sign'd by Mr. Holt; but after it had been near three Weeks in Court, upon Mr. Attorney's suggestion that it was scandalous, the Court refer'd it to the two Chief Justices Bramston and Finch. The latter revild Holt exceedingly, and told him he deserv'd to have his Gown pull'd over his Ears for drawing it: Holt reply'd, it was only a Confession or Explanation of the Charge in the Bill, and a Recital of Acts of Parliament, and how that could be scandalous or impertinent he could not conceive. But the two Justices certified it to be all scandalous and impertinent, except the usual Words in the beginning, *The said Defendant by Protestation not confessing*, &c. and the Words in the latter end, containing his Plea of *Not Guilty*, the common Averment that he was ready to prove the matters of Answer, his Prayer of a favourable Interpretation, and to be dismissed. So all the Body of his Answer, containing about 40 Sheets of Paper, was expung'd, and nothing but the Head and Feet remain'd: And by his Plea of *Not Guilty* to all, he was made to deny what he had confess'd, and justified in his Answer: And the Examiner coming to him afterwards to the Fleet, with Interrogatories grounded on his Answer, he refused to be examin'd unless his Answer might be admitted as it was put in, or he permitted to put in a new one. The Court order'd the Examiner to repair to him a second time with the Interrogatories, but he persisting in his Refusal to be examin'd, for that the Answer now in Court was none of his, the Court order'd the matter of the Information and Interrogatories to be taken against him *pro confesso*; and on the 13th of June the Court order'd the Cause against all the three Defendants to be heard the next Day, and that in the mean time they should have Liberty with their Keepers to attend their Counsel. This was look'd upon as short warning by some, who affirm'd, that by the Course of the Court, a *Subpoena ad audiendum judicium* should

should have been serv'd upon them fifteen Days at least before the Day of hearing, which was not done. However Mr. Prynne made use of his Liberty, and repair'd to Mr. Tomlins (then newly return'd) with his Answer newly drawn up and ingross'd as aforesaid, who sign'd it, but Mr. Holt said he durst not; then Mr. Prynne tender'd it thus sign'd to Mr. Goad at the Office, but he utterly refused to take it.

Mr. Burton in his Answer, set forth the Substance of his Sermon which he preach'd the fifth of November in his Parish Church in *Friday-street*, touching the Innovations brought into the Church.

Dr. Bastwick in his Answer term'd the Prelates Invaders of the King's Prerogative, Contemnors of the Scriptures, Advancers of Popery, Superstition, Idolatry, Profaneness, Oppression of the King's Subjects, in the impious performance whereof they shew'd neither Wit nor Honesty; Enemies of God and the King, and Servants of the Devil.

Mr. Prynne's Answer was much against the *Hierarchy*, but in more moderate and cautious Expressions.

June 14, The Lords being set in their Places in the Star-Chamber, and the three Defendants brought to the Bar, to receive their Sentences, the Lord Chief Justice *Finch* looking earnestly on Mr. Prynne, said, I had thought Mr. Prynne had no Ears, but methinks he hath Ears; which caused many of the Lords to take the stricter View of him, and for their better Satisfaction, the Usher of the Court was commanded to turn up his Hair, and shew his Ears: Upon the sight whereof the Lords were displeased they had been formerly no more cut off, and cast out some disgraceful Words of him. To which Mr. Prynne reply'd, My Lords, there is never a one of your Honours, but would be sorry to have your Ears as mine are.

L. Keeper. In good faith he is somewhat faucy.

Mr. Prynne. I hope your Honours will not be offended, pray God give you Ears to hear.

L. Keeper. The Business of the Day is to proceed on the Prisoners at the Bar.

Mr. Prynne then humbly desir'd of the Court to give him leave to make a Motion or two, which being granted, he moved,

Mr. Prynne. First, That their Honours would be pleas'd to accept of a Cross-Bill against the Prelates, signed with their own Hands, being that which stands with the Justice of the Court, which he humbly craves; and so tender'd it.

L. Keeper. As for your Cross-Bill, it is not the Business of the Day; hereafter if the Court shall see just Cause, and that it favours not of libelling, we may accept of it: for my part I have not seen it, but have heard somewhat of it.

Mr. Prynne. I hope your Honours will not refuse it, being it is on his Majesty's behalf. We are his Majesty's Subjects, and therefore require the Justice of the Court.

L. Keeper. But this is not the Business of the Day.

Mr. Prynne. Why then, my Lords, I have a second Motion, which I humbly pray your Honours to grant; which is, that your Lordships will be pleas'd to dismiss the Prelates here now sitting, from having any Voice in the Censure of this Cause (being generally known to be Adver-

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saries) as being no way agreeable with Equity or Reason, that they who are our Adversaries, should be our Judges. Therefore we humbly crave they may be expung'd out of the Court.

L. Keeper. In good faith, it is a sweet Motion, is it not? Herein you are become libellous. And if you should thus libel all the Lords and Reverend Judges, as you do the most Reverend Prelates, by this your Plea, you would have none to pass Sentence upon you for your Libelling, because they are Parties.

Mr. Prynne. Under Correction, my Lord, this doth not hold, the Case is not alike, for here are only one or two Members of the Court, who are said to be libell'd against, and your Lordship your self in your Case against *Norton*, absented yourself from the Hearing, because a Party, which is usually done by the Lords in like Cases. But this prevailed nothing.

Mr. Prynne. Then I have a third Motion, which is, that your Lordships will receive my Answer to the Information sign'd, with one Counsel's Hand, which as soon as I could get sign'd, I tender'd at the Office, but it was refus'd.

L. Keeper. Your Answer comes now too late, proceed to the Business of the Day. Read the Information, which was read, being very large, and having these five Books thereto annexed, Dr. Bastwick's Latin Apology, his Litany, Mr. Burton's Book, intitled, *An Apology for an Appeal to the King's most Excellent Majesty, with two Sermons for God and the King*, preached on the 5th of November last: *The News from Ipswich*, and *the Divine Tragedy, recording God's fearful Judgments against Sabbath-Breakers*. The King's Counsel being five, took each of them a several Book.

Mr. Attorney began with Dr. Bastwick's Latin Apology; next unto the Attorney, Serjeant *Whitfield* falls upon Mr. Burton's Book, saying, In good faith, my Lords, there is never a Page in this Book, but deserves a heavier and deeper Censure than this Court can put upon him.

Next followed the Archbishop, who in like manner descanted on the News from *Ipswich*, charging it to be full of pernicious Lyes; and especially vindicating the honour of *Matthew Wren*, Bishop of *Norwich*, as being a Learned, Pious, and Reverend Father of the Church.

Next followed the King's * Solicitor, who descanted upon the *Divine Tragedy*; to which part of it concerning God's Judgments on Sabbath-Breakers, he said, That they sat in the Seat of God, who judged these Accidents which fell out upon Persons suddenly struck, to be the Judgments of God for Sabbath-breaking. He enlarg'd himself upon that Passage which reflected upon his Majesty's late Attorney-General, Mr. *William Noy*, who, (he said) was most shamefully abused by a Slander laid upon him, as if God's Judgment fell upon him, for so eagerly prosecuting Mr. Prynne for his *Histrionastix*, which Judgment was this; that he laughing at Mr. Prynne, while he was suffering upon the Pillory, was struck with an Issue of Blood in his Privy Parts, which could never be stop'd till the Day of his Death, which follow'd soon after: but the Truth of this, my Lords, you shall find to be as probable as the rest, for we have here three or four Gentlemen of good Credit and Rank, to testify upon Oath that he had that Issue long before. And the Solicitor call'd out for Room to

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be made for the Gentlemen to come in, but none fuch appear'd.

Laftly follow'd Mr. *Herbert*, who defcending upon Dr. *Baftwick's* Litany, concluded jointly with the reft, that it deferved a heavy Censure.

L. Keeper. You hear, Gentlemen, wherewith you are charg'd, and now left you fhould fay you cannot have Liberty to fpeak for yourfelves, the Court gives you leave to fpeak what you can, with thefe Conditions.

First, That you fpeak within the Bounds of Modesty.

Secondly, That your Speeches be not libellous.

They all three answer'd, they hoped fo to order their Speech, as to be free from any immodest or libellous fpeaking.

L. Keeper. Then fpeak in God's Name, and fhew Caufe why the Court fhould not proceed in Censure (as taking the Caufe *pro confeffo*.)

Mr. *Prynn*. I expected fome particular Charge to be proved againft me: Dr. *Baftwick* and Mr. *Burton* are charged with particular Books to the Information annex'd, but none of the Books are laid to me; my fole Offence, for which the Information muft be taken *pro confeffo*, is my not putting in my Answer under Counfel's Hand by a Day prefix'd; whereas I enter'd my Appearance, and took out a Copy of the Information, which being taken out, I endeavour'd to draw up my Answer; but being shut up clofe Prifoner, I was deferted of all means by which I fhould have done it: for I was no fooner ferv'd with the *Subpena*, but I was fhortly after shut up clofe Prifoner, prohibited of Pen, Ink and Paper, and fo difabled to draw up my Answer, or Inftuctions for Counfel; my Servant who fhould follicit for me was in Prifon, without being admitted to Bail, my Friends deny'd Access, and my Chamber twice fearch'd; and after I had drawn fome Inftuctions, and part of my Answer (having then obtain'd Liberty of Pen and Ink) they were taken away by Mr. *Nicolas*, Clerk of the Council; your Lordships refus'd to let me put in my Answer under my own Hand, tho' a Counfeller at Law, contrary to former Precedents; your Lordships did at laft affign me Counfel, but they neglected to come to me, and when by order of the Court Mr. *Holt* came to me in the *Tower*, I gave him my Fee and Inftuctions, and afterwards Mr. *Holt* and my other Counfel agreed upon my Answer, caus'd it to be ingrofs'd, and promis'd to fign it, but Mr. *Holt* refus'd to do it then; afterwards Mr. *Tomlins* figned it, and it was carry'd to the Office, but they refus'd it. Here it is, I tender it upon my Oath, which your Lordships cannot deny with the Juftice of the Court.

L. Keeper. We can give you a Precedent, that this Court hath proceeded and taken a Caufe *pro confeffo*, for not putting in an Answer in fix Days; you have had a great deal of Favour fhew'd you, in affording you longer time, and therefore the Court is free from all Calumny or Afperſion for rejecting your Answer, not fign'd with Counfels Hands.

Mr. *Prynn*. But one Word or two, my Lords, I defire your Honours to hear me; I put a Caſe in Law, If an Award be made that *A* fhall together with *B* and *C* enter into a Bond of 100*l*. to *S*, the Award is void, becauſe *A* hath no Power to compel *B* and *C* to enter into ſuch a Bond: my Caſe is the ſame, The Court order'd

me to put in my Answer under Counfels Hands; I endeavour'd it, they refus'd to fign it, I had no Power to compel them, and defir'd the Court to order them to fign it; but the Court reply'd they had no Power to force them; how then could I, a cloſe Prifoner, compel them, if the Court could not? By this means the moſt innocent Perſon in the World may be made guilty of what Crimes you pleaſe. I appeal to Mr. *Holt*, if I have not uſed all my Endeavours to get him to fign my Answer.

Mr. *Holt*. There was ſo long time ſpent ere I could do any thing after I was affign'd his Counfel, that it was impoſſible his Answer could be drawn up in ſo ſhort a time as was allotted; for after long expectation, ſeeing he came not to me, I went to him, where I found him ſhut up cloſe Prifoner, ſo that I could not have Access to him; whereupon I motioned to the Lieutenant of the *Tower* to have free Liberty of Speech with him concerning his Answer, which being granted me, I found him very willing and deſirous to have it drawn up; whereupon I did move in this Court for Pen and Paper, which was granted, the which he no ſooner had gotten but he ſet himſelf to draw up Inſtructions, and in a ſhort time ſent me 40 Sheets, and ſoon after I received 40 more; but I found the Answer ſo long, and of ſuch a nature, that I durſt not ſet my Hand to it, for fear of giving your Honours diſtaſte.

Mr. *Prynn*. My Lords, I did nothing, but according to the Directions of my Counfel, only I ſpoke my own Words: my Answer was drawn up by his Conſent, it was his own Act, and he did approve of it; and if he will be ſo baſe a Coward, to do that in private which he dares not acknowledge in publick, I will not have ſuch a Sin lie on my Conſcience, let it reſt with him. Here is my Answer, which tho' it be not ſign'd with their Hands, yet here I tender it upon my Oath, which you cannot in Juſtice deny.

L. Keeper. Your Caſe is good Law, but ill apply'd; the Court deſires no ſuch long Answer, but whether you are Guilty or not Guilty.

Mr. *Prynn*. By the Statutes of *Phil.* and *Mar.* and of *Eliz.* in the Caſe of Libelling the King or Queen, the Party's Confefſion, or two Witneſſes Face to Face are required, elſe no Conviction, and here is neither; nor is there in all the Information one Claufe that doth particularly fall on me, but only in general. There is no Book laid to my Charge, and ſhall I be condemn'd for a particular Act, when no Accuſation of any particular Act can be brought againſt me? This were moſt unjuſt and wicked. Here I tender my Answer to the Information upon my Oath; my Lord, you do impoſe Impoſſibilities upon me, I could do no more than I did.

L. Keeper. Well, hold your peace, your Answer comes too late: What ſay you, Dr. *Baftwick*?

Dr. *Baftw.* My Honourable Lords, methinks you look like an Aſſembly of Gods, and ſit in the place of God: Ye are called the Sons of God; and ſince I have compared you to Gods, give me leave a little to parallel the one with the other, to ſee whether the Compariſon between God and you doth hold in this noble and righteous Caufe. This was the Carriage of Almighty God in the Caufe of *Sodom*, before he would pronounce Sentence, or execute Judgment, he would firſt come down, and ſee whether the Crime was altogether according to the Cry that was come up. And with whom

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doth the Lord consult, when he came down? With his Servant *Abraham*, and he gives the Reason; for I know (saith he) that *Abraham* will command his Children and Household after him, that they shall keep the way of the Lord to do Justice and Judgment. My good Lords, thus stands the Case between your Honours and us this Day: there is a great Cry come up into your Ears against us from the King's Attorney; why now be you pleased to descend and see if the Crime be according to the Cry, and consult (with God) (not the Prelates, being the Adversary part; who, as it is apparent to all the World, do proudly set themselves against the ways of God, and from whom none can expect Justice or Judgment) but with righteous Men, that will be impartial on either side, before you proceed to Censure, which Censure you cannot pass on us without great Injustice before you hear our Answers read. Here is my Answer, which I here tender upon my Oath: My good Lords, give us leave to speak in our own Defence. We are not conscious to ourselves, of any thing we have done that deserves a Censure this Day in this Honourable Court, but that we have ever laboured to maintain the Honour, Dignity, and Prerogative Royal of our Sovereign Lord the King; let my Lord the King live for ever. Had I a thousand Lives, I should think them all too little to spend for the maintenance of his Majesty's Royal Prerogative. My good Lords, can you proceed to Censure before you know my Cause? I dare undertake, that scarce any one of your Lordships have read my Books: and can you then Censure me for what you know not, and before I have made my Defence? O my Noble Lords! is this righteous Judgment? This were against the Law of God and Man, to condemn a Man before you know his Crime: The Governour before whom *St. Paul* was carried (who was a very Heathen) would first hear his Cause before he would pass any Censure upon him; and doth it be seem so Noble and Christian Assembly to condemn me before my Answer be perused, and my Cause known? Men, Brethren, and Fathers, into what an Age are we fallen? I desire your Honours to lay aside your Censure for this Day, to inquire into my Cause, and hear my Answer read; which if you refuse to do, I here profess, I will clothe it in *Roman* Buff, and send it abroad unto the View of all the World, to clear mine Innocency, and shew your great Injustice in this Cause.

L. Keeper. But this is not the Business of the Day; why brought you not in your Answer in due time?

Dr. Bastw. My Lord, a long time since I tender'd it to your Honour, I failed not in any one particular: And if my Counsel be so base and cowardly, that they dare not sign it for fear of the Prelates (as I can make it appear) therefore have I no Answer? My Lord, here is my Answer, which tho' my Counsel out of a base Spirit dare not set their Hands unto, yet I tender it upon my Oath.

L. Keeper. But, Mr. Doctor, you should have been brief; you tender'd in too large an Answer, which (as I heard) is as libellous as your Books.

Dr. Bastw. No, my Lord, it is not libellous tho' large; I have none to answer for me but my self, and being left to my self, I must plead my Conscience in answer to every Circumstance of the Information.

L. Keeper. What say you, Mr. Doctor, are you Guilty, or not Guilty? answer yea, or no: you needed not to have troubled yourself so much about so large an Answer.

Dr. Bastw. I know none of your Honours have read my Book; and can you with the Justice of the Court, condemn me before you know what is written in my Books?

L. Keeper. What say you to that was read to you even now?

Dr. Bastw. My Lord, he that read it did so murder the Sense of it, that had I not known, what I had written, I could not tell what to have made of it.

L. Keeper. What say you to the other Sentence read to you?

Dr. Bastw. That was none of mine, I will not father that which was none of my own.

L. Dorset. Did not you send that Book, as now it is, to a Nobleman's House, together with a Letter directed to him?

Dr. Bastw. Yea, my Lord, I did so, but withal you may see in my Epistle set before the Book, I did at first disclaim what was not mine. I sent my Book over by a *Dutch* Merchant, who it was that wrote the Addition I do not know, but my Epistle set to my Book, made manifest what was mine, and what was not; and I cannot justly suffer for what was none of mine.

L. Arund. My Lord, you hear by his own Speech the Cause is taken *pro confesso*.

L. Keeper. Yea, you say true, my Lord.

Dr. Bastw. My Noble Lord of *Arundel*, I know you are a Noble Prince in *Israel*, and a great Peer of this Realm; there are some honourable Lords in this Court, that have been forced out as Combatants in a single Duel; it is between the Prelates and us, at this time, as between two that have appointed the Field. The one being a Coward goes to the Magistrate, and by virtue of his Authority disarms the other of his Weapons, and gives him a Bullrush, and then challenges him to fight. If this be not base Cowardice, I know not what belongs to a Soldier. This is the Case between the Prelates and us, they take away our Weapons (our Answers) by virtue of your Authority, by which we should defend ourselves, and yet they bid us fight. My Lord, doth not this favour of a base cowardly Spirit? I know, my Lord, there is a Decree gone forth (for my Sentence was passed long since) to cut off our Ears.

L. Keeper. Who shall know our Censure, before the Court pass it? Do you prophesy of your selves?

Dr. Bastw. My Lord, I am able to prove it, and that from the Mouth of the Prelates own Servants, that in *August* last it was decreed, that *Dr. Bastwick* should lose his Ears. O my Noble Lords! is this righteous Judgment? I may say, as the Apostle once said, What whip a *Roman*! I have been a Soldier able to lead an Army into the Field, to fight valiantly for the Honour of their Prince: Now I am a Physician, able to cure Nobles, Kings, Princes and Emperors; and to curtail a *Roman's* Ears like a Cur, O my honourable Lords! is it not too base an Act for so noble an Assembly, and for so righteous and honourable a Cause? The Cause, my Lords, is great, it concerns the Glory of God, the Honour of our King, whose Prerogative we labour to maintain and to set up in a high manner, in which your Honours Liberties are engaged:

And

And doth not such a Cause deserve your Lordships Consideration, before you proceed to censure? Your Honours may be pleased to consider, that in the last Cause heard and censured in this Court, between Sir *James Bagg* and the Lord *Mobun*, wherein your Lordships took a great deal of Pains, with a great deal of Patience, to hear the Bills on both sides, with all the Answers and Depositions largely laid open before you; which Cause when you had fully heard, some of your Honours now sitting in Court, said, you could not in Conscience proceed to Censure, till you had taken some time to recollect yourselves. If in a Cause of that nature, you could spend so much time, and afterwards recollect yourselves before you would pass Censure; how much more should it move your Honours to take some time in a Cause wherein the Glory of God, the Prerogative of his Majesty, your Honours Dignity, and the Subjects Liberty is so largely engaged? My good Lords, it may fall out to be any of your Lordships Cases to stand as Delinquents at this Bar, as we now do: It is not unknown to your Honours, the next Cause that is to succeed ours, is touching a Person that sometimes hath been in greatest Power in this Court: And if the Mutations and Revolutions of Persons and Times be such, then I do most humbly beseech your Honours to look on us, as it may befall yourselves. But if all this will not prevail with your Honours, to peruse my Books, and hear my Answer read, which here I tender upon the Word and Oath of a Soldier, a Gentleman, a Scholar, and a Physician, I will clothe them (as I said before) in *Roman Buff*, and disperse them throughout the Christian World, that future Generations may see the Innocency of this Cause, and your Honours unjust Proceedings in it; all which I will do, tho' it cost me my Life.

L. Keeper. Mr. Doctor, I thought you would be angry.

Dr. Bastw. No, my Lord, you are mistaken, I am not angry or passionate; all that I do press, is, that you would be pleased to peruse my Answer.

L. Keeper. Well, hold your peace. Mr. *Burton*, what say you?

Mr. Burton. My good Lords, your Honours (it should seem) do determine to censure us, and take our Cause *pro Confesso*, although we have laboured to give your Honours Satisfaction in all Things. My Lords, what you have to say against my Book, I confess I did write it, yet did I not anything out of Intent of Commotion or Sedition: I delivered nothing but what my Text led me to, being chosen to suit with the Day, namely the 5th of November; the Words were these, &c.

L. Keeper. Mr. *Burton*, I pray stand not naming Texts of Scripture now; we do not send for you to preach, but to answer to those things that are objected against you.

Mr. Burton. My Lord, I have drawn up my Answer to my great Pains and Charges, which Answer was signed with my Counsels Hands, and received into the Court, according to the Rule and Order thereof. And I did not think to have been called this Day to a Censure, but have had a legal proceeding by way of Bill and Answer.

L. Keeper. Your Answer was impertinent.

Mr. Burton. My Answer (after it was entered into the Court) was referred to the Judges, but by what means I do not know. Whether it be impertinent, and what Cause your Lordships had to cast it out, I know not; but after it was approved of,

and received, it was cast out as an impertinent Answer.

L. Finch. The Judges did you a good Turn to make it impertinent, for it was as libellous as your Book, so that your Answer deserved a Censure alone.

L. Keeper. What say you, Mr. *Burton*, are you Guilty, or not?

Mr. Burton. My Lord, I desire you not only to peruse my Book here and there, but every Passage of it.

L. Keeper. Mr. *Burton*, Time is short, are you Guilty, or not Guilty? What say you to that which was read? Doth it become a Minister to deliver himself in such a railing and scandalous way?

Mr. Burton. In my Judgment, and as I can prove it, it was neither railing nor scandalous; I conceive that a Minister hath a larger Liberty than always to go in a mild strain: I being the Pastor of my People, whom I had in charge, and was to instruct, I supposed it was my Duty to inform them of these Innovations that are crept into the Church, as likewise of the Danger and ill Consequence of them: As for my Answer, ye blotted out what ye would, and then the rest which made best for your own Ends, you would have to stand; and now for me to tender only what will serve for your own Turns, and renounce the rest, were to desert my Cause, which before I will do, or desert my Conscience, I will rather desert my Body, and deliver it up to your Lordships to do with it what you will.

L. Keeper. This is a Place where you should crave Mercy and Favour, Mr. *Burton*, and not stand upon such Terms as you do.

Mr. Burton. There wherein I have offended through human Frailty, I crave of God and Man Pardon: And I pray God, that in your Sentence, you may so censure us, that you may not sin against the Lord.

Thus the Prisoners desiring to speak a little more for themselves, were commanded to Silence. And so the Lords proceeded to Censure.

L. Cottington. I condemn these three Men to lose their Ears in the *Palace-yard* at *Westminster*; to be fined five Thousand Pounds a Man to his Majesty; and to perpetual Imprisonment in three remote Places of the Kingdom; namely, the Castles of *Carnarvan*, *Cornwal*, and *Lancaster*.

L. Finch. I condemn Mr. *Prynne* to be stigmatized in the Cheeks with two Letters (*S & L*) for a seditious Libeller. To which all the Lords agreed. And so the Lord Keeper concluded the Censure.

Archbishop Laud's Speech.

My Lords,

I Shall not need to speak of the infamous Course of libelling in any kind:

Nor of the Punishment of it, which in some Cases was capital by the Imperial Laws.

As appears:

*Cod. l. 9.
T. 36.*

Nor how patiently some great Men, very great Men indeed, have borne *animo civili* (that's *Suetonius's* Word) *laceratam estimationem*, the tearing and rending of their Credit and Reputation, with a gentle, nay, a generous Mind.

In Jul. c. 75.

But of all Libels, they are most odious which pretend Religion; as if that of all things did desire to be defended by a Mouth that is like an open Sepulchre,

Sepulchre, or by a Pen that is made of a sick and a loathsome Quill.

There were Times when *Persecutions* were great in the Church, even to exceed *Barbarity* itself: Did any *Martyr* or *Confessor*, in those Times, *libel* the *Governours*? Surely no; not one of them to my best Remembrance: yet these complain of *Persecution* without all shew of Cause, and in the mean time *libel* and rail without all measure. So little of kin are they to those which suffer for Christ, or the least part of *Christian Religion*.

My Lords, It is not every Man's Spirit to hold up against the *Venom* which *Libellers* spit. For *St. Ambrose*, who was a stout and worthy Prelate, tells us, not that himself, but that a far greater Man than he, that's King *David*, had found out (so it seems in his Judgment 'twas no matter of ordinary Ability) *grande inventum*, a great and mighty Invention, how to swallow and put off those bitter *Contumelies* of the Tongue; and those of the Pen are no whit less, and spread farther. And it was a great one indeed, and well becomed the Greatness of *David*. But I think it will be far better for me to look upward, and practise it, than to look downward, and discourse upon it.

In the mean time I shall remember what an *Antient* under the Name of *St. Jerome* tells me, *Indignum est & præposterum*, 'tis unworthy in itself and preposterous in demeanour, for a Man to be ashamed for doing good, because other Men glory in speaking ill.

And I can say it clearly and truly, as in the Presence of God, I have done nothing, as a Prelate, to the uttermost of what I am conscious, but with a single Heart, and with a sincere Intention for the good Government and Honour of the Church, and the Maintenance of the orthodox Truth and Religion of Christ professed, established, and maintained in this Church of England.

For my Care of this Church, the reducing of it into Order, the upholding of the external Worship of God in it, and the settling of it to the Rules of its first Reformation, are the Causes (and the sole Causes, whatever are pretended) of all this malicious Storm, which hath loured so black upon Me, and some of my Brethren. And in the mean time, they which are the only, or the chief Innovators of the Christian World, having nothing to say, accuse us of Innovation; they themselves and their Complices, in the mean time, being the greatest Innovators that the Christian World hath almost ever known. I deny not but others have spread more dangerous Errors in the Church of Christ; but no Men, in any Age of it, have been more guilty of Innovation than they, while themselves cry out against it: *Quis tulerit Gracchos*?

And I said well, *Quis tulerit Gracchos*? for 'tis most apparent to any Man that will not wink, that the Intention of these Men, and their Abettors, was, and is, to raise a Sedition; being as great Incendiaries in the State (where they get power) as they have ever been in the Church; *Novatian* himself hardly greater.

Our main Crime is (would they all speak out, as some of them do) that we are Bishops; were we not so, some of us might be as passable as other Men.

And a great Trouble 'tis to them, that we maintain that our Calling of Bishops is *Jure Divino*, by divine Right; of this I have said enough, and

in this Place, in *Leighton's* Case; nor will I repeat. Only this I will say, and abide by it, that the Calling of Bishops is *Jure Divino*, by divine Right, tho' not all Adjuncts to their Calling. And this I say in as direct Opposition to the Church of Rome, as to the Puritan Humour.

And I say farther: That from the Apostles Times, in all Ages, in all Places, the Church of Christ was governed by Bishops; and Lay Elders never heard of till *Calvin's* new-fangled Device at Geneva.

Now this is made by these Men, as if it were contra Regem, against the King, in Right or in Power.

But that's a mere ignorant Shift; for our being Bishops, *Jure Divino*, by divine Right, takes nothing from the King's Right or Power over us. For tho' our Office be from God and Christ immediately, yet may we not exercise that Power, either of Order or Jurisdiction, but as God hath appointed us, that is, not in his Majesty's, or any Christian King's Kingdoms; but by and under the Power of the King given us so to do.

And were this a good Argument against us, as Bishops, it must needs be good against Priests and Ministers too; for themselves grant that their Calling is *Jure Divino*, by divine Right; and yet I hope they will not say, that to be Priests and Ministers is against the King, or any his royal Prerogatives.

Next, suppose our Callings, as Bishops, could not be made good *Jure Divino*, by divine Right; yet *Jure Ecclesiastico*, by ecclesiastical Right, it cannot be denied. And here in England the Bishops are confirmed, both in their Power and Means, by Act of Parliament. So that here we stand in as good Case, as the present Laws of the Realm can make us. And so we must stand, till the Laws shall be repealed by the same Power that made them.

Now then, suppose we had no other String to hold by (I say suppose this, but I grant it not) yet no Man can libel against our Calling (as these Men do) be it in Pulpit, Print, or otherwise, but he libels against the King and the State, by whose Laws we are established. Therefore, all these Libels, so far forth as they are against our Calling, are against the King and the Law, and can have no other Purpose than to stir up Sedition among the People.

If these Men had any other Intention, or if they had any christian or charitable Desire to reform any thing amiss; why did they not modestly petition his Majesty about it, that in his princely Wisdom he might set all things right, in a just and orderly manner? But this was neither their Intention, nor Way: for one clamours out of his Pulpit, and all of them from the Press, and in a most virulent and unchristian manner set themselves to make a Heat among the People; and so by Mutiny, to effect that, which by Law they cannot; and by most false and unjust Calumnies to defame both our Callings and Persons. But for my part, as I pity their Rage, so I heartily pray God to forgive their Malice.

No Nation hath ever appeared more jealous of Religion, than the People of England have ever been. And their Zeal to God's Glory hath been, and at this Day is a great Honour to them. But this Zeal of theirs, hath not been at all times and in all Persons, alike guided by Knowledge. Now Zeal, as it is of excellent Use where it sees its Way,

Way, it is so very dangerous Company where it goes on in the dark*: And these Men, knowing the Disposition of the People, have laboured nothing more than to misinform their Knowledge, and misguide their Zeal, and so to fire that into a Sedition, in hope that they, whom they causelessly hate, might miscarry in it.

For the main Scope of these Libels is, to kindle a Jealousy in Men's Minds, that there are some great Plots in hand, dangerous Plots (so says Mr. Burton expressly) to change the Orthodox Religion established in England; and to bring in I know not what, Romish Superstition in the room of it. As if the external decent Worship of God could not be upheld in this Kingdom, without bringing in of Popery.

Now by this Art of theirs, give me leave to tell you that the King is most desperately abused and wounded in the Minds of his People; and the Prelates shamefully.

The King most desperately: for there is not a more cunning Trick in the World, to withdraw the People's Hearts from their Sovereign, than to persuade them that he is changing true Religion, and about to bring in gross Superstition upon them.

And the Prelates shamefully: for they are charged to seduce, and lay the Plot, and be the Instruments.

For his Majesty first. This I know, and upon this Occasion take it my Duty to speak: there is no Prince in Christendom more sincere in his Religion, nor more constant to it, than the King. And he gave such a Testimony of this at his being in Spain, as I much doubt whether the best of that Faction durst have done half so much as his Majesty did, in the face of that Kingdom. And this, you, my Lord, the Earl of Holland, and other Persons of Honour, were Eye and Ear Witnesses of, having the Happiness to attend him there. And at this Day, as his Majesty (by God's great Blessing both on him and us) knows more, so is he more settled and more confirmed, both in the Truth of the Religion here established, and in Resolution to maintain it.

And for the Prelates: I assure my self, they cannot be so base as to live Prelates in the Church of England, and labour to bring in the Superstitions of the Church of Rome upon themselves and it. And if any should be so foul, I do not only leave him to God's Judgment, but (if these Libellers, or any other, can discover that his base and irreligious Falshood) to Shame also, and severe Punishment from the State: and in any just way, no Man's Hand shall be more, or sooner against him, than mine shall be.

And for my self: To pass by all the scandalous Reproaches which they have most injuriously cast upon me, I shall say this only;

First, I know of no Plot, nor Purpose of altering the Religion established.

Secondly, I have ever been far from attempting any thing that may truly be said to tend that way in the least Degree: And to these two I here offer my Oath.

Thirdly, If the King had a mind to change Religion, which I know he hath not, and God for-

bid he should ever have) he must seek for other Instruments. For basely as these Men conceive of me, yet, I thank God, I know my Duty well both to God and the King: and I know that all the Duty I owe to the King, is under God. And my great Happiness it is (tho' not mine alone, but your Lordships and all his Subjects with me) that we live under a gracious and religious King, that will ever give us leave to serve God first, and him next. But were the Days otherwise, I thank Christ for it, I yet know not how to serve any Man against the Truth of God, and I hope I shall never learn it.

But to return to the Business: What is their Art to make the World believe a Change of Religion is endeavoured? What? why, forsooth, they say, there are great Innovations brought in by the Prelates; and such as tend to the advancing of Popery.

Now that the Vanity and Falshood of this may appear, I shall humbly desire your Lordships to give me leave to recite briefly all the Innovations charged upon us, be they of less or greater moment; and as briefly to answer them. And then you shall clearly see, whether any Cause hath been given of these unfavoury Libels; and withal, whether there be any shew of Cause to fear a change of Religion. And I will take these great pretended Innovations in order as I meet with them.

First, I begin with the News from Ipswich.

Where the first Innovation is, that the last Year's Fast was enjoined to be without Sermons in London, the Suburbs, and other infected Places, contrary to the Orders for other Fasts in former Times: whereas Sermons are the only Means to humble Men, &c. Page 2.

To this I say, 1st. That an After-age may, without Offence, learn to avoid any visible Inconvenience observed in the former. And there was visible Inconvenience observed in Men's former flocking to Sermons in infected Places.

Secondly, This was no particular Act of the Prelates; but the Business was debated at the Council-Table, being a matter of State, as well as of Religion. And it was concluded for no Sermons in those infected Places, upon this Reason; that infected Persons or Families, known in their own Parishes, might not take occasion upon those by-days to run to other Churches, where they were not known, as many use to do, to hear some humorous Men preach; for on the Sundays, when they better kept their own Churches, the Danger is not so great altogether.

Nor, 3dly, is that true, that Sermons are the only means to humble Men. For tho' the preaching of God's Word, where it is performed according to his Ordinance, be a great means of many good effects in the Souls of Men; yet no Sermons are the only means to humble Men. And some of their Sermons are fitter a great deal for other Operations: namely, to stir up Sedition, as you may see by Mr. Burton's; for this his printed Libel was a Sermon first, and a Libel too. And 'tis the best part of a Fast to abstain from such Sermons.

* You may see it in the Example of St. Paul himself, whose very Zeal in the darkness of his Understanding, which he then had, made him persecute Christ and his Church, Act. xxii. 3, 4. And he was very dangerous Company then; for he breathed out Threatnings against the Disciples, Act. ix. 1. So true is that of St. Greg. Naz. Orat. 21. Zelus Iracundiam acuit: All Zeal puts an Edge to Anger it self. And that must needs be dangerous in the dark.

2. *The second Innovation is, That Wednesday was appointed for the Fast-day, and that this was done with this Intention, by the Example of this Fast without preaching, to suppress all the Wednesday Lectures in London.*

To this I answer, *1st*, That the appointing of *Wednesday* for the *Fast-day* was no *Innovation*; for it was the Day in the *last Fast* before this: and I my self remember it so, above forty Years since, more than once.

Secondly, If there had been any *Innovation* in it, the Prelates named not the Day: My Lord-Keeper, I must appeal to your Lordship; the Day was first named by your Lordship, as the usual and fittest Day: And yet I dare say, and swear too, that your Lordship had no aim to bring in *Popery*; nor to suppress all, or any the *Wednesday-Lectures* in London. Besides, these Men live to see the *Fast* ended, and no one *Wednesday-Lecture* suppressed.

3. *The third Innovation is, that the Prayer for seasonable Weather was purged out of this last Fast-book, which was (say they) one cause of Shipwrecks and tempestuous Weather.*

To this I say, *first* in the general; this *Fast-book*, and all that have formerly been made, have been both made and published by the Command of the King, in whose sole power it is to call a *Fast*. And the Archbishop and Bishops to whom the ordering of the *Book* is committed, have power under the King to put in, or leave out, whatsoever they think fit for the present Occasion; as their Predecessors have ever done before them. Provided that nothing be in contrary to the Doctrine or Discipline of the Church of England.

And this may serve in the general for all Alterations, in that or any other *Fast-book*, or Books of Devotion upon any particular Occasions, which may and ought to vary with several times; and we may, and do, and will justify, under his Majesty's Power, all such Alterations made therein.

Secondly, For the Particular. When this *last Book* was set out the Weather was very *seasonable*; and it is not the Custom of the Church, nor fit in itself, to pray for *seasonable* Weather when we have it, but when we want it. When the former *Book* was set out the Weather was extreme ill, and the Harvest in danger; now the Harvest was in, and the Weather good.

Thirdly, 'Tis most inconsequent to say, that the leaving that Prayer out of the *Book of Devotions*, caused the *Shipwrecks* and the *Tempests* which followed. And as bold as they are with God Almighty, in saying it was the Cause, sure I am, God never told them that was the Cause. And if God never revealed it, they cannot come to know it: yet had the Bishops been Prophets, and foreseen these Accidents, they would certainly have prayed against them.

Fourthly, Had any Minister found it necessary to use this Prayer at any one time during the Fast, he might with ease, and without danger, have supplied that want, by using that Prayer to the same purpose which is in the ordinary Liturgy.

Fifthly, I humbly desire your Lordships to weigh well the Consequence of this great and dangerous Innovation. The Prayer for fair Weather was left out of the *Book* for the *Fast*; therefore the Prelates intend to bring in *Popery*. An excellent Consequence, were there any shew of Reason in it.

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4. *The fourth Innovation is, That there is one very useful Collect left out, and Clause omitted in another.* Page 3.

To this I answer, *first*, as before: It was lawful for us to alter what we thought fit.

And *secondly*, Since that Collect made mention of *Preaching*, and the Act of State forbade Sermons on the *Fast-days* in infected Places; we thought it fit, in pursuance of that Order, to leave out that Collect.

And *thirdly*, For the Branch in the other, which is the *first Collect*, tho' God did deliver our Forefathers out of *Romish Superstition*, yet (God be blessed for it) we were never in. And therefore that Clause being unfittingly expressed, we thought fit to pass it over.

5. *The fifth Innovation is, That in the sixth Order for the Fast, there is a Passage left out concerning the Abuse of Fasting in relation to Merit.* Page 3.

To this I answer, That he to whom the ordering of that Book to the Press was committed, did therefore leave it out, because in this Age and Kingdom there is little Opinion of meriting by Fasting.

Nay, on the contrary, the contempt and scorn of all Fasting (save what humorous Men call for of themselves) is so rank, that it would grieve any Christian Man to see the necessary Orders of the Church concerning Fasting, both in Lent, and at other set times, so vilified as they are.

6. *The sixth Innovation is, That the Lady Elizabeth and her princely Children are dashed (that's their Phrase) out of the new Collect, whereas they were in the Collect of the former Book.* Page 3.

For this *first*, The Author of the News knows full well that they are left out of the Collect in the latter Editions of the Common Prayer-book, as well as in the Book for the Fast. And this was done according to the Course of the Church, which ordinarily names none in the Prayer, but the right Line descending. Yet this was not done till the King himself commanded it; as I have to shew under his Majesty's Hand.

Secondly, I beseech your Lordships to consider what must be the Consequence here: The Queen of Bohemia and her Children are left out of the Collect, therefore the Prelates intend to bring in *Popery*; for that (you know) they say is the end of all these Innovations. Now if this be the End and the Consequence, truly the Libellers have done very dutifully to the King, to poison his People with this Conceit, that the Lady Elizabeth and her Children would keep *Popery* out of this Kingdom, but the King and his Children will not. And many, as good Offices as these have they done the King quite thorow these Libels, and quite thorow his Kingdoms. For my part, I honour the Queen of Bohemia, and her Line, as much as any Man whatsoever, and shall be as ready to serve them; but I know not how to depart from my Allegiance, as I doubt these Men have done.

7. *The seventh Innovation is, That these Words (who art the Father of thine Elect and of their Seed) are changed in the Preface of that Collect, which is for the Prince and the King's Children. And with a most spiteful Inference, that* Page 3.
this

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this was done by the Prelates to exclude the King's Children out of the number of God's Elect. And they call it an intolerable Impiety, and horrid Treason.

To this I answer, first, That this Alteration was made in my Predecessor's time before I had any Authority to meddle with these things, farther than I was called upon by him.

Secondly, This is not therefore to lay any Asperision upon my Predecessor, for he did in that but his Duty; for his Majesty acknowledges it was done by his special Direction, as having then no Children to pray for.

And thirdly, this Collect could not be very old, for it had no Being in the Common Prayer-book all Queen Elizabeth's time, she having no Issue.

The truth is, it was made at the coming in of King James; and must of necessity be changed over and over again, *pro ratione temporum*, as Times and Persons vary. And this is the intolerable Impiety and horrid Treason they charge upon us.

In this Method the Innovations are set down in the News from Ipswich. But then in Mr. Burton's News from Friday-street (called his Apology) they are in another Order, and more are added. Therefore with your Lordship's leave I will not repeat any of these, but go on to the rest, which Mr. Burton adds.

Burton's Apology, Pag. 2. 8. The eighth Innovation is, That in the Epistle the Sunday before Easter, we have put out In, and made it, At the Name of Jesus every Knee shall bow: which Alteration, he saith, is directly against the Act of Parliament.

Here give me leave to tell you, 'tis At the name of Jesus, in the late learned Translation made in King James's time. About which many learned Men of best note in the Kingdom were employed, besides some Prelates.

But to this I answer: first, 'Tis true, the Common Prayer-book was confirmed by Act of Parliament, and so all things contained in it, at the passing of that Act. But I hope if any thing were false printed then, the Parliament did not intend to pass those Slips for current.

Secondly, I am not of opinion, that if one word be put in for another, so they bear both the same Sense, that there is any great matter done against the Act of Parliament.

Thirdly, This can make no Innovation. For In the Name, and At the Name of Jesus, can make no essential Difference here. And Mr. Pryn (whose darling business it hath long been to cry down the Honour due to the Son of God, at the mentioning of his saving Name Jesus) knows the Grammar Rule well, In a place, or at a place, &c.

Fourthly, If there were any Error in the change of In into At, I do here solemnly protest to you, I know not how It came: for Authority from the Prelates, the Printers had none; and such a Word is easily changed in such a negligent Press as we have in England. Or if any altered it purposely, for aught I know, they did it to gratify the precisers fort; for therein they followed the Geneva Translation, and printed at Geneva 1557*, where

* In Octavo. the words are, At the Name of Jesus. And that is eighty years ago; and therefore no Innovation made by us.

Fifthly, This I find in the Queen's Injunctions, without either word, In or At, Whensoever the Name of Jesus shall be in any Lesson, Sermon, or otherwise pronounced in the Church ('tis enjoined) that due Reverence be made of all Persons, young and old, with lowliness of Courty, and uncovering of the Heads of the Menkind, as thereunto doth necessarily belong, and heretofore hath been accustomed. So here is Necessity laid upon it, and Custom for it, and both expressed by Authority in the very beginning of the Reformation; and is therefore no Innovation now.

9. The ninth Innovation is, That two places are changed in the Prayers set forth for the fifth of November; and ordered to be read (they say) by Act of Parliament. The first place is changed thus, From, Root out that Babylonish and Antichristian Sect which say of Jerusalem, &c. Into this form of Words; Root out that Babylonish and Antichristian Sect, (of them) which say, &c. The second place went thus in the old: Cut off those Workers of Iniquity, whose Religion is Rebellion. But in the Book printed 1635, 'tis thus altered: Cut off those Workers of Iniquity, who turn Religion into Rebellion, &c.

To this I say First, 'Tis a notorious untruth, that this Book was ordered to be read by Act of Parliament. The Act of Parliament indeed is printed before it; and therein is a Command for Prayers and Thanksgivings every fifth of November, but not one word or syllable for the Form of Prayer. That's left to the Church, therefore here's no Innovation against that Act of Parliament.

Secondly, The Alteration first mentioned, that is, That Sect, or that Sect of them; is of so small consequence, as it is not worth the speaking of. Besides, if there be any thing of moment in it, 'tis answered in the next.

Thirdly, Both for that and the second place, which seems of more moment; and so for the rest not only in that Book, but that other also for his Majesty's Coronation; his Majesty expressly commanded Me to make the Alterations, and see them printed. And here are both the Books with his Majesty's Warrant to each of them. So that herein I conceive I did not offend, unless it were that I gave not these Men notice of it, or asked them leave to obey the King.

Against this there can be but two Objections, should Malice it self go to work. The one is, that I moved his Majesty to command the change. And the other, that now, when I saw my self challeng'd for it, I procured his Majesty's Hand for my security.

To these I answer clearly; First, That I did not move the King, directly, or indirectly, to make this change.

And Secondly, That I had his Majesty's Hand to the Book, not now, but then, and before ever I caused them to be printed, as now they are. And that both these are true, I here again freely offer my self to my Oath.

And yet Thirdly, That you may see his Gracious Majesty used not his Power only in commanding this change, but his Wisdom also; I shall adventure to give you my Reasons, such as they are, why this Alteration was most fit, if not necessary.

My first Reason is, In the Litany of Henry VIII.† and also under Edward VI. ‡ there was this Clause; From the Tyranny of the Bishop of Rome, and all

† It was put into the Litany of Henry VIII. his Time, as appears in his Primer, with his Injunction before it.

‡ And 'tis in both the Service-Books of Edw. VI. both that which was printed, 1549; and in that which was after, An. 1552.

his detestable Enormities, from all false Doctrine, &c. Good Lord deliver us. But in the Litany in Queen Elizabeth's time this Clause about the Pope was left out, and it seems of purpose, for avoiding of Scandal: And yet the Prelates for that were not accounted Innovators, or Introducers of Popery. Now 'tis a far greater Scandal to call their Religion Rebellion, than it is to call their chief Bishop Tyrant.

And this Reason is drawn from Scandal, which must ever be avoided as much as it may.

My second Reason is, That the Learned make but three Religions to have been of old in the World, Paganism, Judaism, and Christianity. And now they have added a fourth, which is Turcism, and is an absurd mixture of the other three. Now if this ground of theirs be true (as it is generally received) perhaps it will be of dangerous consequence sadly to avow, that the Popish Religion is Rebellion. That some Opinions of theirs teach Rebellion, that's apparently true, the other would be thought on, to say no more. And this Reason well weighed, is taken from the very Foundations of Religion itself.

My third Reason is, Because if you make their Religion to be Rebellion, then you make their Religion and Rebellion to be all one. And that is against the ground both of State, and the Law. For when divers Romish Priests and Jesuits have deservedly suffered death for Treason, is it not the constant and just Profession of the State, that they never put any Man to death for Religion, but for Rebellion and Treason only? Doth not the State truly affirm, that there was never any Law made against the Life of a Papist, quatenus a Papist only? And is not all this stark false, if their very Religion be Rebellion? For if their Religion be Rebellion, it is not only false, but impossible, that the same Man in the same Act should suffer for his Rebellion, and not for his Religion.

And this King James of ever blessed Memory understood passing well, when (in his Page 336. Premonition to all Christian Monarchs) he saith, *I do constantly maintain that no Papist either in my Time, or in the Time of the late Queen, ever died for his Conscience.* Therefore he did not think, their very Religion was Rebellion. Tho' this Clause passed through Inadvertency in his Time: And this Reason is grounded both upon the Practice and the Justice of the Law.

Which of these Reasons, or whether any other better, were in his Majesty's Thoughts, when he commanded the Alteration of this Clause, I know not. But I took it my Duty to lay it before you, that the King had not only Power, but Reason to command it.

10. The Tenth Innovation is, That the Prayer for the Navy is left out of the late Book for the Fast.

To this I say, there is great Reason it should. For the King had no declared Enemy then, nor (God be thanked) hath he now. Nor had he then any Navy at Sea; for almost all the Ships were come in, before the Fast-book was set out.

But howsoever, an excellent Consequence it is, if you mark it; the Prayer for the Navy was left out of the Book for the Fast, therefore by that, and such like Innovations, the Prelates intend to bring in Popery. Indeed, if that were a piece of the Prelates Plots to bring in Popery from beyond Sea, then they were mightily overseen that they left out the Prayer for the Navy. But else what

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Reason or Consequence is in it, I know not, unless perhaps Mr. Burton intended to befriend Dr. Bastwick, and in the Navy bring hither the Whore of Babylon to be ready for his Christening, as he most profanely scoffs.

Well; I pray God the time come not upon this Kingdom, in which it will be found, that no one thing hath advanced or ushered in Popery so fast, as the gross Absurdities even in the Worship of God, which these Men, and their like, maintain both in Opinion and Practice.

11. The 11th Innovation is, The reading of the second Service at the Communion-Table, or the Altar. P. 105.

To this first I can truly say, That since my own Memory, this was in use in very many Places, as being most proper (for those Prayers are then read which both precede and follow the Communion) and by little and little this ancient Custom was altered, and in those Places first where the Emissaries of this Faction came to preach. And now if any in Authority offer to reduce it; this ancient Course of the Church is by and by called an Innovation.

Secondly, With this the Rubricks of the Common Prayer-book agree: for the first Rubrick after the Communion tells us, that upon Holy-days, tho' there be no Communion, yet all else that's appointed at the Communion shall be read. Shall be read? That's true, but where? Why, the last Rubrick before the Communion tells us, that the Priest, standing at the North side of the holy Table, shall say the Lord's Prayer, with that which follows. So that not only the Communion, but the Prayers which accompany the Communion (which are commonly called the second Service) are to be read at the Communion-Table. Therefore if this be an Innovation, 'tis made by the Rubrick, not by the Prelates; and Mr. Burton's Scoff that this second Service must be served in for Dainties, favours too much of Belly and Profanation.

12. One thing sticks much in their Stomachs, and they call it an Innovation too. And that is, bowing, or doing Reverence at our first coming into the Church, or at our nearer Approaches to the holy Table, or the Altar, (call it whether you will) in which they will needs have it, that we worship the holy Table, or God knows what.

To this I answer, first, That God forbid we should worship any thing but God himself.

Secondly, That if to worship God when we enter into his House, or approach his Altar, be an Innovation, 'tis a very old one.

For Moses did Reverence at the very Door of the Tabernacle; Hezekiah, and all that were present with him, when they had made an end of Offering, bowed and worshipped; David calls the People to it with a Venite, O come let us worship and fall down, and kneel before the Lord our Maker: And in all these Places (I pray mark it) 'tis bodily Worship

Nor can they say, that this was Judaical Worship, and now not to be imitated. For long before Judaism began, Bethel, the House of God, was a place of Reverence, therefore certainly, of, and to God.

R r r 2

And

And after *Judaical Worship* ended, *Venite, Adoremus*, as far upwards as there is any Track of a *Liturgy*, was the *Introitus* of the *Priest* all the *Latin Church* over.

And in the daily *Prayers* of the *Church of England*, this was retained at the *Reformation*; and that *Psalm*, in which is *Venite, Adoremus*, is commanded to begin the *Morning Service* every Day. And for aught I know, the *Priest* may as well leave out the *Venite*, as the *Adoremus*; the calling the *People* to their *Duty*, as the *Duty* itself, when they are come.

Therefore even according to the *Service-book* of the *Church of England*, the *Priest* and the *People* both are called upon, for *external* and *bodily Reverence* and *Worship* of *God* in his *Church*. Therefore they which do it, do not *innovate*. And yet the *Government* is so *moderate* (*God* grant it be not too loose there while) that no *Man* is constrained, no *Man* questioned, only religiously called upon, *Venite, Adoremus, Come, let us worship*.

For my own part, I take myself bound to worship with *Body*, as well as in *Soul*, whenever I come where *God* is worshipped. And were this *Kingdom* such as would allow no *holy Table* standing in its proper place (and such places some there are) yet I would worship *God* when I came into his *House*. And were the *Times* such as should beat down *Churches*, and all the curious carved *Work* thereof, with *Axes*, and *Hammers*, *Psalm*. lxxiv. 6. (and such *Times* have been) yet would

I worship in what Place soever I came to pray, tho' there were not so much as a *Stone* laid for *Bethel*. But this is the *Misery*; 'tis *Superstition* now-a-days for any *Man* to come with more *Reverence* into a *Church*, than a *Tinker* and his *Bitch* come into an *Ale-house*; the *Comparison* is too homely, but my just *Indignation* at the *Profaneness* of the *Times*, makes me speak it.

And you, my honourable *Lords* of the *Garther*, in your great *Solemnities*, you do your *Reverence*, and to *Almighty God*, I doubt not, but yet it is *Versus Altare*, towards his *Altar*, as the greatest Place of *God's Residence* upon *Earth*. (I say the greatest, yea greater than the *Pulpit*; for there 'tis *Hoc est corpus meum*, This is my *Body*; but in the *Pulpit*, 'tis at most but, *Hoc est Verbum meum*, This is my *Word*. And a greater *Reverence* (no doubt) is due to the *Body*, than to the *Word* of our *Lord*. And so, in relation, answerably to the *Throne*, where his *Body* is usually present, than to the *Seat*, whence his *Word* useth to be proclaimed. And *God* hold it there as his *Word*; for as too many *Men* use the *Matter*, 'tis *Hoc est verbum Diaboli*. This is the *Word* of the *Devil*, in too many Places; (witness *Sedition*, and the like to it.) And this *Reverence* ye do when ye enter the *Chapel*, and when you approach nearer to offer. And this is no *Innovation*, for you are bound to it by your *Order*, and that's not new.

And *Idolatry* it is not, to worship *God* towards his *holy Table*; for if it had been *Idolatry*, I presume *Queen Elizabeth* and *King James* would not have practised it, no not in those *Solemnities*. And being not *Idolatry*, but true *divine Worship*, you will, I hope, give a poor *Priest* leave to worship *God*, as yourselves do: for if it be *God's Worship*, I ought to do it as well as you; and if it be *Idolatry*, you ought not to do it more than I.

I say again, I hope a poor *Priest* may worship *God* with as lowly *Reverence* as you do, since you are bound by your *Order*, and by your *Oath*, ac-

cording to a *Constitution* of *Henry the fifth*, (as appears) to give due Honour and Reverence, *Domino Deo, & altari ejus, in modum virorum ecclesiasticorum*; that is, to the *Lord your God*, and to his *Altar* (for there is a *Reverence* due to that too, tho' such as comes far short of *divine Worship*) and this in the *Manner*, as *ecclesiastical Persons* both worship and do reverence.

The *Story* which led in this *Decree* is this: *King Henry the fifth*, that noble and victorious *Prince*, returning gloriously out of *France*, sat at this *Solemnity*; and finding the *Knights of the Order* scarce bow to *God*, or but slightly, and then bow towards him and his *Seat*, startled at it (being a *Prince* then grown as religious as he was before victorious) and after asking the *Reason*, (for till then the *Knights* of the *Order* never bowed toward the *King* or his *Seat*) the *Duke of Bedford* answered, It was settled by a *Chapter Act* three Years before. Hereupon, that great *King* replied, No; I'll none of this, till you the *Knights* do it *Satis bene, well enough*, and with due *Performance* to *Almighty God*. And hereupon the fore-named *Act* proceeded, that they should do this *Duty* to *Almighty God*, not slightly, but *ad modum virorum ecclesiasticorum*, as low, as well, as decently as *Clergymen* use to do it.

Now if you will turn this off, and say, it was the *Superstition* of that *Age* so to do; *Bishop Jewel* will come in to help me there. For where *Harding* names divers *Ceremonies*, and particularly bowing themselves, and Adoring at the *Sacrament*, I say, Adoring at the *Sacrament*, not adoring the *Sacrament*; there *Bishop Jewel* (that learned, painful, and reverend *Prelate*) approves all both the *Kneeling* and the *Bowing*, and the *Standing up* at the *Gospel* (which as *antient* as it is in the *Church*, and a common *Custom*, is yet fondly made another of their *Innovations*;) And further the *Bishop* adds, That they are all commendable *Gestures*, and *Tokens of Devotion*, so long as the *People* understand what they mean, and apply them unto *God*. Now with us the *People* did ever understand them fully, and apply them to *God*, and to none but *God*, till these factious *Spirits*, and their like, to the great *Disservice* of *God* and his *Church*, went about to persuade them that they are *superstitious*, if not *idolatrous Gestures*: as they make every thing else to be, where *God* is not served slovenly.

13. The thirteenth *Innovation* is, The placing of the *holy Table* altarwise, at the upper end of the *Chancel*; that is, the setting of it North and South, and placing a *Rail* before it, to keep it from *Profanation*, which, *Mr. Burton* says, is done to advance and usher in *Popery*.

To this I answer, That 'tis no *Popery* to set a *Rail* to keep *Profanation* from that *holy Table*: nor is it any *Innovation* to place it at the upper end of the *Chancel* as the *Altar* stood. And this appears both by the *Practice* and by the *Command* and *Canon* of the *Church of England*.

First, By the *Practice* of the *Church of England*. For in the *King's Royal Chapels*, and divers *Cathedrals*, the *holy Table* hath ever since the *Reformation* stood at the upper end of the *Choir*, with the large or full side towards the *People*.

And tho' it stood in most *Parish Churches* the other way, yet whether there be not more Reason, the

In Libro Negro Windesore. p. 65.

Bp. Jewel's Reply to Harding's Answer, Art. 3. Div. 29.

P. 4, 5, 105.

the *Parish* Churches should be made conformable to the *Cathedral* and *Mother* Churches, than the *Cathedrals* to them, I leave to any reasonable Man to judge.

And yet here is nothing done either by *Violence* or *Command*, to take off the *Indifferency* of the standing of the *holy Table* either way, but only by laying it fairly before Men, how fit it is there should be *Order* and *Uniformity*; I say, still reserving the *Indifferency* of the Standing.

But howsoever I would fain know, how any discreet moderate Man dares say, that the placing of the *holy Table* *Altar-wise* (since they will needs call it so) is done either to advance or usher in *Popery*? For did *Queen Elizabeth* banish *Popery*, and yet did she all along her *Reign*, from first to last leave the *Communion-Table* so standing in her own *Chapel Royal*, in *St. Paul's* and *Westminster*, and other Places; and all this of purpose to advance or usher in that *Popery* which she had driven out?

And since her *Death* have two gracious Kings kept out *Popery* all their *Times*, and yet left the *holy Table* standing as it did in the *Queen's Time*, and all of purpose to advance or usher in *Popery* which they kept out?

Or what's the Matter? May the *holy Table* stand this way in the *King's Chapel* or *Cathedrals*, or *Bishops Chapels*, and not elsewhere? Surely, if it be decent and fit for *God's Service*, it may stand so (if *Authority* please) in any Church. But if it advance or usher in any *Superstition* and *Popery*, it ought to stand so in none.

Nor hath any *King's Chapel* any *Prerogative* (if that may be called one) above any ordinary Church to deserve *God* in by any *superstitious Rites*. Where, give me leave to tell you, that the *King* and his *Chapel* are most jeeringly and with *Scorn* abused, in the last Leaf of *Mr. Burton's* mutinous *Appeal*; for such it is.

Secondly, This appears by the *Canon* or *Rule* of the Church of *England* too; for 'tis plain in the last *Injunction* of the *Queen*, That the *holy Table* ought to stand at the upper end of the *Quire*, *North* and *South*, or *Altar-wise*. For the Words of the *Queen's Injunctions* are these:

The *holy Table* in every Church (mark it I pray, not in the *Royal Chapel* or *Cathedrals* only, but in every Church) shall be decently made and set in the Place where the *Altar* stood. Now the *Altar* stood at the upper end of the *Quire*, *North* and *South*, as appears before by the *Practice* of the Church. And there to set it otherwise, is to set it cross the Place, not In the Place where the *Altar* stood: and so *Stulti dum vitant vitia*—weak Men, as these *Libellers* are, run into one *Superstition* while they would avoid another; for they run upon the *Superstition* of the *Cross*, while they seek to avoid the *Superstition* of the *Altar*. So you see here's neither *Popery* nor *Innovation* in all the *Practice* of *Queen Elizabeth*, or since.

These Words of the *Injunction* are so plain, as that they can admit of no Shift.

And give me leave to tell you, that a very learned *Prelate* of this Church, and one whom, I think, these Men will not accuse, as a Man like to advance or usher in *Popery*, is of the same Opinion: 'Tis my Lord the *Bishop of Salisbury*.

Some Difference was lately rising about placing the *Communion-Table* in a *Parish Church* of his *Diocese*. The *Bishop* carefully to prevent all Dis-

order, sends his *Injunction* under his Hand and Seal to the *Curate* and *Church-Wardens*, to settle that *Business*: In which he hath these two Passages remarkable. I have seen and read the Order.

The first Passage is this: By the *Injunction* of *Queen Elizabeth* (saith he) and by *Can. 82.* under *King James*, the *Communion-Table* should ordinarily be set and stand with the side to the *East-Wall* of the *Chancel*. Therefore this is no *Innovation*, since there is *Injunction* and *Canon* for it.

The other Passage is this: 'Tis *Ignorance* (saith that learned *Bishop*) to think that the standing of the *holy Table* there relishes of *Popery*. Therefore, if it do not so much as relish of *Popery*, it can neither advance it, nor usher it in. And therefore this is a most odious *Slander* and *Scandal* cast upon Us.

So here's enough both for the *Practice* and *Rule* of the Church of *England* since the *Reformation*. Now before that Time, both in this and other Churches of *Christendom*, in the *East* and *West*, ordinarily the *holy Table* or *Altar* stood so: against this *Mr. Burton* says little.

But the *Lincolnshire Minister* comes in to play the *Puritan* for that. Concerning which *Book* (falling thus in my way) and the nameless *Author* of it, I shall only say these two things.

The one is, That the *Author* provaricates from the first Word to the last in the *Book*; for he takes on him both for the *Name* and for the *Placing* of the *holy Table*, and the like, to prove that generally and universally, and ordinarily in the whole *Catholic Church*, both *East* and *West*, the *holy Table* did not stand at the upper end of the *Quire* or *Chancel*. And this he must prove, or he doth nothing.

Now when he comes to make his *Proofs*, they are almost all of them particular, few or none general and concludent; for he neither brings *Testimonies* out of the general and received *Rituals* of the *Eastern* and *Western Churches*, nor of *Fathers* and *Histories* of the Church, which speak in general Terms of all, but where they speak of particular Churches only.

So that suppose the most that can be, that is, suppose his *Quotations* be all truly alledged, and true too in the Sense that the *Minister* takes them (tho' in very truth, the *Places*, most of them, are neither truly alledged, nor sensed) yet they are but *Exceptions* of, and *Exemptions* from the general *Practice*. And you know both in *Law* and *Reason*, *Exceptio firmat Regulam in non exceptis*. So that upon the sudden I am not able to resolve, whether this *Minister* hath done more wrong to himself or his *Readers*, for he hath abused both.

The other is, That in the *Judgment* of very many learned Men, which have perused this *Book*, the *Author* is clearly conceived to want a great deal of that *Learning* to which he pretends; or else to have written this *Book* wholly, and resolutely against both his *Science* and his *Conscience*.

And for my own Part, I am fully of Opinion, this *Book* was thrust now to the *Press*, both to countenance these *Libellers*, and, as much as in him lay, to fire both Church and State.

And tho' I wonder not at the *Minister*, yet I should wonder at the *Bishop* of the *Diocese* (a Man of *Learning* and *Experience*) that he should give *Testimony* to such a *Business*, and in such Times as these.

And

And once more, before I leave the *holy Table*, *Name*, and *Thing*, give me leave to put you in mind, that there is *no danger* at all in the *Altar*, *Name*, or *Thing*. For at the *Beginning* of the *Reformation*, tho' there were a *Law* for the taking down of the *Altars*, and setting up of *holy Tables* in the room of them; yet in some Places the *Altars* were *not suddenly removed*. And what says the *Queen* in her *Injunction* to this?

Injunct. ultim. Why she says, *That there seems no Matter of great Moment in this, saving for Uniformity, and the better Imitation of the Law in that behalf.* Therefore for any *Danger* or *Hurt* that was in the *Altars*, *Name*, or *Thing*, they might even then have been left standing, but for *Uniformity*, and the *Imitation of the Law*.

But howsoever, it follows in the same *Injunction*, that when the *Altar* is taken down, the *holy Table* shall be set In, (not cross) the *Place* where the *Altar* stood; which (as is aforesaid) must needs be *Altar-wise*.

14. The *fourteenth* and *last Innovation* comes with a *mighty Charge*, and 'tis taken out of an *Epistle* to the *Temporal Lords* of his Majesty's *Privy Council*. Of which *Epistle* we got one *Sheet*, and so (for aught I yet know) that *Impression* staid: In that *Sheet* is this *Charge*; the *Words* are,

The Prelates, to justify their Proceedings, have forged a new Article of Religion brought from Rome, which gives them full Power to alter the Doctrine and Discipline of our Church at a Blow, (as they interpret it) and have foisted it (such is their Language) into the beginning of the twentieth Article of our Church. And this is in the last Edition of the Articles, Anno 1628. in Affront of his Majesty's Declaration before them, &c.

The *Clause* (which they say is *forged* by us) is this: *The Church* (that is, the *Bishops*, as they expound it) *bath Power to decree Rites and Ceremonies, and Authority in Matters of Faith.* (The *Word* is *Controversies of Faith*, by their leave.) *This Clause* (say they) *is a Forgery fit to be examined, and deeply censured in the Star-Chamber.* For 'tis not to be found in the *Latin* or *English Articles* of *Edward VI.* or *Queen Elizabeth*, ratified by *Parliament*.

And then in the *Margent* thus, *If to forge a Will or Writing be censurable in the Star-chamber; which is but a Wrong to a private Man, how much more the Forgery of an Article of Religion, to wrong the whole Church, and overturn Religion, which concerns all our Souls?*

This is a *heavy Charge*, my *Lords*, but I thank God the *Answer's* easy.

And truly I grant, that to *forge* an *Article* of *Religion* in *Whole* or in *Part*, and then to thrust it upon the *Church*, is a most *heinous Crime*, far worse than the *forging of a Deed*; and is certainly *very deeply censurable* in this *Court*. And I would have humbly besought you, that a *deep Censure* might have been laid upon it, but that this *Sheet* was found after, and so is not annexed to the *Information*, nor in *Judgment* at this *present* before you.

But then, *My Lords*, I must tell you, I hope to make it as *clear* as the *Day*, that this *Forgery* was not, that this *Clause* mentioned was added by the *Prelates* to the *Article*, to gain *Power* to the *Church*, and so to serve our *Turns*. But that that *Clause* in the *beginning* of the *Article* was by these

Men, or at least by some of their *Faction*, *raised out*, and this to weaken the *just Power* of the *Church* to serve their *Turns*.

They say (to justify their *Charge*) that this *Clause* is not to be found in the *Articles*, *English* or *Latin*, of either *Edw. VI.* or *Queen Elizabeth*.

I answer, The *Articles* of *Edw. VI.* and those made under *Queen Elizabeth* differ very much. And those of *Edw. VI.* are not now *binding*. So whether the *Clause* be in or out of them, 'tis not much *material*.

But for the *Articles* of the *Church of England*, made in the *Queen's Time*, and now in *Force*, that this *Clause* for the *Power* of the *Church* to *decree Ceremonies*, and to have *Authority in Controversies of Faith*, should not be found in *English* or *Latin Copies*, till the *Year 1628*, that it was set forth with the *King's Declaration* before it, is to me a *Miracle*; but your *Lordships* shall see the *falsehood* and *boldness* of these *Men*.

What? Is this *affirmative Clause* in no *Copy*, *English* or *Latin*, till the *Year 1628*? *Strange!* Why, my *Lords*, I have a *Copy* of the *Articles* in *English*, of the *Year 1612*. and of the *Year 1605*. and of the *Year 1593*. and in *Latin* of the *Year 1563*. which was one of the *first printed Copies*, if not the *first of all*. For the *Articles* were agreed on but the *29th Day of January*.

Anno 1563. } According to the *English Account*.
 } According to the *Julian Account*.

And in all these, this *affirmative Clause* for the *Church's Power* is in. And is not this *strange boldness* then to *abuse* the *World*, and *falsly* to say 'tis in no *Copy*, when I *my self*, out of my own *Store*, am able to shew it in so many, and so *antiently*?

But, *My Lords*, I shall make it plainer yet: For 'tis not fit concerning an *Article of Religion*, and an *Article* of such *Consequence* for the *Order*, *Truth*, and *Peace* of this *Church*, you should rely upon my *Copies*, be they never so many or never so *antient*.

Therefore I sent to the *publick Records* in my *Office*; and here under my *Officer's Hand*, who is a *publick Notary*, is returned me the *twentieth Article* with this *affirmative Clause* in it. And there is also the whole *Body* of the *Articles* to be seen.

By this your *Lordships* see how free the *Prelates* are from *forging* this part of the *Article*. Now let these *Men* quit themselves and their *Faction*, as they can, for their *Index Expurgatorius* and their foul *Rasure* in leaving out this part of the *Article*. For to leave out of an *Article* is as great a *Crime* as to put in; and a *main Rasure* is as *censurable* in this *Court* as a *Forgery*.

Why, but then, my *Lords*, what is this *Mystery of Iniquity*?

Truly, I cannot certainly tell; but as far as I can, I'll tell you.

The *Articles* you see were *fully* and *fairly* agreed to, and *subscribed* in the *Year 1563*. But after this, in the *Year 1571*, there were some that *refused* to *subscribe*; but why they did so, is not *recorded*. Whether it were about this *Article* or any other, I know not. But in *Fact* this is manifest, that in that *Year 1571*, the *Articles* were *printed* both in *Latin* and *English*, and this *Clause* for the *Church* left out of both. And certainly this could not be done, but by the *malicious Cunning* of that *opposite Faction*. And tho' I shall spare *dead Mens Names* where I have not *certainty*; yet if you be *pleased* to look back and consider who they were that governed *Businesses* in 1571, and rid the *Church* almost at their

their Pleasure, and how potent the Ancestors of these Libellers began then to grow, you will think it no hard matter to have the Articles printed, and this Clause left out.

And yet 'tis plain, That, after the stir about Subscription in the Year 1571, the Articles were settled and subscribed unto at last, as in the Year 1562, with this Clause in them for the Church: For looking farther into the Records which are in mine own Hands, I have found the Book of 1563, subscribed by all the Lower House of Convocation, in this very Year of Contradiction, 1571. Dr. John Elmar (who was after Lord Bishop of London) being then Prolocutor: Alexander Nowel Dean of St. Paul's, having been Prolocutor in 1563, and yet living, and present and subscribing in 1571. Therefore, I do here openly in Star-Chamber charge upon that pure Set this foul Corruption of falsifying the Articles of the Church of England; let them take it off as they can.

I have now done, and 'tis time I should; with the Innovations charged upon the Prelates, and fit to be answered here.

Some few more there are, but they belong to matter of Doctrine, which shall presently be answered, *Iusto Volumine*, at large, to satisfy all well-minded People. But when Mr. Burton's Book, which is the main one, is answered, (I mean his Book, not his Railing) neither Prynn, nor Bastwick nor any Attendants upon Rabshakeb shall by me or my Care be answered. If this Court find not a way to stop these Libellers Mouths and Pens, for me they shall rail on till they be weary.

Yet one thing more, I beseech you, give me leave to add. 'Tis Master Burton's Charge upon the Prelates, That the Censures formerly laid upon Malefactors, are now put upon God's Ministers for their Virtue and Piety.

A heavy Charge this too. But if he, or any Man else, can shew that any Man hath been punished in the High Commission, or elsewhere, by the Prelates, for Virtue and Piety, there is all the reason in the World we should be severely punished our selves. But the truth is, the Virtue and Piety for which these Ministers are punished, is for preaching Schism and Sedition, many of their Sermons being as bad as their Libels; as Burton's Libel was one of his Sermons first. But whether this stuff have any affinity with Virtue and Piety, I submit to any Christian Reader.

And yet Mr. Burton is so confident of his Innocency, even in this Cause wherein he hath so foully carried himself, that he breaks forth into these words; I never so much as once dream-

ed, that Impiety and Impudency it self, in such a Christian Sate as this is, and under such a gracious Prince, durst ever thus publicly have called me in question, and that upon the open Stage, &c.

You see the boldness of the Man, and in as bad a Cause, as (I think) in this kind ever any Man had.

I shall end all with a Passage out of St. Cyprian; when he, then Bishop of Carthage, was bitterly railed upon by a pack of Schismatics, his Answer was, and 'tis now mine: They have railed both bitterly and falsely upon me, and yet Non oportet me paria cum illis facere; it becomes not me to answer them with the like, either Levities or Revilings, but to speak and write that only which becomes Sacerdotem Dei, a Priest of God.

Neither shall I in this give way (tho' I have been extremely vilified) to either Grief or Passion to speak, remembring that of the Psalmist, Fret not thy self, else shalt thou be moved to do evil. Psal. 37. 8.

Neither yet by God's Grace shall the Reproaches of such Men as these, make me faint or start aside, either from the right Way in matter of Practice (they are St. Cyprian's words again) or à certâ regulâ, from the certain Rule of Faith. Ib. p. 10.

And since in former Times, some spared not to call the Master of the House Beelzebub, how much more will they be bold with them of his Household, as it is in St. Matthew.

And so bold have these Men been; but the next words of our Saviour are, Fear them not. St. Mat. 10. 25.

I humbly crave pardon of your Lordships for this my necessary length, and give you all hearty Thanks for your noble Patience, and your just and honourable Censure upon these Men, and your unanimous dislike of them, and defence of the Church.

But because the Business hath some Reflection upon my self, I shall forbear to Censure them, and leave them to God's Mercy, and the King's Justice.

On the 30th of June following, the Sentence was executed, when Dr. Bastwick, Mr. Prynn, and Mr. Burton were convey'd to the Pillory in the Palace-yard, Westminster.

DR. Bastwick and Mr. Burton first meeting, they did close one in the other's Arms three times, with as much Expressions of Love as might be, rejoicing that they met at such a place, upon such an occasion, and that God had so highly honoured them, as to call them forth to suffer for his glorious Truth.

Then immediately after, Mr. Prynn came, the Doctor and he saluting each other, as Mr. Burton and he did before. The Doctor then went up first on the Scaffold, and his Wife immediately following came up to him, and saluted each Ear with a Kiss, and then his Mouth. Her Husband desired her not to be in the least manner dismayed at his sufferings: And so for a while they parted, she using these words, Farewel my dearest, be of good comfort, I am nothing dismayed. And then the Doctor began to speak these words.

Dr. Bastwick. There are many that are this Day Spectators of our standing here, as Delinquents, tho' not Delinquents, we bless God for it. I am not conscious to my self wherein I have committed the least Trespas (to take this outward shame) either against my God, or my King. And I do the rather speak it, that you that are now Beholders may take notice, how far Innocency will preserve you in such a Day as this is; for we come here in the strength of our God, who hath mightily supported us, and filled our Hearts with greater Comfort than our Shame or Contempt can be. The first occasion of my Trouble was by the Prelates, for writing a Book against the Pope, and the Pope of Caunterbury said I wrote against him, and therefore questioned me: but if the Presses were as open to us as formerly they have been, we would shatter his Kingdom about his Ears: But be ye not deterred by their Power, neither be affrighted at our sufferings; let none determine to turn from the Ways

of

of the Lord, but go on, fight courageously againſt *Gog and Magog*. I know there be many here who have ſet many days apart for our Behalf (let the Prelates take notice of it) and they have ſent up ſtrong Prayers to Heaven for us, we feel the Strength and Benefit of them at this time; I would have you to take notice of it, we have felt the Strength and Benefit of your Prayers all along this Cauſe. In a word, ſo far I am from baſe Fear, or caring for any thing that they can do, or caſt upon me, that had I as much Blood as would ſwell the *Thames*, I would ſhed it every Drop in this Cauſe; therefore be not any of you diſcouraged, be not daunted at their Power; ever labouring to preſerve Innocency, and keep Peace within, go on in the ſtrength of your God, and he will never fail you in ſuch a Day as this: As I ſaid before, ſo I ſay again, had I as many Lives as I have Hairs on my Head, or Drops of Blood in my Veins, I would give them all up for this Cauſe. This Plot of ſending us to thoſe remote Places, was firſt conſulted and agitated by the Jeſuits, as I can make it plainly appear. O ſee what Times we are fallen into, that the Lords muſt ſit to act the Jeſuits Plots! For our own parts, we owe no Malice to the Perſons of any of the Prelates, but would lay our Necks under their Feet to do them good as they are Men, but againſt the Uſurpation of their Power, as they are Biſhops, we do profeſs ourſelves Enemies till Dooms-day.

Mr. *Prynn* ſhaking the Doctör by the Hand, deſired him that he might ſpeak a word or two. With all my heart, ſaid the Doctör.

The Cauſe (ſaid Mr. *Prynn*) of my ſtanding here, is for not bringing in my Answer, for which my Cauſe is taken *pro confeſſo* againſt me. What Endeavours I uſed for the bringing in thereof, that God and my own Conſcience, and my Counſel knows, whoſe Cowardice ſtands upon Record to all Ages. For rather than I will have my Cauſe a leading Cauſe, to deprive the Subjects of that Liberty which I ſeek to maintain, I rather expoſe my Perſon to a leading Example, to bear this Punishment: And I beſeech you all to take notice of their Proceedings in this Cauſe. When I was ſerved with a *Subpœna* into this Court, I was ſhut up cloſe Priſoner, that I could have no acceſs to Counſel, nor admitted Pen, Ink or Paper to draw up my Answer by my Inſtructions, for which I ſeek'd them twice (tho' to no purpoſe) yet when all was done, my Answer would not be accepted into the Court, tho' I tender'd it upon my Oath. I appeal to all the World, if this were a legal or juſt Proceeding. Our Accuſation is in point of Libel (but ſuppoſedly) againſt the Prelates; to clear this now, I will give you a little Light what the Law is in point of Libel (of which Profeſſion I have ſometimes been, and ſtill profeſs myſelf to have ſome Knowledge in.) You ſhall find in caſe of Libel, two Statutes: The one in the ſecond of Queen *Mary*, the other in the ſeventh of Queen *Elizabeth*. That in the ſecond of Queen *Mary*, the Extremity and Height of it runs thus, That if a Libeller doth go ſo far and ſo high as to libel againſt King or Queen by Denomination, the Height and Extremity of the Law is, that they lay no greater Fine on him than an hundred Pounds, with a Month's Imprisonment, and no corporal Punishment, except he doth reſuſe to pay his Fine; and then to inflict ſome Punishment in lieu of that Fine at the Month's end. Neither was this Censure to be paſſed on him, except it were

fully proved by two Witneſſes, who were to produce a Certificate of their good Demeanor for the credit of their Report, or elſe confeſſed by the Libeller. You ſhall find in that Statute 7 *Eliz.* ſome further Addition to the former of 2 *Maria*, and that only in point of Fine and Punishment, and it muſt ſtill reach as high as the Perſon of the King or Queen. Here this Statute doth ſet a Fine of two hundred Pounds; the other but one: This ſets three Months Imprisonment, the former but one: So that therein only they differ. But in this they both agree, namely at the end of his Imprisonment to pay his Fine, and ſo to go free without any further queſtion: But if he reſuſe to pay his Fine, then the Court is to inflict ſome Punishment on him correſpondent to his Fine. Now ſee the Diſparity between thoſe Times of theirs and ours. A Libeller in Queen *Mary's* time was fined but an hundred Pounds, in Queen *Elizabeth's* time two hundred: In Queen *Mary's* days but a Month's Imprisonment; in Queen *Elizabeth's* three Months, and not ſo great a Fine if they libelled againſt King or Queen. Formerly the greateſt Fine was but two hundred Pounds, tho' againſt King or Queen: now five thouſand Pounds, tho' but againſt the Prelates, and that but ſuppoſedly, which cannot be proved: Formerly, but three Months Imprisonment; now perpetual Imprisonment: Then, upon paying the Fine, no corporal Punishment was to be inflicted; but now, infamous Punishment with the loſs of Blood, and a l other Circumſtances that may aggravate it. See now what Times we are fallen into, when that libelling, if it were ſo, againſt Prelates only, ſhall fall higher than if it touched Kings and Princes.

That which I have to ſpeak of next, is this: The Prelates find themſelves exceedingly aggrieved and vexed againſt what we have written concerning the Uſurpation of their Calling, where indeed we declare their Call not to be *Jure Divino*. I make no doubt, but there are ſome Intelligencers or Abettors within the Hearing, whom I would have well to know and take notice of what I now ſay. I here in this place make this Offer to them, That if I may be admitted a fair Diſpute, on fair Terms, for my Cauſe; that I will maintain, and do here make the Challenge againſt all the Prelates in the King's Dominions, and againſt all the Prelates in Chriſtendom, (let them take in the Pope, and all to help them) that their Calling is not *Jure Divino*. I will ſpeak it again, I make the Challenge againſt all the Prelates in the King's Dominions, and all Chriſtendom to maintain, that their Calling is not *Jure Divino*. If I make it not good, let me be hanged up at the Hall Gate: Whereupon the People gave a great Shout.

The next thing that I am to ſpeak of, is this: The Prelates find themſelves exceedingly aggrieved and vexed againſt what I have written in point of Law, concerning their Writs and Proceſs, That the ſending forth of Writs and Proceſs in their own Name, is againſt all Law and Juſtice, and doth intrench on his Maſteſty's Prerogative Royal, and the Subjects Liberties. And here now I make a ſecond Challenge againſt all the Lawyers in the Kingdom, in way of fair Diſpute, that I will maintain, the Prelates ſending forth of Writs and Proceſs in their own Names, to be againſt all Law and Juſtice, and intrencheth on his Maſteſty's Prerogative Royal, and Subjects Liberty. Leſt it ſhould be forgotten, I ſpeak it again, I here challenge all

the whole Society of the Law, upon a fair Dispute, to maintain, that the sending forth of Writs and Process in the Prelates own Names, to be against all Law and Justice, and intrencheth on the King's Prerogative Royal, and the Subjects Liberty. If I be not able to make it good, let me be put to the tormentingest Death they can devise.

We praise the Lord, we fear none but God and the King: Had we respected our Liberties, we had not stood here at this time: it was for the general Good and Liberties of you all that we have now thus far engaged our own Liberties in this Cause. For did you know how deeply they have intrenched on your Liberties in point of Popery; if you knew but into what Times you are cast, it would make you look about you: and if you did but see what Changes and Revolutions of Persons, Causes and Actions, have been made by one Man, you would more narrowly look into your Privileges, and see how far your Liberty did lawfully extend, and so maintain it.

This is the second time that I have been brought to this Place; who hath been the Author of it, I

think you all well know: For the first
7 Feb. 1633. time, if I could have had leave given

me, I could easily have cleared my self of that which was then laid to my Charge; as also I could have done now, if I might have

been permitted to speak: that Book for which I suffered formerly, especially for some

Hypocrasix. particular Words therein written, which

I quoted out of God's Word and antient Fathers, for which notwithstanding they passed Censure on me; that same Book was twice licensed by publick Authority, and the same Words I then suffered for, they are again made use of, and applied in the same Sense by *Heylin*, in his Book lately printed and dedicated to the King, and no Exceptions taken against them, but are very well taken.

Dr. Bastwick. And there is another Book of his licensed, wherein he rails against us three at his pleasure, and against the Martyrs that suffered in Queen *Mary's* days, calling them Schismatical Hereticks; and there is another Book of

Altare Christianum. *Pocklington's* licensed: they be as full of Lyes as Dogs be full of Fleas; but were the Presses as open to us as they

are to them, we would pay them, and their great Master that upholds them, and charge them with notorious Blasphemy.

Mr. Prynn. You all at this present see there be no degrees of Men exempted from suffering: Here is a reverend Divine for the Soul, a Physician for the Body, and a Lawyer for the Estate: I had thought they would have let alone their own Society, and not have meddled with any of them. And the next (for aught I know) may be a Bishop. You see they spare none of what Society or Calling soever, none are exempted that cross their own Ends. Gentlemen, look to your selves; if all the Martyrs that suffered in Queen *Mary's* days are accounted and called schismatical Hereticks and factious Fellows; * what shall we look for? Yet so they are called in a Book lately come forth under Authority. And such factious Fellows are we, for discovering a Plot of Popery. Alas poor *England*,

what will become of thee, if thou look not the sooner into thine own Privileges, and maintaineft not thine own lawful Liberty? Christian People, I beseech you all, stand firm, and be zealous for the Cause of God, and his true Religion, to the shedding of your dearest Blood, otherwise you will bring your selves, and all your Posterities, into perpetual Bondage and Slavery.

Now the Executioner being come to fear him and cut off his Ears, *Mr. Prynn* spake these Words to him: Come Friend, come, burn me, cut me, I fear not. I have learned to fear the Fire of Hell, and not what Man can do unto me: Come fear, fear me, I shall bear in my Body the Marks of the Lord Jesus: Which the Executioner performed with extraordinary Cruelty, heating his Iron twice to burn one Cheek; and cut one of his Ears so close, that he cut off a piece of his Cheek. He said, *The more I am beaten down, the more am I lift up.*

Upon the day for Execution, *Mr. Burion* being brought into the *Palace-yard*, unto a Chamber that looked into the Yard, where he viewed three Pillories there set up: Methinks (said he) I see *Mount Calvary*, where the three Crosses (one for Christ, and the other two for the two Thieves) were pitched: And if Christ were number'd among Thieves, shall a Christian (for Christ's Cause) think much to be numbered among Rogues, such as we are condemned to be? Surely, if I be a Rogue, I am Christ's Rogue, and no Man's. And a little after, looking out at the Casement towards the Pillory, he said, I see no difference between looking out of this square Window and yonder round Hole. Pointing towards the Pillory, he said, It is no matter of difference to an honest Man. And a little after that, looking somewhat wishly upon his Wife, to see how she did take it, she seemed to him to be something sad; to whom he thus spake: Wife, why art thou so sad? To whom she made answer, Sweetheart, I am not sad. No, said he? See thou be not, for I would not have thee to dishonour the Day, by shedding one Tear, or fetching one Sigh, for behold there, for thy Comfort, my triumphant Chariot, on which I must ride for the honour of my Lord and Master: And never was Wedding-day so welcome and joyful a Day as this Day is; and so much the more, because I have such a noble Captain and Leader, who hath gone before me with such undauntedness of Spirit, that he faith of himself, I gave my Back to the Smiters, my Cheeks to the Nippers, they pluck'd off the Hair, I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore shall I not be confounded: therefore have I set my Face like a Flint, and I know I shall not be ashamed. At length being carried toward the Pillory, he met *Dr. Bastwick* at the foot of the Pillory, where they lovingly saluted and embraced each other; and parting a little from him, he returned and most affectionately embraced him the second time, being heartily sorry he missed *Mr. Prynn*, who was not yet come before he was gone up to his Pillory, which stood alone next the Star-Chamber, and about half a Stone's Cast from the other double Pillory, wherein the other two stood; so as all their Faces looked Southward, the bright

* The Archbishop of Canterbury being informed by his Spies what *Mr. Prynn* said, moved the Lords then sitting in the Star-Chamber, that he might be gagged, and have some further Censure presently executed upon him; but that Motion did not succeed.

Sun all the while, for the space of two Hours, shining upon them. Being ready to be put into the Pillory, standing upon the Scaffold, he spied Mr. *Prynn* new come to the Pillory, and Dr. *Bastwick* in the Pillory, who then hasted off his Band, and called for a Handkerchief, saying, What shall I be laft, or shall I be afhamed of a Pillory for Chrift, who was not afhamed of a Crofs for me? Then being put into the Pillory, he faid, Good People, I am brought hither to be a Spectacle to the World, to Angels, and Men; and howfoever I ftand here to undergo the Punifhment of a Rogue, yet except to be a faithful Servant to Chrift, and a loyal Subject to the King, be the Property of a Rogue, I am no Rogue. But yet if to be Chrift's faithful Servant, and the King's loyal Subject, deserve the Punifhment of a Rogue, I glory in it, and I blefs my God, my Confcience is clear, and is not ftained with the Guilt of any fuch Crime as I have been charged with, tho' otherwife I confefs myfelf to be a Man fubject to many Frailties and human Infirmities. Indeed that Book intituled, *An Apology for an Appeal, with fundry Epiftles and two Sermons, for God and the King*, charged againft me in the Information, I have and do acknowledge (the mifprinting excepted) to be mine, and will by God's Grace never difclaim it whilft I have Breath within me. After a while, he having a Nofegay in his hand, a Bee came and pitched on the Nofegay, and began to fuck the Flowers, which he beholding, and well obferving, faid, Do ye not fee this poor Bee? She hath found out this very place to fuck Sweetnefs from thefe Flowers; and cannot I fuck Sweetnefs in this very place from Chrift? The Bee fucking all this while, and fo took her Flight. By and by, he took occafion from the fhining of the Sun, to fay, You fee how the Sun fhines upon us, but that fhines as well upon the Evil as the Good, upon the Juft and Unjuft, but that the Sun of Righteoufnefs (Jefus Chrift, who hath healing under his Wings) fhines upon the Souls and Confciences of every true Believer only, and no Cloud can hide him from us, to make him afhamed of us, no not of our moft shameful Sufferings for his fake: And why fhould we be afhamed to fuffer for his fake who hath fuffered for us? All our Sufferings be but Fleabittings to that he endured: he endured the Crofs and defpifed the Shame, and is fet on the right Hand of God. He is a moft excellent Pattern for us to look upon, that treading his Steps, and fuffering with him, we may be glorified with him. And what can we fuffer, wherein he hath not gone before us even in the fame kind? Was he not degraded, when they fcornfully put on him a Purple Robe, a Reed into his Hand, a thorny Crown upon his Head, faluting him with, *Hail King of the Jews*, and fo difrobed him again? Was not he deprived when they fmote the Shepherd, and the Sheep were fcattered? Was not Violence offered to his f acred Perfon, when he was buffeted and fcourged, his Hands and his Feet pierced, his Head pricked with Thorns, his Side goared with a Spear, &c? Was not the Crofs more shameful, ye and more painful than a Pillory? Was not he ftript of all he had, when he was left ftark naked upon the Crofs, the Soldiers dividing his Garments, and cafting Lots upon his Vefture? And was he not confined to perpetual clofe Imprifonment in Man's Imagination, when his Body was laid in a Tomb, and the Tomb fealed, left he fhould break Prifon, or his Difciples ftal him away? And yet did he not rife a-

gain, and thereby brought Deliverance and Victory to us all, fo as we are more than Conquerors thro' him that loved us? Here then we have an excellent Pattern indeed.

One faid unto Mr. *Burton*, Chrift will not be afhamed of you at the laft day. He replied, He knew whom he had believed, and that Chrift was able to keep that he had committed to him againft that Day. One asked him how he did? He faid, never better, I blefs God, who hath accounted me worthy thus to fuffer. The Keeper keeping off the People from preffing near the Pillory; he faid, Let them come and fpare not, that they may learn to fuffer. The fame Keeper being weary, and fitting him down, asked Mr. *Burton* if he were well, and bad him be of good Comfort. To whom he replied, Are you well? If you be well, I am much more, and full of Comfort, I blefs God. Some asked him if the Pillory were not uneasy for his Neck and Shoulders? He answered: How can Chrift's Yoke be uneasy? This is Chrift's Yoke, and he bears the heavier end of it, and I the lighter; and if mine were too heavy, he would bear that too. O good People, Chrift is a good and fweet Mafter, and worth the fuffering for! And if the World did but know his Goodnefs, and had tafte of his Sweetnefs, all would come and be his Servants; and did they but know what a bleffed thing it were to bear his Yoke, O who would not bear it? The Keeper going about to eafe the Pillory by putting a Stone or a Brickbat between, Mr. *Burton* faid, Trouble not your felf, I am at very good Eafe, and feel no Wearinefs at all: And efpying a young Man at the Foot of the Pillory, and perceiving him to look pale on him, he faid, Son, Son, what is the matter you look fo pale? I have as much Comfort as my Heart can hold, and if I had need of more, I fhould have it. One asked him a while after, if he would drink fome *Aqua Vita*. To whom he replied, that he needed it not; for I have, faid he, (laying his Hand upon his Breaft) the true Water of Life, which like a Well doth fpring up to eternal Life. Paufing a while, he faid with a moft chearful and grave Countenance, I was never in fuch a Pulpit before, but little do you know (fpeaking to them that flood about him) what Fruits God is able to produce from this dry Tree. They looking ftedfaftly upon him, he faid, Mark my Words, and remember them well, I fay, Little do you know what Fruits God is able to produce from this dry Tree; I fay, remember it well, for this Day will never be forgotten; and thro' thefe Holes (pointing to the Pillory) God can bring Light to his Church. The Keeper going about again to mend the Pillory, he faid, Do not trouble yourfelf fo much: But indeed we are the Troublers of the World. By and by, fome of them offering him a Cup of Wine; he thanked them, telling them he had the Wine of Confolation within him, and the Joys of Chrift in Poffeffion, which the World could not take away from him, neither could it give them unto him. Then he looked towards the other Pillory, and making a fign with his Hand, cheerfully called to Dr. *Bastwick*, and Mr. *Prynn*, asking them how they did? Who answered, Very well. A Woman faid unto him, Sir, every Chriftian is not worthy this Honour, which the Lord hath caft upon you this Day. Alas (faid he) who is worthy of the leaft Mercy? But it is his gracious Favour and free Gift, to account us worthy in the Behalf of Chrift to fuffer any thing for his

his sake? Another Woman said, There are many hundreds which by God's Assistance would willingly suffer, for the Cause you suffer for this Day. To whom he said, Christ exalts all of us that are ready to suffer Afflictions for his Name with Meekness and Patience; but Christ's military Discipline in the use of his spiritual Warfare, in point of Suffering is quite forgotten, and we have in a manner lost the Power of Religion, in not denying our selves, and following Christ as well in suffering as in doing. After a while Mr. *Burton* calling to one of his Friends for a Handkerchief, returned it again, saying, It is hot, but Christ bore the Burden in the Heat of the Day; let us always labour to approve ourselves to God in all things, and unto Christ, for therein stands our Happiness, come of it what will in this World.

One said to Mr. *Burton*, The Lord strengthen you. To whom he replied, I thank you, and I bless his Name he strengthens me. For tho' I am a poor sinful Wretch, yet I bless God for my innocent Conscience in any such Crime as is laid against me; and were not my Cause good, and my Conscience sound, I could not enjoy so much unspeakable Comfort in this my Suffering, as I do, I bless my God. Mrs. *Burton* sending Commendation to him by a Friend: He returned the like to her, saying, Commend my Love to my Wife, and tell her I am heartily cheerful, and bid her remember what I said to her in the Morning; namely, That she should not blemish the Glory of this Day with one Tear, or so much as one Sigh. She returned Answer, That she was glad to hear him so cheerful; and that she was more cheerful of this Day than of her Wedding-day. This Answer exceedingly rejoiced his Heart, who thereupon blessed God for her, and said of her, she is but a young Soldier of Christ's, but she hath already endured many a sharp Brunt, but the Lord will strengthen her unto the end: And he having on a pair of new Gloves, shewed them to his Friends thereabout him, saying, My Wife yesterday of her own accord bought me these Wedding-Gloves, for this is my Wedding-Day.

One said to him, Sir, by this Sermon (your Suffering) God may convert many unto him. He answered, God is able to do it indeed. And then he called again to Dr. *Bastwick* and Mr. *Prynn*, asking them how they did; who answered as before. Some speaking to him concerning that Suffering of shedding his Blood: He answered, What is my Blood to Christ's Blood? Christ's Blood is a purging Blood, but mine is corrupted and polluted with Sin. One Friend asked another standing near Mr. *Burton*, if there should be any thing more done unto him? Mr. *Burton* over-hearing him answered, Why should there be no more done? For what God will have done must be accomplished. One desiring Mr. *Burton* to be of good cheer: He thus replied, If you knew my Cheer, you would be glad to be Partaker with me; for I am not alone, neither hath God left me alone in all my Sufferings and close Imprisonment since first I was apprehended. The Halberd-men standing round about, one of them had an old rusty Halberd, the Iron whereof was tacked to the Staff with an old crooked Nail; which one observing, and saying, What an old rusty Halberd is that? Mr. *Burton* said, This seems to me to be one of those Halberds which accompanied Judas when he went to betray and apprehend his Master. Mr. *Burton* said again, I am persuaded that Christ

my Advocate, is now pleading my Cause at the Father's Right Hand, and will judge my Cause tho' none be found here to plead it, and will bring forth my Righteousness as the Light at Noon-day, and clear my Innocency in due time. A Friend asked Mr. *Burton*, if he would have been without this particular Suffering? To whom he said, No, not for a World. Moreover, he said that his Conscience in the Discharge of his ministerial Duty and Function, in admonishing his People to beware of the creeping in of Popery and Superstition, exhorting them to stick close unto God and the King in Duties of Obedience, was that which first occasioned his Sufferings; and he said, As for this Truth I have preached, I am ready to seal it with my Blood, for this is my Crown both here and hereafter. I am jealous of God's Honour, and the Lord keep us that we may do nothing that may dishonour him, either in doing or suffering; God can bring Light out of Darkness, and Glory out of Shame: And what shall I say more; I am like a Bottle which is so full of Liquor, that it cannot run out freely; so I am so full of Joy, that I am not able to express it.

In conclusion, some told him of the Approach of the Executioner, and prayed God to strengthen him. He said, I trust he will, why should I fear to follow my Master Christ, who said, I gave my Back to the Smilers, and my Cheek to the Nippers that plucked off my Hair; I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore shall I not be confounded; therefore have I set my Face like a Flint, and I know that I shall not be ashamed.

When the Executioner had cut off one Ear, which he had cut deep and close to the Head in an extraordinary cruel manner; yet he never once moved and stirred for it, tho' he had cut an Artery, so as the Blood ran streaming down upon the Scaffold, which divers Persons standing about the Pillory seeing, dipped their Handkerchiefs in, as a thing most precious, the People giving a mournful Shout, and crying for the Surgeon, whom the Croud and other Impediments for a time kept off, so that he could not come to stop the Blood; he all the while held up his Hands, said, Be content, it is well, blessed be God. The other Ear being cut no less deep, he then was freed from the Pillory, and came down, where the Surgeon waiting for him, presently applied remedy for stopping the Blood after a large Effusion thereof, yet for all this he fainted not, in the least manner, tho' through expence of much Blood he waxed pale. And one offering him a little Wormwood-water, he said, It needs not; yet through Importunity he only tasted of it, and no more, saying, His Master, Christ, was not so well used, for they gave him Gall and Vinegar, but you give me good strong Water to refresh me, blessed be God. His Head being bound up, two Friends led him away to an House provided him in *King-street*, where being set down, and bid to speak little, yet he said after a Pause, This is too hot to hold long: Now left they in the Room, or his Wife should mistake, and think he spake of himself concerning his Pain, he said, I speak not this of myself; for that which I have suffered is nothing to that my Saviour suffered for me, who had his Hands and Feet nailed to the Cross: and lying still a while, he took Mr. *Prynn's* Sufferings much to heart, and asked the People how he did, for, said he, his Sufferings have been great. He asked also how Dr. *Bastwick*

did, with much Compassion and Grief, that himself (being the first that was executed) could not stay to see how they two fared after him.

Soon after the Execution of the Sentence, they were severally sent Prisoners to the respective Castles of *Carnarvan*, *Launceston* in *Cornwal*, and *Lancaster*, and afterwards on the 27th of *August* following, it was ordered by the King and Council, That Dr. *Bastwick* should be removed to the Castle or Fort of the Isles of *Scilly*, Mr. *Burton* to the Isle of *Guernsey*, and Mr. *Prynn* to which of the two Castles of the Isle of *Jersey* the Governor should think fit; and that none be admitted to have Conference with them, or to have Access to them, but whom the Captains of the said Castles or their Deputies should appoint; they not to be allowed Pen, Paper, or Ink, nor any Books, but the Bible and Common-Prayer-Book, and other Books of Devotion, consonant to the Doctrine and Discipline of the Church of *England*; no Letters or Writings to be brought them, but what shall be open'd, nor any to be sent from them: that the Wives of *Bastwick* and *Burton* should not land or abide in any of the said Islands; and if they did, they should be detain'd in Prison till further Order from the Board; and the Conductors of the said three Prisoners, either by Sea or Land, to suffer none but themselves to speak to them in their Passage. Accordingly they were sent to the said three Islands, where they remained till the beginning of the Long Parliament 1641. when upon their respective Petitions they were sent for up, discharged and restored. Their Petitions were as follow.

To the Honourable the Knights, Citizens, and Burgeses of the Commons House of Parliament;

The humble Petition of William Prynn, late Exile and close Prisoner in the Isle of Jersey,

In all humbleness sheweth,

THAT your Petitioner, tho' not conscientious to himself of any voluntary or apparent Offence against the Laws of the Realm, (to which he ever studied to conform himself) thro' the malicious Practices and Persecutions of some Prelates and Church-men, (especially the now Archbishop of *Canterbury*, and *Peter Heylin*, Doctor in Divinity) whose Errors and Innovations, contrary to the Doctrine and Discipline of the Church of *England*, and Extravagancies in the High Commission, and other Ecclesiastical Courts, your Petitioner for his own relief, being there unjustly prosecuted, (had to his weak power oppugned) hath within eight Years last past, undergone two heavy Censures in the Star-Chamber Court.

The first upon an Information there exhibited against your Petitioner, by Mr. *Noy* deceased, then Attorney General, for some misconstrued Passages, inoffensive in themselves, and in your Petitioner's true Intention, being for the most part the words of other approved Authors, comprised in a Book, styled *Histrionastix*, written by the Petitioner, against common Interludes, and licensed for the Press by Mr. *Thomas Buckner*, Household Chaplain to the then Archbishop of *Canterbury*, authorized by the State to license Books, and by him exactly perused, and approved both in the written and printed Copy, before its

Publication, and so confessed the Information; for which authorized Book and Passages, your Petitioner, before the hearing of the Cause, was not only imprisoned in the Tower of *London*, without Bail or Mainprize, for a whole Year's space, denied access to his Counsel, convenient time to examine Witnesses, and make Breviats to instruct his Counsel (the Information being general, and reciting no particular Clauses of the Book excepted against) the only means of his Defence illegally suppressed, some of his Counsel tampered with to make no Justification, contrary to your Petitioner's Instructions and Desire, whereby his Cause was miscarried; but also at the Hearing, by reason of those malicious and perverse Glosses on the said Passages, which the said *Heylin* had collected and presented to his Majesty's learned Counsel, who repeated his Instructions only, your Petitioner was fined 3000 Pounds to his Majesty, expelled the University of *Oxford*, and *Lincolns-Inn*, degraded from his Profession of the Law, wherein he never offended, set in the Pillory in the *Palace-Yard* at *Westminster*, where he lost one of his Ears, and two days after on the Pillory in *Cheapside*, where he lost the other Ear: and had his said Licensed Books there publickly burnt before his Face, by the *Hangman*, in a most disgraceful manner; and adjudged after to remain a Prisoner during his Life.

That after the said Censure, to defame and injure your Petitioner the more, he was charged wrongfully in the Decree, as censured for Perjury, (tho' not taxed for it by the Court) and between his Sufferings in the Pillory, the Books of his Study (twice surveyed, and restored to him by Order from the Lords) before any Fine estreated, by a Warrant out of the High Commission, signed by the said Archbishop and others, were seized on by *Cross* a Messenger, who carried them to his House; with which Warrant your Petitioner charging the said Archbishop upon occasion, in the open Court of Star-Chamber; he there publickly disavowed the same (tho' your Petitioner can yet produce it under his own Hand) promising withal, that the Books should be restored forthwith; which notwithstanding were all still detained by his Means, till they were extended and sold for your Petitioner's Fine: who shortly after, by an Order out of the said Court sent to the Tower to be executed, was there shut up close Prisoner, and Dr. *Reeves* sent thither to search his Chamber for the Pamphlet, which the said Archbishop would wrongfully have fathered upon your Petitioner, whose Friends have been unjustly prosecuted in the Exchequer, and elsewhere, sundry Years, for his Fine aforesaid.

And your Petitioner further saith, that about *Easter* was three Years, during his Imprisonment in the Tower, by means of the said Archbishop, a new Information was exhibited in the said Court against your Petitioner, and others, with certain Books thereto annexed; *Denying the Prelates Jurisdiction over other Ministers, to be Jure Divino. Charging them with many Errors and Innovations in Religion, Usurpation upon his Majesty's Prerogative, and Subjects Liberty*, Abuses, and Extortions, in the High Commission, and other Ecclesiastical Courts, suppressing Preaching, and painful Ministers without a Cause; Licensing *Popish, Arminian*, and other erroneous Books against the Sabbath; setting up Altars, Images, and Crucifixes; removing and railing in Communion Tables, and bowing

bowing down to them, altering the Book of Common Prayer, the Books for the Gunpowder-Treason, and late Fast, in some material Passages in favour of Popery and Papists. Which things, (tho' very notorious, and oft complained against by this Honourable House, in former and late Parliaments) were yet reputed scandalous. And tho' neither of the said Books was particularly charged on your Petitioner, in the said Information, nor any Witness produced to prove him either Author, or Disposer of any of them; yet by denying your Petitioner liberty to draw up his own Answer, (tho' once a Barrister at Law) when as his assigned Counsel refused to do it, by close imprisoning your Petitioner, and his Servant, by debarring him Pen, Ink, and Paper, whereby to answer, or instruct his Counsel; searching his Chamber, and taking away part of his Answer there found; denying him access to his Counsel, and conference with his Co-defendants, even at Counsel, tho' jointly charged with him; rejecting the Cross-Bill exhibited by him for his Defence; threatening Master Holt, one of your Petitioner's assigned Counsel, sent by the then Lord Keeper to the Tower, to draw up your Petitioner's Answer, and commanding him not to sign it, after it was engrossed, whereupon he refused to subscribe it, contrary to his Promise to your Petitioner; and by refusing to accept your Petitioner's Answers to the said Information, signed with his own, and Master Tomlins, the other of his Counsel's Hands, tho' tendered by your Petitioner, both at the Star-Chamber Office, and in the open Court at the Hearing; the said Information, for default of Answer (tho' two Answers were thereto tendered by your Petitioner) was taken *pro confesso* against your Petitioner, and he thereupon Fined five thousand Pounds to his Majesty, Pilloried, Stigmatized on both Cheeks, Mutilated and Dismember'd, in a most barbarous manner, and the small remainder of his Ears, left after his first Execution, cut off, to the hazard of his Hearing, and Life; and adjudged to perpetual close Imprisonment in the Goal of Carnarvon Castle in North-Wales, a nasty Dog-hole, far remote from your Petitioner's Friends. Which Sentence was unduly drawn up and executed upon your Petitioner, as his Attorney's Clerk informed, before it was entered into the Book, or your Petitioner could get any Copy of it, to except against the same, as he had just Cause.

That immediately after the Execution of the same Sentence, your Petitioner sent to the said Archbishop to desire him to release or bail his Servant (who was detained close Prisoner for ten Weeks space in the Messenger's Hands, and oft examined and solicited, by fair Promises and Threatnings, causelessly to accuse your Petitioner against whom they wanted Evidence) that so he might attend him during his Sores, which the said Archbishop out of his Grace and Charity utterly refused; saying that he intended to proceed against his said Servant in the High Commission, where he hath ever since vexed, censured, and banded him from Prison to Prison, only for refusing to accuse and betray your Petitioner.

That after the said heavy Sentence, your Petitioner by an Order in the said Court (by way of Addition to the said Censure) was inhibited the use of Pen, Ink, and Paper, and all Books; except the Bible, and the Book of Common-Prayer, and some few Books for private Devotion; and before his Wounds were perfectly cured, he was by order remov'd from the Tower to Carnarvon; and some

of his Friends in Chester, who visited him there in his Passage, in the Presence of his Conductors, who had no order to restrain any Person from resorting to him, were for this very cause sent for by a Messenger, to appear before the Lords of the Privy-Council, and likewise cited into the High Commission at York, where they were imprisoned and fined, to the ruin of their Estates, and enjoined to make a publick Recantation in the Cathedral Church, and in the Town-Hall of Chester: The said Commissioners further decreeing, that three Pictures of your Petitioner found in Chester, should be publickly burnt at the High Cross there, which was done accordingly.

That your Petitioner, since his said Sentence, hath been publickly reviled at, and libelled against, both by the High Commissioners at York, and in sundry Churches, both at Chester and elsewhere, and in divers licensed printed Books, compiled by the said Heylin, and published by the Archbishop's Privy or Command; and that sundry of his Friends Houses, Studies, Books, and Writings have been violently broken up, ransacked and taken away, and themselves prosecuted in the High Commission, out of Malice, for the relation they had to your Petitioner.

That after your Petitioner had continued some ten Weeks space close Prisoner in Carnarvon, he was about three Years since, by a Warrant from the Lords of the Council, made in the Summer Vacation, (to which the said Archbishop's Hand was first subscribed) order'd by way of Exile, to be embarked and transported with all privacy into one of the Castles in the Isle of Jersey, and his Conductors thereby charged not to admit any Person whatsoever, but themselves only, to speak with your Petitioner in his Passage: Whereupon, after some Injuries there receiv'd by Mr. Griffith, the King's Attorney in those Parts, who endeavoured to seize upon the Furniture of his Chamber for his own use, your Petitioner was embarked among Papists, in a bruised shipwreck'd Vessel, full of Leaks, and after fourteen Weeks Voyage in the Winter Season, through dangerous Storms and Seas, which spoiled most of his Stuff and Bedding, and threatening often Shipwreck to him, he arrived at the said Isle, and was conveyed close Prisoner into Mount Orgueille Castle there, where the Lieutenant-Governour, by another extra-judicial Order, to which the said Archbishop's Name was first, was ordered to keep your Petitioner close Prisoner in a Chamber, suffer none but his Keepers to speak with him, to intercept all Letters to him; to permit him neither Pen, Ink, nor Paper, either to write to his Friends for Necessaries, or to petition for Relief, and to permit him no Book but the Bible, and those aforementioned Books, without giving any order for his Diet there: so that being deprived of his Calling and Estate, exiled and shut up close Prisoner among Strangers, remote from all his Friends, denied all Address to him by Person or Letters, he had certainly perished in his almost three Years close Imprisonment there, had not the extraordinary Providence and Goodness of God, which he shall ever adore, and the noble Charity of those under whose Custody he did remain, furnished him with such Diet and Necessaries, as preserved him both in Health and Life, in this his close Imprisonment and Exile.

May it therefore please this Honourable House, to take these your Petitioner's almost eight Years tragical Grievances, of new and dangerous Example,

ple, into your most sad and just Considerations, that so they may not become Precedents to the prejudice of Posterity; to grant him Liberty to send for and examine all necessary Witnesses: to order all Clerks, Registers, and other Officers of the Star-Chamber, or elsewhere, speedily and freely to grant him the Copies of such Orders, Decrees, and Writings, as his Cause shall require, to release him upon Bail (being now but a Prisoner only upon an extrajudicial Order of the Lords, and not by Virtue of any Sentence or Decree in Court) to grant him Liberty to plead and prosecute his own Cause, since Counsel hath so often failed him, and to give him such Satisfaction and Relief as the Justice and Equity of his Cause shall merit.

*And your Petitioner shall ever pray for your
Safeties,*

William Prynne.

*To the Honourable the Knights, Citizens, and Bur-
gesses of the Commons House of Parliament :*

*The humble Petition of John Bastwick, Doctor in
Physick, lately retained close Prisoner and Exile,
in the Island of Scilly :*

Most humbly sheweth,

THAT your Petitioner having about six Years since set out a Book in *Latin*, called *Elenchus Religionis Papisticae*, with an Addition thereunto called *Flagellum Pontificis, & Episcoporum Latialium*; being thereunto provoked by one *Richard Short*, a Papist that maintained the Pope's Supremacy, the Mass, and papal Religion: In which Book your Petitioner (for preventing all Misinterpretations of his pious and good Intentions therein) in his Epistle to the Reader, fully declared himself, That your Petitioner meant nothing against such Bishops as acknowledged their Authority from Kings and Emperors; yet, because your Petitioner (the better to shew the papal Usurpation over other Princes) therein only maintained by way of Argument (as other orthodox Writers of that Subject have done) a Parity of the said Bishop of *Rome*, or all other Bishops or Presbyters, by the Word of God, denying his and their Supremacy over other Ministers to be by the Divine Institution:

Thereupon a Pursuivant, by Authority from the High Commission Court, came into your Petitioner's House at *Colchester* in *Essex*, in his Absence, and the said Pursuivant, assisted with the then Bailiffs and Constables of *Colchester*, aforesaid, ransacked his said House, together with his Chests and Trunks, and with great Violence broke open your Petitioner's Study, which was in his Apothecary's House, and took and carried away divers of your Petitioner's Books, Writings, Letters, and what else the Pursuivant pleased, without making of Restitution of them to your Petitioner.

And then your Petitioner was prosecuted in the said High Commission Court, principally for his said Book; where, after a long and chargeable Prosecution, he was the 12th of *February* 1634, fined 1000*l.* to the King, excommunicated, debarred to practise Physick, the chiefest Means of his livelihood; his said Book ordered to be burnt; that he should pay costs of Suit, and be imprisoned till he should make a Recantation. The which heavy Censure was only for the said Book, wherein your Petitioner maintained the Prerogative of a King against the Papacy. Whereas one *Thomas*

Chawney, of *Essex*, lately wrote a Book in Maintenance of the papal Religion, and in Defence of the Church of *Rome*, and avers it to be a true Church; the which Book is dedicated to the Archbishop of *Canterbury*, and was and is patronized and defended by the said Archbishop, and the said *Chawney* never troubled for it. After which Censure declared as aforesaid, all the Bishops that were then present, denied openly that they held their Jurisdiction from his Majesty; and affirmed, that they had it from God only. And the Archbishop of *Canterbury*, among other erroneous Sayings uttered by him, maintained the said *Chawney's* Book; and maintained that the Church of *Rome* was a true Church, and that it erred not in Fundamentals: And he, and other the said Bishops, there defamed the holy Scriptures, and abused reverend Master *Calvin*. In regard whereof, and for the vindicating of your Petitioner's Innocency in the Matters for which he was most unjustly censured, as aforesaid, your Petitioner published in Print another Book in *Latin*, intitled, *Apologeticus ad Praesules Anglicanos*, expressing the Truth of his Proceedings, and Speeches of his said Censure. For which last mentioned Book, and his Book called the *Litany*, not then in Print, an Information was exhibited against him and others in the Star-Chamber, to which your Petitioner's Answer being drawn and engrossed, was only subscribed by himself, because he could get no Counsel to set their Hands to it; your Petitioner tendered the said Answer first at the Star-Chamber Office, and after in open Court at the Star-Chamber Bar, but it would not be accepted for want of Counsellors Hands to it; contrary to former Precedents. But the Court of Star-Chamber took the said Information *pro confesso*, and censured your Petitioner 5000*l.* Fine to the King, to stand in the Pillory, and to lose both his Ears, and to be close Prisoner in *Launceston Castle* in *Cornwal*. All which hath been executed upon him with great Extremity, to the Peril of his Life. After all which Extremity, your Petitioner (by what Order he knoweth not, it being no part of his Censure in Star-Chamber) was transported from the said Castle to the Island of *Scilly*, a Place so barren that it affords not ordinary Necessaries; where he hath been in close Durance for three Years or more, and not suffered to have any of his Friends come at him, his very Wife being prohibited, by the Lords of the Council's Order, under pain of Imprisonment, not to set her Foot upon any part of the said Island to enquire of his Welfare. So that your Petitioner hath been exiled from his Wife and divers small Children three Years and more; besides the great Straits and Miseries which he hath sustained during the said Time. All which is contrary to the Law of God and Man, and the Liberties of a free Subject; and to the utter undoing of your Petitioner, his Wife, and Children.

May it therefore please this honourable Assembly, to take these pressing Grievances of your Petitioner into your Considerations, and to afford him such Relief therein, as in your grave Wifdoms shall seem consonant to Justice and Equity; and to assign him for Counsel, Mr. *Atkins*, Mr. *Ludborne*, Mr. *Tomlins*, Mr. *Gurdon*, and Mr. *Randal*, to assist him in this his Complaint; and to order that your Petitioner may take out gratis, such Copies of the said Censures, Warrants, and Orders, and other the Proceedings in the said several

veral Courts, as shall or may any way concern this his sad, yet most just Complaint, with Warrant from this honourable House, to bring in his Witnesses.

And your Petitioner, as in Duty bound, shall ever pray for your Prosperities.

John Bastwick.

The humble Petition of Henry Burton, late Exile, and close Prisoner in Castle-Cornet, in the Isle of Guernsey,

In all humbleness sheweth,

THAT whereas your Petitioner, on the 5th of November 1636, did preach two Sermons in his own Parish Church in St. Matthew Friday-street, London, for the which he was, in December then next following, summoned to appear before Dr. Duck, one of the Commissioners for Causes Ecclesiastical, at Chiswick in the County of Middlesex; where (with the Register of the High Commission Court) the said Dr. Duck tendred to the Petitioner the Oath *ex Officio*, to answer to certain Articles there presented: Which Oath the Petitioner refusing to take, did then and there appeal from the said Court unto the King's Majesty; which Appeal the said Dr. Duck did admit, and the said Register, by Dr. Duck's Direction, did then and there enter in Writing.

Notwithstanding which said Appeal, a special High Commission Court was shortly after called at London, consisting of four or five Doctors; where the said Commissioners proceeded illegally to suspend the Petitioner in his Absence; by means whereof, as of the Threatnings of the said Commissioners, he was enforced to keep his House, until a Sergeant at Arms, with divers Pursuivants, and other armed Officers, assisted by Alderman Abell, then Sheriff of London, beset the Petitioner's House at eleven o'Clock at Night, and violently broke open his Doors with Iron Crows, and the like, and surprized him in his House; he making no Resistance at all. Where having first searched his Study, and taken away such Books as they pleased, they carried your Petitioner to Prison; whence, the next Day, being the second of February, by a pretended Order from the Lords of the Council, he was conveyed to the Fleet, and there kept close Prisoner.

During which Imprisonment, an Information was exhibited against the Petitioner and others, in his Majesty's Court of Star-chamber; whereby he was charged, *inter alia*, with the publishing of a certain Book, containing, *An Apology for an Appeal*, with his said two Sermons, intitled, *God and the King*. Wherein he taught Subjects to yield all manner of due Obedience to their lawful King, and reproved all lawless Innovations in Religion, &c. Which Information the Petitioner upon his Oath under the Hand of M. Holt, being then of his Counsel, assigned by special Order from the said Court, did put in his Answer; wherein he alledged such things only as his said Counsel conceived to be material, and pertinent to his just Defence in publishing the said Book; but denied all other Matters in the said Information contained. Which said Answer being admitted and received in Court, the Petitioner (being then a close Prisoner) not only attended the exhibiting of Interrogatories, according to the Custom of that Court, but withal, after some universal Delay, did write unto the King's At-

torney to hasten them; but before the Examiner came, the Petitioner heard that his said Answer was referred to Sir John Bramston Kt. Lord Chief Justice of the King's-Bench, Sir John Finch, then Chief Justice of the Common Pleas, and was by them wholly expunged as impertinent and scandalous, save only the not Guilty. And the Petitioner understanding the Answer he was to make to the Interrogatories was to be reckoned as a Part of his Answer, admitted in Court, but afterwards expunged as impertinent and scandalous, as aforesaid: so as if he should then have answered the Interrogatories, he should thereby have assented to the said Act of the said Judges, and so the Condemnation of his Cause before the Hearing; whereby he should have contradicted his former Oath, that his said Answer was a true Answer; and so should justly have brought himself under the Guilt of wilful Perjury, and his Cause under just Censure. For that very Reason he held himself not bound, as he conceived, to answer the Interrogatories; for that his said Answer was so expunged, and the (*Not Guilty*) as the Foot so tied to the Head without the main Body, and that in the Judge's own Words, as the Petitioner could not in any sort take or acknowledge it now for other than the Judge's own Answer; as may appear upon Record in the same Court.

Nevertheless, the Court taking the same Information *pro Confesso*, and refusing to permit a Copy of the Petitioner's own true Answer, as also of his Reasons of not answering the Interrogatories, both which at his Censure he tendered to the Court, desiring they might be then and there publicly read the 14th of June, 13 *Caroli Regis*, proceeded to Censure; whereby your Petitioner was censured *in a Fine of 5000 l. to his Majesty, to be deprived of his ecclesiastical Benefice, degraded from his ministerial Function and Degrees in the University, and ordered to be set on the Pillory, where both his Ears were to be cut off; confined to perpetual close Imprisonment in Lancaster-Castle, debarred the Access of his Wife or any other to come to him but only his Keeper, and denied the Use of Pen, Ink, and Paper.* All which, except the Fine, was executed accordingly. And after his close Imprisonment for twelve Weeks in the common Jail in the said Castle, he was, by what extrajudicial Order he knows not, transported by the Conduct of one Brian Burton, appointed by the High Sheriff of Lancaster, who used your Petitioner very basely and deceitfully, in that his Transportation, which was in the Winter Season through dangerous Seas, to the apparent Hazard both of his Health and Life, to the said Castle of Guernsey, where he hath remained a close Prisoner and Exile almost three whole Years; his Wife utterly prohibited, upon pain of Imprisonment, to set her Foot upon any part of the Island where she might but inquire how her Husband did; contrary to the Laws of God and the Liberties of this Kingdom.

May it therefore please this honourable House, to take the Petitioner's sad Cause into Consideration; and for the better Manifestation of his Grievance in this Cause, to assign him for Counsel Mr. Sergeant Atkins, Mr. Tomlins, and Mr. Gordon, to assist him in his Cause, and to command that he may take out such Copies *gratis* out of the said several Courts as do or may concern his Cause.

And your Petitioner, as in Duty bound, shall daily pray for your Prosperities.

Henry Burton.

Thele

These Petitions being read, they were referr'd to the Committee appointed for inquiring into the Proceedings of the Star-Chamber and High Commission Court, and upon their Report the House came to the following Resolutions.

As to Dr. Baftwick, Feb. 22, 1640.

1. *Resolved*, That the Precept made by the Archbishop of *Canterbury* and others, High Commissioners for Causes Ecclesiastical within the Realm of *England*, for the apprehending the Body of *Dr. Baftwick*, and searching for and seizing his Books; and the Messengers Actings thereupon in searching *Dr. Baftwick's* House, and seizing his Books and Papers, are against Law and the Liberty of the Subject.

2. *Resolved*, That the Sentence given against *Dr. Baftwick* by the High Commissioners, and the Proceedings whereupon that Sentence is grounded, and the Execution of that Sentence, are against Law; and that the Sentence is void, and that *Dr. Baftwick* ought to be restored to the Exercise and Practice of Physick, and to have Reparation and Recompence for his Damage and Loss sustained by the said Sentence and Execution.

3. *Resolved*, That all those several Commissioners of the High Commission Court which voted against *Dr. Baftwick*, in the Sentence pronounced against him, ought to give Satisfaction to *Dr. Baftwick*.

The House afterwards resumed the Debate concerning *Dr. Baftwick*. Whereupon it was farther,

4. *Resolved*, That the Proceedings against *Dr. Baftwick*, are against the Law and Liberty of the Subject, as also the Sentence against him ought to be reversed, the Fine of 5000 *l.* discharg'd, and he have Reparation for his Losses and Sufferings.

5. *Resolved*, That the Orders and Warrants from the Council Board for *Dr. Baftwick's* Exile, and transferring him from the Castle of *Launceston* to the Isle of *Scilly*, and his Imprisonment there, are against the Law and Liberty of the Subject, and that he ought to have Reparation for his Losses and Damages sustain'd by those Orders, and that Imprisonment.

Present at the Sentence in the Star-Chamber these Lords and Privy-Counsellors following:

<i>The Lord Keeper,</i>	<i>Earl Moreton,</i>
<i>Duke of Lenox,</i>	<i>Lord Newburgh,</i>
<i>Earl of Pembroke,</i>	<i>Mr. Secretary Coke,</i>
<i>Earl of Holland,</i>	<i>Lord Privy Seal,</i>
<i>Lord Cottington,</i>	<i>E. of Arundel and Surry,</i>
<i>Sir Thomas Jermin,</i>	<i>Earl of Bridgwater,</i>
<i>Lord Treasurer,</i>	<i>Viscount Wimbleton,</i>
<i>Marquis Hamilton,</i>	<i>Sir Henry Vane,</i>
<i>Earl of Dorset,</i>	<i>Mr. Secreat. Windebank.</i>

As to Mr. Burton;

1. *Resolved*, That the four Commissioners, *Dr. Duck*, *Dr. Worrall*, *Dr. Sams*, and *Dr. Wood*, proceeded unjustly and illegally in suspending *Mr. Burton ab Officio & Beneficio*, for not appearing upon the Summons in the first Process.

2. *Resolved*, That the breaking open *Mr. Burton's* House, and arresting his Person without any Cause shewed, and before any Suit depending against him in the Star-Chamber, and his close Imprisonment thereupon, are against the Law and Liberty of the Subject.

3. *Resolved*, That *John Wragg* hath offended in searching and seizing the Books and Papers of *Mr. Burton*, by colour of a general Warrant dormant from the High Commissioners, and that the said Warrant is against Law and the Liberty of the Subject; and that Serjeant *Dendy* and Alderman *Abel* have offended in breaking open the House of *Mr. Burton*, and ought respectively to make him Reparations for the same.

4. *Resolved*, That *Mr. Burton* ought to have Reparation and Recompence for Damages sustain'd by the aforesaid Proceedings from *Dr. Duck*, &c.

5. *Resolved*, That the Warrant from the Council-Board, dated at *Whitehall Feb. 2. 1636.* for the committing *Mr. Burton* close Prisoner, and the Commitment thereupon, is illegal, and contrary to the Liberty of the Subject.

6. *Resolved*, That the Archbishop of *Canterbury*, Bishop of *London*, and the Earl of *Arundel*, the Earl of *Pembroke*, *Sir Henry Vane*, Secretary *Cooke*, and Secretary *Windebank*, do make Reparation to *Mr. Burton* for his Damages sustain'd by his Imprisonment.

As to Mr. Prynn;

1. *Resolved*, That the Sentence given against *Mr. Prynn* in the Star-Chamber *February 17. 9 Car.* is illegal, and given without just Cause, and ought to be reversed; and that *Mr. Prynn* ought to be discharged of the Fine of 5000 *l.* imposed by the said Sentence, and of all Extents thereupon, and of his Imprisonment decreed by that Sentence.

2. *Resolved*, That *Mr. Prynn* ought to be restored to his Degrees in the University of *Oxford*, and to the Society of *Lincolns-Inn*, and to the Exercise of his Profession of an Utter Barrister at Law, and to his Chamber again at *Lincolns-Inn*.

3. *Resolved*, That *Mr. Prynn* ought to have Reparation for such Damages and Prejudice as he hath sustained by the said Sentence and Proceedings.

4. *Resolved*, That the Sentence given against *Mr. Prynn* in the Star-Chamber, *14 Junii 1637. 13 Car.* is illegal, and given without any just Cause, and therefore ought to be reversed; and that he ought to be discharged of the Fine and Imprisonment thereby decreed, and that he ought to have Reparation and Recompence for the Damages sustained by that Sentence, and the Execution thereof.

That the Warrant dated *27 Aug. 13 Car.* for the Transportation of *Mr. Prynn* from *Carnarvan-Castle* to the Isle of *Jersey*, and his Imprisonment there, and other Restraints therein mentioned, are against the Law and Liberty of the Subject, and that he ought to be discharged of that Imprisonment, and to have Reparations for his Damages sustained thereby.

5. *Resolved*, That the Imprisonment of *Mr. Prynn*, by a Warrant dated the 1st of *Feb. 1632.* under the Hands of *Thomas Lord Coventry*, Lord Keeper of the Great Seal of *England*; *Richard Lord Archbishop of York*, *Henry Earl of Manchester*, *Edward Earl of Dorset*; *Henry Lord Viscount Falkland*, *William Lord Bishop of London*, *Edward Lord Newburgh*, and *Sir Thomas Jermin*, is unjust and illegal, and that they ought to give *Mr. Prynn* Satisfaction for the Damages sustain'd by his Imprisonment.



XXXVII. *Proceedings in the Case of SHIP-MONEY, between the King and JOHN HAMPDEN* Esq; in the Exchequer, 1637. 13 Car. I.*

The Speech of Thomas Lord Coventry, Lord Keeper of the Great Seal of England; by Command from his Majesty, to all the Judges of Assize of England, in the Star-Chamber, June 17. 1635.

My Lords the Judges,



THE Term being done and ended, the Assizes are at hand: You are to divide your selves for your several Circuits. Circuits are for the Service of the King and the Good of the People; they are the Execution of the King's Laws, and Administration of Justice. In the Term, the People follow and seek after Justice; but in the Circuit, Justice followeth and seeketh after the People. So gracious is the Frame and Constitution of the King's Government, that twice a Year, at the least, Justice followeth the Subjects home to their own Doors; which, as it is a great Ease to the Trouble, Charge, and Travail of the Country, so it giveth the People a better Knowledge of Justice; and the End of it, that they may bless God and the King for the same.

It hath been the Custom, that before your Circuit you should receive such Directions as the King, or his Council, thinks seasonable to impart unto you, for the Service of the King and Weal of the People: In the declaring whereof, I shall say little of the just Acts you are to do between Party and Party, only that you do equal Right between Poor and Rich; the Particulars are left unto your selves, as they happen in your Circuits. But since you are sent by the King to hear the Causes of the People, it is his Majesty's Pleasure, that you so hear and order the same, that they may have no Cause to complain to his Majesty either for Denial or Delay of Justice.

Of the Trial of Capital Offenders, I shall say as little; that Part of Justice moveth in a Frame, and if all Officers under you did their Parts, you should walk in so strait a Path, that you would find it very hard to tread awry: therefore you had need to heed them narrowly, lest they pervert Justice. Look to the Corruptions of the Sheriffs and their Deputies; the partiality of Jurors; the bearing and siding with Men of Countenance and Power in their Country. When you meet with any such, your Proceedings ought to be severe and exemplary against them, otherwise Justice shall be overborn, howsoever in your own Persons you bear your selves with never so much Uprightness.

And because the Time of Assize is very short, and expireth in a few Days, it is necessary that you afford as much Time as may be unto those Businesses that are most general, and most concern the Publick; the Trials of *Nisi prius*, and particular Causes, they are in the Number of those

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* Clarend. Hist. Vol. I. p. 185.

things that are not to be left undone: but those things that concern the general and publick Good, you are to account them as the weightier Matters of the Law; and therefore you are to take them into your prime and chief Care and Cogitation. Now among those, I shall commend unto you in the first place, The presenting and convicting of Recusants; for as it concerneth Religion, so it hath relation to his Majesty's Profits, which are two great Motives, to which you may add a third, because the King hath many Years since assigned these Forfeitures to the Publick Defence.

In the next place, I do require you, that you make a strict Inquiry after Depopulations and Inclosures; a Crime of a crying Nature, that barreth God of his Honour, and the King of his Subjects: Churches and Houses go down together. His Majesty knoweth and taketh notice, that according to former Directions given you in this Place, you have given it in Charge to the Grand Inquests to inquire of these things, but to little Effect; and without doubt the Freeholders of England do hate and detest them. Depopulation is an Oppression of an high Nature, and commonly done by the greatest Persons, that keep the Jurors under and in Awe; and that is the Cause there are no more presented and brought in question: but however your Charge and Inquiry, touching this Point, hath not taken effect worthy his Majesty's Care and your Pains, yet his Majesty willet, that you do not cease, but inquire on still; for it is his Resolution, against all Opposition, to make all Men see he hath a Care of this overspreading Evil, and of the Means of his People having Churches and Towns demolished, and his People eaten up like Bread, to satisfy the greedy Desires of a few, who do waste as profusely, as they gather together unconscionably, and bring unto their Posterity that Woe which is pronounced against those that lay House to House, and Field to Field, to dwell alone in the midst of the Earth.

The next Thing that I shall mention unto you, is, the rectifying and reforming of Alehouses and Tipling-houses, and those I account one of the greatest Pests of the Kingdom. First, therefore, let none be enabled to set up or continue without License: There are a kind of People that do take upon them Licenses, Recognizances, or Laws, or what you will, and who have been a great deal the worse, because they see a great Multitude tolerated that have no License; and therefore I give it in charge, to take a Course that none be permitted unless they be licensed: And for the licensed Alehouses, let them be but a few, and in fit Places; if they be in private Corners and ill Places, they become the Dens of Thieves, they are the publick Stages of Drunkenness and Disorder. In Market-Towns, or in great Places or Roads, where Travellers come, they are necessary.

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Next unto this, let those that be licensed be held strictly to it, according to Law. It hath been observed, and very truly, that in the Taverns, Inns, and Alehouses in *England*, by the Falshood of their Measure, and their unjust Prices, they have drawn more Money from the Guest, than out of the Excise of Ale and Beer are drawn out in *Holland*. A strange thing, that People for a publick Work, for any thing that is good, should be loth to part with any thing, and yet, with open Eyes, to see themselves deceived by such base and leud People.

Next unto this, let Care be taken in the Choice of Alehouse-keepers, that it be not appointed to be the Livelihood of a great Family: one or two is enough to draw Drink, and serve the People in an Alehouse; but if six, eight, ten or twelve, must be maintained by Alehouse-keeping, it cannot choofe but be an exceeding Disorder, and the Family by this means is unfit for any other good Work or Employment. I have not Skill enough to understand all the Inconveniencies that come from this one ill Fountain, and my Memory will not contain what I have so many times observed of them myself; but your Lordships have a Knowledge and Experience of them, therefore I will leave them unto you: only this, that because in many Places these swarm by the Default of the Justices of the Peace, that set up too many, and there are none (except your selves at the Assizes) all the Year long can meet with this Evil, but the Justices of the Peace. And if the Justices of Peace will not obey your Charge herein, certify their Default and Names, and I assure you they shall be discharged. I once did discharge two Justices for setting up one Alehouse, and shall be glad to do the like again upon the same Occasion.

In the next place, I will commend unto you the Punishment of Vagabonds and Wanderers; to beguile the Alehouses of such unruly Guests; it would make some Way of Amendment to those Alehouses: and it cannot be deny'd, but the Law hath appointed Hands enough to do this Work; the Constable, Headborough, Tything-men, and the rest of the inferior Officers, and the Watchmen, who may do all with a particular Warrant from the Justices of Peace; and the Justices of the Peace are bound to call them to an Account, and to punish them for their Neglect. If this were done, and other Officers were chosen as they ought to be, not People of little Wealth, and as little Understanding, but that they were elected out of the better sort of Yeomanry, and the Watches kept by able Men, I am sure that these loose People that wander up and down will quickly be gone: therefore you may do well to let it be known in the Country, that the Lords of Leet, and those that have the Elections of Constables and Officers, they are, by the Law, answerable for their Choice. There have been Precedents, that where an insufficient Coroner hath been chosen by a County, the whole County hath been answerable to the King for the Coroner's Fault. And if the Lords of Leet, and their Homagers, and those that make choice of the Constables and Officers, were sometimes awakened by soon seizing of their Leets, or Fine, or *Quo warranto*, I make no doubt, but the Country would be better served many Years after, for some such Service done; therefore

I could wish that this were made known unto the Country, that the Lords, and those that choofe them, were answerable for their Defaults.

Now for bringing loose People in Order, the House of Correction hath need to be looked unto, and be put in readines, that those that are idle may not want Work. *Ducere volentes, trahere nolentes*. And for the Houses of Correction, as it is in some Countries, it were convenient they were placed near the Jail; that not idle Persons only, but the Prisoners of the Jail also might be made to work, and eat the Labour of their own Hands: this, as it hath been formerly, so it is now commended by his Majesty to see it effected so soon as may be.

The binding out of Apprentices is a thing fit to be pressed throughout all your Circuit. Opposition hath been made against it by some, tho' without any Ground or Law: Sometimes the Parents are not willing to leave their Children, tho' they have not Meat to feed them at home; sometimes the Parishioners are not willing to give them Clothes, and those that bind them are negligent; and all these must be overruled, and made smart for their Opposition and Neglect.

In a word, you are to call upon all to whom it belongeth, but especially to the Justices of the Peace, to see his Majesty's printed Order be put in execution. You are to justify your selves, what Justices of the Peace are diligent in it, and who neglect, and so to certify to the Lords of the Council.

I have but one thing more to give you in Charge, and it is a thing of great Weight and Importance; it concerneth the Honour of his Majesty and the Kingdom, and the Safety of both. Christendom is full of War, and there is nothing but Rumours of War: what hath been done of late Years abroad by Fire and Sword, it were a Pity and Grief to think of; yet we have, by the Goodness of God and his Majesty's provident Care, all this while enjoyed a most happy Peace and Plenty. As it is a good Precept in Divinity, so it holdeth in Policy too; *Nunc tua res agitur, jam proximus ardet*: which if we observe, to defend our selves, it would be a Warning to all Nations, and we should be the more assured to enjoy our Peace, if the War abroad do make us stand upon our Guard at home. Therefore no question it hath ever been accounted the greatest Wisdom for a Nation to arm, that they may not be enforced to fight; which is better than not to arm, and to be sure to fight. Therefore his Majesty in these doubtful Times, hath not only commanded, that all the Land-Forces of the Kingdom should be set in order and readines, but to set to Sea a Royal Fleet at his Majesty's great Charge, but with the Assistance of the Maritime Places of this Kingdom.

The Causes and Occasions, and Times of War, with the Preparations and Ordering of them, is proper to the King; and dutiful Obedience in such things does best become the Subject. And yet his Majesty hath vouchsafed, even by his Writ, to declare enough to satisfy all well-minded Men, and to express the Clearness of his Princely Heart, in aiming at the general Good of his Kingdom.

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The Dominion of the Sea, as it is an antient and undoubted Right of the Crown of *England*, so it is the best Security of the Land; for it is impregnable so long as the Sea is well guarded: therefore, out of all question, it is a Thing of absolute Necessity, that the guarding of the Sea be exactly looked unto; and those Subjects whose Minds are most fixed upon the Honour of their King and Country, will with no patience endure to think of it, that this Dominion of the Sea, which is so great an Honour, should be either lost or diminished. Besides, for safety sake, the Dominion of the Sea is to be kept, and the Seas guarded. The Wooden Walls are the best Walls of this Kingdom; and if the Riches and Wealth of the Kingdom be respected for that Cause, the Dominion of the Sea ought to be respected: for else, what would become of our Wool, Lead, and the like, the Prices whereof would fall to nothing if others should be Masters of the Seas? There is a Case in the Book of Assize, *Fol. 43.* which putteth me in mind of certain Men that went down into the Country, and carried a Report, that no Wool should pass over the Sea that Year; upon this Wool fell to so low Prices, that the Men that carried the Report were questioned and fined. And now if a Report alone, and that a false one too, wrought such an Effect upon the Wools in *England*, think what would be wrought by a real Loss of the Dominion of the Sea in all our Commodities, if our Trade should be at the Command of other Princes and States. Therefore, as his Majesty, out of his great Wisdom, hath found it expedient to set to Sea that Fleet that is now upon the Sea; so his Majesty being engaged both in his Honour, and the Honour of the Kingdom, he findeth it to be of absolute necessity to strengthen this with a greater Strength and more Shipping the next Year. Therefore, upon Advice with his Council, he hath resolved, that he will forthwith send forth new Writs for the Preparation of a greater Fleet the next Year, and that not only to the Maritime Towns, but to all the Kingdom besides: For since that all the Kingdom is interested both in the Honour, Safety and Profit, it is just and reasonable that they should all put to their helping Hands.

Now that which his Majesty requireth from you, and doth command, is, That in your Charges at the Assizes, and in all Places else, where Opportunity is offered, you take an occasion to let the People know how careful and zealous his Majesty is to preserve his Honour, and the Honour of this Kingdom, and the Dominion of the Sea; and to secure both Sea and Land by a powerful Fleet, that foreign Nations may see, that *England* is both ready and able to keep itself, and all its Rights. And you are to let them know how just it is, that his Majesty should require this for the common Defence; and with what Alacrity and Cheerfulness they ought, and are bound in Duty, to contribute unto it; that foreign Nations may observe the Power and Readiness of this Kingdom, which will make them slow to contend with us either by Sea or Land, and that will be the best way to confirm unto us a firm and sure Peace.

This is the Substance of all that which I received in Commandment from his Majesty; there are many Things else that concern the Publick, but your Judgments are well versed in them. These are the Particulars I had command to men-

tion unto you, so I will trouble you no further, but leave them to your grave Considerations.

The Speech of Thomas Lord Coventry, Lord-Keeper of the Great-Seal of England, to all the Judges of Assize of England, by Command from the King in the Star-Chamber, Feb. 14. 1636.

Together with the King's Letter and Case, touching Ship-Money, and the Judges Opinions thereupon.

My Lords the Judges,

THE Term being now at an end, and the Assizes at hand, his Majesty hath commanded, That according to the Custom in former Times, so now in this Place you should receive some Directions for the Execution of Justice in all Parts of the Kingdom whereto you resort. This (as it may justly be) is a great Comfort to his Majesty's Subjects, to see his Majesty's Care herein; which as it is a Testimony of their own Happiness, in receiving Justice from the King himself, the Fountain of Justice, so it may as justly add Strength and Encouragement to you when you go your Circuits, not only to be armed with your own Authority by Commission, but with your Prince's Instructions.

In the doing of Justice, you will find Things of several Natures and Degrees: In some Places before you, Communicative Justice beareth sway, as in that which concerns *Meum & Tuum*: In other, Distributive Justice, as in *Premium & Pœnam*; some concern one and a few; others concern the Multitude; others concern the King and all the King's People. In some Pleas Things are brought before you that are *ad nocumentum*, of this or that particular Town; some *ad nocumentum totius Regni*. Some Things are brought before you that are *contra pacem Regis*, and others *contra coronam & dignitatem Regis*; and in this variety of Business, as there are many of a lesser and lower Degree, yet not to be omitted, so you have *Graviora Legis*, upon which you ought to pitch your Mark; *hæc oportet fieri, illa non omitti*.

In that Justice which you are to do between Party and Party, his Majesty doth require you, as in all his Courts here, so in your Circuits to administer impartial Justice, and repress vexatious and wrangling Suits, not worthy the Dignity of your own Persons, and the Court where you sit; for those Actions, as they empty the Spleen on the one side, so they never fail to empty the Purse on both sides.

But besides the doing of Justice between Man and Man, there is much more expected from your Lordships; for the publick Business of the Country is of much more Importance than the Trial of a *Nisi Prius*, and fitting you should esteem them so: And therefore it is his Majesty's Command, That those Services which concern himself and the Publick, may be timely thought of, and not posted off to the End of the Assize.

Now before all Things, the Advancement of Religion and Piety towards God, the Peace of the Church, and the Execution of those Laws that tend to those Ends, ought to have the first Place. As oft as I have had occasion to speak to you

here, I have seldom spared to give you a Charge of the Laws against Recufants; and I must reiterate it now: for if you convict them not in the Country, there is likely to be little Reformation, or Profit to his Majesty; and whosoever they be that will not be found in the Church, it behoveth you that you take order they be found in the *Exchequer*.

In the next place, that you proceed roundly against Capital and Felonious Offenders, especially Robbers on the Highways, who now march in Troops after a high hand. As a good Judge ought in Court to shew Severity to those in the Jail, also the ablest and activest Men in the County, ought to do their utmost Endeavours for the apprehending of those Offenders as are abroad; that when you are there or here in the Term, the Service may proceed in a good Way, and you be made a Terror to Malefactors, as some of your Predecessors have been; for if your Care be not great, Malefactors will abound: therefore you must shew a severe and constant way of Justice when they are found, and it will soon abate their Pride, wherewith they now bear up themselves; and fit it is with an unanimous Consent you agree of one Course; for if there be a Remissness in any one Circuit, it leaveth a way to Malefactors to overthrow all Reformation, and Justice is thereby discouraged.

In the next place, Care must be had of those Laws which concern Luxury and Idleness, the suppressing and punishing of Vagabonds, the ordering and employing of Houses of Correction, the suppressing of Ale-houses and Tipling-houses, and binding out of Apprentices. If these were well and constantly observed, they would save many able Bodies that die miserably at the Gallows, and cut off a multitude of Enormities that peester the Commonwealth, and lessen the Number of Thieves and Robbers; and therefore your Lordships should do well to have a special care of the Execution of those Laws. And this giveth me occasion to put you in mind of those printed Orders published by his Majesty in the Year 1630, wherein at first there was a Direction given for an Account to be made by the Sheriff and Justices of the Peace; this same was orderly kept in divers Places, in others not so well. It was afterwards advised by yourselves, that the way of Account should be changed, and that you should receive it at the Assizes, and present it to the Council-Board; yet it is my part to tell you, that it hath not so appeared by the Account that is come to the Council-Table, and it is expected a better be given by you the next Term.

Now in respect the publick Service dependeth much upon the Justices of the Peace in the County, it will be necessary that you cast your Eye upon them, that they give due Attendance at the Assizes: it is their Duty to do it, and yours to enforce it upon them. An Assize lasteth but a few Days, but the Instructions that they may receive from you in that short time, may be of great use for the County for the whole Year: Also that you examine whether they give due Attendance at the Quarter-Sessions. Altho' there is an express Article in their Oath that they should give it; I hear many neglect it: Therefore it is a Thing very fitting, and well worthy your Labour, that at the Beginning of every Assize, you trust not to the

Clerk of the Peace his Information, but that your selves do cast an Eye upon his Book, and command him to return the Names of such Justices of Peace as you find by his Book were absent at the Quarter-Sessions. Fit it will be that you let them know, that to prefer a Riding, or Bowling, or Hunting-match, before their Attendance at the Quarter-Sessions, is little less than Perjury; and if your Admonition will not serve the turn, a Remedy shall be taken. In the third place, it is necessary for you to inquire how they attend the Monthly Meetings, or other times of publick Service; for this I am sure of, they are all within one Commission, and have the same Oath, and the same Attendance is imposed upon all; and why the greatest Number exempt themselves, and leave the publick Service upon a few, I know not; but if I may know the particular Men (of which I hope I shall henceforward by your Lordships) I shall rid them out of Commission, and put others in their Places.

My Lords, I have but one Particular more, and that is of great Importance; whereof by special Direction and Command from his Majesty, I am to speak unto you at this time. All of you are the Witnesses of his Majesty's Proceedings, tho' the Candour and Clearness of his own Heart, exceedeth your Testimony, and your Testimony is not only fit to be declared in this Place, but in all the Places of this Realm.

His Majesty hath now the third time sent forth Writs* to require the Aid of his Subjects for the guarding of the Dominion of the Sea, and Safety of the Kingdom. This his Majesty did upon great Deliberation and Advice, and upon important and weighty Reasons. In the first Year when the Writs were directed to the Ports and Maritime Places, they received little or no Opposition; but in the second Year, when they went generally thro' out the Kingdom (tho' by some well obeyed) have been refused by some, not only in some Inland Counties, but in some of the Maritime Places; and Actions have been brought against some that have been employed in the execution of these Writs. I suppose that no Man will expect that *Arcana Regni*, the private Reasons of a Prince, should either upon this or other Occasions be made publick; but so many Reasons as were fit to be opened, were formerly declared by me in this place to you the Judges of this Realm.

The *First* was, That the whole Kingdom is concerned in point of Safety; admitting there were no other Counsel or Attempt against us, but only to interrupt us in the Dominion of the Seas, our most secure and safe Defence, better either than Castles or Forts; which if it be commanded by others, it lays us open to much Peril and Danger.

Secondly, The whole Kingdom is concerned in point of Honour: for it is one of the most ancient and honourable Rights of the Crown of *England*, even the Dominion of the Sea. And all Records do shew, how the Kings and People of *England* have ever been careful that this Honour should never perish: and certainly the whole Kingdom is concerned in point of Trade and Profit; for the Traffick does not only enrich the Maritime Parts, but the Inland Towns; and if Trading fail, the Inland Places will find it in the fall of the Prices of Wool, Lead, and other Staple Commodities. This Experience sheweth daily, when upon every Stop of the vent of Cloth, there come such Out-

cries

* See the particular Taxation in Rush. Col. Vol. 2. p. 453.

cries by the Weaver, the Fuller, the Spinner and Wool-growers themselves; and the Authority of the Law sheweth the same: 43. in the Book of Assize, which your Lordships know better than I, it appears that certain Men went into the Country, and cast out a Fame, that for that Year no Wool should be transported beyond the Seas; presently upon this the price of Wool fell, and those Men were called in question, and were adjudged in a Fine for it. Now if a Rumour did so much abate the Trade in the Heart of the Kingdom, what would the Loss of the Dominion of the Sea do, which exposeth us, and all our Trade, to the Mercy of our Neighbours? Therefore since the whole Kingdom is concerned in point of Honour, Safety, and Profit, what Reason is there but that all should contribute to the Maintenance of it? This, or to the like Effect, I did formerly declare to you the Judges, by his Majesty's Command; and his Majesty received Satisfaction, in that you made a full Declaration thereof in your Circuits: and this I may say, for the most part the Subjects have shewed themselves most dutiful and obedient in this Service of his Majesty; and this Year the Sum imposed upon the County of *York*, being twelve thousand Pounds, is brought in already by the Sheriff, and so is most part of *Lancashire*, and other Shires: but when his Majesty heard of some Refusals, tho' he had Cause to be sensible of it, yet he was far from being transported with Passion, but thought good to resort to the Advice of you his Judges, who are sworn to give him faithful and true Counsel in that which pertaineth to the Law; and this his Majesty, as well for the Direction of his own Course, as for the Satisfaction of his Subjects, required you to deliver your Opinions herein, to which you returned an Answer under your Hands. And because the Command which you received from the King, is expressed in a princely Letter under his own Signature, I shall not take upon me to repeat it, you shall hear it read.

Which being delivered by my Lord-Keeper to one of the Clerks in Court, was read in hæc Verba.

CAROLUS Rex,

TRUSTY and Well-beloved, we greet you well. Taking into our Princely Consideration, that the Honour and Safety of this our Realm of *England*, the Preservation whereof is only intrusted to our Care, was, and is now more nearly concerned than in former Times, as well by divers Counsels and Attempts, to take from us the Dominion of the Sea, of which we are sole Lord and rightful Owner; the Loss whereof would be of greatest Danger and Peril to this Kingdom, and other our Dominions: We, for avoiding these and the like Dangers, well weighing with ourselves, that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, there the Charge and Defence ought to be borne by all the Realm in general; did, for prevention of so publick a Mischief, resolve with our selves to have a royal Navy provided, that might be of Force and Power, with Almighty God's Blessing and Assistance, to protect and defend this our Realm and our Subjects therein, from all such Perils and Dangers; and for that purpose We issued forth Writs under our Great Seal of *England*, and directed to all our Sheriffs of all our several

Counties of *England* and *Wales*, commanding thereby all our said Subjects, in every City, Town and Village, to provide such a Number of Ships, well-furnished, as might serve for this our Royal Purpose; and which might be done with the greatest Equality that could be. In Performance whereof, tho' generally throughout all the Counties of this our Realm, we have found in our Subjects great Chearfulness and Alacrity, which we graciously interpret as a Testimony, as well of their dutiful Affections unto us, and to our Service, as the Respect they have to the Publick, which well becometh every good Subject; nevertheless finding that some few, haply out of Ignorance what the Laws and Customs of this our Realm are, or out of a Desire to be eased and freed in their Particulars, (how general soever the Charge ought to be) have not yet paid and contributed the several Rates and Assessments that were set upon them, and foreseeing, in our Princely Wisdom, that from hence divers Suits and Actions are not unlikely to be commenced and prosecuted in our several Courts at *Westminster*: We, desirous to avoid such Inconveniencies, and out of our Princely Love and Affection to all our Subjects, being willing to prevent such Errors as any of our loving Subjects may happen to run into, have thought fit, in a Case of this Nature to advise with our Judges, who we doubt not are all well studied and informed in the Right of our Sovereignty. And because the Trials in our several Courts, by the Formality in Pleading, will require a long Protraction, we have thought it expedient, by this our Letter directed to you all, to require your Judgments in the Case, as it is set down in the inclosed Paper, which will not only gain Time, but also be of more Authority to over-rule any prejudicate Opinions of others in the Point.

Given under our Signet at our Court at White-hall, the Second Day of February, in the Twelfth Year of Our Reign. 1636.

This being thus Read, the Lord-Keeper commanded the Case inclosed to be read, being as followeth.

CAROLUS Rex,

WHEN the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger; Whether may not the King, by Writ under the Great Seal of *England*, command all the Subjects of this Kingdom, at their Charge, to provide and furnish such Number of Ships, with Men, Victuals and Munition, and for such Time as he shall think fit, for the Defence and Safeguard of the Kingdom, from such Danger and Peril; and by Law compel the doing thereof in case of Refusal or Refractoriness? And whether, in such a Case, is not the King sole Judge, both of the Danger, and when and how the same is to be prevented and avoided?

The Judges Answer.

May it please Your Most Excellent Majesty,

WE have, according to your Majesty's Command, every Man by himself, and all of us together, taken into Consideration, the Case
and

and Question, signed by your Majesty, and inclosed in your Royal Letter: And We are of Opinion, That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, your Majesty may, by Writ, under the Great Seal of *England*, command all the Subjects of this your Kingdom, at their Charge, to provide and furnish such Number of Ships, with Men, Munition, and Victuals, and for such Time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom from such Danger and Peril: And that by Law your Majesty may compel the doing thereof, in case of Refusal or Refractoriness. And we are also of Opinion, That in such Case, Your Majesty is the sole Judge, both of the Danger, and when, and how the same is to be prevented and avoided.

<i>Jo. Brampton,</i>	<i>Rich. Hutton,</i>	<i>Geo. Vernon,</i>
<i>Jo. Finch,</i>	<i>W. Jones,</i>	<i>Fra. Crawley</i>
<i>Hump. Davenport,</i>	<i>Geo. Croke,</i>	<i>Rob. Berkley,</i>
<i>Jo. Denham,</i>	<i>Tho. Trevor,</i>	<i>Fra. Weston.</i>

The said Case, with the Judges Opinions thereunto, (formerly in private deliver'd to his Majesty) being thus publickly made known by my Lord-Keeper, who, withal, caused their several Names to be read, as they were in order subscribed; (all the Judges being present save only Judge *Croke*) the Lord-Keeper spake as followeth.

My Lords,

This being the Uniform Resolution of all the Judges of *England*, with one Voice, and set under their own Hands; I say, this being so resolved, as they do hereexpress upon every Man's particular studying the Case, and upon a general Conference amongst themselves, it is of very great Authority: for the very Lives and Lands of the King's Subjects are to be determined by these Reverend Judges; much more a Charge of this Nature, which God knows cannot be burdensome to any, but is of singular Use and Consequence, and for the Safety of the whole Kingdom. The Command from his Majesty is, that I should publish this your Opinion in this Place, and give Order, That it should be entered in this Court, in the High-Court of *Chancery*, and in the Courts of *King's-Bench*, *Common-Pleas*, and *Exchequer*; for this is a Thing not fit to be kept in a Corner: And his further Command is, that You the Judges do declare and publish this general Resolution of all the Judges of *England*, thro' all Parts of the Kingdom, that all Men may take notice thereof, and that those his Subjects which have been in an Error, may inform themselves, or be reformed. You have great Cause to declare it with Joy, and you can hardly do it with Honour enough to the King, that in so high a Point of his Sovereignty, he hath been pleased to descend, and to communicate with you his Judges; which sheweth, that Justice and Sovereignty, in his Majesty, dokiss each other. His further Pleasure is, That you let all know it is not his Purpose by this Resolution to stop, or check, the Actions or Suits which any have brought, or shall bring, concerning this; for it is his Majesty's Command, that all such as proceed in any Action about the same, have equal and meet Justice, and that they be suffered to proceed in Course of Law, so as you call the King's Learned Counsel

unto their Proceedings, that they may not be surprized.

Now, my Lords, I have little more to say, but this I am sure of, that if any contrary Opinion shall yet remain amongst Men, it must proceed from those that are Sons of the Law, (*Felices essent artes*, &c.) and you the Judges of the Realm have been accounted the Fathers of the Law; then, in good Faith, it will ill become the Son to dispute against the Father. Having thus delivered unto You, what I received in Command from his Majesty, as his Majesty doth, so do I, leave it to your Judgments.

By Writ. Of the Term of the holy Trinity, in the 13th Year of King Charles.

Memorandum; that the Writ of our Lord the King under the Seal of the *Exchequer*, by the consent of the Barons here, issued out in these words.

‘ *ff. Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Bucks* greeting. Whereas several and divers Sums of Money, specified in the Schedule to this Writ annexed, by virtue of our Writ under our Seal of *England*, bearing Date the fourth Day of *August* in the eleventh Year of our Reign, were assessed and charged upon several Persons in the said Schedule named, for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging, in the said Writ particularly mentioned; which said several Sums of Money being so assessed and charged, and unpaid and not satisfied, the Names of the said several Persons, together with the several Sums of Money charged upon them, were certified into the Court of our *Chancery* by our Writ of *Certiorari*, bearing Date the ninth Day of *March* in the 12th Year of our Reign, issuing under our great Seal aforesaid: And by our Writ of *Mittimus* under the said Seal, bearing Date the 5th Day of the Month of *May* Instant, were sent into our *Exchequer* for further Process thereupon to be had, as by the Tenor of the said Writ, bearing Date the 4th Day of *August* in the 11th Year of our Reign, and by the Writ of *Certiorari*, and Certificates thereupon made, sent into our said *Exchequer*, and there of Record, remaining in the Custody of our Remembrancer, more fully doth appear: We command you, that you do not, by reason of any Liberty, omit entering thereupon; and by good and lawful Men of your Bailiwick, make known to the several Persons aforesaid, named and specified in the said Schedule, that they appear before the Barons of the *Exchequer* at *Westminster* on the Octave of the Holy Trinity ensuing; to shew and propose, if they have or know any thing to say for themselves, why they ought not to be charged with the aforesaid several Sums of Money upon them assessed in manner and form aforesaid, and not paid, in the said Schedule specified, and to satisfy the same; and further, to do and receive in the Premises, what our Court shall then there think fit to be ordered; and there bring then this Writ, and the Names of those by whom you have so made known unto them. Witnesses *Humphry Davenport*, Knt. at *Westminster*, the 22d Day of *May*, in the 13th Year of our Reign. *By the Roll.*

Memorandum of the same Year of the King in the Record Roll of this *Easter*, and by the Barons *Fenshaw*, and the Tenour of the aforesaid Schedule in the aforesaid Writ mentioned as touching *John Hampden*, followeth in these words, *viz.* A Schedule of the Names of certain Persons in the County of *Bucks*, and of certain Sums of Money upon them assessed, and charged for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging; by the virtue of a certain Writ under the Great Seal of *England*, bearing Date the 4th Day of *August* in the 11th Year of *Charles* our now Lord the King, and certified in to the Court of *Chancery* of our said Lord the King to be unpaid, by virtue of a Writ of *Certiorari*, issuing out under the Seal aforesaid, bearing Date the 9th Day of *March* in the 12th Year of his Reign; and by Writ of *Mittimus* under the said Seal sent into the *Exchequer* of our said now Lord the King, for further Process thereupon to be made, as by the Tenour of the aforesaid Writ, bearing Date the 4th Day of *August* in the aforesaid 11th Year of our said now Lord the King, and by the Writ of *Certiorari*, and the Certificates thereupon made sent into the said *Exchequer*, and there of Record remaining in the Custody of the Remembrancer of our Lord the King, more fully doth appear: *ff. Stoake Mandivile, ff. J. Hampden Esq; 1 l.* At which Day *Anthony Chester* Bart. Sheriff of the County aforesaid, as touching the aforesaid *John Hampden*, returned, that he by *Nicholas Aris, Robert Alexander, Richard Harrison, and William Heyborne*, good and lawful Men of his Bailiwick, made known to the aforesaid *John Hampden* amongst other things, that he appear before the Barons within written, at the Day and Place within contained; to shew and propose, if he hath or knoweth of any thing to say for himself, why he ought not to be charged with the aforesaid Sum upon him assessed, and not paid, in the said Schedule specified, and to satisfy the same, as it is further commanded him. And now, that is to say, from the Day of the Holy Trinity, upon three Weeks the aforesaid *John Hampden* in the aforesaid Schedule named, here cometh in his proper Person, and prayeth *Oyer* of the Writ of *Scire Facias* aforesaid, the Return of the same, and the Schedule unto the same annexed, and they are read unto him. He likewise prayeth *Oyer* of the aforesaid Writ, bearing Date the 4th Day of *August* in the 11th Year of *Charles* our said now Lord the King in the Writ of *Scire Facias* mentioned, and it is read unto him in these Words, *ff. Charles*, by the Grace of God, of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. To the Sheriff of our County of *Bucks*, the Bailiff and Burgeses of the Burrough and Parish of *Buckingham*, the Mayor, Bailiff, and Burgeses of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, and the good Men in the said Burroughs, Parish, and their said Members; and in the Towns of *Agmondesham, Wendover, and Great Marlowe*, and in all other Burroughs, Villages, Hamlets, and other Places in the said County of *Bucks*, greeting. Because we are given to understand, that certain Thieves, Pirates, and Sea-Robbers, as well *Turks*, Enemies of Christianity, as others confederated together, wickedly take away and despoil the Ships, Goods, and Merchandizes,

not only of our Subjects, but also of the Subjects of our Allies upon the Sea, which of old used to be defended by the *English* Nation; and at their pleasure have carried away the Men therein, enslaving them in a most wretched Captivity: And whereas we see them daily preparing Shipping further to annoy our Subjects, and to aggrieve the Kingdom, unless a more speedy Remedy be applied, and their Endeavours more vigorously obviated: Considering also the Dangers which every where in these Times of War hang over us; so that it behoves us and our Subjects to hasten the Defence of the Sea and Kingdom with all possible Expedition: We being willing by the help of God, in the highest degree to provide for the Defence of the Kingdom, the Protection of the Sea, the Security of our Subjects, the safe Convoy of Shipping and Merchandize coming to our Kingdom of *England*, and going from the said Kingdom to foreign Parts: And since we and our Progenitors, Kings of *England*, have hitherto been Lords of the Sea aforesaid; and it would in the highest manner concern us, if this Royal Honour should in our days be lost, or any ways diminished; since also this Burden of Defence which touches all, ought to be born by all, as hath been accustomed to be done by the Law and Custom of the Kingdom of *England*: We firmly enjoin and command you the aforesaid Sheriff, Bailiffs, Burgeses, Mayor, good Men, and all others whomsoever above-mentioned, in the Burroughs, Towns, Villages, Hamlets and Places aforesaid, and their Members, in the Faith and Allegiance whereby you are bound to us, and as you love us and our Honour, as also under the forfeiture of all things you can possibly forfeit to us, that you cause to be fitted out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well skilful Officers as able and experienced Mariners, a hundred and fourscore at least; as also with a sufficient quantity of Cannon, Muskets, Gunpowder, Pikes and Spears, and other Arms necessary for War, with double Tackling; as also with competent Victuals for so many Men, until the 1st Day of *March* now next ensuing; and from thence for six and twenty Weeks at your Costs, as well in Victuals, as the Men's Wages, and other things necessary for War by that time, on account of defending the Sea at our Command in Company with the Admiral; to whom we shall before the aforesaid first Day of *March*, commit the Custody of the Sea, to be and remain where he on our behalf shall appoint; and that you cause the same to be brought into the Port of *Portsmouth* before the said first Day of *March*, so that they may be there that Day at farthest; thence to proceed with our Ships, and the Ships of other loyal Subjects for the Protection of the Sea, the Defence of you and yours, to repel and vanquish all those whosoever they are, that endeavour to molest and annoy on the Sea our Merchants and other loyal Subjects aforesaid, coming into our Dominions on account of Traffick, or returning thence to their own Country. We have also appointed you the Sheriff of our County of *Bucks*, the Bailiff and Mayor of the Burroughs and Parish aforesaid, or any two or more of you, of whom our Will is, that you the aforesaid Sheriff of our County of *Bucks* be one, within thirty days after the Receipt of this Writ,

to assess as much of the Charges aforesaid upon the aforesaid Burroughs of *Buckingham* and *Chipping Wiccombe* alias *Wiccombe* with their Members, as ought severally to be laid on or assessed. And if such Assessment within the aforesaid thirty days shall not happen to be made by you, two or more of you; then we have appointed you the aforesaid Sheriff of our County of *Bucks*, to make such Assessment upon the aforesaid Burroughs, and Parish, and Members, as you shall see reasonable to be done. And our Will is, that of your so doing, you the aforesaid Sheriff of *Bucks*, wholly certify under your Seal the Mayor and Bailiffs aforesaid. We have also appointed you the aforesaid Bailiff of the Burrough and Parish of *Buckingham*, to assess every Man in the said Burrough and Parish, and in the Members thereof, and the Land-Tenants in the same, not having the Ship aforesaid, or any Share thereof, or not serving therein, to contribute to the Expences about Provision of the necessary Premises; and to assess and lay upon the aforesaid Burrough and Parish with the Members thereof, so as aforesaid, that is to say, every one of them according to their Estate, Goods, and Employment, and the Portions on them assessed by Distresses, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint; and all those whom you shall find rebellious and refractory in the Premises to imprison, there to remain till for their Delivery we shall further think fit to direct. We have also appointed you the aforesaid Mayor of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, to assess every Man in the same Burrough, and in the Members thereof, and the Land-Tenants in the same, not having the Ship aforesaid, or any Share thereof, or not serving therein, to contribute to the Expences about Provision of the necessary Premises; and to assess and lay upon the aforesaid Burrough with the Members thereof, so as aforesaid, that is to say, every one of them according to their Estate and Goods, or Employment, and the Portions on them assessed by Distresses, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint; and all those whom you shall find rebellious and refractory in the Premises to imprison, there to remain till for their Delivery we shall

further think fit to order and direct. And further, we command you all, that you diligently apply your selves to the Premises, and effectually do and execute the same, as you shall answer the contrary at your Peril. But our Will and Pleasure is, not that under Colour of our Mandate aforesaid, you cause to be levied from the said Persons more than shall suffice for the necessary Expences of the Premises; or that any one who shall levy any Money of the Contributors to the Charges aforesaid, detain the same or any Part thereof in his own Possession, or presume to appropriate it to other Uses under any Pretence or Colour whatsoever. It being our Will, that if more shall be collected than is sufficient, that the same be paid back again to those who shall have so paid the same, according to every Man's respective Share and Proportion. Witness my self at *Westminster* the 4th Day of *August* in the 11th Year of our Reign. He prayeth also Oyer of the aforesaid Writ of *Scire facias* above mentioned, and it is in like manner read unto him. ff *Charles*, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To those who were Sheriffs of our County of *Bucks* between the 4th Day of *August*, in the 11th Year of our Reign, and the first Day of *March* then next ensuing, to those who were Bailiffs of the Burrough and Parish of *Buckingham*, and the Mayor and Bailiffs of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, in the said County of *Bucks* within the time aforesaid, greeting. Whereas by our Writ made under our Great Seal of *England*, bearing Date the aforesaid 4th Day of *August* in the 11th Year aforesaid, for the Defence of the Kingdom, the Protection of the Sea, the Security of our Subjects, and the safe Convoy of the Ships and Merchandize coming to our Kingdom and passing thence to foreign Parts; we commanded the Sheriff of our County of *Bucks*, the Bailiff of the Burrough and Parish of *Buckingham*, as also the Burgeses of the said Burrough, the Mayor and Bailiffs of *Chipping Wiccombe* alias *Wiccombe*, as also the Burgeses of the said Burrough, and the good Men in the said Burroughs and Parish, and in the said Burroughs and Parish and Members of the same, and in the Towns of *Agmondesham*, *Wendover*, and *Great Marlow*, and in all other Places, Towns, Burroughs, Villages, Hamlets, and other Places in the said County of *Bucks*, that you should cause to be fitted out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well skilful Officers, as able and experienced Mariners a hundred and fourscore at least, as also with a sufficient Quantity of Cannons, Muskets, Pikes and Spears, Gunpowder, and other Arms necessary for War, with double Tackling, as also with competent Victuals for so many Men, at a certain Day in the said Writ contained, and from thence for six and twenty Weeks at the Costs of the Men and Land-Tenants of the Burroughs, Parish, Towns, Villages, Hamlets, and other Places above mentioned in the said County of *Bucks*, as well in Victuals, as the Men's Wages, and other things necessary for War, by that time, for defending the Sea; and that you should cause the same to be brought into the Port of *Portsmouth* within the time in the said Writ limited. And whereas by the said Writ, we appointed the Sheriff of our County of *Bucks* aforesaid, the Bailiff of the Burrough

rough and Parish of *Buckingham* aforesaid, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe* aforesaid, or any two or more of them, of whom our Will was that the Sheriff of our said County of *Bucks* should be one, to assess as much of the Costs aforesaid, upon the aforesaid Burrough and Parish of *Buckingham*, and upon the aforesaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, with their Members, as ought severally to be laid on, or assessed. And whereas we appointed the Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, severally and respectively to assess every Man in the said several Burroughs and Parish, and the Members thereof, and the Land-Tenants in the same, not having the Ship aforesaid or any Share thereof, or not serving therein, to contribute to the Expences about the Provision of the necessary Premises: And upon the aforesaid Burrough and Parish of *Buckingham*, and upon the aforesaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, so as aforesaid, then to be severally and distinctly laid, that is to say, every one of them according to their Estate and Goods, or Employment, and the Portions upon them assessed by Distresses, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint, in Manner and Form as in the said Writ was commanded. And whereas, by our said Writ we moreover appointed the Sheriff of our said County of *Bucks*, to assess every Man in the aforesaid Towns of *Agmondesham*, *Wendover*, *Great Marlowe*, and in the Members thereof, and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the aforesaid County of *Bucks*, and the Land-Tenants in the same, to contribute to the Expences about the Provision of the necessary Premises, and the other things to do and execute in Manner and Form as by the said Writ was commanded. And because some Men and Land-Tenants in the said County, Burroughs, Parish, Towns, Villages, Hamlets, and other Places, by several Taxations, and Sums of Money, by you upon them respectively laid and assessed towards the Contribution of the Burden aforesaid, according to the Exigency of the Writ aforesaid, have not yet paid and satisfied the same, but have refused and yet gainsay to pay the same, as we are informed. And whereas our late Will was to be certified as well of the Names of the Men and Land-Tenants who had been assessed towards the Contribution of the Expences aforesaid, and had not paid the Money so assessed, as also of the several Portions or Sums of Money laid upon them. You nevertheless in contempt of us, have sent nothing upon the Return of our Writ limited. We therefore command you, the late Sheriff of our County of *Bucks*, as we heretofore have commanded you, that you certify to us, as well of the Names of the Men, and Land-Tenants, in the aforesaid County, by virtue of our said Writ by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money, by you the aforesaid late Sheriff of our County of *Bucks* upon them assessed, reduced into Writing, with all things touching the same, into our Chancery, distinctly and openly, under your Seals,

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without delay, or at farthest before the six and twentieth Day of *April* next ensuing, wheresoever you shall then be, together with this Writ. And we command you the aforesaid late Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, as we heretofore have commanded you, that you severally certify us, as well of the Names of the aforesaid Men and Land-Tenants in the Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, by virtue of our said Writ first above mentioned by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money by you upon them respectively assessed, reduced in like manner into Writing, with all things touching the same, into our Chancery aforesaid, distinctly and openly without delay, or at farthest before the six and twentieth Day of *April* next ensuing, wheresoever you shall then be, together with this Writ. Witness my self at *Westminster*, the ninth Day of *March*, in the twelfth Year of our Reign. *EYRE*. At which Day, *Peter Temple* and *Heneage Proby* return'd the aforesaid Writ, by Indorsement, thus, ff. The Execution of this Writ appears in certain Schedules to this Writ annexed. The Tenor of which Schedules as to the aforesaid *John Hampden* return'd by the aforesaid *Peter Temple*, follows in these Words. ff. *Bucks*, ff. I. *Peter Temple* Knight and Baronet, who was Sheriff of the County of *Bucks*, that is to say, between the 4th day of *August*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, &c. and the twenty second Day of *February* then next following; on which Day I went out of my Office of Sheriff of the County of *Bucks* aforesaid; by virtue of the said Writ of our Lord the King to this Schedule annexed, do certify unto our said Lord the King into his Chancery, that by virtue, and according to the Exigency of the Writ of our said Lord the King issued out of his Chancery, and there inrolled of Record, and, amongst others, directed to the Sheriff of the said County of *Bucks*, bearing Date the fourth Day of *August*, in the eleventh Year aforesaid; have assessed upon several Men and Land-Tenants of the County of *Bucks* aforesaid, whose Names are underwritten, the several Portions and Sums of Money at their particulars placed below, to contribute to the Expences about the providing of the Ship in the said Writ mentioned; which said Portions and Sums of Money, or any parcel thereof, before my going out of my Office of Sheriff of the County aforesaid, the said Men and Land-Tenants, or any of them whose Names are under-written, have not paid, but have refused to pay the same to my Hands, or the Hands of the Collector by me in that behalf appointed, by virtue of the Writ last mentioned, viz. *Stoake Mandiville*, ff. Mr. *John Hampden*, Esq; 1 l. And the Tenure of the other Schedule by the aforesaid *Heneage Proby* in like manner returned, and to the said Writ annexed also, follows in these Words: ff. *There is to be accompted upon by the Assessors, High Constables, Petty Constables within the said County in general, which cannot be accompted for by Sir Peter Temple, being as it is conceived short four Pounds.*

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‘ I *Heneage Proby* Esq; who was Sheriff of the County of *Bucks*, between the twenty-second Day of *February*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, &c. and from the said Day and Year, to the first Day of *March* then next following; by virtue of the Writ of our said Lord the King to this Schedule annexed, do certify unto our said Lord the King into his *Chancery*, that the Men and Land-Tenants of the County of *Bucks* aforesaid, or any one of them whose Names are expressed in certain Schedules to this Writ annexed, who were assessed by Sir *Peter Temple* Knight and Baronet, late Sheriff of the County of *Bucks* aforesaid, whilst he was in the Office of Sheriff of the County aforesaid, in the several Portions and Sums of Money placed at their several Names above, to contribute to the Expences about the providing of the Ship; by virtue, and according to the Exigency of the Writ of our said Lord the King, issued out of his *Chancery*, and there inrolled of Record, directed amongst others to the Sheriff of the said County of *Bucks*, bearing Date the fourth Day of *August*, in the eleventh Year aforesaid, have not paid, but have refused to pay the same to *Heneage Proby* being Sheriff of the said County of *Bucks*, next after the going out of Sir *Peter Temple* Knight and Baronet, from the Office of Sheriff of the said County, or to the Hands of the Collector in that behalf appointed by virtue of the Writ last mentioned. And further, the aforesaid *John Hampden* in like manner prayeth Oyer of the aforesaid Writ of *Mittimus*, of which mention is made in the Writ of *Sciri Facias* aforesaid, and it is read unto him in these Words: *ff Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To the Treasurer and Barons of his *Exchequer*, Greeting: By the tenor of a certain Writ of ours made under our Great Seal of *England*, bearing Date the fourth Day of *August*, in the eleventh Year of our Reign, inrolled in the Rolls of our *Chancery*; by which we commanded the Sheriff of our County of *Bucks*, the Bailiff and Burgessees of the Burrough and Parish of *Buckingham*, the Mayor or Bailiff and Burgessees of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and the good Men in the said Burroughs, Parish, and the Members thereof, and in the Towns of *Agmondesham*, *Wendover*, and *Great Marlow*; and in all other Burroughs, Towns, Villages, Hamlets, and other Places in the said County of *Bucks*; that for the Defence of the Kingdom, the Protection of the Sea, the Security of the Subjects, and safe Convoy of the Ships and Merchandize coming to our Kingdom of *England*, and thence going to foreign Parts, they should fit out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well skilful Officers, as able and experienc’d Mariners a hundred and fourscore at least: as also with a sufficient Quantity of Cannons, Muskets, Gunpowder, Pikes and Spears, with other Arms necessary for War, and with double Tackling; as also with competent Victuals for so many Men, at a certain Day, and from thence for six and twenty Weeks at the Costs of the Men and Land-Tenants of the Burroughs, Parish, Towns, Villages, Hamlets, and other Places above mentioned in the said County of *Bucks*, as well in Victuals as the

Men’s Wages, and other things necessary for War for that time, on account of the Defence of the Sea under our Command, in Company of the Admiral to be and remain; and that they should cause the same to be brought into the Port of *Portsmouth* about the time limited in the said Writ; and that they should respectively assess every Man in the said Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the rest of the Burroughs, Towns, Villages, Hamlets, and other Places in the said County of *Bucks*, and the Members thereof, and the Land-Tenants in the same, to contribute to the Expences about the Provision of the necessary Premises, and other things to do and execute in Manner and Form as was commanded by the said Writ: We send to you being present the inclosed Writ; for that the Safety of our Kingdom of *England*, and our People thereof were in Danger, which we have taken care to have issued out of our *Chancery* amongst other Writs to make such Provision and Assessment thro’ every County, City, Burrough, Town, Village, Hamlet, and Places of our Kingdom of *England*, and of *Wales*, and the Members thereof, out of our *Chancery* aforesaid lately issuing, and there in like manner inrolled. And also a certain other Writ of ours to certify us into our *Chancery*, as well of the Names of the Men and Land-Tenants in the aforesaid Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the rest of the Burroughs, Towns, Villages, Hamlets, and Places of the said County of *Bucks*, who by our Command aforesaid were assessed to contribute towards the Provision of the Premises, and have not paid the Sums of Money upon them so assessed; as also of the several Portions and Sums of Money so charged and laid upon the said Men and Land-Tenants; as likewise certain Certificates by virtue of the said Writ reduced in writing, and sent into our *Chancery*. We also send you being present the inclosed, commanding you, that having inspected the Writs and Certificates aforesaid, you further cause to be done thereupon for the levying, collecting, and receiving all and singular the aforesaid Sums of Money of the aforesaid Contribution as yet unpaid, as by Right, and according to the Law and Custom of our Kingdom of *England* hath been used to be done. Witness myself at *Westminster* the fifth Day of *May*, in the thirteenth Year of our Reign. *E T R E*. As in the said Writs and Schedules thereunto annexed, certified into the *Exchequer* of our said Lord the King, and there in the Custody of the Remembrancer of our said Lord the King remaining of Record, more fully is contained. Which being read, heard, and by him understood, the said *John Hampden* complaineth, that by colour of the several Writs, their Returns and Schedules to them annexed, he hath been grievously vexed and disquieted, and that unjustly; because he saith, that the aforesaid several Writs above mentioned, their Returns and Schedules to them annexed, and the Matter in them contained, are not sufficient in the Law to charge the said *John Hampden* on or with the payment of the aforesaid Sum of twenty Shillings on him in the Schedule aforesaid, in the manner and form aforesaid taxed and assessed, or any Parcel thereof; to which he hath no necessity,

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or is obliged by the Law of the Land to make Answer: Whereupon by reason of the Insufficiency of the aforesaid several Writs above-mentioned, their Returns, the Schedules to them annexed, and the Matter in the said Writs and Schedules contained, he the said *John Hampden* prayeth Judgment, If our said now Lord the King ought, or is willing further to assess or charge him with the aforesaid twenty Shillings, or any Parcel thereof.

ROB. HOLBORNE.

And *John Banks* Knight, Attorney-General of our now Lord the King, who sueth for our said Lord the King, being present here in Court, the same Day in his proper Person, saith, that the aforesaid several Writs, and their Returns, and the Schedules aforesaid to the same annexed, and the Matter in the same contained, are sufficient in the Law to charge the aforesaid *John Hampden* with the aforesaid twenty Shillings upon him assessed in the Form, and for the Cause aforesaid; which said Matter, he the said Attorney-General of our said Lord the King, for and in behalf of our said Lord the King, is ready to verify; and which Matter the aforesaid *John Hampden* doth not deny, nor any wise make Answer thereunto, but wholly refuseth to admit the Verification thereof, and therefore prayeth Judgment; and that the aforesaid *John Hampden* be charged with the said twenty Shillings, and satisfy the same.

JOHN BANKS.

The First Day's Argument of Mr. St. John, on the Behalf of Mr. Hampden, before all the Judges in the Exchequer-Chamber, in the great Case of Ship-Money.

May it please your Lordships,

PASCH' xiiij^o Car' a *Sciri Facias* issued to the Sheriff of Bucks, reciting, that whereas several Sums of Money mentioned in a Schedule to that Writ annexed, by a Writ under the Great Seal of England, dated 4^{to} Augusti 11 Car' sealed upon several Persons for providing of a Ship of War, were not paid: And that upon a *Certiorari* dated 9^{no} Martij 13 Caroli, these Sums and the several Persons upon whom they were assessed, were certified into the Chancery, and from thence by *Mittimus* dated 5^{to} Maij, were sent into the Exchequer, that Process might be issued against these Defaulters: Thereupon the Sheriff is commanded, *Quod sciri faceret* to those several Persons to appear in the Exchequer Octab' Trinitat' 13 Caroli, to shew Cause why they should not pay those Sums assessed upon them.

The Sheriff returns, *Quod sciri fecit John Hampden* Esq; who was assessed at 20 s. and he hath not paid it. Mr. *Hampden* hath appeared and demanded Oyer of the *Scir' fac'* of the Schedule of the Writ dated 4^{to} Augusti, the *Certiorari* and the *Mittimus*, and of their several Returns, and hath thereupon demurred in Law.

The Writ dated 4^{to} Augusti 11 Car' because it is the Ground of the issuing forth the *Sci fa'*, and so by necessary Consequence, is that which first occasioned any Process against him, it will be the Subject from whence will be fetch'd all that shall be said either for or against my Client. I will endeavour by breaking it into Parts, more clearly to present it to your Lordships View.

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The Thing commanded is, that this County should provide a Ship of War of 450 Tuns, with 180 Men, Guns, Gunpowder, double Tackling, Victuals, and all other things necessary, and to bring her to *Portsmouth* by the first of *March* following, and from that time to provide her of Victuals, Mariners Wages, and all other Necessaries for six and twenty Weeks. For effecting this, there is Power given to assess each Person within the County *secundum Statum & Facultates*, and to bring in these Sesses by Distress, & *quos Rebelles invenirent* to imprison their Persons.

My Lords, if the Writ had staid here, and gone no further, the Command tho' full in Word, it had been void in Law, because as yet it appears not for what End this Ship was to be provided. 40 *Aff. Plow.* A Commission to seize Mens Goods notoriously suspected of Felony, before Conviction, adjudged void, because therefore the Command, without Cause shewn, and that sufficient in Law too, would be void.

In the second Place therefore they are set down to be these: *Pro Defensione Regni, Tutitione Maris, Securitate Subditorum, & salva Conduetione Navium*, both outward and inward, the Sea being infested with Pirates, and more Shipping being daily prepared *ad Regnum gravandum*; these are the Ends.

In the third Place, the Legality of it, that every Man *secundum Statum & Facultates* should be hereunto assessed, is thus enforced. First, from Custom and continued Use, in these Words; That the Sea per Gentem Anglicanam ab olim defendi consuevit. And Secondly, this Use proved to be from a common ground of Equity; *Onus defensionis, quod omnes tangit, per omnes debet supportari*: And the Rule of Equity back'd by the Common Law in these Words, *Prout per legem & consuetudinem Regni Angliæ fieri consuevit*. The Argument stands thus; All have Benefit by Defence of the Realm, and therefore by Law the Charge ought to be borne by all.

Then it is further inferred, that every Man, even by his Allegiance, is bound to contribute to this Charge, the Command being *in fide & legiancia quibus nobis tenemini*. Of these Parts the Writ consists, which all being put together, in brief declare the Scope and End of the issuing forth thereof to be the Defence and Safety of the Kingdom; a thing so necessary, that it must needs be legal: For it is too near and too narrow a Conceit of the Wisdom and Policy of the Law to think, that whilst the Care thereof should be confined only to the Preservation of the general Members of the Body Politick from the Wrongs and Pressures that might be offered from others to the Fellow-Members, that in the mean time it will leave the Whole to the Violence and Will of Enemies: so that whilst each Subject, considered as a Part of the Whole, hath a known and sure Estate in Lands, and real Property in his Goods, not to be impeached by any whatsoever within the Realm; yet considered all together as they make the *Unum Compositum*, they should have in them only *precariam Possessionem*, or Tenancy at Will in regard of Foreigners. My Lords, this cannot be; for the Law is so careful herein, that even afar off it foresees and prevents all Dangers in this kind; and that is the Reason that an Alien, tho' a Friend, hath not Capacity to purchase any Land in the Realm. And if the Law be so quick-sighted, as that to prevent but Possibility of Danger, it keeps such Strangers from having any Land within the Realm, which desire

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to come by it peaceably and for valuable Considerations; by this we may easily see the great Care it hath to prevent apparent Dangers, which usually proceed from open Force and Violence. Which further appears by the Greatness of the Punishment which the Law inflicts upon Offenders in this Kind, which is High-Treason, of all other the greatest. 13 Eliz. Dyer 298. Story conspired beyond Sea with a foreign State to invade the Realm; and tho' nothing was attempted, yet it was adjudged High-Treason. And 21 Ed. 3. fo. 23. and 45 Ed. 3. 24. a Man killed a Captain that was going with twenty Men at Arms to the King in his Wars, and it was adjudged to be High-Treason. And so by some Opinions in Print it is, to burn or sink any of the King's Ships. By the Greatness of the Punishment for the Breach of the negative part of the Law, we might understand the Peremptoriness and Force of the affirmative part. So that, my Lords, in this Case the Question is not *de Re*, for by the Law the Safety of the Realm is to be provided for; *Salus Populi suprema lex*: Neither is the Question *de Personis*, either in respect of the Persons who are to bear the Charge of it, or of the Persons whom the Law hath intrusted with the Care and Power of this common Defence.

For the first, that is, the Persons that are to bear this Charge, that in the Writ, *Quod omnes tangit per omnes debet supportari*: The Reasons of the Writ are weighty, and agreeable to the Rule both of the Civil and Common Law, *Qui sentit commodum, sentire debet et onus*: So that I conceive the Burden lies upon all. In respect of our *Bona Natura*, our Lives and Persons be equally as dear to one as another: In respect of our *Bona Fortuna*, so *secundum Statum et Facultates*; because the greater the State and Means of Livelihood, the greater the Benefit by the Defence. The Law in this Case of Defence against the Invasion of living Enemies, being the same with that against our Soil and Ground by the Inundations and Outrages of the Sea and fresh Water; for by the Law, as appears by the Commission of Sewers, as well before the Statute of 28 Hen. VIII. as since, to the repairing of a Bank or Causey, River, or other Sewer, all are chargeable that have *Defensionem, Commodum, vel Salvationem qualitercunque*. All that have Defence must be assessed, the Assesses must be equally distributed, and therefore laid upon every Man within the Level, *Pro rata portionis Tenuræ suæ, seu pro quantitate Communis Pasturæ vel Piscariæ*; the more Land, Common, or Benefit of Fishing each Man hath, according to the Proportion thereof the Assesses must be. So that, my Lords, in the second place, the Question will not be, Whether my Client by Law be exempted from the Charge of the Defence of the Realm; for with other his Majesty's Subjects he ought to help to bear the common Burden, and more or less may be laid upon him proportionably to his Estate and Means of Livelihood.

Neither, *Thirdly*, is there any Question to be made, but the Law hath intrusted the Person of his Royal Majesty with the Care of this Defence. The Defence and Protection which we have in our Bodies, Lands, and Goods, against any within the Realm, we know it is from him; for all Jurisdiction legal, both Ecclesiastical and Civil, which defends us in them, is wholly in his Majesty. The same it is in case of Foreign Defence, even by the *Jus Gentium*, as appears in the Text, by the Peoples desiring that they might be like

other Nations, by having a King that might go in and out before them, and fight their Battles. That the King, and that legally, calleth the Kingdom *Regnum nostrum*, and every City and great Town *Civitatem et Villam nostram: Quoad Proprietatem* it cannot be, because they are the several Land-Owners; it must be so therefore principally in this respect, *Quoad Protectionem et Defensionem*. Neither hath the Law invested the Crown with this Height of Sovereignty only as a *Honorarium*, for the greater Splendor of it, but likewise as a Duty of the Crown, or *Pars Ministerii*, for the Good and Safety of the Realm, which in many of the ancient Commissions of Sewers, before the Statute of 28 Hen. VIII. is thus expressed, The King *ratione Regiæ Dignitatis et per Juramentum est obligatus ad providendum Salvationi Regni undique*; so that both in Honour, and by his Oath he is bound to provide for the Safety of the Realm, and that *circumquaque*.

My Lords, by the Law the King is *Paterfamilias*, which by the Law of Oeconomick is, not only to keep Peace at Home, but to protect his Wife and Children, and whole Family from Abroad. It is his Vigilancy and Watchfulness that discovers who are our Friends, and who are our Foes; and that after such Discovery first warns us of them; for he only hath Power to make War and Peace.

Neither hath the Law only entrusted the Care of Defence to his Majesty, but it hath likewise, secondly, put the *Armat' Potestat'* and Means of Defence, wholly into his Hands: for when the Enemy is by him discovered and declared, it is not in the power of the Subject to order the Way and Means of Defence, either by Sea or by Land, according as they shall think fit; for no Man without Commission or special Licence from his Majesty, can set forth any Ships to Sea for that purpose; neither can any Man without such Commission or Licence, unless upon sudden coming of Enemies, erect a Fort, Castle, or Bulwark, tho' upon his own Ground; neither, but upon some such emergent Cause is it lawful for any Subject, without special Commission, to arm or draw together any Troops or Companies of Soldiers, or to make any general Collections of Money of any of his Majesty's Subjects, tho' with their Consent.

Neither, in the third place, is his Majesty armed only with his primitive Prerogative of *Generalissimo* and Commander in Chief, that none can advance towards the Enemy, until he gives the Signal, nor in other manner than according to his Direction; but also with all other Powers requisite for the full Execution of all things incident to so high a Place, as well in Times of Danger as of actual War. The Sheriff of each County, who is but his Majesty's Deputy, he hath the *Posse Comitatus*; and therefore it must needs follow, that the *Posse Regni* is in himself.

My Lords, not to burn Day-light longer, it must needs be granted that in this Business of Defence, the *Suprema Potestas* is inherent in his Majesty, as part of his Crown and kingly Dignity. So that as the Care and Provision of the Law of England extends, in the first place, to Foreign Defence; and, secondly, lays the Burden upon all; and, for aught I have to say against it, it maketh the Quantity of each Man's Estate the Rule whereby this Burden is to be equally proportioned upon each Person: So likewise hath it,

in the third Place, made his Majesty sole Judge of Dangers from Foreigners, and when and how the same are to be prevented; and, to come nearer, hath given him Power by Writ under the Great Seal of *England*, to command the Inhabitants of each County to provide Shipping for the Defence of the Kingdom, and may by Law compel the doing thereof.

So, my Lords, as I still conceive, the Question will not be *de Persona*, in whom the *Suprema Potestas* of giving the Authorities or Powers to the Sheriff, which are mentioned in this Writ, doth lie, for that is in the King: But the Question is only *de Modo*, by what Medium or Method this Supreme Power, which is in his Majesty, doth infuse and let out itself into this Particular; and whether or no in this Case such of them have been used, as have rightly accommodated and apply'd this Power unto this Writ in the intended Way of Defence: For the Law of *England*, for the applying of that Supreme Power which it hath settled in his Majesty to the particular Causes and Occasions, hath set down a Method and known Rules, which are necessarily to be observed.

In his Majesty there is a twofold Power, *Voluntas* or *Potestas Interna* or *Naturalis*, and *Externa* or *Legalis*, which by all the Judges of *England*, 2 Ric. III. fo. 11. is expressed *per Voluntatem Regis in Camera*, and *Voluntatem Regis per Legem*.

My Lords, the Forms and Rules of Law are not observed in this Case; this Supreme Power not working *per Media*, it remains still in himself as *voluntas Regis interna*, and operates not to the Good and Relief of the Subject that standeth in need. To instance; his Majesty is the Fountain of Bounty; but a Grant of Lands without Letters Patent transfers no Estate out of the King, nor by Letters Patent, but by such Words as the Law hath prescribed. His Majesty is the Fountain of Justice; and tho' all Justice which is done within the Realm, flows from this Fountain, yet it must run in certain and known Channels. An Affize in the *King's-Bench*, or an Appeal of Death in the *Common-Pleas*, are *coram non Judice*, tho' the Writ be by his Majesty's Command; but so of the several Jurisdictions of every Court. The Justice whereby all Felons and Traitors are put to death, proceeds from his Majesty; but if a Writ of Execution of a Traitor or a Felon be awarded by his Majesty without Appeal or Indictment preceding, an Appeal of Death will lie by the Heir against the Executioner. If the Process be legal and in a right Court, yet I conceive that his Majesty alone, without Assistance of the Judges of the Court, cannot give Judgment. I know that King *John*, *Henry III.* and other Kings, have sat in the *King's Bench* and in the *Exchequer*, but, for aught appears, they were assisted by their Judges: This I ground upon the Book, Case 2 Ric. 3. fo. 10, 11. where the Party is to make Fine and Ransom at the King's Will and Pleasure. This Fine by the Opinion of the Judges of *England*, must be set by the Judges before whom the Party was convicted, and cannot be set by the King. The Words of the Book are thus: *In Terminis & non per legem per se in Camera sua, nec aliter coram se, nisi per Justiciarios suos, & hoc est voluntas Regis, scilicet per Justiciarios suos & per legem suam*, to do it.

And as without the Assistance of his Judges, who are his settled Council at Law, his Majesty

applies not his Laws and Justice in many Cases; neither is this sufficient to do it without the Assistance of his great Council in Parliament. If an erroneous Judgment was given before the Statute of 27 Eliz. in the *King's-Bench*, the King could not relieve his grieved Subject any way but by Writ of Error in Parliament: neither can he out of Parliament alter the old Laws, or make new, or make any Naturalizations or Legitimations, nor do some other things: And yet is the Parliament his Majesty's Court too, as well as other his Courts of Justice: It's his Majesty that gives Life and Being to it, for he only summons, continues and dissolves it, and he by his *le Veut* enlivens all the Actions in it; and after the Dissolution of it, by supporting his Courts of Justice, he keeps them still alive, by putting them in execution. And altho' in the Writ of Waste, and in some other Writs, it is called *Commune Concilium Regni*, in respect that the whole Kingdom is representatively there; and, secondly, that the whole Kingdom have Access thither in all things that concern them, other Courts affording Relief but in special Cases; and, thirdly, in respect that the whole Kingdom is interested in, and receives Benefit by the Laws and Things there passed: Yet it is *Concilium Regni* no otherwise than the Common Law is *Lex Terræ*, that is, *per modum Regis*, whose it is, if I may so term it, in a great Part, even in point of Interest, as he is the Head of the Commonwealth, and whose it is wholly in Trust for the Good of the whole Body of the Realm; for he alone is trusted with the Execution of it. The Parliament is the King's Court, and therefore in the Summons the King calls it *Parliamentum nostrum*. So the Returns of the Knights and Burgeses, *Quod sint ad Parliamentum Domini Regis. Fleta Lib. 2. Cap. 2. Habet Rex curiam suam in concilio suo in Parliamentis suis*; and therefore the Pleadings there anciently were usually wont to begin for the most part, *Queritur Domino Regi*; of Petitions by private Persons, *Supplicavit Domino Regi*, tho' for Relief against others. Inquisitions and *Venire fac'* returnable there sometimes *Coram Domino Rege & Concilio suo*, as appears by infinite Precedents in the Parliament-Pleas of *Edward the First* and *Edward the Second's* Time, both in the *Tower*, and many Cases adjourned into the *King's-Bench*.

The Patents pass'd by Authority of Parliament, and likewise the Acts of Parliament, had anciently so much of the King's Name and Style in them, that as it appears in the Prince's Case in the eighth Report, it was a hard matter, otherwise than by Circumstances, to know whether they had any thing of the Parliament in them or not. And from those Times even until now, the Alteration is nothing in Substance, for the Acts for the most part are thus: *It is enacted by our Sovereign Lord the King, with the Assent of the Lords Spiritual and Temporal, and Commons*. The King both then and still is *Pars agens*, the rest are but *Consentientes*.

My Lords, to apply all to the Case in question: By the Cases before cited it appears, that what was done in Parliament by the Law Phrase and Dialect, is said to be done by the King; for as the Civilians say of the Senate, that it is *Pars Corporis Caesaris*, so we of the Parliament, that it is *Pars Corporis Regis*. The Maxim of *Justinian*, *Quod Principi placet legis vim habet*, is agreed by *Bracton* and all the Civilians. And yet both he and many of them say, that those must pass the Senate, and tho' done in the Senate, yet they be *Placita Principis*.

cipis. So it is, altho' when we speak *ut Vulgus*, we say Fines are said to be set by the King's Court; yet the Law, when it saith that they be done and set, saith they be done and set by the King. By the same Reason therefore, tho' when we speak *ut Vulgus*, we say such a Thing is done by the Parliament, yet in the legal Account these are done by the King; the *Medium*, or way of doing of them, is with the Assistance or Consent of his great Council in Parliament.

The second thing which I observe is this: By the Case before cited it appears, that without the Assistance in Parliament, his Majesty cannot in many Cases communicate either his Justice or his Power unto his Subjects.

Hence, thirdly, it necessarily follows, as I conceive, that the kingly Dignity doth most appear and manifest itself there; which was the Opinion of all the Judges of *England*, declared in a Parliament 34 *Hen. VIII.* as appears by *Crompton's Jurisdic. fo. 10.* who by the King's Commandment meeting together about Point of Privilege of Parliament, the King afterwards in declaring of their Opinions, doth it in part of the Case in these Words: *Further, We be informed by our Judges, that we at no time stand so highly in our Estate Royal, as in time of Parliament, wherein we as Head, and you as Members, are conjoined and knit together in one Body Politick.* Which Declaration of it shews likewise that it was the King's own Opinion, that he at no time stood so highly in his Estate, as in the Time of Parliament.

It appears not by the Record, that this Writ, which giveth Power to sell and alter the Property of the Defendant's Goods, issued from his Majesty sitting in his Estate Royal in Parliament, and therefore cannot be intended by your Lordships and the Court so do. If therefore it hath issued from his Majesty in the *Chancery*, otherwise than in Parliament, where he stands in the Height of Sovereignty and Perfection, that he hath not so much as a *Possesse nocere*; the Question is, Whether it be erroneously issued, yea or no.

My Lords, I have now put the Case, which altho' in this particular Case it concerns the Defendant only; yet in Consequence, as it appears, it concerns both his Majesty and the whole State, and that in Matters of the greatest and highest Nature possible. His Majesty is concerned in the Way and Manner of Execution of the highest and greatest Trust which the Law hath reposed in him, the Safety and Preservation of the Kingdom; the Subject is concerned in that, wherein he is most tender, in the Property of what he hath.

My Lords, the Greatness and Weight of the Case puts me in this *Dilemma*: Not to argue it, were to deny that full Submission to the Command of some of your Lordships that are sitting in the Court, neither should I do my Client that Service which he expects. If I proceed, the Case is too weighty and too great for me to argue. But I know the safest way is Obedience, and that the Court cannot expect much from me. Having therefore already put the Case, I will go on in the next place to state it, and afterwards to argue it.

The Question being concerning the Validity of the Command in the Writs, which extends so far as to the altering of the Property of the Subjects Goods without their Consent; and yet this

being for a Thing so necessary as the Defence of the Kingdom both at Land and Sea; for the Ends of issuing forth of the Writ are, *Pro Defensione Regni, Tutitione Maris, Securitate Subditorum, salva Conduetione navium*, both outward and inward.

In the stating of this great Question, I will in the first place endeavour to present your Lordships those known and undoubted Ways and Means, whereby the Law hath provided for the Defence of the Realm both at Land and Sea, without the Way in the Writ.

The first whereof is by Tenure of Lands. The Services which hereby grow due are of two sorts; Service in Kind, which tends immediately to Action in Times of War, some whereof are for Land-Service, and some for Sea-Service. The second are such as supply his Majesty for that purpose.

The second Way is those many Prerogatives which the Law hath settled in the Crown, and made peculiar unto it for the Defence of the Kingdom in general.

The third is the particular Supplies of Money for the Defence of the Sea alone in Times of Danger, both ordinary and extraordinary, the Thing principally intended in the Writ. These, my Lords, will be the Materials, whereupon afterwards I shall state the Question.

In that of Tenure, I shall begin with the Service, and those which tend immediately to Action in Times of War.

The Kings of this Realm, as they are the Head of the Commonwealth in general, so are they the Head and Root from whence all Tenures spring; for as our Books agree, all the Lands within the Realm are held mediately or immediately of the Crown. As therefore the Law hath appropriated the Defence of the Kingdom to the Kings thereof, so hath it, as one of the principal Ways for effecting thereof, trusted them with the Reservation of such Tenures, as might serve for that Purpose.

Amongst which, intending first to speak of Land-Service, I will begin with the Tenures of Knights-Service; every Man that holds by this Service, from a whole Knight's Fee to any part thereof, ought to find a Man completely armed for the War. Neither doth the finding of Arms satisfy this Tenure; for he that holds by a whole Knight's Fee, ought to be forty Days in the Service; and he that holds by a Moiety of a Knight's Fee twenty Days; and so in proportion. In the Books of the Knight's Fee of *Hen. II. Edw. I.* and *Hen. VIth's* times, in the *Exchequer*, it appears, that there were many thousand Knights Fees held of the Crown. And in the *Red Book* it is said, that it was *in ore omnium*, that in the Conqueror's Time there were thirty Thousand held of him: some since have computed them to three-score Thousand, which perhaps may be with the Addition of those that were held of common Persons, which are not of those upon which I shall insist.

But it may be objected, that in respect these Services are reserved by the King, that therefore they were not instituted only for the Defence of the Realm, but may be exacted for foreign Wars, or other-where for his Majesty's peculiar Service, as he shall think fit: which may be inferred both from the Name which our old Books and Deeds style

style this Service by, when due to the Crown, that is, *forinsecum servitium*; and, secondly, from the Use thereof, it having been performed in *Normandy, Gascoyne, Tholouse, and Ireland*, as appears by the *Red Book*, and many Cases put together in the *Institutes*, in the Chapter of *Escuage*.

To the first Objection of the Name, the Answer is clear; for antiently, when those that held immediately of the Crown by this Service, did infeoff others of the Land so held, desiring to free themselves of the Burden of this Service, besides the Service which they reserved to themselves, they likewise commonly in the Conveyance, made Provision for their own acquittal against the King, and the Feoffee took the whole Burden thereof upon himself: and therefore in the Book of Knights Fees of *Hen. II's* Time, in so many hundred Certificates of those that held immediately of the King, *William London of Wilts* certifies this; *Quod nullum Militem habeo Feofatum, sed debeo defendere feodum meum per servitium Corporis mei*. Of this Nature are three or four others. All the rest after certifies, by how many Knights Fees he holds: them likewise he certifies that *Defendit, &c.* of the King by such and such *Milites Feofatos*. And in these Deeds of Feoffment, after the Reservation to the Feoffor, was this Clause; *Et faciend' inde, sometimes Forinsecum servitium, sometimes Regale servitium*. *Braët. lib. 2. fol. 36, 37. and Fleta, lib. 3. cap. 14.* saith, that it is called *Regale servitium, quia est servitium Domini Regis*; and by them *Regale servitium, and servitium Domini Regis*, are all one and the same thing. To that therefore I shall need to give no further Answer. By the same Authors it is called *Forinsecum, quia capitur foris sive extra servitium, quod fit Domino Capitali*; and that is the meaning of the Word; and that it is called *Forinsecum*, in regard the Service is to be done *Foris*, that is, out of the Kingdom, is cleared to your Lordships by these Cases, *P. 49 Hen. III. Com. 31 Ed. 1. Rot. 32. Dors. Com. Hill. 33 Ed. 1. Rot. 52. Dors.* Cornage, which we know is to wind a Horn within the Realm, in all those three Cases is called *servitium Forinsecum Domini Regis Cornagij*; and *Castleguard* in the County of *Northumberland*, at the Castle of *Bamburgh*, called *Forinsecum servitium Domini Regis*.

To the second Part of this Objection, that this Service hath been often performed beyond Sea; for the present I shall give Answer thereunto but in part, by telling your Lordships, without making Proof thereof, that *Escuage*, which is all the Penalty that lies upon the Tenant for his Default, cannot be assessed but in Parliament; which, if it be so, proves that the King cannot command this Service, otherwise than for the Good and Defence of the Realm, in regard that if it be otherwise, no *Escuage* can be assessed without consent in Parliament; which by Intendment, according to the Good the Kingdom is likely to receive by the Service, will proportionably lessen or increase the *Escuage*.

My Lords, That this Service was instituted for the Defence of the Realm, appears by the Care the Law hath always taken for the Increase and Preservation of these Services; so that if the Lord purchase part of the Land, yet the whole Service remains; which being entire, and to be done by the Body of a Man, in that of being a Steward or Bailiff, or other private Service, makes an Extinction of the Whole. The Authorities in Point are many; the Statute of *Mortmaine 7 Ed. I.*

the Mischief by conveying Lands to Houses of Religion is there expressed to be, *Quod servitia quæ ex hujusmodi feodis debentur, Et quæ ad defensionem Regni ab initio provisæ fuerunt, indebite subtrahantur*. And besides the Declaration that they are for the Defence of the Realm, that Statute likewise promises for the Increase of them; for if the Lord enters not within a Year and a Day after the Feoffment, the King is to enter; and as the Words of the Statute are *alios inde feoffavimus per certa servitia nobis inde ad defensionem Regni nostri facienda*, the Words are observable, *per servitia nobis inde facienda*; for tho' the Service be to be done to the King, it is to be done *ad defensionem Regni*. This explains the Charter of *Hen. I.* inrolled in the *Red Book* in the *Exchequer*, and cited in *Mat. Paris*, in the first Leaf of *Hen. I's* Reign; where the King frees Knights-Service Lands from all Gelds and Taxes; that being eased of this Burden, *apti Et parati sint ad Servitium meum, Et ad defensionem Regni mei*. In the *Black Book* in the *Exchequer, fo. 3.* Scutage is thus defined, *ut inveniente in Regnum hostium machinatione*, it is then due: see *Braët* in his second Book *fol. 36 and 37.* that they are so, *Propter exercitum Et Patriæ tuitionem*, and to be performed *certis temporibus cum casus Et necessitas evenerit*. *Braët. fol. 162. Les Fees de chartre fuerunt purveans ad defence de notre Reialme.* The Books are express, the *35 Hen. VI. 41. 8 R. fol. 105. Talbot's Case, 6 Rep. fol. 2. Bruerton's Case, Institut. pl. 103. Co. Preface to the ninth Report.*

For the further clearing of what is said already, and what I am to add, it is observable, that these Services are not created *ex provisione hominum*, but *ex provisione legis*; for as it is in *33 Hen. VI. 7. and sixth Rep. fol. 7. Wheeler's Case*, if the King grants Land without reserving any Service at all, or *absque aliquo inde reddendo*, the Patentee shall hold the Land by Knights-Service *in Capite*. The Book of *24 Ed. III. 65. Stamford Prerogat. fol. 10. Institut. pl. 73.* it's said the first Kings of this Realm had all the Lands of it in their own hands; which appears likewise by this, that all the Lands within the Kingdom are held mediately or immediately of the Crown. In the transferring these Lands to the several Inhabitants, we see, by the Cases before cited, that the Care and Provision of the Law was, that all should by Tenure of the Crown be made liable to the Defence of the Kingdom. I shall briefly therefore shew how the Kings of this Realm have executed the Trust for the Defence of both Land and Sea.

And first, a little further to prosecute the Land-Service, because the Tenure by Knights-Service ties the Tenant only to forty Days Service, and that for the Defence of the Realm only in general; they therefore reserved divers other Tenures for particular and certain Services; as Grand Serjeanties, some whereof, as in the *Institutes, fol. 106.* is observed were for Service of Honour in times of Peace; and some for Military Service, of which last sort, as appears in the Book of Serjeanties in the *Exchequer*, and many Rolls of them in the *Tally-Office*, were very many; some whereof were to carry the King's Banner, some to summons the Tenants *ad exercitum*, some to be of the Vanguard, some of the Rear; some to serve in *Wales*, some in *Scotland*, some *infra quatuor maria*, some *infra Cinque Portus Angliæ*. Of these are Services of all sorts necessary for an Army; and in respect of the Multitude of these Military Serjeanties over others, as forgetting them, *Brit. fol. 164.* in his

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Definition of Grand-Serjeanty, faith, that they are *Pur defence del Royalme*; and *Fleta lib. 3. cap. 16. Magna Serjeantia Regem tantum respiciunt & Patriæ defensionem*. Besides the Grand-Serjeanties, of this nature likewise are the Tenure of Cornage, to give warning of the Enemies coming into the Kingdom, and the Tenures by *Castle-Guard*: These by *Littleton* were eleven Thousand, to defend the Castles when the Enemy enters the Realm, within Forts and Bulwarks of the Realm. Mr. *Camden* p. 515. observes, there were 1115 in Henry II's Time, whereof a great part, and especially such as were upon the Sea-Coasts and Frontiers of *Scotland* and *Wales*, the Places of greatest danger, were the King's. And besides these Grand-Serjeanties that were to be perform'd by the Bodies of Men, there are Petty-Serjeanties for finding of Armour of all forts for the War.

My Lords, That the former Kings did execute this Power of Tenures for the Defence of the Realm, according to the Trust the Law reposed in them, appears further in this, that in the Places of greatest Danger there ever were most of them. All along the Sea-Coasts of *Kent* and *Sussex*, nearest of all others to *France*, are the Cinque-Ports, which for their Sea-Service have all the Jurisdiction within themselves, that the Inhabitants for weakening these Parts, might not be compelled to travel out of them for any Matters of Justice, and divers other Privileges; both to invite the People to live there, and to encourage them to the Defence of those Parts. And *Dover* Castle, the Key of the Kingdom, as of greatest Consequence, so hath it two hundred Tenures by *Castle-Guard*, wanting very few, besides divers Tenures for the repairing of the Castle; which appears by the Record called the Quire of *Dover*, remaining in the *Exchequer*; which that it is a Record, and determines the Service of the Cinque-Ports, as *Doomsday-Book* doth the Tenures of antient *Demefn*, appears in *Comm'* 27 *Edw. I. Rot. 35.* and by another Record added to that Quire of *Dover*, 20 *Edw. IV.* it likewise appears, that in the time of War the King is to maintain in that Castle, one thousand Foot, and one hundred Horse. Next, to come to the Borders of *Scotland*, there we find the Franchisement of the Bishoprick of *Durham*, instituted likewise for that purpose, for the Defence of those Parts; which *William* the Conqueror, as *Malmf. fo. 157.* observes, first made a County Palatine, and *Walther* Bishop thereof, *Ducem pariter & Episcopum, ut refrænaret Rebellionem Gentis gladio, & reformaret mores eloquio*. And besides all this, in all the Counties of *Cumberland*, *Northumberland*, and *Westmoreland*, are more such Tenures for the Defence of the Realm, than in any of the Inland Counties, and those likewise most proper for Bodies. *Com. Pa. 31 Edw. I. Rot. 32.* It's there found by Inquisition returned into the *Exchequer* out of Parliament, that every Lord of a Town within the County of *Northumberland*, held by Cornage when the *Scots* entred the Realm. Mr. *Camden* in his *Britannia*, pag. 794, and 799. mentioning the great number of Petty-Baronies and Castles all along those Marches, which *Brit. fol. 87.* and *Instit. fol. 73.* say were instituted for the Defence of the Realm; observes here likewise the Policy of the Law, and likewise in the many Serjeanties there, in advancing of the King's Army, to be of the Vanguard, and in the Retreat in the Rear, those People best knowing the Ways and Passages of the Country.

Whence, my Lords, when we come to the Marches of *Wales*, there we find another County Palatine, I mean that of *Chester*, and the Care of *Chester* and his Barons to oppose the *Welsh* Invasions upon these Marches; besides the like Services, as upon the Borders of *Scotland*, there were likewise many Lords Marchers of several Baronies, who had Administration of all Justice within themselves, *secundum legem Marchiæ*: and for their Service to be done against the *Welsh*, they had two special Privileges, that is, the third Penny of all the Spoils in the War, as was adjudged in Parliament, the 20 *Edw. I. Banc. Regis Rot. 123.* in that great Case between the Earls of *Glocester* and *Hereford*, and in the Parliament Book, 20 *Edw. I.* And, Secondly, all the Prisoners that they took in the Wars, *per consuetudinem Marchiæ*, belonged to the Takers of them. *Trin. 25 Edw. I. Rot. 28. Co. Roger de Kownwell, in partibus Montgomery, in guerra Walliæ, 23 Edw. I.* had taken three *Welsh* Prisoners; and because, by the King's Command, they were released of their Imprisonment, it is there adjudged, that the King should pay him forty Pounds in recompense thereof. And so it was adjudged, *Com' Hill. 25 Edw. I. Rot. 11. dorf.*

My Lords, His Majesty is in the actual Possession of these Military Services, by taking the Profits of Wards, Marriages, Releases, Licences, Forfeitures for Alienations, and *primer seisin*, as Fruits of them.

That the Profits of Wards and Marriages are to be spent in Wars, for the Defence of the Realm, as well as for the bringing up the Ward, the Books are, 35 *Hen. VI. 41. Brit. 162.* That the King receives the Profits, because he is not able to do the Service. If the King's Ward was within Age, when the Tenants were summoned *ad exercitum*, he paid no Escuage, as is adjudged, *M. 20. Edw. I. Rot. 9. & 20. Comm' and M. 23 Edw. I. Br. irrot.* So it is for Reliefs and Licences; and Forfeitures of Alienation of the King's Tenant without his Consent might not be altered; and for *primer seisin*, the King was to receive the Profits till the Tenant, by his Homage, had assured the King of his Service; the Summons always commanding him to be at the Place of Rendezvous, *in fide & homagio quibus nobis tenemini*. All these things being but Fruits that fall from these Military Services.

My Lords, Now to come to the Sea-Service, the Care and Execution of this Trust by Tenures, was extended likewise to the Defence of the Sea. The Town of *Lewis* in *Sussex* holds by this Service, *quod si Rex ad mare custodiend' suos mittere voluisset, they paid so much Money, & hos habebant qui in navibus arma custodiebant*. This, my Lords, is in *Doomsday-Book*, in *Colchester* every House to pay 6d. per ann. *ad victum Soldior' Regis, ad expeditionem terræ vel maris*. *Warwick, Si Rex per mare contra hostes ibat*, the Town was to find four Boatswains. *Salisbury*, then to pay so much Money, *ad pascendum Bussecorlos Domini Regis*, which, as *Florentius* explains the Word, be *Ministeros Nauticos*. *Glocester*, and other Places such a Weight of Iron, *ad Claves navium Regis*. Others, to find Horses to carry Armour and Weapons to the Ships. My Lords, of this nature are many in that Book, which particularly to mention, to gain Time, I will omit.

That the Tenures of this kind after the Conqueror's Time, continued in use, and were well known

known, appears by the Register *fo. 2.* where, amongst other Services, is this of Shipping also intanced in these Words; *Quod clamat tenere de nobis per liberum servitium inveniendi nobis quinque Navas per annual' Servitium.* In the Iter-Roll of *Essex, 13 Ed. I. Rot. 7.* it is presented that the Town of Maldon *tenet per Serjeantiam inveniendi unam navem quandocunque Rex necesse habuerit ire vel mittere propter negotium Regni.* And from the Time they came to the Place of their Rendezvous, to stay in the Service forty Days, *sumptibus propriis.* And being there presented, that they made Default at the *Welsh War*, they plead they had no Summons.

So, my Lords, in the Book of *Serjeanties* of *Edward the First's Time*, in *Kent*, the Town of *Killingborne* is to find one Ship; and in the County of *Berks*, *Fulke Caudry* holds the Mannor of *Padworth*, *per serjeantiam inveniendi servientem* to perform Sea-Service, *Braet. 20. 8 Ed. II. Rot. 40.* *William Dier*, in the County of *Suffex*, to find a certain Proportion of Cordage. *Iter Cantie, 21 Edw. I. Rot. 46.* *Solomon de Campis* holds *per serjeantiam tenendi Caput Domini Regis*, when he is at Sea, *si necesse fuerit*; and so *Rot. 30.* another in the same Iter-Roll. The *Cinque Ports* and their Members are to find twenty Men, and a Master, *bene armatos & bene ariatos*; from the Time that they come to their Rendezvous, they are to continue in the Service fifteen Days, at their own Charge, and afterwards so long as the King pleaseth; but after the fifteen Days, the King is to pay the Master 6 *d.* a Day, and the rest 3 *d.* a Day for their Wages. This Service appears by the Record of the *Chaire of Dover* before-mentioned, and the Patent Roll 7 *Hen. VII.* both which Records imply, that this Service of theirs cannot be exacted, otherwise than for the Defence of the Sea; for it cannot be demanded but once in a Year, nor then neither, *nisi necesse fuerit.* *Parl. Pet. 1 Edw. III. Rot. 4.* the Barons of the Ports, in consideration of this Sea-Service, pray a Confirmation of their Liberties, *pro salvatione dicti Navigii & Regni*; and commonly when the Land-Service was summoned, these were likewise summoned to the same Service at Sea, as appears by the close Rolls, 28 *Edw. I. M. 15.* 31 *Edw. I.* and 34 *Edw. I. M. 15, 16.* In all which Years the Land-Service was summoned for *Scotland*, and the Summons both for the one and the other run in the same Words, commanding them to be at the Place, *cum toto servitio vestro quod nobis debetis*, which shews it to be a Service by Tenure. That these Services of theirs are for the Defence of the Realm, and likewise that there are many other of the like Nature besides these, which by a superficial reading of two or three Iter-Rolls, I have cited, appears by the Parliament-Roll, 13 *Ed. III. pars 1. M. 11.* where it is declared in these Words, That the *Cinque Ports* and other great Towns and Havens are franchised, *pur estre & mure inter nous & Aliens*, if it shall fall out that they shall endeavour, *notre enter & assay & sunt tenuis a ceo faire.* My Lords, a fuller Declaration than this there cannot be, that both the Ports, and Havens, and Sea-Towns, are bound to the Service of Shipping, for the extraordinary Defence of the Realm, as well as the ordinary.

I have now done with the Service in kind; and because these which immediately tend to Action alone, were not sufficient to defend the Real; and this in the Frame and first Constitution of the

Commonwealth, being foreseen, and that the Land, or *Fundus Regni*, the most visible and constant Supplier of our Wants, was best able to supply this likewise; therefore besides them, there were divers other Tenures created for that Purpose. Those which I am next to speak of, are such as supply his Majesty with Money for that Purpose.

In the *Black Book* in the *Exchequer*, lib. 1. cap. 7. it is said, that in particular *Regni statu ad stipendia & donativa Militum & alia necessaria & castellis*, and other Lands *in quibus agricultura non exercebatur pecunia numerata successebat.* It might from hence be colourably infer'd, that in respect *ex provisione Legis*, upon the King's passing of Lands, a Tenure for Knights Service for the Defence of the Realm was to be reserved; that in case upon such Grants, Rents only, without any such Tenure, were reserved, yet that Money should be employ'd for Soldiers Wages, and other necessary Affairs of the Commonwealth, *ad stipendia Militum & alia necessaria.* But not to press this further, it is plain, that all Men within the Kingdom were not equally inheritable, either to the Body or Propriety of Lands or Goods, but that there are Degrees and Ranks, and each differing from other in all these. *First*, Villains. *Secondly*, Freeholders, either by Knights Service, or Free Socage. *Thirdly*, Tenants of ancient Demesne, and that held by Burgage within Cities and Burrough Towns

First, for the Villain, we know, that as to his Lord he had Freedom in neither; in respect of his Body, he could not *ire qua voluit*; but the Lord at his Will might imprison him, and in respect of his Land and Goods he might tax him *de baut & de bas.*

Secondly, The Freeholders, the greatest Part of the Realm, always had an absolute Freedom in them both.

The third Sort, and those are the Tenants in ancient Demesne and Burgers, they had an absolute Freedom in their Persons, but qualified in the other of Property, not taxable at the Will, as Villains, but for the Defence and other necessary Affairs of the Realm, they might be taxed without Consent in Parliament. My Lords, that these had a divided Estate from other free Tenants, is clear. And first, for Tenants in ancient Demesne: It is to be questioned whether such Land be ancient Demesne, yea or no; the Issue is in these Words, whether it be ancient Demesne or frank Fee. By this it appeareth they have not a frank and free Estate, as the others have; and as all our Books agree, they have no Vote in Parliament, for they have no Voice in the Election of Knights, nor pay to the Expences of the Knights that serve in Parliament, nor Soldiers granted in Parliament, *Na. Brev. 79. and 14.* It is often disputed in our Books, whether Acts of Parliament extend to them, unless they be especially named; neither can they sue at Common-Law for any thing that concerns the Freehold, but only by a Writ of Right close within themselves. And therefore *Bracton, fo. 209.* call them *villanos Privilegiatos.* The same it is of Burgeses within Cities and Burroughs; and therefore the Statute of *Merton* makes it a Disparagement for the Lord to marry his Ward, *villanis & aliis sicut Burgesibus, Na. Br. 7.* and other Books. No Assizes will lie for such Lands, but they are impleadable without Original Writ, by a Bill of fresh Force; and as a Chattel, they may devise their Land. By

the Statute 1 Ed. II. *de militibus*, for such Land and ancient Demefn, no Man is compellable to take the Order of Knighthood. Much more might be brought in Proof of this, which I omit.

My Lords, all our Books agree, the Tenants in ancient Demefn, were to plow and manure the King's Lands, being his Demefn. In a Manuscript that I have seen, the Author faith, that he hath an ancient Manuscript which faith, "That the Corn, and other Viſtuals, ariſing hereby, was to ſtore the King's Garifons and Caſtles; and conſidering the Numbers of thoſe Garifons, there being above a Thouſand of them in the King's Hand at the Conqueſt, as appears by *Doomſday-Book*, and that thoſe Mannors for the moſt part are great, and the greateſt Part of the Socage-Tenures, till Henry II'd's Time, as appears by the *Black Book*, lib. 1. cap. 23. were to find Viſtuals of all Sorts, in kind, for the Provision of the King's Houſhold, and were in his Time turned into Rents." Altho' this may ſeem probable, yet becauſe I have not ſeen the Manuscript, I will inſiſt no more upon it.

That for which theſe, and the Tenures of Burgage in the King's Cities and Burroughs, were mentioned in the raiſing of Monies for the neceſſary Affairs of the State; that theſe were anciently talliable without their Conſent in Parliament, is ſo plain and frequent in the *Exchequer Rolls*, as that I intend to cite nothing in Proof thereof; it will be admitted by them that argue on the other Side. That which I ſhall endeavour to prove is, that theſe were not talliable at the King's Will and Pleaſure, but only for the Defence and other Neceſſities of State, *Na. Br.* fo. 15. 49 *Ed.* III. 22. They be not talliable, *de haut & baſs*, as Villains are; and therefore *Bracton*, fo. 209. calls them *villanos Privilegiatos*, lib. Parl. fo. 112. *talliare & rationabile auxilium dare pro neceſſitate*. *Na. Br.* 14. *talliable pur grand Cauſe*. *Rot. Parl.* 6 *Edw.* III. Commiſſions to tax Cities and Burroughs, and ancient Demefne, upon Petitions of the Commons revoked, and Writs in due Form to be ſent; and for the time to come, the King ſhall not aſſeſs, but in ſuch a manner, *come ad eſtre fait en temps de ſeux Anceſtors & come il denera pur reaſon*. The Occaſion not requiring it, I ſhall ſay nothing of it, when theſe Taxes were diſuſed. My Lords, I have now done with the Tenures, the firſt Way whereby the Law hath provided for the Safety of this Realm; which of themſelves not enabling the Kings intruſted therewithal ſufficiently to do it, the Law therefore, beſides the Honours, Caſtles, Mannors, and other conſtant Revenues of the Crown, for the Supportation of the ordinary Charges thereof, hath appointed unto it divers Prerogatives, for the Extraordinary, and for this of the Defence of the Realm, as one of the chiefeſt of them; theſe Prerogatives then have an Influence into the States of all the Subjects in the Realm, and are ſo many, that, to gain Time, I will omit to mention any of them.

That which I will inſiſt upon, will be to prove, that the Things coming to the Crown by this Prerogative Way, are to be employed for the Defence, and other publick Affairs of the Realm.

In his Maſteſty there is a double Capacity, Natural and Politick. All his Prerogatives are *Jure Coronæ*, and of all ſuch Things he is ſeiſed *Jure Coronæ*; and therefore, as in other Corporations, ſuch Things are *Patrimonia & bona publica*, to be employed for the common Good, ſo likewise by

the ſame Reason here. The Reason why the King hath Treasure Trove, and Gold and Silver Mines in the Earth in the Caſe of Mines, is declared to be, becauſe the King is hereby to defend the Kingdom: and in the *Inſtitute*, in the Title of *Socage* fo. 28. 137. the Reason of many of the reſt, *Quia theſaurus Regis eſt fundamentum belli & Firmamentum Pacis*: This I conceive to be the Reason, that by the Statute 14 *Ed.* 3. cap. 1. *Eſcheats*, Wardſhips, Cuſtoms, and Profits ariſing of the Realm of *England* ſhould be declared to be ſpent for the Safeguard of the Realm, more than the Profits of the King's Mannors and Lands; and of the Difference made in the *Comm' M.* 3. *Rich.* 2. *London*, between *Reſtas promiſſiones Regni*, which by the Advice of the Lords of the Council were to be ſpent in the Houſhold, and the other Profits of the Crown to be ſpent *Circa ſalvationem & deſenſionem Regni*. In the Parliament Roll. 6 *Rich.* N. 42. the Commons petition that the King will live of his own Revenues; and that Wards, Marriages, Releases, *Eſcheats*, Forfeitures, and other Profits of the Crown, may be kept to be ſpent upon the Wars for the Defence of the Kingdom: which ſheweth, that there was always a Difference made between the Profits ariſing of the King's Mannors and Lands, and that which roſe by the Prerogative, caſual and accidental Ways. My Lords, I have now done with theſe.

The third Way the Law hath provided for the Defence of the Kingdom, is particular Supplies of Money for the Defence of the Sea alone in times of Danger, both ordinary and extraordinary; for beſides the Supplies of Money before-mentioned, which are to be employed for the Good and Defence of the Realm in general, as in the other Caſes where the Law putteth the King to any particular Charge for the Protection of the Subject, it always inables him thereunto, and yields him particular Supplies of Money for the Maintenance of the Charge; ſo here the Courts of Juſtice, for the Prefervation of us in our Rights, are ſupported at his Charge; and that is the Reason why he hath all Fines and Amerciaments, the Goods of Outlaw'd Men in perſonal Actions, *Bract. Lib.* 3. cap. 13. fol. 129. and Fines for purchaſing of Original Writs, & *pro licentiis concordandi*, which in Suppoſition of Law, are paid for not proceeding, and Troubling the Court without Cauſe. The King's Juſtices who are maintained in their Places at the King's Charge, theſe are the *veſtigal Juſticiar*. The Defence of the Realm extends it ſelf to many Particulars of the Church, and of Religion; and therefore in the Summons of Parliament, the Cauſe of the calling the Parliament is always declared to be *Pro deſenſione Eccleſiæ Angliæ* in particular, as well as *Totius Regni*. His Maſteſty therefore hath the Temporalities of Biſhopricks, *Sede vacante*, a great Prerogative, and that which Patrons have not; with an Addition of the Firſt-Fruits and Tenths of them, and all other Eccleſiaſtical Promotions and Benefices in Henry the Eighth's Time, and likewise the Tithes of all Lands which lie not within any Pariſh.

For Defence of the Land alone, beſides thoſe Military Services before-mentioned, the Profits of Wards and Marriages, which, as I have read, no other Chriſtian Prince hath as a Fruit of them, are received for that Purpoſe. So it is for the Sea, in *Rot. Sco.* 10 *Ed.* 3. *M.* 16. it is ſaid that the King and his Anceſtors are *Domini Maris Anglicani & Deſenſores contra hoſtium invaſiones ante hoc tempus exiſtentes*. For the ſupporting of this Charge

Charge therefore, they have not only had the Grand Customs of the Mark and Demy-Mark upon the Wool, Wool-Fells and Leather, and the Prifage; that is, one Tun of Wine before the Mast, and another abaft the Mast of every Ship, which were even due by the Common Law, as appears by the Book of my Lord Dyer, 1 Eliz. 165. and Sir John Davies Reports, fo. 8, & 9. and implied by Mag. Char. cap. 30. that Merchants may trade *per Rectas & antiquas Consuetudines*; but likewise divers other Things were afterwards granted by Act of Parliament in Addition to them. As First, the Petty-Customs began 31 Ed. I. and were made Perpetual by the Statute of 27 Ed. 3. cap. 26. and likewise divers Aids and Subsidies, which are an Increase of Custom upon the Staple Commodities of Wool, Wool-Fells, &c. Leather, and Tonnage upon Wines, and Poundage, and Increase upon all other things either imported or exported, either by Denizens or Aliens. That which in this kind was taken by his Majesty in the 11th Year of his Reign, when this Writ issued forth, was three hundred thousand Pounds and upwards. The Aids and Subsidies, and likewise the Tonnage and Poundage anciently granted upon particular Occasions only, and afterwards to the late Kings and Queens for their Lives by Act of Parliament; and now taken by his Majesty, and likewise the new Imposition, altogether makes up the aforesaid Sum of three hundred thousand Pounds. Of the Legality thereof I intend not to speak, for in case his Majesty may impose upon Merchandize what himself pleaseth, there will be less Cause to tax the Inland Counties; and in case he cannot do it, it will be strongly presumed, that he can much less tax them. The proving these two things herein will serve my turn:

That his Majesty *de facto* takes them, and that this judicially appears to your Lordships in the Court; and, Secondly, that these and the ancient Customs, are for the Defence of the Sea.

For the First, it was declared by his Majesty in the last Parliament, and annexed to the Petition of Right as part of it, that his Majesty took them, and could not be without them; whereof he likewise desired the Judges to take notice, and that they might so do, it is inrolled both in this and other the Courts of *Westminster-Hall*.

For the second, that the Grant of Custom is principally for Protection of Merchants at Sea against the Enemies of the Realm, and Pirates, the common Enemies of all Nations, Sir John Davies Reports, fo. 9, & 12; and that those, and likewise the Impositions are for that purpose, was held by many of the Judges in the Argument of *Ball's Case* 7 Jac. in the *Exchequer*, in the Case of Impositions upon Currants, and likewise by the King's Council, when the same Case afterwards came to be debated in Parliament, and was one of the main Reasons urged by them for the Maintenance of that Judgment. That the Aids and Subsidies, and likewise Tonnage and Poundage, before they were granted for Life, were not only for the Protection of Merchants, and the ordinary Defence of the Sea, but also for the Defence thereof in times of extraordinary Danger, and from Invasion from Enemies, appears by the several Grants of them in the Parliament Rolls. Rot. Parl. 1 Rich. II. pars 2. M. 9, & 27. the Kingdom being in Point to be lost by the Enemies of Spain and France, and divers others there men-

tioned, who made War against us both at Land and Sea, a Subsidy upon the grand Customs was granted, as the Words are, *pur le defence & rescous del Kingdome*; this was for two Years, and Persons assigned to receive and expend the Money. Comm' Mich. 3. Rich. II. London: William Wallworth and John Philpot, Citizens of London, appointed the Treasurers of it, upon their Account, shew the Particulars how this Money was expended, *circa salvationem & defensionem Regni*, and were discharged. Rot. Parl. 3 Rich. II. M. 16, & 17. The same Cause continuing, Enemies intended to blot out the Name of the *English* from under Heaven, the Subsidy continued for a Year longer. Rot. Parl. 5 Rich. II. pars 2. M. 14, & 15. Tonnage and Poundage granted *assint pre fait apply sur safeguard del Mers*, and the King at the Petition of the Commons appoints Receivers. 6 Rich. II. M. 13. the Commons complain, that notwithstanding the Grant of Tonnage and Poundage, the Sea is not kept, and therefore Persons named and assigned in Parliament to receive the Money, and to do it. 10 Rich. II. M. 1. Tonnage and Poundage for a Year. 11 Rich. II. M. 6, & 12. Tonnage and Poundage and Subsidy for a Year. 12 Rich. II. M. 20. both for a Year. 14 Rich. II. M. 16. both for a Year. 17 Rich. II. M. 12. both for three Years. 20 Rich. II. M. 28. Subsidy for five Years, and Tonnage and Poundage for three Years. 2 Hen. IV. M. 9. both for two Years. 6 Hen. IV. M. 9, & 10. both for two Years, upon Condition to cease if the King before St. Hilary provide not a sufficient Army for the Sea. 8 Hen. IV. M. 9. and 9 Hen. IV. M. 16. both for two Years for the common Commodity and Defence of the Realm. 13 Hen. IV. M. 10, & 11. for one Year, so as the same be confessed to proceed out of their own Good Will, and not out of Duty. 5 Hen. V. for four Years, upon many Conditions. 1 Hen. VI. M. 9. for two Years. 3 Hen. VI. M. 17. Subsidy for three Years, Tonnage and Poundage for one Year. 4 Hen. VI. M. 22. 6 Hen. VI. M. 11. for two Years Tonnage and Poundage; and 6s. 8d. upon every Man within a Parish-Church that hath twenty Nobles, and 6s. 8d. upon every Knights-Fee held immediately of the King. 8 Hen. VI. M. 15. Tonnage and Poundage to continue until the next Parliament. 9 Hen. VI. M. 14. both, and for two Years. 10 Hen. VI. M. 21. for two Years. 23 Hen. VI. M. 16. for four Years, and double upon Strangers. 27 Hen. VI. M. 20, & 23. for five Years. 37 Hen. VI. M. 8, & 42. Tonnage and Poundage first granted for Life; and M. 41. assigned into the Subjects Hands for three Years for the good of the Seas.

My Lords, either by the Grant itself of them, or by the Declaration of the Cause of the calling of the Parliament, it appears, that these were all granted upon extraordinary Occasions: and when they come to be granted for Life, as appears by the Rolls and printed Statutes of 12 Ed. IV. cap. 13. they were not only granted for the ordinary Defence of the Realm, and principally of the Sea; but likewise that the Kings might always have in readiness a Stock of Money in their Hands to withstand an Invasion, as is declared by the very Words of those Statutes.

My Lords, his Majesty is in Possession of them, and was pleased by his Proclamation printed 1626, declaring the Cause of the Dissolution of the last Parliament, as appears Page 17, to declare that they were always granted to his Progenitors, for the

the guarding of the Seas, and Safety and Defence of the Realm; and Page 18, is graciously pleased in these words, to declare that he doth, and must still pursue those Ends, and undergo that Charge for which they were first granted to the Crown; and Page 44, that he receives them for the guarding of the Seas, and Defence of the Realm.

My Lords, I have now done with the Ways which I first propounded, whereby the Law hath provided for the Defence of the Realm. I shall add this only, That by the Statute of *Winchester*, which was made in 13 *Edw. I.* every Man *secundum statum & facultates*, for the Words of the Statute are according to the quantity of his Lands and Goods, is to find Horse and Armour for the Defence of the Realm; for that the Statute in this Particular, extends not only to the keeping of the Sea, but likewise to the Defence against Foreigners, is declar'd in the Parliament Roll of 3 *Rich. II. M. 36.* and by the Statute of 5 *Hen. IV.* in the Parliament Roll *M. 24.* not printed, *juxta quantitatem terrarum & bonorum*, against Invasions each Man is to find Armour. And by the Statute 1 *Ed. III. cap. 5.* these Men upon sudden coming of strange Enemies into the Realm, may be compelled to march out of their own Counties where they live: whether they may be compelled so to do without Wages, I shall have occasion afterwards to speak. How far the Statute of *Winchester* and 5 *Hen. IV.* for Arms upon the Statutes of 4 and 5 *Phil. & Mar. cap. 2.* and 1 *Jac. cap. 25.* are in force, I shall not speak.

My Lords, I shall now proceed to the stating of the Question. *Bracton* in the Beginning of his Book saith, That *in Rege necessaria sunt hæc duo, Arma & Leges quibus utrumque tempus Bellorum & Pacis recte possit gubernare.* *Glanvill*, in the Beginning of his Book, saith, *Reg' Majestatem Armis contra gentes sibi regnoque insurgentes oportet esse decorat'* His Majesty, as he is Lord of Sea and Land, so by that which hath been said, it appears that he is armed for the Defence of both.

My Lords, The Reasons in the Writ, as they are weighty, so from these known Supplies, whereby the Law hath provided for the Safety of the Realm, they will all of them be confessed; and yet thereby receive Answer, that the Law hath foreseen and provided the Supplies accordingly without the Way in the Writ.

First, The Command in the Writ being *In fide & legiancia quibus nobis tenemini*, it's thence inferred, that each Subjects Allegiance binds him to contribute to the Defence of the Realm. In the old Customs of *Normandy*, cap. 43. Allegiance binds *ad concilii & auxilii adjumentum*. This, tho' it be principally perform'd by the Parliament, both in Advices and Aids, yet besides these extraordinary, by that which hath been said, we see both by the Tenures in kind, and pecuniary Supplies, that, without the Assistance thereof, our Persons, Lands, and Goods, by his Majesty's Command alone, are made contributory thereunto, and that in a large Proportion. Secondly, The Rule whereby this Contribution must be regulated, as in the Writ, *secundum statum & facultates*, that likewise is satisfied, and that both for Sea and Land.

For Land, in case either the Statute of *Winchester*, or 5 *Hen. IV.* be on foot, then in Words that of finding Arms, *juxta quantitatem terrarum & bonorum*. So, Secondly, in respect of the Tenures, by Knights-Service, by the Wards, Marriages and Reliefs; these, I confess, concern the

Tenant only; but those other Tenures *in Capite* and *Grand Serjeanty*, these concern all others, in respect of the Licenses of Alienation, and of the Wardships of Lands, held of other Lords, and that all the Tenants are become hereby wardable. And, Thirdly, in respect of the Prerogatives before mentioned; for the greater the Subject's Estate is, the greater Influence they have into it, and proportionably raise more Profit out of it.

In respect of the Sea, this is so by the Customs, Aids, Subsidies, Tonnage and Poundage, before mentioned; for the Charge of these is not born by the Merchants alone, but by each Subject within the Kingdom, and that *secundum statum & facultates suas*.

For, First, in respect of the Export: The greater the Estate, the more Wool and Wool-fells, and Leather, Lead, and other Commodities; if that be done by the Owner, he bears the immediate Charge; if by the Merchant, according to that Proportion is his Abatement in Price to the Owner. So it is for Goods imported; for the greater the Estate and Means of Livelihood are, the more each Person buys of these, and at a dearer Rate. This is cleared by the Petition of the Commons in Parliament 22 *Ed. III. Rot. 22. M. 41.* that the Merchants had granted to the King forty Shillings upon a Sack of Wool, *en charge del people & nemy des Merchants*. And by the Statute 36 *Ed. III. cap. 11.* that no Subsidy or Charge be granted to the King by the Merchants upon Wool, without Assent in Parliament.

Hence likewise that other Ground of Equity in the Writ, *quod omnes tangit ab omnibus debet supportari*, receives Answer: For as all have Benefit by the Defence, so is the *Compensatio publica*, we see it comes from all. The fuller Answer is the Parliament Summons of 23 *Ed. I.* for Provision against the French, who intended *Linguam Anglicanam omnino delere*. *Rot. Claus. 23 Ed. I. M. 14. Lex justissima provida & circumspessione sacrorum principum stabilita, statut' Quod omnes tangit ab omnibus approbatur*; the Charge must be born by all, so it must be approved by all.

If his Majesty be intrusted with the Defence of the Realm, as in the great Case between the Earls of Hereford and Gloucester, it is said, that *incumbit Domino Regi solvatio populi sibi commiss'*, and that *per jurament' est strictus ad providendum salvationem Regni circumquaque*, because no Man goeth to War at his own Charge. We see by that which is already said, that the Law hath provided the *Stipendia Ministerii*; which that they do bind his Majesty to the Defence and Safety of the Kingdom, not only in point of Care and Vigilancy, but even in point of Charge too, I shall endeavour to prove to your Lordships and the Court.

Allegiance we owe as an Act of Reciprocation; for as it binds the Subject to Tribute and Subjection, so therefore the King to the Charge of Protection by the Expence of these, *Rex ad tutelam corporum & bonorum erectus*. The Supplies he hath, for these Purposes, tie him to the Supportation of the Laws, and the Execution of Justice. 20 *Ed. I.* in the Case before mentioned between the Earls of Gloucester and Hereford, it is said, that *Dominus Rex est omnibus & singulis de regno suo justitie debitor*; which that he is so, even in point of Charge, appears in his Majesty's Supportation of the Courts of Justice, and the Salaries not only to your Lordships, and other the inferior Ministers of Justice, and anciently to the Sheriffs, but likewise many other

other Ways. 4. *Hen. VII. cap. 12.* the King shall not let for any Favour of Charge, but that he shall see his Laws fully executed. *Parl. 23 Ed. I. Rot. 12 Exchequer,* A Clerk that attended a Committee of Grievances recover'd Salary from the King, altho' the Commission was for the Relief of that County. This I conceive to be the Reason of the Declaration in the Statute of 14 *Ed. III. cap. 1.* and other Statutes, That Aids, tho' granted in Parliament, for Defence, shall not be brought into Example; in that it might be conceived, that the Commons were to bear that Charge which principally belonged to the King. *Pat. 48 Hen. VII. M. 8.* it is recited, That whereas a late Parliament in *Articulo necessitatis pro defensione regni contra hostilem adventum alienigenarum*, the Commons granted him a large Subsidy, *ultra quam retroactis temporibus facere consueverant*; now the King *eorum in sempiternitatem prospicere volens*, grants, that *non cedat in prejudicium nec in posterum trabatur in consuetudinem.* In *Wiseman's Case*, in the second Report, fo. 15. it's resolv'd that a Covenant to stand seized to the Use of Queen *Elizabeth*, that she is the Head of the Commonwealth, and hath the Care of repelling foreign Hostility, is not good, because, saith the Book, the King is bound to do that, *ex Officio. Com. 315.* One Reason why the King is to have Royal Mines, alledged by all that argued for the King, is, because he is at his own Charge to provide for the Defence of the Realm, which he cannot do without Money. In the Earl of *Devon's Case*, Co. 11. 91. 6 *Institut.* fo. 28, & 131. *Theſaurus Regis* is called *Nervus Belli.* For the Practice, the Proof of the particular Charges, the several Kings have been at for Defences of all sorts, would be so tedious, that I will omit the citing of any thing in this kind. Sir *John Davies Reports*, fo. 12. many Authorities, and in the Treatise *de Regalibus*, pag. 81. *Principes totam Navigationem pro vectigalibus prestare coguntur.*

But because his Majesty, in the forementioned Proclamation, pag. 18, and 44, is graciously pleased to profess, that he holds himself obliged to undergo the Charge of the Defence of the Realm, and of the Sea in particular, I shall spare any further Proof in this.

If that in the Writ, that the Sea *per Gentem Anglicanum ab olim defendi consuevit*, be not answered by the *Scotish Roll* of 10 *Ed. III.* before recited, which says, that the King and his Ancestors *Maris Anglicani defensores antebac constiterunt*, nor by what is now said, if it be admitted, yet that even the Charge of this Defence is born *per gentem Anglicanam*, is before proved.

The next, and one of the main things whereupon I shall state my Question, is this. His Majesty is in the actual Possession, not only of the Service in kind, for the Defence of the Land, by taking of the Benefit of the Wardships, Marriages, Reliefs, Fines, and Licences of Alienations, and *primer Seisin*, and of the Prerogatives before-mentioned, but likewise of the Services of the *Cinque Ports*, unless they be released since 7 *Hen. VII.* (for then their Services were summoned) and of the Tonnage and Poundage, and other Duties, for the Defence of the Sea: It appears not by any part of the Writ, nor by any thing in the Record, that either the Services of the *Cinque Ports* were summoned, or that any Money at all of his Majesty's was expended, either for this Service, or at any other time for the Defence of the Sea. My

Lords, I desire to be understood, I do not affirm that none was expended; only this appears not to your Lordships and the Court: All that can be inferred from the Writ to this Purpose is, that this Ship for *Bucks*, is commanded to be at *Portsmouth* by such a Day *ad proficiendam exinde cum Navibus dicti Domini Regis & Navibus aliorum fidelium subditorum suorum.* By this it appears not to the Court, that tho' the Ships are the King's, that they are to be set forth at the King's Charge; for the Charge may be born by the Subject for ought appears.

Neither, *Secondly*, doth it appear, how many these Ships were, whereby the Charge, in case it were born by the King, might in any Proportion appear to be answerable to the Supply before-mentioned. Those other Ships, *aliorum fidelium subditorum nostrorum Regis*, as in Truth they were not those of the *Cinque Ports*, neither can they be so intended, unless it had been so expressed.

The Service of the *Cinque Ports*, and Tonnage and Poundage, and other Duties, are the ordinary settled and known Ways by the Law appointed for the Defence of the Seas; the Way in the Writ by selling and altering the Property of the Subjects Goods without their Consent, as in the Writ, must needs be granted to be a Way more unusual and extraordinary. Against the Legality of it, I shall thus frame my Argument by Way of Admission; *First*, That in case the Service of the Ports had been summoned, and the Money by the fore-mentioned Ways raised had been expended upon the Defence, and they had not been sufficient, that tho' in this Case the Writ had been legal; yet, as now it is, it is not. *Rylie's Case* in the 10th Report fol. 139. and *Trin. 18 Ed. II. Banc. Regis 174*, adjudged, that so long as he that is bound by Tenure, or Prescription, is able to do it, the whole Level cannot be assisted to the repairing of a Wall or Bank. It's a Maxim, *Lex non facit Salutem*, nor that we are to run to extraordinary, when the ordinary Means will serve the Turn; these Rules are often put in our Books, I intend to instance but in one or two Cases.

The Common Law is the common Reliever of Persons wrong'd; that in *Chancery* is extraordinary, and therefore no Man can sue there, when he may have Remedy at the Common Law. The ordinary Way of Trial for Life is by Indictment and a Jury; when therefore this may be done, and that the Sheriff, with the *Posse Comitatus*, is able to keep the Peace, it cannot be done by Martial Law, or by Judgment of the King and Peers in Parliament without Indictment, as was adjudged in the Case of the Earl of *March*, *Trin. 28. Ed. III. Banco Regis Rot. 21.* My Lords, the Reason of this Maxim of Law is, as I conceive, these Actions extraordinary are done *extra ordinem*, and done only in Times of Necessity, when we are not tied to any Rules of Law, and therefore not to be brought into Example, nor have any Warrant but only that of Necessity; nor any Rule to guide them but what, *pro hic & nunc*, shall serve for the bringing of them about: The same Power then that may once do them, in the omitting of the ordinary Way, may, by the same Rule, always do them, and so by Consequence, how far such Power is tied at any time, or in any thing, to any Rules of Law, I shall humbly submit to your Lordships Consideration. My Lords, I have now done stating the Question, those things whereupon I shall spend the rest of my Time are these.

First,

First, Admitting that the ordinary Means above-mentioned had been all used, and that they had not been sufficient; whether in this Case his Majesty, without Consent in Parliament, may in this Case of extraordinary Defence, alter the Property of the Subjects Goods for the doing thereof?

In the next Place I shall endeavour to answer some Objections which may be made to the contrary.

In the third Place, for qualifying of this, I shall admit, that in some Cases the Property of the Subjects Goods for the Defence of the Realm, may be alter'd without Consent in Parliament; and shall shew what they are in particular, and compare them and the present Occasion together.

In the fourth Place, because of some Precedents of the Matter of Fact, and likewise of all Authorities that may seem to prove a Legality in this Particular of Shipping for Defence of the Sea, whatever it be in the General, I shall therefore endeavour to answer to such of them as I have met withal.

For the *First*, that to the altering of the Property of the Subjects Goods, tho' for the Defence of the Realm, a Parliamentary Assistance is necessary. In this it must be granted in the first place, that the Law ties no Man, and much less the King, to Impossibilities: And *Secondly*, that the Kingdom must be defended.

As therefore the Law hath put this great Trust upon his Majesty, so when the Supplies which by the Ways before-mentioned it hath put into his Hands fail therein, it hath provided other Ways for a new Supply.

The first thing that I shall present unto your Lordships and this Court, are the Aids and Subsidies granted in Parliament. That amongst the *Ardua Regni negotia*, for which Parliaments are called, this of the Defence not only is one of them, but even the chief, is cleared by this; that of all the rest none are named in particular in the Summons, but only this: For all the Summons of Parliament shew the Cause of the calling them to be, *pro quibusdam arduis negotiis nos & defensionem Regni nostri Angliæ & Ecclesiæ Anglicanæ concernentibus*; and in the Conclusion the Party summoned to be there, *Sicut honorem nostrum & salvationem & defensionem Regni & Ecclesiæ diligit*. And in all the ancient Summons of Parliament, when Aid was demanded, the particular Cause of Defence, and against what Enemy in special, was mentioned.

My Lords, to gain time, I will instance but one or two of each King's Reign. *Claus. 23. Ed. I. M. 4. dorf.* that the *French ad expugnandum Regn' nostr' Classe maxima & bellatorum copiosa multitudi-ne Regn' nostrum invadunt & linguam Anglicanam omnino proponunt*, &c. *Claus. 3 Ed. II. M. 3. dorf.* and *7 Ed. II. M. 8. dorf.* that the *Scots* had enter'd, burnt and destroy'd the *Marches*, and put them to a Tribute. *Claus. 1 Ed. III. pars 2. M. 6. and 22 Ed. III. M. 31 dorf.* that the *Scots* and *French* had invaded the Realm. *Claus. 7 Hen. IV. M. 29. dorf.* that the *French* were with a great Fleet, *Quasi in ore Thamesis*, to invade the Kingdom, and the King to go in Person; after this King's Reign, the Summons was as now it is.

That these *Ardua defensionem Regni concernent*, are the Aids and Means of Defence, and not the Way and Manner of doing it, as their Counsel therein, is clear. In the Parliament Roll *6 Rich. II. M. 9.* This of the Manner and Way and Prosecution of the War being given in Charge to the

Commons to advise upon, they answer this, *Nec doit, nec soluit appartenir al eux mes al Roy. Rot. Parl. 13 Ed. III. pars 1. M. 11.* the same being given in Charge to the Commons, they pray *que ils ne sont charge al Council doner al choses del queux ils n'ont pas conuzance*: And so *Rot. Parl. 21. Ed. III. M. 5.* they excuse themselves, and say, that this belongs to the King and his Council.

And that these *ardua circa defensionem*, were the Aids, is expressed in Words in some of the Summons. *Claus. 7 Ed. II. M. 8. dorf.* the Cause of the Parliament to withstand the *Scots*, and that in *tam arduis debetis extendere manus adjutrices opportun' auxili' faciend.* *Claus. 31 Ed. III. M. 21. dorf.* that *circa necessariam defensionem Regni quam ad dictum negotium expediend' auxilium necessar' nos habere oportet.* *Claus. 5 Rich. II. M. 2. dorf.* the King being to make a Voyage *pro defensione Regni*, which could not be done without borrowing great Sums of Money; therefore the Parliament was called to advise about the Assurance. So that, my Lords, it is clear, that the Law hath provided this Parliamentary Way for supplying of the King's Wants for the extraordinary Defence, and hath likewise put the Power of using of it into his Majesty's own Hands, for he may call Parliaments when, and so often as he pleaseth.

My Lords, as the Parliament, *First*, are best qualified and fitted to make this Supply; (for some of each Rank, and that thro' all the Parts of the Kingdom, being there met, his Majesty having declared the Danger, they best know the States of all Men within the Realm, and are fittest, by comparing the Danger and Mens Estates together, to proportion the Aid accordingly;) and, *Secondly*, are fittest for the Preservation of that Fundamental Propriety which the Subject hath in his Lands and Goods; because each Subject's Vote is included in whatsoever there is done: So that it cannot be done otherwise, I shall endeavour to prove to your Lordships both by Reason and Authority.

My First Reason is this, that the Parliament by the Law is appointed as the ordinary Means of Supply upon extraordinary Occasions, when the ordinary Supplies will not do it. If this in the Writ therefore may without resorting to that be used, the same Argument will hold as before, in resorting to the Extraordinary by way of the Ordinary, and the same Inconveniency will follow.

My Second Reason is taken from the Actions of former Kings in this of the Defence. The Aids demanded by them, and granted in Parliament even for this purpose of the Defence, and that in times of imminent Danger, are so frequent, that I will spare the citing of any of them. It's rare in a Subject, and more in a Prince, to ask and take that of Gift, which he may and ought to have of Right.

The second Way was Loans and Benevolences demanded by them, with Promise of Repayment both for the ordinary and extraordinary Defence of the Realm; and that as well of all the Subjects equally, as of some few. *Pat. 48 Hen. III. M. 16.* a Commission to the Earl of *Leicester* and others, *contrabendi mutuum in nomine nostro de denariis & viualibus*, and other things *in munitionem Navium ponendis & Nautarum stipendiis contra hostilem adventum Alienigenar' in Regnum nostrum, & ad defensionem & tuitionem ejusd' Regni*; and promiseth Repayment. *Vifis computis* in the *Exchequer*, *26 Ed. I. Rot. 100.* the King borrows of the Merchants

289661. *pro defensione Regni*, and promifeth Repayment, *Hil. 31 Ed. I. Rot. 4. and Trin. 31 Ed. I. Rot. 41.* divers Sums borrowed *pro defensione*, and Repayment promifed. *Br. irrot. 34 Ed. I. Rot. 82.* ten thousand Pounds paid by the King at one time for Money borrowed, this I confefs is *Arduis Regni negotiis. Br. irrot. 11 Ed. II. Rot. 1.* the Scots having entered the Kingdom, *diversa homicidia, incendia, & depredationes perpetrantes*, the King being in Perfon to go againft them, writes to his Council to provide Money; and they, *diversas vias pro denariis providendis exquirentes*, refolve to borrow. *P. 12 Ed. II. Commun'* for the fame Caufe a Loan upon all Merchants Strangers. *Rot. Scot. 1 Ed. III. M. 3.* the Scots having entered the Realm and taken divers Castles, and threatned a Conqueft of *England*, and *Quia crescit sumptuum multitudo in tantum quod Thesaurus noster ad sustentationem exercituum nostr' nequaquam sufficit*, he borrows. *Claus. 14 Ed. III. M. 8.* the King had borrowed 3333 l. *pro salvatione & defensione Regni, & vult promptam solutionem fieri prout decet*; and now affigns it to be paid out of the Customs. *Walsingham, Pag. 179. 44 Ed. III.* the King *Sinistro usus concilio magnas summas pecunie* of all forts *mutuo petiit, asseverans quod in defensionem Ecclesie & Regni illas expenderet*; but the People would not lend. *Claus. 5 Rich. II. M. 12. dorf.* the King *pro defensione Regni*, being to make a Voyage to Sea, desired to borrow Money, and a Parliament called to give Assurance. *7 Hen. IV. Rot. Franc.* Money borrowed *pro defensione, volens promptam & securam solutionem fieri. Rot. Parl. 11 Hen. VI. M. 13.* ten thousand Pounds borrowed *pro defensione* and spent, and the Parliament order the Security. *Rot. Parl. 15 Hen. VI. M. 3.* ten thousand Pounds borrowed *pro defensione* by the King. *Stat. 11 Hen. VII. cap. 10.* it appears that a Benevolence had been desired by *Hen. VII.* for the Defence of the Realm, and wherein he went in Perfon. The known Commission to Cardinal *Wolsey* for the Benevolence in *March, 16 Hen. VIII.* it was to withstand *Infestissimos hostes* of *France* and *Scotland*, who intended to invade the Realm; and that the King's Coffers were now empty, and therefore they have Power *Communicandi & inducendi, persuadendi & practicandi cum subditis Regis super amicabilem pecuniarum concessionem. 2 pars Pat. 37 Hen. VIII. cum pro sustentatione ingentis oneris nostrarum Copiarum, quas in presenti tam per mare quam per terram conficere, & in promptu habere cogimur ad resistend' propellend' hostem nostrum Francorum Regem, in defensionem tutelam & securitatem dilectorum subditorum nostrorum, quorum ill' damnum & interitum omnibus viis & modis molitur, Statut' & ex consensu & scientia concilii nostri decrevimus aliquam opem de dictis subditis nostris petere, & eand' cum eorum benevolentia recipien' pro eorum cujuslibet facultate ministrand' nihil dubitans quin sponte & liberaliter quisque pro sua portione & facultate elargiturus sit, eoque magis & citius quod id totum consumatur & cedat in suam ipsorum defensionem*; and the Power is given to levy it as a Benevolence only. By the Statute of *35 Hen. VIII. cap. 12.* it appears that for the Defence *Hen. VIII.* had borrowed divers Sums of Money.

The third Way was by anticipating their Rents. *Trin. 29 Ed. I. Rot. 58.* in the *Exchequer*, Writs went to all the Sheriffs of *England*, *pro salvatione Regni ejusque incolarum salvatione, & inimicorum depredatione*; that all the Profits arising out of their Counties, and the Rents of all the King's Tenants due at *Michaelmas*, be paid at *Midsummer*,

and Allowance promifed in the next half Year's Rent; and that this *ad tam ardua negotia necessaria, & in consuetudinem non trabatur.*

My Lords, that not one or two, but so many Kings, and of such Power and Wisdom as many of them were, and that in a Matter of such Consequence, and in times of Necessity, should so far descend from their Greatness, or so far prejudice their Right, as to borrow that of the Subject, which, without being beholden unto them, they might take of Right, and bind themselves to Repayment, and all without any *salvo* of their Right, your Lordships will conceive that it can hardly be imagined.

My third Reason is taken from the Incertainty of the Way intended by the Writ; for the Law delighting in Certainty, to the end that the Subject might be sure of somewhat that he might call his own, hath made all those Things that the King challengeth as peculiar to himself from the Subject, either certain in themselves, or else reducible to a Certainty either by the Judges, Jury or Parliament, (or some other Way than by his Majesty himself) as indifferent between the King and his People. In this I intend not such Things as are common to the King with the Subject, of which Nature are the Aids for marrying the King's eldest Daughter, or Knighting his eldest Son; for these are due to several common Persons that are Lords of a Manor, as well as to the King, as appears by the Statute of *Westm' 1. 3 Ed. I. cap. 35. M. 28.* and are not due by any special Prerogative, but by Tenure; and yet the Common Law for avoiding Excess therein, calls it *Rationabile auxilium*; and even this by the Statute of *Westm' 1. 3 Ed. I. cap. 35.* is put into Certainty; and the Cause of making the Statute, as therein is expressed, is, because the People were grieved by paying more than was requisite; and thereby that which was reasonable, became an unreasonable Aid. This Statute was general, and named not the King in particular; but the Statute *25 Ed. III. cap. 11.* is only in case of the King, and *Na. Br. fo. 82.* gives the Reason of the making of that Statute, because the King before did diftrain for more than was fit, and therefore by reason of the Excess, was restrained to a Certainty as well as the Subject. Neither are the Taxes and Talliages upon Cities and Burroughs, or ancient Demefne against this, in respect of the Baseness of their Tenures before-mention'd. And Secondly, because the Subject that is Lord of such Burrough and Mannor of ancient Demefne, hath them as well as the King, as appears by the Case of *New-Salisbury, 33 Ed. I.* in the Parliament Book, and in the New Parliament Roll, *8 Ed. II.* for the Burrough of *Cirencester*, and *Br. Trin. 33 Ed. I. Rot. 22. and Na. Br. 97.* These things which are peculiar to the King, either they be certain in themselves, as are Treasure-Trove, Deodands, Wrecks, and the like, where the King is to have the thing itself; and so if it be in Money, as the Demy-Mark; when in a Writ of Right the Tenant prayeth, that the Seisin may be inquired, *Fines pro licentia concordandi*, it is the tenth Part by the Law comprized in the Writ of Covenant, and the Post-Fine one half so much more, and Fines for purchasing Original Writs *ii. s. viii. d.* where the thing demanded is forty Pounds, or ten Shillings where one hundred Pounds, and so in proportion. Or else it is reducible to a Certainty, as in all Cases where the Party is to be amerced, tho' he is *miser cordia dom'*

dom' Regis, yet the Jury must find the Amerciament; and when he is to make Fine and Ransom *ad voluntatem Domini Regis*, yet this Fine must be set by the Judges: when the Tenant by Knight-Service makes default in the Summons *ad exercitum*, which is to pay Escuage for the Default; this cannot be set but in Parliament, as I shall prove hereafter.

My Lords, to apply all to the Thing in question, there is a Cause for raising Money for the Defence of the Realm, *non definitur in lege*, what will serve the Turn. If his Majesty, as in the Writ, may without Parliament lay 20s. upon the Defendant's Goods, I shall humbly submit it to your Lordships, why by the same Reason of Law it might not have been 20l. and so *ad infinitum*; whereby it would come to pass, that if the Subject hath any thing at all, he is not beholden to the Law for it, but it is left entirely in the Mercy and Goodness of the King.

My Lords, I am now come to the second kind of Proofs, and that is by Authorities. The Cases which in the first Place I will insist upon, will be to prove it by Induction: for if I shall prove that his Majesty without Parliament cannot tax his People for setting forth of Land-Forces for Defence, for making and maintaining of Forts and Castles for Defence, for Victuals for a defensive Army, for Maintenance of Prisoners taken in a defensive War, for Pledges and Hostages given by Foreign States for the keeping of Peace; if it cannot be in all or any of these Particulars, the five Supports of a defensive War: I shall then offer it to your Lordships, whether it can be done at all.

Before I proceed to these Particulars, I shall observe thus much, my Lords, in the general; that if those that hold by ancient Demesne and Burgage, which are but base Tenure, cannot be taxed *nisi sur grand cause*, and that have many Privileges in point of Ease and Profit in Consideration thereof, as they have; much less then can the Tenants by Knights-Service and Socage, that are free Tenants, and have no Privilege in Support of the Charge, be taxed. And as they are not taxable, but *sur grand cause* in the general, so neither in particular for this of Defence, as is proved by that of Escuage; for if his Majesty without Consent in Parliament, cannot tax his own Tenants, nor proportion the Fine according to his Pleasure, when the Tenant holds the Land *ad exercitum*, for the Defence of the Kingdom, much less can he do it where there is no Tenure for that Purpose. That Escuage cannot be set without Parliament, is first the Statute of *Running Mead*, *Nullum Scutagium vel auxilium ponatur in Regno nostro nisi per commune concilium Regni nostri*; which tho' it be not printed, yet it is of Record, and inrolled in the *Red Book* of the *Exchequer*, and cited in *Mat. Paris*, p. 343. And that as well before the Confirmation of it, 9 Hen. III. as since, it hath been by the Judges reputed to be a Statute and of Force, appears by the Book of 5 Hen. III. *Mordam*. 53. where it is pleaded, and called by the Name of *Magna Charta*, and allowed; and *M. 19 Ed. I. finiente* 20. *incipiente Banc. Regis Rot.* 56. in the Case of *Ralph de Tunney*, it's pleaded by the Name of *Magna Charta Johannis Regis de Running Mead*, and allowed.

In the Book of Knights-Fees of *Ed. I.*'s Time, there is a Writ cited, which went to the Sheriff of *Hereford* thus; *Datum est nobis intelligi quod plures*

sunt qui tenent per servitium Militarium de nobis, qui contradicunt solvere Scutagia quæ nobis sunt concessa per commune concilium Regni nostri; therefore he is commanded to levy them. *Comm' M 8 Ed. II. Rot. dors.* many Processes issued for the levying of Escuage granted in *Ed. I.*'s Time superseded, and quite releas'd; the Reason entered on the Roll is, *Quia dictum servitium non fuit communiter factum*; that is, as I conceive, that it was not done *per commune Concilium Regni*: The Books are exprets, 13 Hen. IV. *Com. Banc. Na. Br.* 83. *Institut. Sect.* 97.

My Lords, that those that held in Socage or Fee-Farm, or not by so many Knights-Fees as they were distrained for, were always discharged, as appears by infinite Precedents, I shall make no Use of it, as the manner of entering these Discharges upon the Roll; it is observable, that he is distrained *ac si teneret per servitium Militare*, whereas he holds the Lands in Socage, *pro quibus servitium aliquod Regi in exercitibus suis facere non debet*, and in some Rolls that *Ratione alicujus autoritatis*, he ought not to be distrained; therefore *Quia Dominus Rex non vult illum in hac parte injuriari prout justum est*, the Distresses are released. Amongst divers Precedents for this, I shall cite but one or two, *Br. Trin.* 34 *Ed. I. Rot.* 20. the Abbot of *Abington* and *John Arden*, the Iter Roll of *Sussex*, 7 *Ed. I. Rot.* 107. of *Gilbert Gifford*. My Lords, if the King might have raised Money, and seized Money for finding of Soldiers, or for their Arms, this manner of Entry, as I humbly conceive, would never have been suffer'd.

I am now come to the first Particular that I have instanced; that is, the charging the Subject for finding of Soldiers to go out of their County for the Defence of the Realm. My Lords, in that I shall in the first place admit these three Things.

1. That every Man after the Statute of *Winchester*, *secundum statum & facultates*, was to find all manner of Arms, as well for the Defence of the Realm against Foreigners, as for the Peace; and that I have before proved by that of 3 *Rich. II. M.* 16. and after by the Statute 5 *Hen. IV.*

2. That upon sudden coming of strange Enemies, these are compelled to travel out of their own Counties, is the Statute of 1 *Ed. III. cap.* 5. and so for appeasing of any notable Rebellion, when the King for the doing thereof goes in Person, as appears by the Statute 11 *Hen. IV. cap.* 1, and 18.

3. I shall admit, that so long as they remain at home, and go not out of their Counties, they are to have no Wages; and that the Maritime Shires, and those that border upon *Scotland* and *Wales*, were not to be at the King's Charge, so long as they remained at home in their own Counties for the Preservation of them; but that they were in that Case themselves to bear the Charge against Foreign Invasion, as of making Hue and Cry, assisting the Sheriff when he took the *Posse Comitatus*, and all other Things concerning the keeping of the Peace.

But that the Subjects are taxable either for Wages or Victuals, or otherwise for finding of Soldiers out of their Counties, tho' for Defence of the Kingdom, or that any are compellable to do it at their own Charge, I shall humbly deny. The Statute 1 *Ed. III.* says, that in this Case it shall be done, as usually hath been done in times past, for the

the Defence of the Realm. My Lords, I shall not deny, but that before *Edward III.*'s time Commissions have issued out of the Chancery for that purpose; against which Matters of Fact, not only to ballance them, but even to weigh them down, it's as clear that whole Armies, some of them of 30000 at the least, over and above them that were summoned by their Tenure, have been maintained at the King's Charge, from the time that they have departed out of their Counties, during the whole time of their Service, and that not only with Promises of Payment, but that they were paid *ex Thesauris Regis*, out of the *Exchequer*; and many times upon failure of Payment, Victuals, Wages, and other Things, upon Suit for them in the *Exchequer*, full Payment has been made; of which fact in most Kings Reigns there are many Cases.

My Lords, this is the Answer that I give to the Commissions to the Country, That *de facto* the King was at the Charge usually for defensive War. By the Statute 19 *Hen. VIII. cap. 1.* those that have Annuities of the King, must attend him when the King in Person goes for the Defence of the Realm, or against Rebels: But there is a special *Proviso*, that they shall have Wages of the King from the time they set out till they come to the King, allowing twenty Miles a Day, and afterwards as long as they shall remain in the Service. Upon a Rebellion in the North 28 *Hen. VIII.* against which the King intended to go in Person, Privy-Seals were sent to most of the Gentry to attend the King with the best Retinue that they could make, and likewise to bring the Bills of their Expence, and Payment promised, as appears by many of those Privy-Seals remaining in the Palace-Treasury. And besides the Indentures themselves, whereof I have seen many, it appears by the Statute 2 & 3 *Ed. VI. cap. 2.* that the Retainer of Soldiers at the King's Charge, was as well for Defensive as Offensive Wars; and also by the Statute of 3 *Hen. VIII. cap. 5.*

My Lords, in the next Place I shall endeavour the Proof hereof by clear Authorities. The Statute of 25 *Edw. III. cap. 8.* is, that none shall be compelled to find Arms, but such as hold by such Service, if it be not by Grant in Parliament. That this was not *introdutivum novæ legis*, appears by a Petition whereupon the Statute is made, that it is *encounter le droit del Roynme*. That the Common Law was so before the Statute, and likewise in case of a Defensive War, appears by the Authorities following: *P. 26 Ed. I. Rot. 35. dorf.* the Scots entering the Borders, a Commission issued *Reginaldo de Gray*, to press Soldiers in *Lancashire*; he certified by his Letter inrolled there, *que sans denieres prest*, he could not procure them to march out of those Parts; and therefore Order is taken in the *Exchequer* to send Money. That the Scots had now invaded the Kingdom, appears by *Br. irrot. m. 26 Ed. I. in Scaccar.* where Commissions are inrolled for many Thousands to be levied for this War at the King's Wages. *Bra. Trin. 32 Ed. I. Rot. 18. Communia.* The Wardens of the Marches of *Cumberland* and *Westmorland* write to the Barons of the *Exchequer*, that whereas the Scots lay near the Marches with a great Army, and that the People of these Counties would not march out of their Counties without Wages and Victuals, that they would provide for both. 2 *Pars Pat. 10 Ed. II. M. 26.* and 9 *Ed. II.*

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in *Parl.* a Grant to find one Soldier for sixty Days at the Charge of the Town against an Invasion of the Scots. Now the King grants, *Quod hujusmodi concessio non reddat in præjudicium, nec trabatur in exemplum in futuro.* At the Time when this Aid was granted, the Scots had entered the Realm, and wasted the Bishoprick of *Durham*, as appears in 14 *Ed. II. Banc. Reg. Rot. 60. Rot. Scot. 12* and 13 *Ed. II. M. 7.* and 13. The same Indemnity upon the like Occasion of Defence, when they found the Soldiers *ad rogatum Regis*, and the King commanded the Chancellor to declare as much. *Claus. 13 Ed. III. M. 38. dorf. pars 1.* the Abbot of *Ramsay* discharged *pro Custodia Maritima* in the County of *Norfolk*, because he remained in his own County of *Huntington*, *cum equis & armis*, for the Defence thereof, with this, that therefore it was not *rationi consonans* to charge him farther. The same it is *Rot. Fra. 21 Ed. II. M. 1. Pars 1. Oxon.* because they were *prompti & parati* at home to defend the County. But the Practice, it seems, not agreeing with the Right in the Parliament, 20 *Ed. III. M. 12.* the Commons complain, that Commissions had issued out of the Chancery to charge the People in this Particular and otherwise, without Consent in Parliament, and pray, that they may disobey such Commissions. The Answer is, that the Commons had heretofore promised to assist the King with their Bodies and Goods in the War with *France*, and likewise for the Defence of the Realm; and that the great Lords, considering the Necessity as well for Defence as for the King's Wars, agree thereunto, and yet promise that this which is done *in cess Necessitate, ne soit troit en consequence n' ensample.* My Lords, this is a full Declaration of the Right, even when for the Defence, and yet some practise to the contrary. Before the making of the Statute 25 *Ed. III.* procured the Complaints in this Particular, in the Parliament 21 *Ed. III. M. 22 Ed. III. Pat. 8 Hen. III. Fulcarius de Brent inimicus publicus & excommunicatus*, that imprisoned the Justices Itinerant in *Bedford-Castle*, and held the Castle against the King; the King, *propter graves & manifestos excessus quibus regnum multipliciter perturbavit*, besieged the Castle; and whereas the Clergy, *de mera gratia*, had granted the King Aid for the doing thereof, *Rex nolens gratiam sic nobis exhibitam ad debitum retorqueri*, declares as much by his Letters Patent. My Lords, it is here declared, that the King cannot *de debito*, or *de jure*, take any Aid against the Subjects Wills for besieging of a Castle, held against the King by a publick Enemy. *Rot. Inquisition 3 Ed. I. Rot. 4. Keni coram auditoribus querelarum post bellum Everham & pacem proclamata.* The Castle of *Tunbridge* being held against the King, the Hundred of *Feverham* was assessed at fifteen Pounds *per insultationem* of the Castle: The Jury presents this as a Grievance, which the Justices would never have received, nor suffered to be entered into the Roll, if this Assessment might have lawfully been made. My Lords, this Castle and Hundred they were both in the same County, and being before the Statute of *Winchester*, they are not compellable to besiege the Castle; and if they were compellable to go in Person and with Arms, yet no Assessment could be laid for the doing thereof. My Lords, I shall only offer to your Lordships Consideration the *Scotish* Roll of 20 *Ed. III. M. 6.* the Wardens of the Marches of *Scotland* were to

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appoint *Exploratores & Vigiles*, which were to espy out and give notice of the Enemy's Intentments. By the Commissions in Henry IV. Henry V. and Henry VI.'s Times, they were *explorandum defensione Regni, & partium sumptibus incolarum*: But how? Only *de assensu & voluntate sua, prout fieri consuevit*.

My Lords, I am now come to that of Victuals. The Statute 14 Ed. III. cap. 19. is, That for the Wars the Provision for them shall be done by Merchants without Commission or other Power from the King, or any other Power, that the People may not be compelled to sell against their Wills. That this was as well for Defensive as Offensive War, and that this was not *introducitur novae legis*, but was so at Common Law, is by your Lordship's Favour, clear. *Pat. 29 Ed. I. M. 16, 19. ad reprimendam malitiam Scotorum*, and to repel them, Commissions to most Counties to provide Victuals; and because they refuse to do it, the King then offers them Security. *Br. Trin. 8 Ed. II. Rot. 99. Victuals bought juxta forum patrie, pro munitione marchie Scotie*, and there Payment upon Suit adjudged. Sometimes at *Newcastle*, sometimes at *Carlisle*, sometimes at *Berwick*, as the War required, were Store-Houses, where the Victuals were laid, and Clerks of the Stores to issue them out. That the King not only paid for the Victuals, but for the Houses where they were laid, appears. *Br. Trin. Ed. III. about the End of the Roll, dorf. the Burgeffes of Newcastle complain in Parliament, that their Houses had been taken up long time for the keeping of those Victuals; this was transmittted into the Exchequer by Writ, which says, Volumus hiis pro domibus suis praediatis sic occupatis, satisfacere, prout debet & prout justum fuerit, & prout temporibus Progenitor' nostror' fieri consuevit*.

My Lords, in the next place for the Defence. When those that served with Horse *ad vadia Regis* lost their Horses in the Service, the Owners did not bear the Loss, but they were always paid for by the King; and therefore when they were first entered into the Service, the Marshal, or else the Wardens of the Marches, who had the Command of them, did set down in a Roll the Horse of each Man, and the Mark and Price of each Horse, to the intent that the Owner by this Certificate might be assured of the full Value to be paid him, in case the Horse was lost. This appears *Claus. 34 Ed. I. M. 16. where the custodes Marchie Scotie assigned pro defensione Marchie* were to do it. *Br. irrot. in the 26 Ed. I. Rot. 105, 106. the Scots having entered the Realm divers homicidia, incendia & alia facinora perpetrantes*, there the Horses *ad vadia* for Defence were to be appraised. *2 Pars Pat. 10 Ed. II. the same; and the Scotish Roll of the 21 Ed. III. M. 7. the same, prout jus est*. That thereupon, since, the Subject hath recovered of the King, are many Cases. I will instance but in two or three. In *24 Ed. I. Rot. 16. dorf. Robert Heibam recovered twenty Marks in the Exchequer, pro equo perduto in conflictu Dover inter homines Regis & inimicos Francie*; at which time the French had assaulted Dover, and burnt the Priory and a great part of the Town. *Br. Hil. 17 Ed. II. pro restauratione trium equorum perditor' at Carlisle. 9 Ed. II. Com. P. 9 Ed. II. Richard Waldgrave recovered for Horses lost at*

Carlisle. Com. Hil. 2 Ed. III. for Wages pro restauratione equorum perditor' and burying of the Dead when the Scots had entered the Realm at Stanope-Park, for one Troop fifty eight thousand Pounds allowed, habita inde deliberatione, and adjudged.

For Castles the antient Forts and Bulwarks for Defence, the Statute 14 Ed. III. cap. 13. says, that Merchants without any Commission or Power from the King shall victual them, so that the People shall not be compelled to sell against their Will. That this Statute in this Particular is not *introducitur novae legis*, is cleared by the Case *Trin. 16 Ed. I. Rot. 93. Wills*, in a little Roll, and in a great Roll of the same Year, *Rot. 19. when in Trin. by John Evesborne against John Flavell, Quia blada & garbas suas cepit*, the Defendant says, he was Constable of the King's Castle of the *Devises*, and that he had *in preceptis Domini Regis, quod mur' faceret to the Castle de morturo stauo vel de bladiis*; and of these things, and that by Virtue of this Writ, he took an Inquest to know where he might have best these Provisions, *ad minus nocumentum patrie*; and the Jury found it, that the Defendant might take it *ad minus nocumentum patrie* of the Plaintiff; and that he came to the Plaintiff's House, and offered to buy *pro Denariis & ad usum Regis*; and that because the Plaintiff refused to sell, they departed from his House; the Issue joined, and found against the Defendant; 100 Marks Damages given the Plaintiff, and adjudged. There were always antiently *visores operationum*, and they upon Oath certified, that they saw the King's Money expended, which was demanded in the Exchequer. And for Victuals, as they were bought with the King's Money, so when they grew stale, or the Danger was passed, they were sold again to the King's Use.

My Lords, that even in the Time of War, when the Frontier Towns and Castles were besieged, and the Borders invaded, that even then the King did bear the Charges, appears by the Allowances in the Exchequer, *Trin. 27 Ed. I. Rot. 47. pro tuitione Newcastle contra Scotos, qui hostiliter Regnum in partibus illis invaserunt. M. 31. Ed. I. Rot. 2. the Scots besieged Carlisle, 26 Ed. I. and Allowance now de exitibus Castr' which was the King's. And in the 27 Ed. I. 75. ten thousand Pounds allowed pro ingen' and Trin. 32 Ed. I. Rot. 11, 12. Visis comput. 28 Ed. I. Rot. 71. prout justum, quia Scoti contra Regem hostiliter insurgunt, therefore de thesauro Regis, Berwick is fortified; & Rot. 78. dorf. it appears that the Sheriff of Yorkshire had carried ten thousand Pounds de thesauro Regis to those Parts. Br. M. 17 Ed. II. propter frequentes egressus Scotorum in Regno, the Castle of Sandall at the King's Charge is fortified prout justum, and Allowance given. And Brevia Hil. that Year the Castle of Horney for the same Cause was fortified, the Scots having entred circa praedi' Castrum & apud Lancaster. 3 & 4 Phil. & Mar. Dyer. 162. b. One in Execution for Debt in the Fleet, who, as the Book saith, was a Man very necessary for the War; and it was moved by the King's Attorney, per mandatum concilii, If the Prisoner might be licensed with a Keeper by the Queen to go to Berwick for the Defence of it, or no: and it was held by all the Judges of the Ring's-Bench and Common Pleas, that the License*

was not good; and 4 & 5 the same Case cited accordingly to have been the Opinion of all the Judges.

My Lords, for Prisoners taken in defensive Wars, and likewise for Pledges and Hostages for securing the Peace, that the Charge and Maintenance, and the carrying them to the several Places of their Abode, have been always borne by the Kings of this Realm, the Allowances thereof in the *Exchequer* are so frequent, that I intend to cite none of them, save that for the Prisoners taken in the Conflict at *Dover* before spoken of, which is *Comm' 4 Ed. II. Rot. 22. dorf.* neither do I find it at any time stood upon, save only 8 *Ed. II.* among the *Br. Trin. 8 Ed. II. Rot. 88. dorf.* But the Reason is, because that after the Death of *Ed. I.* in the Commission of granting the Constabship of the Castle, no mention was made of the Prisoners, and yet even in that Case upon a *Monstravit Regi*, a Writ of Privy-Seal is awarded for Allowance *prout Justum.*

My Lords, if in all these Particulars of Soldiers, Victuals, Castles and Forts, Horses, Prisoners and Pledges in case of a Defensive War, the main Supports of them, the Kings could not tax their Subjects, but have borne the Charge thereof themselves; I shall then offer it to your Lordships to be so for the Defence in General.

My Lords, the Allowances in the *Exchequer* in all the Particulars before-mentioned are frequent. In the Case of Mines, the Profits of Silver Mines, that they upon an Accompt in the *Exchequer* were always answered unto the King, was one of the principal Arguments for the King's Right thereunto; and there *fo. 320.* it is held, that in all Things that concern the Revenue of the Crown, because they are there debated, the Record of the *Exchequer* shews not only the Course of the Court, but what the Law is thro' the Kingdom.

My Lords, that in Cases of War and Embassies the *Chequer* made Allowances, and with what great Consideration, appears by the Statute 5 *Rich. II. cap. 10.* that they were not allowed by the Court, till the Party brought the Great Seal, or the Privy-Seal for it. And if a Writ of Allowance came to the *Exchequer* before the Court had examined the Accompt, yet they never made Allowance until the Court had examined it. *Hill. 25 Ed. I. Rot. 22. Licet breve de allocatione pendit de 1000 l. allocandis tamen ante allocationem factam oportet inquirend' si pecunia illa ad opus Regis devenit & quod ipsi doceant super hoc Curiam Regis.* And *Trin. 25 Ed. I. Rot. 47.* the Allowances are never in Gro'ss, but by Particulars.

My Lords, the next Proof that I shall humbly offer unto your Lordships, is in that of borrowing of Money by the King for the Defence of the Realm, which as they have usually done it, so it is as clear, that not only upon Petitions, their own Pleasure, and upon Grace, but likewise upon Suit they have been adjudged so to do in the ordinary Courts of Justice. *Comm' Pasch. 31 Rot. 41.* one hundred and forty nine Pounds borrowed of *Henry Tompson*, *pro defensione totius Regni* was sued for, and Repayment ordered. *M. 10 Ed. II. Rot. 160.* *Grandes pecunie summe* borrowed by the King for that Purpose, and order for Repayment. *Br. 3 Ed. III. Comm' Princip. Rot. 664 l.* My Lords, in this Particular I shall cite but this one Case more, *Comm' Pasch. 29 Ed. I. Rot. 18.* the King

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pro urgentissimis Regni negotiis & defensione totius Regni, had seized divers Sums of Money in all the Abbies and Cathedrals, and other religious Houses in the Realm, *& quo citius commode poterit* promised Payment. In the Parliament 29 *Ed. I.* at *Lincoln* the King is petitioned for Repayment of these Monies, who promiseth Repayment, *Ita quod Regis conscientia super hoc exoneret* and there, and *Rot. 19.* divers Sums are adjudged to be paid.

My Lords, I shall thus humbly offer this unto your Lordships, that if the King had conceived, that when himself wanted Money for the Defence, that he might have charged his Subjects, he would never have made this Answer of Repayment, *ad exonerandum Conscientiam*, for then in Equity and Conscience the Parliament should have taken Care for the Satisfaction of these Debts, or should at leastwise have distributed part of the Charge upon all his Subjects; neither should the Parties have had full Satisfaction for all their Debts, but should have borne part themselves. By the Statute 35 *Hen. VIII. cap. 12.* the King for the Defence of the Realm had divers great Loans made to him. Now likewise there being great Cause of new Defence against *France* in *Scotland* in Aid of the King, they release these Assurances given by the King, and likewise release to the King all Suits and Petitions concerning those Moneys.

My Lords, I am now come to the other Authorities for proof thereof, which is by Acts of Parliament. My Lords, before I come to the Acts of Parliament themselves, I shall humbly offer unto your Lordships, the Summons and Preparatives to them.

First, The *Ardua Regni negotia* for which they are called, are principally *defensionem concernentia*; that these are not the Way and Manner of Defence, and their Advice therein, but the Supplies and Aids for this Defence, I have presented clear Proofs to your Lordships before. That these Aids cannot be raised without their Consents, is strongly inferred in this, that the Knights of the Shires are to have *plenam & sufficientem auctoritatem pro se & comitate Comitatus præd' ad faciend' & consentiend'*, to the Things in *negotiis ante dictis*. If this might be done without consent of the Commons, this in the Writ would be needless. But that this cannot be done without their Consents is cleared by the Words following in the Negative, *Ita quod pro defectu potestatis hujusmodi dicta negotia infecta non remaneant quovismod.* This, my Lords, is the constant form of modern, and all the antient Writs, and shews clearly that the Commons without their Consents in Parliament, are not chargeable to a defensive War.

In the Acts of Parliament, I will begin with that of *William* the Conqueror, *Anno quarto* of his Reign; which besides that it is cited in the Preface of the 8th Report, and *Instit. fol. 75.* and by *Ingulphus fo. 519.* and *Mr. Selden* in his *Eadmerus*, Page 171. it's likewise upon Record, and inrolled in the Red Book in the *Exchequer*. The words are these, *Volumus & firmiter precipimus & concedimus quod omnes liberi homines totius Monarchie Regni nostri Anglie, habeant & teneant terras suas & possessiones suas bene & in pace libere ab omni exactione injusta & ab omni tallagio. Ita quod nihil ab eis exigatur vel capiatur nisi servitium suum*

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suum liberum quod de jure nobis facere debent & facere tenent' & concessum jure hæreditario in perpetuum per Commune concilium totius Regni nostri præd'.

My Lords, the Words by reason of the Disjunctive & *ab omni tallagio* are plain, that the King shall not exact, nor take any Thing of any Freeman, but what his Tenure binds him unto. As in words by reason of the generality of them, it extends to Cases of the Defence of the Realm; that it doth so in intent, I shall endeavour thus to present it to your Lordships.

The Military Services before mentioned for the Defence of the Realm, they are by *Bracton* attributed to the Conqueror's Institution; for in his second Book *fo. 36.* speaking of them, he saith, *Secundum quod in Conquestu fuit adinventum.* *Plowden* in the Argument of Sir *Thomas Tresham's* Case. Means the Conqueror had to do it by reason of the many Attainers of those that took part with *Harold*, and after his Death with *Edgar Atheling*. That he did it in a great part, appears by *Matth. Paris fo. 8.* that he put all the Clergy that before held in *Franke Almogne sub servitute Militari* to do Service *tempore hostilitatis*, and by the County Palatine of *Durham* and *Chester* in those Places of Danger. In the Book of Knights Fees in *Henry IId's* Time, it appears by the Certificates, they had sometimes *de veteri Feoffament'* and sometimes *de novo.* And by some of them it appears, that the Tenures *de novo Feoffament'* were before King *Stephen's* Time, and therefore 'tis probable that the *Veteri* might be those created by the Conqueror. The Provision for Soldiers Pay by Tenures was likewise of his Institution, as appears by that before cited out of the Black Book, *lib. 1. cap. 27.* that *in primitivo regni statu post conquestum ad stipendia & donat' militum* out of the Castles and other Lands *in quibus agricultura non exercebatur pecunia numerata succrescebat.* The Policy and Provision of the Conqueror for the Defence being by Tenures, when in this Act of Parliament he says, *quod nihil ab iis, exigatur vel capiatur, nisi servitium suum quod de jure nobis facere tenentur,* I humbly conceive shews plainly, that the Subject was not otherwise to be charged for the Defence, nor further than by their Tenure. This, my Lords, further appears by others Parts of that Act of Parliament, where speaking of any thing of Charge that is to be done according to their Tenures, as that all *bene se teneant in equis & armis ad servitium suum integrum faciend'.* But in the next Place speaking of the Defence it saith, that all within the Realm *sunt fratres conjurati pro viribus & facultatibus* to defend the Kingdom and the Peace, & *ad judicium rectum, & justitiam faciend'.* the coupling of the Defence with that of the Peace, and doing Justice, shews the personal Care that all by their Oath of Allegiance ought to bear to the common Peace and Good of the Realm.

The next Statute that I shall present to your Lordships, is that of *Running Mead*, 17 *Johannis Regis*, the words are these, *Nullum Scutagium vel auxilium pona' in Regno nostro nisi per Commune Consilium Regni nostri nisi ad corpus nostrum Redimend',* and to knight his eldest Son, and to marry his eldest Daughter. As in Words these extend to the Defence; because all Supplies for that Purpose from the Subject, they are only in *auxilium*, or in *subventionem expensor'* of the King, who, as before is proved, is principally bound thereunto: So may the Intent likewise be further gathered, *First* from this, that the Word *auxilium* is joined with that of

Scutage, which is for the Defence; and likewise from this, that particular Satisfaction is made, by other parts of that Statute, to those that had been disseised by *Richard II.* and King *John*, which were things done only for the Increase of their Revenue, without shew of the Common Defence. That both before 9 *Hen. III.* and afterwards 20 *Edw. I.* this was a Statute, and so accounted, I have before proved. And in the Book 5 *Hen. III.* it is called by the Name of *Magna Charta sans addition.* So 37 *Hen. III.* in that solemn Confirmation observed by *Matth. Paris*, p. 115. this of *Running Mead* is confirmed by the Name of *Mag. Char.* and 50 *Hen. III.* p. 1220, which I note only to this purpose; that of speaking of *Mag' Chart'*, this of *Running Mead* is intended as well as that of 9 *Hen. III.* as part thereof, and bodied both together; yet that neither of them were observed either in King *John's*, or *Hen. III's* time, our Histories are full of it. And by the Pope's Bulls of 12 and 13 *Hen. III.* the Pope absolving the King from his Oath in their Confirmation, doth it because, as the words of the Bulls are, *Juramentum peccati vinculum esse non debet:* neither till after 29 *Edw. I.* as I shall hereafter prove, were they at all observed in the things concerning the King's Prerogative.

The next that I shall cite, are the Statutes of 25 *Edw. I.* and the Statute *de tallagio non concedendo.* That of the 25 *Edw. I. cap. 5 & 6.* the Grievance is for Aids, Tasks and Prizes taken thro' the Realm, for the Wars, shall not be brought into any Custom for any thing before done, be it by Roll or any other Precedent that may be found; and further grants, that for no Business from henceforth, he will take any such Aids, Tasks and Prizes but by common Consent in the Parliament of the Realm, and for the common Profit, saving the antient Aids and Prizes due and accustomed. My Lords, tho' by the Copulative it is clear enough, that there must be a Consent and common Profit concurring, and altho' the saving of the antient Prizes and Aids accustomed, might well enough have been satisfied in the Aid excepted in *Running Mead*, and the prizing of Wines and Purveyance; yet to out these and all other Scruples, the Statute *de tallagio, &c.* made afterwards for that purpose is absolute and general: That no Talliage or Aid shall be taken by the King, nor that any of his Officers shall take any Corn, Leather, Cattel, or any other Goods without the consent of the Party.

My Lords, to bring these Statutes to the Thing in question, that these Things cannot be done tho' for the Defence, the times of the making of them, and the Circumstances concurring thereunto, I shall present unto your Lordships.

That of the 25th of *Edw. I.* by the Date appears, was the 10th of *Octob. 25 Edw. I.* My Lords, the King, the 12th of *Aug.* before being at *Odimer* ready to go over into *Flanders*, the Parliament being then summoned by his Letters Patents, *Rot. pat. 25 Ed. I. M. 7.* taking notice of the Constables and Marshals departure from the Court in Displeasure, and of the Rumors of the People, that the King refused to seal Articles sent him for the common Profit, for the Redress of divers Grievances done to the People. For the Grievance he saith, that without those things he could not have defended the Realm, and yet saith, that he is sorry for it, and prayeth that this may be his Excuse, as he that hath done those Things, neither to buy Lands nor Tenements, nor Castles, but to defend

defend himself and the whole Realm; and that if he returned again, he would have all know, that he had an Intent to amend all those things, to the honour of God, and Content of his People; that if he dies in this Service, his Heirs shall make amends. Hereby it appears, that the Grievances that procured this Statute, were for the Defence of the Realm; therefore from hence it follows, that the Aid and Taxes there mentioned were for the Defence. So likewise that the Exception of the antient Aids extends not to those of the Defence, that being the Thing wholly complained of. This Declaration of the King was the 12th of August; the September after the King being at *Winchelsea*, those Articles are sent unto him, to which he deferred for the present to give his assent unto them, because his Council was not there, and so sails over into *Flanders*. This Statute of the 25th of *Edw. I.* is past, the King beyond the Sea, the *Teste Edwardo Filio nostro*; at his return, as appears by *Walsingham*, page 42. the King is desired to confirm these Articles, which in *Walsingham*, page 40. are the same Word for Word as the Statute *de tallagio*, which the King then deferred. 27 *Edw. I.* they desire it again, which the King doth with a *Salvo jure Coronæ nostræ in fine adjecto, quod cum audissent Comites cum displacencia ad propria discesserunt*, saith the Author, *sed revocatis ipsis ad Quind' Pasch' omnia sunt concessa*.

That the Statute *De tallagio* was after that of 25 *Edw. I.* is plain in this, by the King's going over into *Flanders* without assenting unto any Articles in *Septemb.* and 10 *Octob.* following, as appears by that Statute 25 *Edw. I.* itself, it was made; and likewise by the Statute *De tallagio* itself, the King's releasing all Rancour to the Earl-Marshal and Constable who had most offended him, and first presented these Articles to the King. My Lords, I shall add this only, as I conceive it will not be proved, that this King either before or after the making of this Statute, or any of his Successors since, ever claimed this absolute Power over their Subjects, as to lay Aids and Tallages upon them for the Supportation of their own private Estates abstracted from the common Defence or Good of the Kingdom. This King at this time we see by his own Declaration, was far from it. This last Statute fully satisfied those that desired it; for as *Walsingham* saith, *Ad eorum votum absolute omnia sunt concessa*. If therefore it extends not to that of Defence, I shall humbly offer it by what Construction of it our Ancestors Judgments and Discretions will be freed from a great deal of Censure, that were so well contented with it.

My Lords, *Mag. Chart.* being confirmed at the same time when the Statute 25 *Edw. I.* was made, and both that and the Statute *De tallagio*, being only Articles upon *Mag. Chart.* they were all of them, as I conceive, intended in the subsequent, and so often Confirmation of *Magna Charta*.

My Lords, the next is the Statute of the 14 *Edw. III. cap. 1.* that the People shall not be compelled to make any Aid, or to sustain any Charge but in Parliament. That this cannot be done for the Defence, will, as I conceive, be enforced from the Words; for a great Subsidy having been granted as well for the War on this side the Sea, that is for Defence, as for the *French Wars*, it's declared, that this shall not be drawn into Example, and that out of Parliament they shall not be compelled to sustain any Charge; and then it is further enacted, that this Subsidy and all the Profits of Ward-

ships, Escheats, and other Profits of the Realm, shall be spent for Defence and Safeguard of the Realm, and the Wars in *Scotland* and *France*, and not elsewhere; so that this Statute, as I conceive, all put together, bears this Sense, That the Subsidies granted in Parliament, and the Wardships being a Fruit of the Tenures created for the Defence of the Realm, and other Profits arising to the King by way of Prerogative, are to be spent for the Defence of the Realm, and the King's other Wars; but that no Aid or Charge for any of these, can be laid upon the Commons without consent in Parliament. My Lords, that the Practice of the King, I mean *Edw. III.* was contrary to these Statutes, and that they were not kept appears by the Parliament Roll, 15 *Edw. III. M. 9.* the next Year after, where the Commons shew that their Goods were seized, and their Bodies imprisoned without any Suit commenced against them.

My Lords, the next which I shall cite are the Statutes of 25 *Edw. III.* and 1 *Rich. III.* against Loans and Benevolences, which I shall humbly offer unto your Lordships on this Ground, *Ad ea quæ frequentius acciderint adparantur leges*. As for my part I have seen general Loans and Benevolences, but they were for the Defence; so I conceive if they were otherwise, they were but few in respect of the others. The common Grievances therefore being by Loans and Benevolences of that Nature, these Statutes, I conceive, were made against them; for these not being within the words of any of the former Statutes, that therefore the Kings might with the more Colour put them in Practice, and on the other side being as equally dangerous to the Subjects, because of the Displeasure by denial, they procured the Statutes. That Loans for the Defence were after 25 *Edw. III.* counted unlawful, appears by *Walsingham*, pag. 179. that 44 *Edw. III.* the King *Sinistro Consilio magnas summas pecuniæ* of all Sorts *petiit, asserens, quod in defensionem Ecclesiæ & Regni illas expenderet*, but that the People would not lend.

My Lords, the next which I shall cite is direct in Words, which tho' it be not an Act of Parliament, yet the Weight of the Authority by putting of it will appear. In the Second Part of the Parliament Roll, 2 *Rich. II. M. 3, 4, 5.* the King being beset with the Enemies of *France* and *Spain*, and *Scotland*, who all three by Land and Sea invaded the Realm, the Privy-Council not willing in a thing so much concerning the Realm, to take the whole Charge of it upon themselves, nor desiring so soon to call a Parliament, a Parliament but a little before being dissolved; they therefore resolved to assemble a great Council of most of the Bishops, Lords, and other great Men and Sages of the Realm, who meeting and finding the absolute Necessity of a Preparation for Defence, and that the King wanted Money to do it; what their full and final Resolution in this Case of Extremity for Defence was, I shall read the words of the Roll; they say, *Pur conclusion final quilz ne poient cest mischiefe remedier sans charger les Comm' del Royalme, quel charge ne poient de fait ne grant sans Parliament*: and therefore the Necessity being urgent, the great Men lend Money for the present, with advice presently to call a Parliament, as well to provide for the Repayment of this Loan, as for further Supply. It's true, my Lords, that this King was at this time within Age, and it is likely that many of his Council had been *Edw. III.* his Grand-

Grandfather's Privy-Council, who well knew his Prerogative, and extended it as far, by reason of his great Wars, to the charging of his Subjects, as any before him, or since his time. And that not only the Privy-Council, but likewise, as the Record faith, almost all the Prelates and others, Dukes, Earls, Barons, Bannerets, and other Sages of the Realm, which I conceive were the Judges, should be so far from putting this in Execution, that they declare in the Negative upon full Deliberation, that the Commons cannot be charged herein but in Parliament, themselves likewise thereby being to undergo a present Charge, by lending to supply that Necessity; the Authority must needs be weighty: And upon second Thoughts afterwards, the same was declared in full Parliament by the Lord Chancellor, and so afterwards entered upon the Roll without any Qualification at all, which adds farther to the Authority thereof.

Ult. Feb. 3. Car. A Commission issued to divers great Lords, the End, as appears by the words, was for aiding the King's Allies beyond Sea, and for the Defence and Safety of the Kingdom and People. They were, by the Commission, to raise Money by Imposition or otherwise, which without extreme Danger to the King, Kingdom, and People, can admit no long delay, wherein Form and Circumstances are to be dispensed with rather than the Substance lost. This, my Lords, was a Commission to tax the Subjects in time of Necessity for Defence. The last Parliament, this Commission as against the Law was condemned by both Houses, and cancelled in his Majesty's Presence.

Philip Comines in his 5th Book, *cap. 8.* observing the same, above all other commends the Policy of the *English* Laws and Government; and both he and *Bodin* *Reipublic. lib. 6. cap. 11.* and *Pasquier* Advocate-General in the King of *France* his Chamber of Accompts in his second Book, *cap. 6.* and *7.* all shew this likewise to be the antient Law of *France*; and how the Practice comes now to be otherwise there, *Pasquier* shews at large; and that the Kings sometimes endeavouring to the contrary, found so much Difficulty, that they afterwards, especially *Charles* the Fifth, procured by the Consent of the three Estates these Aids for Defence to be granted for three or four Years together: And that this Consent of the People at the first, was afterwards that which gave the occasion to the King to take it without Consent; and therefore he concludes that *France* being *Un Roy-alme de Consequence*, that they must not easily promise any thing, tho' but once, which they will not be willing to permit for ever.

My Lords, I have now done with the Proofs; in the next place I shall endeavour an answer to some few Objections that are obvious, both from Reason and Authorities.

For those of Authorities, 13 *Hen. IV. 14, 16.* *Gascoigne's* Opinion that the King may charge his People without Parliament, to a thing that is for the common Profit of the People; the thing that he applies it to, is, that the King may grant Pontage and Murage, &c.

My Lords, that the King may grant both these, and Tolls upon erection of a new Fair or Market, or Paveage, I shall not deny. The Answer that I shall give to them is, *First*, That these Grants do charge *venalia* only, that is, Goods carried to those Places for Merchandize; but that any

Tax may be laid *secundum statum & facultates*, either upon the Hundred or County, I shall humbly deny it.

It is true, my Lords, by the Conqueror's Laws it appears, that Cities and walled Towns were for the Defence of the Country, and therefore by those Laws no Fair or Market might be kept but in *Civitate aut Burgo muro walliat*. Therefore in *Doomsday-Book* in all such Cases it is found, that there are so many *Mansiones Murales*, which by their Tenure, when need was, were bound *ad murum reficiend*. That no other Land that holds not by that Service is liable, appears by the Parliament Roll. 1 *Ric. II. pars 2. M. 76.* where all the Cities and Burroughs of *England* petition, that in this time of Danger they not being able with their Merchandize to do it, that others that had Lands within the Towns might be made Contributaries, who before were at no part of the Charge.

The Answer is, that all according to their Tenure, as they have antiently done, so shall they still; and if this might be done, there would have been no need of the Statutes of 2 & 3 *Phil. & Mar. cap. 1.* 23 *Eliz. cap. 4.* for giving Power to tax Men *secundum statum & facultates*, to repair Castles and Towns within twenty Miles of *Scotland*.

For the Tolls and Pontages and Paveages, as there is a great deal of Equity that those which receive Benefit by bringing their Goods to the Market, and over the Bridge, should contribute to the Charges that make and maintain the Market-Places and the Bridges; so neither are they compulsory, but voluntary Charges: For as no Man pays, but he that receives the Benefit, so none is compellable thereunto, but is left to his Liberty. Neither is there any Colour in respect of the Town itself, to whom the Murage or Paveage is granted, why they should not be charged, because the Grant cannot be but at their own Suits; for if it be not at the Suit of *tot Burgenfium*, the Grant is void, and to be revoked.

It may be further objected, that as the Law hath intrusted the Way and Manner of managing of Defence wholly and independently to his Majesty, so likewise of Aids and Means, as the *Causa sine qua non*; and therefore his Majesty should not be dependent upon the Parliament for them.

My Lords, the near Relation between his Majesty and the Parliament, that they are but one Body, hath been presented unto your Lordships, and that his Majesty did exercise the *summum Imperium* there. *Bodin lib. 1. cap. ult.* says, *quod ejusd' esset potestas tributa nova imponere cujus est legem terræ*; but that the Legislative is not in his Majesty, out of Parliament, will be granted.

The Subjects Interest being as nearly concerned in the Defence, as his Majesty's is; as there is no Cause to fear that they should not be willing to proportion the Aid to the Occasion; so neither can the Law presume otherwise, which hath so high an Opinion of the Judgment and Integrity of this Court, that as it is in the *Comm'* 398. it's unlawful for any Man to conceive any dishonourable Thing of it.

My Lords, my last Answer thereunto is, that by the Law the King hath as independent a Power to make a foreign War, as to make a defensive. It will, as I conceive, be granted, that in this Case his Majesty hath not Power to tax the Subject; for then it would follow that as well as to the conquering

quering of the next adjacent Realm, so of all *Europe*, the Subject should be at the Charge, and yet the Land conquered be only his Majesty's; and yet upon this Ground, in respect of the equality of the Powers, it might be done.

Neither, as I humbly conceive, doth this only answer the Objection, but returns upon the other side; for his Majesty has Power to make an Offensive War, which for the most part causeth a Defensive; by this means it should be in his Majesty's Power to make a Defensive War, and to tax the Subject for the Maintenance of it.

My Lords, the last Objection whereto I shall endeavour an Answer, stands thus. The Parliament is a great Body, and moves slowly; and that the Case may be such, that the Cause may be lost before the Parliamentary Supplies come.

My Lords, how Means of effecting so sudden and so great a Surprise can be so secretly carried, I shall not examine it in Reason, but shall humbly offer unto it these Answers.

That the Service whereby the Law hath provided for the Defence both for Land and Sea, they have both the same limitation of Time with the Parliamentary Supplies in the Summons of the Tenants by Knight's-Service *ad exercitum*, and of the *Cinque Ports*; forty Days warning is to be given, as is for the Parliament. And so it is probable, for that of *Mould*, 13 *Ed. I.* it was for others that held by Sea-Service. And anciently the Summons *ad exercitum* to the Ports, and for the Parliament, went out together, or much about the same time, that the Parliament might assesse the Escheuage; and in case the Tenures and other Revenues were not able to maintain the War, that the Parliament might provide for further Supplies, as appears *Hil. 28 Ed. I. M. 15. 31 Ed. I.* and 44 *Ed. I. M. 15. & 16. & oportet neminem legibus esse sapientiores.*

The Tonnage and Poundage when first granted for Life, was, that the Kings might always have Money ready upon such sudden Occasions. In the Parliament Roll, 4 *Ric. 2. M. 42.* the Commons desire Payment of *Edward the Third's* Debts, that they might be encouraged to lend the King in Aid of the Realm, if a sudden Cause of Necessity should fall out. The Answer is, that it shall be done *selon le petition.* My Lords, by this it appears, that this Objection was not then taken to be of Weight, many of the Loans are in *Causa necessitatis in Articulo.* The Authorities that further answer this Objection are great, and full in the Point.

The first is that of the Parliament Roll of 2 *Ric. II.* before cited; the Business of Defence could not stay so long as for a Parliamentary Supply, yet agreed, that the Commons without a Parliament could not be charged; and therefore the same Men that gave the Judgment, presently lend Money for that Purpose.

In the Statute 31 *Hen. VIII.* for Proclamations, the Cause of making the Statute is expressed in these Words. Considering that sudden Causes and Occasions fortune many times, which do require speedy Remedies; and that by abiding for a Parliament, in the mean time might happen great Prejudice might ensue to the Realm; therefore the King's Proclamation is by that Act made equivalent to an Act of Parliament, but with a full exception of their Lands, Goods and Chattels: which as it shews that before that, by the Com-

mon Law, the King could not, in Cases of Exigency that could not stay for a Parliament, take or seize their Goods, so they were careful still to preserve their Rights.

My Lords, after the Statute of 31 *Hen. VIII.* the Maxim of *Justinian* was verified in *Hen. VIII.* as of the *Roman* Emperors after the *Lex Regia*, whereby the People transferred their Suffrage to the Emperor, *Quod Principi placet legis vim habet*; so all that time was that other as true on the Subjects part here, as there in the Digest, *Lege omnia de Regalis: quod meum est non est universitatis, & quod nostrum est sine facto nostro ad alienos transferri non potest.* The 7 *Prædict.* of Spain, *titul. 1. particular. 2.* gives something more to the King, for he may take from the Subject, *pro necessitate, Reipublicæ dato primum tali causa dictæ rei bono lumbia ejusd' vel majoris pretii bonorum virorum arbitrio*; he may in this Case take, giving a Pawn to the Subject for the assurance of a future full Satisfaction. *Lyme* in his 6th Book, *cap. 35.* *Bodin* in his 6th Book, *fo. 655.* affirms, that when *Hannibal* had put *Italy* and *Rome* itself into so great a hazard, and that there was not Money left in the common Treasury, that yet the Senate without their Consent could not charge the People, but that *unusquisque* of the Senate *mutuo dabat aliquid in usum publicum.*

My Lords, the last Authority for the answering of this Objection, and the clearing of the whole Business, is the Commission of the Loan. 2 *Car. pars 4. Pat. Roll*, the Words are these. 'The great and mighty Preparations both by Sea and Land, did daily threaten the Kingdom; that the Safety and Subsistence of the King and People, and the common Cause of Christendom were in apparent Danger of suffering irreparably; that the King's Treasure is exhaust, and the Coffers empty: That the Business of Supply cannot endure so long delay as the calling of a Parliament, and enquiring into all means just in Cases of such unavoidable Danger; the King is now resolved to borrow of the Subject, to enable his Majesty for their Safeties, and promifeth Repayment.'

My Lords, the borrowing of Money only is the thing required, that is for Defence, the King had no Money left; the Exigency such, that it would not stay for a Parliament. This Commission afterwards in the Parliament 3 *Car.* was questioned, and upon Debate adjudged by both the Houses of Parliament to be void in Law; by the Petition of Right presented so to the King, his Majesty denies it not.

My Lords, from this Objection of sudden Danger, I come to the next, which is the third Thing before offered unto your Lordships, which is an Admittance, that the Danger sometimes may be such, that the Subjects Goods sometimes without their Consent may be taken from them; for Property being both introduced and maintained by human Laws, all Things by the Law of Nature being common, there are therefore some times, like the *Philistines* being upon *Sampson*, wherein these Cords are too weak to hold us, *Necessitas enim* (as *Cicero* saith) *magnum humanæ imbecillitatis patrocinium omnem legem frangit*; at such times all Property ceaseth, and all things are again resolved into the common Principles of Nature. These Times, as sometimes they are only *instanti*, and concern but some few, as in Cases of killing one other

other Mens Lands, or with their Goods upon sudden Assaults; so sometimes they are longer in Continuance, and larger in Extent, and concern the whole Kingdom, as it is in Times of War, *quando agitur pro aris & focis flagrante Bello*. And as on the Particulars before mentioned, which are but for a short Time, and that concern some few only, the Law hath no Power for that Time, nor maintains any Property, so in the other Case it loseth this Power for a longer Time, and over all. A Dissent upon Disseisin in time of War, takes not away the Entry of the Disseisee. *Littl. Sec. 412.* no Plenary after the six Months bars the Patron of his *Quare Impedit* upon a Presentation in time of War. *43 Ed. III. Quare Impedit 135. Na. Br. 31.* And in a Writ of Right, where the Seisin makes the Title, the taking of Explees must be alledged to be done *tempore pacis*, the Law allowing no Estate in such Times, but calls it an Occupation in time of War. *Littl. fo. 12.* And as *inter arma leges silent*, so that of *Bract. lib. 4. fo. 240.* that *tempus Guerre est tempus Injurie*, is likewise true; for after the War is ended, the Law, as not having Cognizance of things then done, gives no Remedy for Wrongs in that time sustained, as the Case is adjudged in the Roll of *Kent. 7 Ed. I. inter placita de querelis*, one Parleton de Petro Randal quod ipse die Mercurii ante festum Stiⁱ Thomae, 46 Hen. III. came to the Town of Cleve, and took of the Plaintiff's Goods three Oxen, four Cows, and three Heifers, and yet detains them; the Defendant alledgeth the Pardon of Henry III. of *Omnes transgressionis facti ratione turbationis tunc in Regno existentis*, and that it was *tempus Guerre* when the Goods were taken; the Plaintiff replies, that the King pardons only Offences done to himself, & *non transgressionis aliis illatas*; the Defendant rejoins, that *tempus illud* was *tempus Guerre*, & *non tempus pacis*, and upon this the Issue was joined; the Jury finds that when the Defendant took the Goods, *fuit tempus belli*, & *non tempus pacis*, and therefore it was adjudged for the Defendant. *Tempus belli*, when Property ceaseth, is not upon every Inteline or Defensive War, but only at such times when the Course of Justice is stop'd, and the Courts of Justice shut up: and this is *tempus belli* in the *Institutes. Sec. 412. 39 Ed. III. Banc. Regis Rot. 49.* the Attainder of Treason of Thomas Earl of Leicester reversed, Error assigned, *Quia tempora pacis maxime cum per totum tempus pre^d Cancellar' & al' curie Dom' Regis aperte fuerunt, Et in quibus jus cuicunq; fiebat prout fieri consuevit, Nec pre^ddictus Dominus Rex in tempore illorum cum illis explicatis equitavit.* That there were great Armies on foot on both Sides in this Business when the Earl was taken at Barrowe-Bridge, our Histories are full, but yet it was not that *tempus Guerre* intended by the Law, because the Courts of Justice were open, and the King with Banners displayed was not in Person in the Field.

My Lords, in these times of War I shall admit not only his Majesty, but likewise every Man that hath Power in his Hands, may take the Goods of any within the Realm, pull down their Houses, or burn their Corn, to cut off Victuals from the Enemy, and do all other things that conduce to the Safety of the Kingdom, without respect had to any Man's Property. *12 Hen. VIII. 2 Br. trans. 406. 8 Ed. IV. 23.* that in such times a Subject may make a Bulwark in other Men's

Lands, and that the Laws already established are silent in such times. And although in that foreseen and lingring War of Hannibal's, whereof I have before spoken, the Senate could not charge the People, yet when there was a *Tumultus Gallicus*, that is, when the *Cisalpani* their Neighbours, on the sudden, as sometimes they did, assaulted the City; by the same Author the Case was otherwise.

My Lords, besides this sudden and tumultuous War, which shuts the Courts of Justice, and brings his Majesty in Person into the Field, and wherein Property ceaseth; the Law takes notice likewise of other times of War, as when his Majesty upon just Cause known unto himself by Proclamation proclaimeth War against any foreign State, and likewise the Law taketh notice of the Effects thereof; that is, that no Subject of such Prince or State is capable to prosecute any Suit in any his Majesty's Courts; and likewise, that then it is lawful for any his Majesty's Subjects to seize and keep to their own use, the Goods of the Subjects of any such Prince or State, as in the Books are adjudged. *7 Ed. IV. 13. 13 Hen. VIII. Br. Property, 38, 22 Ed. III. 16.* My Lords, it appears not by any thing in this Writ, that any War at all was proclaimed against any Prince or State, or that if any of his Majesty's Subjects had taken away the Goods of any Prince's Subjects in Christendom, but that the Party might have recovered them before your Lordships in any of his Majesty's Courts. So that the Case in the first place is, whether in time of Peace his Majesty may without Consent in Parliament, alter the Property of the Subjects Goods for the Defence of the Realm. The Time that will serve the turn for the bringing in of the Supplies and Means of the Defence, as to your Lordships appears judicially by the Writ, that is seven Months within four Days. For the Writ went out *Aug. 4.* and commands the Ship to be at *Portsmouth*, the Place of Rendezvous, the first of *March* following; and thereby it appears, that the Necessity in respect of Time was not such, but that a Parliament might in that time have been called for the effecting of the Supply.

Yet in the next place it is averred, that *Salus Regni periclitabatur*, and that was the cause of issuing forth the Writ; and this by the Demurrer if it should be confessed, yet this is but in general; how, or in what manner *periclitabatur non constat*. By the Law the Defendant may have a Protection when he is in *Negotiis Regni*; but when he will make use of it, it's not allowable in that Generality, but he must shew in particular, in what Town or Castle, or other particular Service he is in, that so the Court may judge whether the Cause be sufficient, yea or no; and yet that is his Majesty's Writ too, as well as that in question. The Books for it are, *36 Hen. VI. 28. 39 Hen. VI. 1.*

Yet in the next place, if your Lordships shall give any heed to this General, as to the Particular of Pirates infesting the Coasts, and Preparations further *ad Regnum gravand'* mentioned in the Writ, the Case then, as I conceive, is this.

In a time of Peace, his Majesty's Vigilancy foresees a Danger likely to ensue; the Supplies for prevention of this Danger will serve, if brought in in seven Months after within four days; yet whether in this their Case without Consents in

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Parliament, his Majesty may alter the Property of the Subjects Goods?

Mr. St. John's second Day's Argument for Mr. Hampden.

My Lords, hawing done with the Defence in general, I shall now endeavour to prove, that this of the Sea hath no such Peculiarity in it, but that it will fall within that of the Defence in general: wherein, in the first place, I will endeavour an Answer to some Objections both from Authority and Reason, that may seem to prove a Right: And secondly, to some Precedents concerning the Use and Practice.

Of the first Rank, I shall begin with *Danegelt*. It may be said, that the *Danes* infesting the Realm, that *Ethelred*, for the resisting of them first by his own Authority, laid this upon the Subject, and made it an annual Charge. That after the Conquest they seldom infesting the Coasts, the Conqueror took it not annually as at first, but at such times only as it is in the Black Book, *lib. 1. cap. 11.* when *ab exteris gentibus bella vel opiniones bellorum fuerunt*. And that after *Henry the Second's* time, the Kingdom being altogether freed from the *Danish* Invasions; altho' *Danegelt* lost the Name and Use, it never after his time being taken by Hides of Land as before; yet the succeeding Kings, by the same Authority, did lay Taxes upon the Subjects for Defence of the Sea.

My Lords, for Answer hereunto, I shall in the first place observe this only by the way, that the best and certainest Authorities agree not what it was, I mean the Laws of *Edward the Confessor*, *cap. 11.* and the Black Book. For the Confessor's Laws say, it was one Shilling upon every Hide of Land, and the Black Book two Shillings; by which it should seem it was little in use in *Henry the Second's* time, nor much known. That *11 Cap.* in the Confessor's Laws, where this is mention'd, was no part of the antient Laws themselves, but something afterwards added, appears by the Words themselves. First, it speaks of the Freedom which the Church, in the first Institution of it, had; Freedom, we know, was not lost till after the Conquest; and likewise of the granting of it by *William Rufus* in Parliament: and therefore it should seem to be inserted in those Laws afterwards out of the Laws of *Henry the Second*; for this *11 Cap.* and that of *Danegelt* in *Henry the Second's* Laws, are the same, *De verbo in verbum*, as appears in *Hoveden fo. 344.*

But admitting the thing, I shall endeavour Answers to each Part of the Objection: As First, that the *Danegelt* was granted in Parliament. Mr. *Cambden's Brit.* p. 142. observes, that the *Danes* first infested the Coasts *Ann. Dom. 800.* and, as his Words are, with such Hurliburlies, as the like was never hear of, Havock was made of all, razing of Cities, and burning of Churches; and for their continual Piracy, they had got the Nick-name of *Neccugii*, that is, Pirates. The *Danegelt* first began in *Ethelred's* time, almost 200 Years after the *Danes* first Invasion, for he began his Reign *Anno Domini 978.* That Provision was made for Sea-Defence in the Interim, and before *Ethelred's* time, appears by the many Sea-Fights of *Alfred* and other Kings. That this Provision was usually in Parliament, is probable from that of *Ingulphus*, *London print. fol. 488.* where *Anno Dom. 833.* which was 33 Years after the *Danes* first Invasion,

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a Deed to the Abbot of *Crowland* is dated thus, *Coram Pontificibus Proceribus & Majoribus totius Anglie in Civitate London, ubi omnes congregati sumus pro consilio capiendis contra Danicos Piratas littora Anglie assidue infestantes.* If King *Ethelred*, by his own Authority, might have imposed this, it is like some of his Predecessors, the Case so necessarily requiring it, in almost two hundred Years Space would have done it before this time. That this of *Danegelt* was done in Parliament, the Words carry as much; for the Words of the Law are, *Danegeldi redditio primitus Statu' fuit*, a Word most proper for the Parliamentary Authority. But fully by the Laws of that King, I mean *Ethelred's* Laws, in Mr. *Lambert's Saxon Laws*, *fo. 58.* there *ex sapienti' suorum consilio*, Peace is made with the *Danes*, and a certain Sum of Money granted to the Army, as our Historians observe. The *Danes*, by Composition, were to send away the whole Fleet, saving 45 Ships, which were to remain to defend the Kingdom against other Enemies, and the King was to maintain them at his Charge. That the *Danegelt* was paid to the *Danes* for this Defence, many of our Historians observe. My Lords, that at the same Parliament this was provided for, appears by the Words of the Law, *Si quis igitur posthac Navalis aspirat in Anglia predam fecerit, hic nobis auxilium ferat exercitus noster; et quamdiu in fide manserit que ad Comitatu' supplicent' paramus omnia.* That this was a Parliament, as the Words shew it, so it is held in the Preface to the 9th Report, and *Huntington fo. 205.* If this was not the *Danegelt*, yet this is clear, that in that King's time then Provision *contra Navales apparatus* was made by Parliament. *Primum statuerunt Angli' insausto consilio quod ipsi Danis Censum persolverent; Regibus namq; nostris modo per servitia ex consuetudine quod Danis persolvebatur ex ineffabili terrore.* That *Danegelt* which after the Conquest was paid to the King, we see by that Author, *Primum statuerunt Angli'; statutum Angli'*, must needs be by Parliament. If the *Danegelt* in such time of great Danger, was not imposed without Parliament, it must strongly make against those that shall object it.

The *Danes* having quitted the Realm, that the *Danegelt* was released by *Edward the Confessor*, as *Ingulphus fo. 520.* and *Hoveden 253.* and all our later Historians. That of *Ingulphus*, my Lords, alone, is without Exceptions, who lived in those times; he was brought up in *England* in the Confessor's Days, and therefore knew what he wrote; he afterwards went over into *Normandy*, and was the Conqueror's Secretary, came over with him to the Conquest, and at his own Charge maintained twelve Horses: he was so great at the Court, that, as himself writes, *fo. 514.* *quos voluit humiliavit, quos voluit exaltavit;* and *pag. 518.* a Charter of the Conqueror's to the Abbey of *Crowland* was made, *ad petitionem Familiaris mei Ingulphi;* and therefore, in all likelihood, would not report this partially against the King.

My Lords, that we are not to put out our Fires upon ringing of the Cur Feu Bell, we have no other Law for it but Disuse; and the Testimony of Historians, that *Henry I.* released it.

For that of the Black Book, that *William the Conqueror* retained it, *Quando Bella vel opiniones Bellorum fuerint*, as that Book is mistaken in the thing, saying it was 2 s. every Hide of Land, being in truth but one; so it is possible he might mistake in the other too. That it was released *in aeternum* is apparent. That many things were done *de facto*,

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to the infringing of the Liberty of the Subjects both in his time, and the times of *Hen. I.* and *Hen. II.* too, it is clear by Historians; and if it were not released before, yet that King *Stephen* released it, is, *Huntingdon fo. 221. Hoveden fo. 276. Hoc deo voluit*, say these Historians, *sed nihil horum tenuit*: and, as all our Historians agree, that after *Hen. II.*'s time, in whose Reign the Black Book was compiled, it was never paid; so it may be collected out of the Red Book, for all or most of the Aids and Escuages in *Hen. II.*'s time, and King *John*'s time, are there mention'd. In 8 *Hen. II.* 'tis said, *quod Danegeldum assessum fuit*; but after that, neither in his time, nor in the time of King *John*, or of any other King, is any more Mention of it. Sir *Henry Spelman*, in his *Glossary*, saith, that when it was taken in the Conqueror's time, and since, it was *Consultis magnatibus & Parlamentar' demum auctoritat' diminui' sunt*.

My Lords, in the last place, if the succeeding Kings, *mutato nomine* only, have in lieu thereof laid other Taxes upon the Subjects, they must hold Proportion with that of *Danegelt*; that is, that they have been equally set upon all the Inland Towns throughout the Kingdom, as that was, and *xii. d.* upon every Hide of Land; and likewise in time, and that there was no Intermision, but that in *Rich. I.*'s time, and King *John*'s, which were active, that then it was put in Execution. *Claus. 15. Job. M. 3. dorf. & 7. and Mat. Paris Pag. 312, 313.* The Pope had granted the Crown of *England* to the *French* King, who was ready to invade the Realm; great Provision of Shipping was made, *ad illiberationes Regis & ad stipendia Regis*: so far was this King in this time of Necessity, from imposing any Aid upon the Subjects for the Defence of the Sea, as that he himself bore the Charge.

My Lords, the next Authority that I shall insist upon, is, that in the Terms of the Law, *fo. 114.* in the Title of *Hidage*, the taxing by Hides was used much in old Times, and that chiefly in King *Ethelred*'s Days, who in the Year 1006, when the *Danes* landed at *Sandwich* in *Kent*, taxed all the Realm by Hides, and every 910 Hides of Land should find a Ship.

My Lords, my first Answer to this is, that this was done when there was a formidable Enemy, and which soon after conquer'd the Kingdom, was upon the Shore, as by the Book appears; and therefore 'tis likely that the Courts of Justice were shut, and that the King was then in Person in the Field.

Secondly, This was but *Aelus unicus*, and even by the Common Law, that easily admits of Customs not good; it's *Aelus binus* that hath any Colour *introducendi consuetudinem*.

Thirdly, It appears not by any thing in the Book, but that this might be done by Parliament, many of the antient Acts of Parliament are *statuit Rex*; and whereas the Book saith, Taxing by Hidage was much used in old Time, that these were by Parliament, appears both by the Use and Authority express in the Point in Print, *Doomsday-Book* in *Berks*, *Quando geldum dabatur*, *Matth. Paris 780.* many *Corneagia & Hidagia*, recited in Parliament, that had been formerly given to that King in Parliament. *Bract.* in his second Book, *fol. 37.* is express in the Point, that they cannot be taken but by Grant in Parliament, his Words are these; *Sunt quedam communes prestationes que servitia non dicuntur, nec de consuetudine veniunt nisi cum necessitas intervenerit, sicut sunt Hidagia & Corneagia de*

necessitate & consensu totius Regni introducta. Rot. Parl. 8 *Hen. III. M. 4.*

My Lords, the next Authority I shall insist on, is the Case of the Abbot of *Robertbridge* in *Kent*; which, because *prima facie*, it seems to be to the Point, I will put it at large. *M. 25 Ed. I. finient. l. Banc. Rot. 77.* The Abbot brought a Replevin against *Adam de Bridland* and others, for taking his Cattel; the Defendants avow in these Words, *Dicunt enim occasione turbationis inter Regem, & Regem Francie suborta, assignatus fuit Willielmus de Leighbourne ex parte Regis ad Custodiam Marie faciend' ratione cuius custodie faciend' terra & tenementa hominum ejusd' Comitatus agistata fuerunt ad custod' faciend'.* And the Abbot was assessed, 22 *Ed. I.* at 7 s. the 23 *Ed. I.* at 13 s. and 24 *Ed. I.* at 15 s. *ad pre'd' custod' faciend'*; and because he refused to pay, that the Defendants being Collectors for the Town, distrained the Abbot. The Abbot, in Bar of the Avowry, says, that for his Lands he was assessed to find a Horse and Man in *subsidium Custod' pre'd'*, and that he found his Horse and Man accordingly, *ad eand' Custodiam faciend'*; and therefore demands Judgment, *si una & ead' occasione custod' pre'd'*, he ought to find the Horse, *& nihilominus pre'd' pecuniam solvere.* The Defendants maintain their Avowry, and say, that the Abbot had divers other Lands within the Town, that he was assessed for them, for the Money, and that he was not assessed for those for the Man and Horse; thereon Issue is joined, and Day given, without any more thereupon that I have seen.

My Lords, besides the Authority of it in point, these two things may be further objected from this Case. The County was agisted *ad Custodiam maris*, and likewise to find Forces. My Lords, for the last, I have before admitted, and by the Statute of *Winchester* that may be done, for the Service was to be performed in *Kent*, the same County where the Land lay.

My Lords, because this Case *prima facie* hath some shew of Authority in Point, I shall endeavour a full and clear Answer unto it. By the Case it self it appears, that these Sesses were in time of War, the Words are, *occasione turbationis inter Regem & Regem Francie*; neither was the War with *France* only at that time, but likewise with *Scotland* and *Wales*, and all the Effects of War accompanied it. The *French* had landed in divers Parts of the Realm, and in particular, 23 *Ed. I.* in this County of *Kent*, and had burnt the Priory, and the greatest Part of *Dover*; the Havens were shut up for a great part of that time; the Goods both of the *French* and *Scottish* Nation were seized through the whole Kingdom; the Lands of all Priors Aliens were seized, and those that were upon the maritime Parts removed, and Natives put into their Houses, and all Strangers whatsoever, that landed within the Kingdom, to be arrested. All these, if any of them should be denied, will be made good, not only by our Histories, but likewise by the publick Records of the Kingdom. So that my first Answer is, that these Sesses were in the time of an actual defensive War from the two next and greatest States unto the Realm.

My second Answer is, that it appears not at all, by any thing in this Case, that these Sesses were made by any Authority from the King; for the Words are only in the general, that the County was agisted, and that the Abbot himself was agisted, but says not by whom, or whose Authority. That it was not by the King's Authority, appears

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by Leighborne's Commission appointed *ad custodiam præd' faciend'*, as the Words of the Case are; for by his Commission whereby he was to do this, which is *Rot. 22 Ed. I. M. 8.* he was so far from having any Power to tax the County hereunto, that he's commanded for Victuals, Arms, or other things that he shall need in this Business, that he shall pay those from whom he shall have any such thing, which likewise is enter'd in the *Communia*, 23 *Ed. I. Rot. 77.* My Lords, that there were Parliaments in every one of these Years, appears by the Summons, and those in Words not usual; for the great Fleet of France being mention'd, and that the French did intend *Linguam Anglicanam omnino delere*, they were now called *ad tractand' ordinand' & faciend' nobiscum*, and the Lords, & *aliis Incolis Regni qualiter sit hujusmodi periculis obviend'*, as it is in the Close Roll, 23 *Ed. I. M. 4. dorf.* and 24 *Ed. I. M. 7. dorf.*

My Lords, that accordingly Order was taken *cum Incolis*; and that the Gentry and other Inhabitants, by way of By-law or Agreement amongst themselves, did make Provision in this Particular, I shall endeavour to prove to your Lordships: that it hath been done at other times, and that such By-laws are good, appears, 14 *Ed. II. Banc. Regis, Rot. 60.* The Scots entering Durham, a By-law was made by the Inhabitants for the raising of Money, and one that refused it was adjudged to pay it: besides Leighborne, who was Admiral of all the English Fleet, there were *Custodes maris* in each maritime County; these, as appears by *Communia*, 24 *Ed. I. Rot. 78. dorf.* were chosen by the Commonalty of each County; and that these, together with the Sheriff and Inhabitants, did make Orders for those things, appears by the *Communia*, 23 *Ed. I. Rot. 79.* where Writs are directed to the Sheriff of Kent, and to the Sheriff of other maritime Counties, commanding them that *circa maris custod' visis presentibus Milites & potentiores liberos homines de Balliva tua evoces, & cum ipsis provida circumspeditione deliberes*, how he should do it. This, I conceive, is expressed in Point, and the Practice grounded upon that in Parliament, *ad ordinand' cum Incolis.*

My Lords, my third Answer to this Case is, that these Sesses were for Land-Service only, and not for Shipping. And this appears, *First*, by the Case it self; for the Abbot, in Bar of the Avowry, says, that he was sessed to find a Man and Horse *in subsidium custod' præd'*, which must be for Land-Service; and therefore demands Judgment, *si una ead' occasione custod' præd'*, he ought both to find the Horse and to pay the Sess. This is not denied by the Defendants, but they say that the Abbot had other Lands; and that this Sess was for those other Lands; so that it is admitted that the Sess for the Horse, which must be for Land-Service, and that for which they avow, were both for the same Use; all the Difference is, whether the Sess were upon the same Land or no.

My Lords, if the Sess, for which the Defendants avow, had been for Shipping, they might have admitted all that the Abbot had said, in Bar of their Avowry; that is, notwithstanding he found Arms for Land-Service, that yet he might, for the same Land, have been sessed again to the finding of Shipping. Neither do I doubt, but that the Parties, in the Action now before your Lordships, do find Arms, and yet they are sessed for Shipping; and that it will be stood upon by the

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other Side, that the finding of Arms for Land-Service excuseth not for Shipping.

But it may be said that the very Words are, that the Sesses were *pro Custod' maris*. My Lords, by divers Records it appears expressly, that the Custody of the maritime Part of the Land is called *custod' maris*. *Claus. 23 Ed. I. M. 4. dorf.* A Writ directed *Collectoribus pecunie ad custodiam maris*, in this County of Kent, commanding them, that in respect that the Cinque Ports were at the Charge of Shipping, *quod quieti sint de custod' maris facienda*, which must needs lie at Land. *Communia*, 24 *Ed. I. Rot. 79.* A Writ to William Bonell, & *sociis suis ad custodiam Maris in Com' Suff' assignatis*, and yet all that they are to do in that Office is for Defence at Land. So *Trin. 31 Ed. I. M. 20. Communia*. This *Custodia Maritima*, how it is to be done appears, *Rot. Parl. 46 Ed. I. M. 49.* and by the Statute 5 *Hen. IV. cap. 3.* it is to be done as heretofore it hath been done according to the Statute of Winchester.

My fourth Answer to this Case is, that the Plaintiff was a Clergyman, and the Clergy having denied in Parliament to aid the King, as the Laity did this Year, at this time they stood in the King's Disfavour; and in *Hil. Term. 25 Ed. I. Rot. 17.* the King commanded all his Courts of Justice, that if any Clergyman was Plaintiff in any Action, *quod nullum ei fiat Remedium*. And therefore Walsingham, in his *Annualis Consiliis* of this Year of 25 *Ed. I.* says, that it was *Clero Angliæ importabilis, quia de protectione Regia est exclusus, & per Regem nihilominus depredatum*.

But, my Lords, if I should let all go that hath been said, yet, under your Lordships Favours, the Case is of no Authority at all: for, admitting that the Sesses were for Shipping, and that by the King's Authority; yet had the Plaintiff no Reason to put himself upon the Point of Law when the Matter of Fact would help him; for the Plaintiff says, that he had been sessed before for those Lands, the other Party says no, but that it was for other Lands, and upon this the Issue is joined.

Nay, my Lords, if there be any Authority at all in the Case, under favour, it is strong the other Way; for if the Sesses were for Shipping, the Abbot says, that before he had found Arms for the Land-Service, and demands the Judgment of the Court, if therefore he ought to pay this Sess too. The other Party, if the Law had been clear, might have demurred thereupon; so that the Authority sways this Way, that none for the same Land are chargeable for Arms at Land, and Shipping too.

My Lords, not only for the clearing of this Case, but all other things that concern it, either in the mere Right, or Matter of Fact before the 29 *Ed. I.* that before the Parliament at Lincoln 29 *Ed. I.* all things concerning the King's Prerogative, and the Subjects Liberties, were altogether upon Incertainties. The Statute of Running Mead, *Magna Charta*, *Charta de Foresta*, had been confirmed at least eight times, from 17 *Joh.* unto 29 *Ed. I.* and yet not only the Practice, but likewise the Judges, in the Courts of Justice, went clear contrary to the plain, both Words and Meaning of them. By the second Chapter of *Magna Charta*, a Baron, *pro Baronía integra*, was to pay but one hundred Marks for his Relief; the Practice and Process of the Exchequer till

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29 Ed. I. was always for this Relief one hundred Pounds. *Michaelis* 28 Ed. I. Rot. 34. *Communia*, after the Death of John Gray, that held *per Baroniam*, the Question was, whether he should pay 100*l.* as the Record says, *prout antebac onerari solebat*, or 100 Marks, *propter Confirmationem secundum Magnam Chartam*; and this the Court would not determine before they had consulted with the King; and yet the Statute of *Magna Charta* had been confirmed by 25 Ed. I. and likewise the same Year, as appears by the Statute *de Articulis super chartas. Communia. M. 13. Ed. I. Rot. 26.* Philip Mermion died, and 100*l.* paid for his Relief. It was now 29 Ed. I. and in question, whether 100*l.* or 100 Marks Admittance, *licet hactenus*, they were always 100*l.* because the King had confirmed *Magna Charta* 29th of his Reign, and by his Writs had commanded his Courts to inroll it, and would have it *de cetero in omnibus suis Articulis observari*. My Lords, of this kind there be many Cases. The Charter of King John, and of the Forest, cap. 10. is *Nullus de cetero amittat vitam vel membrum pro venatione nostra*; and yet against the plain Letter and Meaning, *Communia Trin. 29 Ed. I. Rot. 44.* Adam Gower of Scarborough, as appears, had in this King's Reign been beheaded, *pro venatione*, in the Forest of Danby; and now an Inquisition went out to find, what Lands and Goods he had, and then upon the Return, the Question was, whether his Land was forfeited, and should escheat upon such an Attainder, and resolved that the Land was not forfeited. *Pasch. 22 Ed. I. Rot. 48.* The King's Shepherd had put the King's Sheep into a Man's Ground, who had distrained them; and for this Process went out of the Exchequer to punish the Man, who there pleads, that he knew not that they were the King's Sheep. And there *Rot. 51. dorf.* Lessee for Life of a Manor of the King's, with an Advowson excepted, the Court declared, that he had forfeited the Manor it self. By these Cases it appears, that neither the Practice, nor the Proceedings in the Courts of Justice in those Times, in Things between the King and the Subject, are so much to be relied upon, as the Words of the Law.

My Lords, it may further be objected, that at Common Law, before the Statute of *Winchester*, the King might compel the Subject to find Arms for the Defence of the Kingdom, and therefore by the same Reason, he may charge them to find Ships for the Defence of the Sea.

My Lords, not granting the Thing, yet for the present admitting it, I shall thereunto give these Answers.

That his Majesty, by Tonnage and Poundage, and the other Duties at Common Law mentioned, hath a particular Supply for that of Shipping, but hath nothing in particular for the other of Arms; and therefore that may with more Reason be laid upon the Subject than the other. And yet for one of the principal Things in that Statute of *Winchester*, that is, for Watching and Warding, the King before that Statute, had a particular and certain Farm or Sum of Money of each County for the doing of it, which after that Statute, the County was discharged of, because by that Statute the Counties took the Charge of doing of it upon themselves, as the Cases are. *Comm. Hil. 20 Ed. I. Rot. 10.* and *Br. Trin. 43 Ed. I. Rot. 22. dorf. 181. pro Com' Northumb' and 161. pro Cumber-land.*

My second Answer is, that each Subject, and that *secundum statum & facultates*, is already chargeable for that of Shipping, as hath been before proved; and therefore if he be chargeable both in Money and Kind too, the Charge is double in the one, and but single in the other. Neither could it hold Proportion with these Cases of Watching and Warding, where the Counties were discharged of the Money, when they took the Thing in Kind upon themselves. And therefore this Objection cannot, as I conceive, be made, unless his Majesty first quit all the before-mentioned Duties laid upon Merchandize.

My third Answer is, that in that of Arms, there is only *Mutatio Speciei*, changing of Money into Arms, for they remain the Subjects still in Property, and are in his own Custody; he may sell them, or employ them at his Pleasure to his own Use: but in this way of Shipping there is *ablatio rei*, in respect of the Victuals and Mariners Wages.

My fourth Answer is, that that of Arms is not only for the Defence against Foreigners, but in Watching and Warding, upon Hue and Cry, and otherwise to keep the Peace within the Realm, and for the Execution of Justice, by assisting the Sheriff when he shall have occasion to use the *Posse Comitatus*, and otherwise, all which do fail in the other. And as the use of Arms is more general, so are they for the more immediate Defence of that Element, wherein we have our usual and certain Livelihood. And yet the ordering of these for three hundred Years and upwards, was by Authority of Parliament.

Lastly, my Lords, in respect of the Victuals and Mariners Wages to be found for xxvi Weeks, the Case in question, as I conceive, cannot be compared to that of Arms, but rather to that of taxing the Country for finding of Soldiers to go out of their Counties.

My Lords, the next Objection that I shall endeavour to give Answer unto, is, that it is in his Majesty's Power, for the Safety of the Realm, to shut up the Ports and Havens of the Kingdom, and thereby to make a general Stoppage of all manner of foreign Trade; and therefore as his Majesty may anticipate Gain, by barring Men from the exercising of their Callings, so by the same Reason may he take something away.

My Lords, My first Answer is, that the Law therein doth trust the King only with that, which being done, is most to his own Loss, as in respect of the Customs and other Duties this of prohibiting foreign Trade would be.

My second Answer is, that this cannot be done but in time of War, and imminent Danger, and that therefore this Objection will not be seasonable till the other be put in Execution.

The last Objection is, that in divers old Charters of Liberties and Exemptions, the Patentees are freed *de Danegeldo & Navigio*, hereby is implied Right.

My Answer is from the same Charters, it may as well be inferred, the Subject is bound to make and repair the King's Parks and Houses, and to make up new Bridges, and divers other Things, these Charters of Exemption freeing them *ab operationibus omnium Regalium Parcorum & Pontium*, and from divers other Things which by Law the Subject is bound unto.

My Lords, for the Precedents that, from Matter of Fact and Charge, may be brought for proof

of the Use and Matter of Fact, as I do not profess to know them all, so if I did, yet Time would not permit to give a particular Answer to each of them; I shall therefore offer these general Answers to them.

The most of them, or all of them, are for charging the Sea Towns, and Haven Towns which have Ships, and many great Privileges, and are enfranchised for that Purpose, as is declared in the Parliament-Roll of 13 Ed. III. M. 11. before cited. These that are to find Ships, besides the main Prescriptions for Wrecks and Benefit of Fishing, are discharged of Arrays and Defence at Land, as appears not only by the Parliament-Roll, but by the Scotch Roll 10 Ed. III. M. 28. dorf. The Town of Shoreham, in the County of Sussex, time out of mind had found Ships, and therefore being by the Commissioners of Array taxed to Arms for the Land-Service, a *Superfed* for that Cause awarded. *Iter Sussex*, 7 Ed. I. Rot. 63. dorf. William de Bruce, Lord of Shoreham, upon his Claim adjudged, that all the Customs of Merchants at Shoreham belonged to him. Rot. Pat. 26 Ed. I. M. 16. the Town of Yarmouth, *pro servitio Navium impenso & impendendo*, are discharged of all Subsidies granted in Parliament, *pro Corporibus Navium, & attito: & Communia Trin.* 31 Ed. II. Rot. 30. The Town of Baldsey, in the County of Sussex, for the same Cause discharged by Judgment of the Court. *Iter Kant.* 21 Ed. I. Rot. 44. dorf. Certain Land-holders within the Cinque-Ports have Taillage *de quolibet homine applicante*, upon their Lands. *Petitions* 1 Ed. III. Rot. 9. Office de Pat'. In Consideration of the Charge of providing Ships, the Town of Southampton Petition, that their Privileges of having Customs within their Ports be confirmed to them; that they had these, appears *Hil.* 13 Hen. IV. Banc. Regis Rot. 39. where they are indicted for Extortion, for taking more Custom than was due. Rot. Parl' 45 Ed. III. The Commons pray, that the Franchises of the Sea Towns and Havens may be allowed them as heretofore, and that by default thereof, the Navy of England is much decay'd, to the Disaffurance of all the Realm if need should be. That these that are not Maritime Towns ought not to be charged, which is the very Case of the Defendant, I shall cite to your Lordships exprefs Precedents. *Claus.* 13 Ed. III. M. 14. par. 2. The Town of Bodmin in Cornwall discharged of Ships, because in *dicta villa Portus non est & longe a Mari & distat*, and hath not used before-time to find Shipping, and an Inquisition awarded to inquire of these Particulars; whereby it appears, that the Inland Counties had not so much as *de facto* been usually charged with Ships. Rot. Fra. 21 Ed. III. M. 17. those Towns *quæ Naves non habent, & quæ aliis Naves habentibus contributoria non existunt*, that they should be discharged; it appears thereby that some Towns that are Members of great Sea Towns, are contributory to Shipping, and other Inland Towns are not contributory. 2 Pars Rot. 2 Rich. II. M. 42. in which 51 Ed. III. is recited, whereby it is likewise recited, that the Burgeffes of Beverly had, by their Petition in Parliament, complained, that their Town is in *loco arido & a mari*, that *ad sinistram procuracionem quorund' machinantium ipsos indebite pregravare ad contribuend' hominibus de villa de Kingston super Hull*, to the making of a Barge *per Mandatum Regis*; now they pray *de omnibus & singulis hujusmodi oneribus insolitis*, to be discharged by their Charter, and it appears they are

discharged accordingly, and this now exemplified. 2 Rich. II.

To those of 48 Hen. III. both for Taxes for Soldiers and for Shipping, I shall give a particular Answer, that it was then *Tembus belli*, when the Courts of Justice were shut; for the Commission went out after April, and in the Red Book fo. 241. 6. it was *tempus belli* from 4 Sept. 48 Hen. III. until the 10th of Sept. 49 Hen. III. and that the Courts of Justice were shut up, appears 49 Hen. III. Rot. 4. Comm' Scaccario non fuer' Barones residentes in Scaccario, ad Pas. 48 Hen. III. ad Comm' Pas. 49 Hen. III. *propter turbationem nuper habitam*, there were no Sheriffs in *aliquibus Comitatus*, 48 Hen. III. and those that were *non poterint sic facere quæ ad officium vic' pertinebant*.

To the Commissions 30 Ed. I. M. 9. in the Patent Roll, *de puniendo homines* that refused, it is *quia ad Rogatum mittere non concesserint*, so many Ships. And if a By-Law were good to bind them, as is before proved, as well as their own Promise, it may be so; but I have never seen any legal Proceedings against any of those that refused at that time, save only against the Cinque-Ports that are summon'd by their Service. P. 33 Ed. I. Banc. Regis Rot. 82. against Seaford, as a Member of the Ports, and the Charge is, that *per servitium tenentur invenire unam Navem*.

For those of Ed. the Third's time, his Reign, for the most part, was a time of War; and that the Offensive brought a Defensive upon the Kingdom, is plain. *Walsingham* faith, Page 119, 131, that 10 Ed. III. the French burnt Southampton. And Stowe, Page 234. says, that 12 Ed. III. they assaulted Southampton, and burnt part of Plymouth. 13 Ed. III. they assaulted the Isle of Wight; Rot. Parl' 13 Ed. III. pars 1. M. 9. that they had done much Mischief in the West Coasts, and conquer'd the Isle of Guernsey. Rot. Sco. 10 Ed. III. M. 5. dorf. and M. 2. and all the Ports of England were shut up.

My Lords, in these Years wherein most of these Writs issued, the great Danger appears; and yet that the Charge laid upon the County was by By-Law and Agreement, I shall cite to your Lordship the Scotch Roll, 10 Ed. III. M. 3. The French riding at Anchor at the Isle of Wight, the King sends divers Privy-Counsellors to Dover, and commanded all the Officers, Masters of Ships, Mariners and Inhabitants from the Thames Mouth to the West, to come thither, *ad tractand'* with those Lords of the Council for the Defence of the Sea by Ships; and in the Record it is cited, that notwithstanding the King's former Command, *hactenus quicquid non facer' impress'*, the Writs for Shipping issued before, and were not executed; and therefore now a Commission, if so it might be done with Consent. 20 Ed. III. other Writs went out, Rot. Franc. pars 2. M. 24. 20 Ed. III. a Writ to Yarmouth *propter pericula Maris* to stop up their Haven, and Rot. Franc. pars 1. M. 19. that no Fishermen go out to Sea.

I shall endeavour a particular Answer to this. *Claus.* 10 Ed. III. M. 23. the Writ says, that *valida defensionis super Mare solvi non solebant temporibus Progenitorum* of the King. To this I shall give this Answer, that these Wages were demanded before their time of going to the Service; and the Record is, *hujusmodi vadia* have not been paid.

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My Lords, if this Answer be not sufficient, my Second is by denying the Thing; for besides that of 15 *Johan.* in that Time of Necessity, the Ships were to serve *ad liberationes & ad stipendia Regis*; and 46 *Hen. III. M. 4.* both in *Ed. I. Ed. II.* and this King's time before the tenth Year of his Reign, Wages for Defence were frequently paid.

My Lords, because I know not how far this will be stood upon, I shall spare the citing of any of them, and to this purpose shall cite to your Lordships only this Case. It is amongst the Parliament Petitions 1 *Ed. III.* and transmitted into the *Exchequer*, *Hil. 2 Ed. II. dorf.* the Fishermen upon the Coasts of *Yarmouth*, 20 *Ed. II.* were daily robbed and killed, and for rescous of them, those of *Yarmouth* were commanded to set out some Ships to Sea; and *Adam Bridlington*, the King's Clerk, sent with 300*l.* to set out this Fleet, which the Men of *Yarmouth* intended they should have as Wages for the Voyage; but the Clerk would not let them have above 230*l.* and that as Money borrowed of the King, and for this they gave their Bond of Repayment thereof. 1 *Ed. 3.* they complain in Parliament, and pray that they may be discharged of the 230*l.* and that the Bond may be cancelled; which is adjudged accordingly, and transmitted into the *Exchequer* for a Trial, whether the Service was done or not.

My last Answer to these Precedents is, that the Matters of Fact in these Years, to the Violation of the Subjects Rights, procured upon fresh Suits, not only the before-mentioned Statute of 14 *Ed. III. cap. 1.* against any Charge to be laid upon the Subject without Assent in Parliament, but afterwards they complain in Parliament, 15 *Ed. III. M. 9.* that their Goods were seized, and their Bodies taken without any Suit commenced against them, contrary to *Magna Charta*, and the Statutes and Ordinances made thereupon with so much Discretion of their Ancestors; and in particular in the Parliament-Roll of 22 *Ed. III. M. 4.* for the guarding of the Sea, and in 36 *Ed. III. M. 9.* and 37 *Ed. III. M. 2.* as before in 15 *Ed. III.*

My Lords, I now come to the last Thing, which is the Proofs in the Point, which I shall humbly offer to your Lordships. The first Authority that I shall offer unto your Lordships, is the Patent-Roll, 26 *Ed. I. M. 21.* whereby I shall endeavour to prove to your Lordships these two Things.

The Confession of that King and his Council, that he was so far from having Power to tax the People for the Custody of the Sea, as that he is bound to make Satisfaction for any thing taken from the People for this Purpose. The second, that the Charges laid upon the People for the Custody of the Sea, were the principal Grievances that occasioned the making of the Statute of 25 *Ed. I.* and the Statute of *de tallagio non concedendo*.

For the First, that the King declares that he had a Desire to redress the Grievances made to the People in his Name, and instanceth what they were, *veluti de rebus captis in Ecclesiis, & de aliis rebus captis & asportatis tam de Clericis quam de Laicis, sive pro custodia Maris vel alio modo quocunque*; whereby, my Lords, there's an Acknowledgment that it is Grievance, and to be redressed, to lay any Tax upon the Subject for the Defence of the Sea.

Commissioners are there named throughout all England to inquire of these Grievances; herein they

are to proceed according to certain Instructions from the King and the Council, which are these three.

First, Whether the Things were taken without Warrant, and if so, then the Party that took the Goods is to make Satisfaction, and further to be punished for the Trespass. *Secondly*, If there were no Warrant allowed, then the Officer was to make Satisfaction. *Thirdly*, If all were done according to, and in Pursuance of the Warrant and no more; then what upon Certificate thereof is, the Words are *& enferra tant que il se fienere appais pur raison*: The King hereby promiseth, that whatsoever Things were taken from the People by any Command of his for the Custody of the Sea, that he will make reasonable Satisfaction to the Party for such Things.

My Lords, for the second Thing, that is, that these Grievances occasioned the making of these Statutes, is clear from the Words of the Patent; for they were made *post guerram inter Regnum & Regem Francia*, which, as appears by the Case of the Abbot of *Robertbridge*, were from the 22d to the 25th of *Edward the First*, and by all our Historians, and many Records. It appears likewise, by those other Words, that the King, before his going into *Flanders*, intended to have remedied those Grievances; he went over in *September*, 25 *Ed. I.* and the Statute 25 *Ed. I.* was made the 10th of *October* after. Hence likewise it follows, that the Exception of the King's antient Aids and Prizes, mentioned in the Statute of 25 *Ed. I.* extends not to this of charging the People to the Custody of the Sea, that being one of the principal Grievances that occasioned the making of it. That the same Grievances caused the making of the Statute *de tallagio, &c.* I have before offered to your Lordships.

My Lords, the next Authority which I shall present, is the *Communia Hil. 23 Ed. I. Rot. 77.* there the King commanded thirty Gallies to be made by several great Towns, every Galley was to have sixscore Men a-piece, these were *pro defensione Regni & securitate maris*. My Lords, the Cases are many in the *Exchequer*, where the Money for making these Gallies was recovered against the King. I confess, my Lords, that the King had promised Payment to those that made them, which I shall thus submit to your Lordships. That in case the King might have commanded the making of them, at the Charge of the Towns, that then the King's Promise was but *nudum pactum*, for promising of Payment for that which by Law they might have been forced to do, and so the Payment rested only the King's Grace and good Pleasure. But, my Lords, upon Suits in his own Time, and in the Times of *Ed. II.* and *Ed. III.* the Monies for making these Gallies was received by several Towns, *M. 29 Ed. I. Rot. 29. dorf.* for *York*, *M. 31 Ed. I. Rot. 77.* *Ipſwich* and *Dunwich*. *P. 5 Ed. III. Rot. 31.* for him *prout justum fuer'* nothing having been paid before. *Bract. M. 16 Ed. II. Rot. 14.* both for the Galley made at *Southampton*, and the bringing her to *Winchelsea*, at their own Charge, *Præcept. P. 1 Ed. III.* all the Money from *Southampton* not being paid, now order'd that it should be paid.

My Lords, the next Authority that I shall present to your Lordships, is, the Parliament-Roll, 13 *Ed. III. pars 1. M. 9, & 11.* The Causes of calling the Parliament are declared to be these. *First*, the keeping of the Peace. *Secondly*, the Defence of the Marches. *Thirdly*, the Safeguard

of the Sea, that the Enemy might not enter the Realm to destroy it: these were the three Points for the Commons to advise on, which are put into Writing, and entered upon the Roll. My Lords, By the Articles themselves propounded on the King's Part, it appears, That the Commons are not chargeable to the guarding of the Sea; and they pray, that this Advice of theirs may not be prejudicial to them to bind them thereunto, and that there are Ships enough in England to do it, if the People were willing. *M. 11.* The Commons afterwards in debating of these Articles, when they came to this of the Sea, notwithstanding the Caution before, they are afraid, that if they should debate it, it might imply, that they are chargeable to do it; and therefore they protest against giving any Advice therein, as a Thing whereof they have no Cognizance: and do further declare, that the *Cinque Ports*, and other great Towns, that have Franchises, are bound thereunto, that they should do it. And therefore the Merchants, Masters of Ships, and Mariners, throughout England, are summoned to be at the next Parliament for Advice about Shipping.

My Lords, The next Authority is the Parliament Roll, 22 *Ed. III. M. 21.* The Commons petition in these Words, *que le guard de la mere se face deseries Res soit le guard fit man ad refait amant vis senois ut semble que melliur guard ne poit estre fait que le Roy ne fait ne qu'il demeritissent de la sur la guer & par de fair de c'est ter.* The Commons having formerly granted the King divers Aids and Subsidies upon Wool, Wool-fells, and Leather and otherwise, for the guarding of the Seas, they now grew weary of it, and desire, that the King himself from thenceforth should bear the whole Burden, and charge him with his Promise to that purpose.

My Lords, This Petition, tho' in the Name of the Commons, yet the Lords joined in it; for otherwise all Acts of Parliament of those Times being made upon Petition and Answer, should be without the Lords Assent. Hence it appears, that the whole Kingdom, at this time, was so far from thinking, that the King could charge them, without their Consents, to the guarding of the Sea, as that they alledge, the King himself ought to bear the whole Charge. Neither doth the King deny his Promise, nor wholly deny the thing; for tho' he saith, it should be done as it hath been done before, yet it is with a Qualification, because the Sea cannot be better kept than he hath kept it, by reason of his being so often at Sea in Person, in going and returning from France, and diverting the Enemy by his Wars in France. If the King had given his absolute Denial, yet here is the Judgment of both Houses of Parliament express in the Point.

Rot. Francie 21 Ed. III. pars 2 M. 9 & 11. The Merchants had granted 2 s. 8 d. upon their Goods till Michaelmas, for providing 120 great Ships *pro secura Conduccione Navium & Marchandizorum, & pro defensione ceterarum maritimarum partium Regni, & aliis periculis his guerrinis temporibus regno imminuentibus.* This Grant being made, the King alledging that this was not sufficient for the Service, and to remove the Causes of the stopping of the Trade by reason of the Wars; the King now lengthens out the same from Michaelmas to Easter following, and to satisfy the People, the King by his Proclamation declares

that the 2 s. 8 d. shall cease at Easter, according to the Grant; which, as it should seem, not satisfying the People, or the King continuing the taking thereof, the Commons in Parliament, 22 *Ed. III. M. 16.* pray that it may cease, and that by procurement of no Merchant, *pluis l'argent soit continue.* An Imposition but for half a Year, and that upon Merchandize, and by consent of the Merchants for the Defence, yet taken off upon Complaint. The Answer is, that it should cease.

My next Authority is the Parliament-Roll, 2 *Rich. II. pars 2 M. 5.* before cited, where the great Council and Sages of the Kingdom resolve, that the Commons are not chargeable to the Defence of the Realm without Parliament; which extends to this Particular of the Sea, for the present Preparation whereunto the Commons are not chargeable, was for Defence at Sea; and therefore the Money lent, was to provide an Army for the Sea, *en defence & salvation del dit Royaume & de la Navy & des costiers del mere.*

My Lords, the next Authority is the Parliament-Roll 2 *Hen. IV. M. 22.* Commissions to charge the People to make Ships for the Defence of the Realm without consent of Parliament, repealed by the King and the whole Parliament for that very Cause.

Item pur ceo quere tarde divers Commissions fueront foist an divers Cities Burroughs & Villages du Royaume pur faire certaines Rarges & Ballingers sans assent du Parliam' & ont mi' pr' nad estre fast devant ces hents' n'r' les Commons pray n'r' sur' le Roy que les Ditz Commissions soient repeals & que ils ne soient forces ne fait a quore loir fuit respons' que le Roy vest que in les Commissions soient repeals in tout points mes pur le grand necessity que ad des tiels vessels pur defence du Royaume in case que les Quens sint priment le Roy vest communer de rest matter ouesque les Surs' & puis apres le mre' al' dits Commons pur intifuner loir Council & advise tiel party. The first Commissions repealed, because the Commons were not chargeable without a Parliament. And now the King will put it in a Parliamentary Way, by doing it with the Assent of the Lords and Commons.

My Lords, my next Authority is the Parliament-Roll 9 *Hen. IV.* The Cause of the calling the Parliament is for the Safeguard of the Sea, and of the North Marches; and *M. 17.* great Mischief shewn for Default of keeping the Sea; and *M. 21.* it is there inrolled by the King's Command, that there was Communication had between the King and the Lords for the Defence of the Realm, and for resisting of the Enemies, who made Preparations on all sides; whereunto sufficient Resistance cannot be provided, unless the King have in his Parliament some notable Aid granted unto him. My Lords, the King hereby acknowledgeth, that he cannot without the Parliament charge the People for the safe keeping of the Sea, that being the principal Part for the Defence there intended, the same with the Summons, that without the Consent of the Commons *negotia preed' infesta remanerent,* and with the Summons in the Close Roll 23 *Ed. I.* before-mentioned, *Quod omnes tangit per omnes debet supportari.*

My Lords, the next Authority is the Parliament-Roll 4 *Hen. IV. M. 28.* The Lords Spiritual and Temporal, and the Commons, grant the King a Subsidy upon the Staple Commodities, and Ton-

nage and Poundage, and likewise a Tenth and Fifteenth, with this Protestation, *Protestant que cest grant in temps avener ne soit poit en exemple de charger les dits Surs ne Commons du Royalle de nul maner del Subsidy ne 10th ne 15th a les guerres descroigates, ou safeguard del Mere sans soit per les volents des Seig' & les Commons de Realme & ceo a novel grant faire in pleine Parliament. Rot. Parl' 6 Hen. IV. M. 12. and Rot. Parl' 1 Hen. V. M. 17. the same Protestation as before.*

My Lords, that the Charge of the Defence at Sea, and that in a large Proportion, by reason of the before-mentioned Duties, is to be borne by his Majesty, I conceive that it will not be deny'd; that in *Subsidium* and Aid of his Majesty therein, the Commons are not chargeable without their Consent in full Parliament. In these three Records there are not only these Protestations of the whole Realm being made by the Lords and Commons, but likewise the King's Consent by accepting the Things granted, and that without any Qualification of the Protestations. Those Protestations, that they are not chargeable to the guarding of the Sea in a certain Way, as are *10ths* and *15ths*, do much more fail in a way uncertain as here.

My Lords, my next Proof is from the Practice of former Kings in their frequent Demands of Aids from Parliaments for the Defence of the Sea, as well before the Statutes of Tonnage and Poundage, as then and since; Moneys borrowed by former Kings for Ships and Defence at Sea, and Indentures of Retainer for that purpose at the King's Charge; and not only so, but upon Suit allowance in the *Exchequer* for Victuals, Mariners Wages, Anchors, Prisoners taken in Fights *pro defensione*, and also other Things necessary for Shipping when for Defence of the Realm. Whereupon the same Argument may be made in this Particular for the Sea, as was before for the Defence in general.

The First Thing that I shall press, is that of the *Cinque Ports*. Their Service is certain in respect of the Time, but fifteen Days in a Year; and in respect of the Charge, but twenty Men and a Master; and the Number of Ships certain: besides, that they are discharged of Arms for the Land-Service, they have likewise divers other Privileges for the doing hereof; they were free from all Aids and Subsidies granted in Parliament, and are by Privy-Seals discharged thereof. *Hil. 2 Ed. III. Comm'* about the end of the Roll; they are freed from all Tolls, Murage and Pontage throughout the Realm, which bringeth a greater Charge upon the rest of the Subjects.

My Lords, I shall thus offer it unto your Lordships: If they that have these Privileges shall serve but fifteen Days in a Year, how the others that have no Privilege at all, shall do it for twenty six Weeks, as in the Writ?

Secondly, Their Charge is certain in the Number of Men and Ships; how the rest of the Commons that are so far from having any Privileges or Recompence for it, as that they do contribute to this Charge of the *Cinque Ports*, shall, as by the way in the Writ, be altogether uncertain in the Matter of Charge, both in the Number of Men and Ships, and of every other Thing.

My Lords, I shall press this further, that when the Ports exceed their Charge in the Number of Men or Ships, Allowance by the King is to be made unto them, as appears by the Quire of *Dover*, and *Pat. Roll'* of 7 Hen. VII. before cited,

that after the fifteen Days they were to be at the King's Charge; so in the *Pat. Roll'* 19 Hen. III. M. 14. because they found forty Men in the Ship, the King promiseth payment for all over and above the Number of twenty. *Banc. Regis Trin. 33 Ed. I. Rot. 22.* allowance to Service in Scotland. The Scots, as appears by *Walsingham*, Pag. 53. and other where, having about that time burnt divers English Towns and Ships, and a School-House, with 200 Scholars in it, *Visus Comp. P. 33 Ed. I. pro ingenti Ro. Scotland P. 34 Ed. I. Rot. 37. Comm' le Composition.*

My Lords, if the Ports who are bound to the Defence at Sea, when they have performed their Service, be not compellable to any further Charge, I shall humbly offer it to your Lordships, whether those that be not bound at all, from the same Reason, are chargeable at all.

My Lords, I have now done, and shall not further press upon the Patience of your Lordships; I know that *Nullum tempus occurrit Regi*; the disuse thereof, I shall press it no otherwise than that it is an Interpretation of the Statute made against all Aids and Tailages in general; and of the Complaints of the Parliament of 15 Ed. I. M. 9. 36 Ed. III. M. 19, and 37 Ed. III. M. 9. that those Statutes had not been kept; and further, as it is an Interpretation likewise of the before-mentioned Declaration, Petitions and Protestations against this in particular; and as it is an Execution of them, and putting them into Practice: *Praxis Sanctorum*, as the Divines say, *est interpres preceptorum*.

The Claims which antiently the Subjects have made upon the Crown, that none of the great Officers of the Kingdom could be chosen but in Parliament, nor that the King had Power to sell any of the antient Crown-Lands, the Disuse shews, that those Claims of theirs were not legal. *Br.* in his fourth Book fol. 209. saith, that *longa patientia trahitur ad consensum*. The Non-Claims therefore of so many Kings and Queens I shall present unto your Lordships, as so many *Le veets* and Declarations of their general Consents, that without Assent in Parliament they could not have laid the like Sefs upon any of their Subjects, as is now laid upon my Client.

The First Day's Argument of Sir Edward Littleton, Kt. His Majesty's Solicitor-General, in the Exchequer-Chamber, before all the Judges, on the Behalf of his Majesty, in the Great Case of Ship-Money.

May it please your Lordships,

MAY the 22d last, issued a *Sciri facias* out of the *Exchequer* to the Sheriff of the County of *Bucks*, to warn Mr. *Hampden* to shew Cause why the 20 s. should not be charged on him toward the finding of a Ship of War, with Men, Munition, and Victuals, expressed in a Writ dated 4 Aug. 11 Car. And the Sums and the Names of the Defaulters were certified into the *Exchequer* by a *Mittimus*, dated 5 May 13 Car. to be there proceeded upon for the Levying of the 20 s. according to the Law and Custom of England: Mr. *Hampden* appeared, and desired that all the Writs might be read unto him; they being read, he demurred, and Mr. Attorney joined with him in Demurrer, and adjourned out of the *Exchequer* into

into this Court, to have the Advice of all the Judges of England.

Before I enter into my Argument, because the true stating of the Question in this and all other things doth exceedingly conduce to the clearing of the thing in question; I shall, in the first place, observe the Writ, dated 4 Aug. 11 Car. the Ground of this Assess, which was directed into Bucks, and others into all the Counties of England, and this was for raising Aids for Ships, for the Defence of the Kingdom, with a notable Circumstance, *quia salus Regni periclitabatur*; which being expressed in the Record, is confessed by the Demurrer, and not only so, but testified by the King himself under the Great Seal in the *Mittimus*: and in all Matters, especially in Matters concerning the publick Safety, the King is *Recordum superlativum & præexcellens*, as in the great Case of the Earls of Gloucester and Hereford, 20 Ed. I. so that the Question is only this,

Whether the King, in his Judgment, finding the Safety and Preservation of the Kingdom and People, necessarily and unavoidably to require the Aid commanded by the Writ, may not command such Aid by the Writ, for saving and preserving the Kingdom and People?

Having stated the Question, I shall now discard many Things as impertinent to the Question, not that I that am sworn Council for the King, do agree in those things against the King; but that they are not now in Question.

It is not now in Question, What may be imposed by the King upon the Subject for Defence, at their Charge, for Conquest or Conservation of foreign Countries or Territories beyond the Seas.

Neither is it in Question, what may be laid by the King upon his Subjects, for vindicating Injuries done by foreign Princes or States.

Neither is it in Question, whether arbitrary Impositions or Taxes may be laid at pleasure upon the Subject for the mere Increase of the Revenue of the King's Treasure.

Neither, whether in ordinary and common Defence, for Preservation of the Kingdom, tho' necessary, it may be thus imposed.

But the Question is, *Quando Salus Regni periclitabatur*; in truth, the Question is, whether we can be charged *pro Salvatione nostræ & nostrorû*.

Again, it is not in Question, whether the Subject hath a Property in his Goods, or can lose them without Consent in Parliament. I shall shew that his Property shall remain unto him notwithstanding this Assess; and the Argument on the contrary favours more of Malignity than Reason, to say that by this the Subject shall lose his Property in his Goods.

It was rightly admitted, that the Law of Property must give place to the Law of Nature, for common Defence; the levying of a Debt or Duty publick or private, upon any Subject, is so far from destroying the Property, that it doth confirm it. He hath as good Property that payeth Debts to the King, as he that doth not.

We are agreed *de Re*, the Kingdom is to be defended; no Man in his five Senses will deny that *de personis*, according to the equitable Rule in the Writ, *quod omnes tangit per omnes debet supportari*: we are in this as in the Conqueror's Laws, *sumus fratres conjurati ad Regnum defendendum*. *De persona* whom the Law hath intrusted with the Defence of the Kingdom, *viz.* the King,

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we are likewise agreed. The only Difference is *De modo*, whether the right *Media* be observed by the King? And whilst we are disputing whether he may do it, I am told he may do it in Parliament; true, he that may do it every where, may do it in Parliament. And I shall be sorry to hear there shall be no Salvation for the People but in Parliament.

And whilst this was the Question, tho' a great deal of Care was had, and tho' it was done with Advantage and Policy, yet the Bulk and Mass of what was said, shall appear to fall quite off as nothing to the purpose. There were Multiplicity of Particulars, and a pretty Survey of the King's Revenues, no ways concerning the Case, and as much mistaken in it, as he that reckoned without his Host. He hath done like a discreet Gentleman, and went as near the Question as his Client would let him; he hath agreed Cases more prejudicial than this, as thus: It was admitted, that if there be any actual War, tho' there be but light Skirmishes, the King may do it; nay, if there be but a War denounced, tho' there be never a Blow struck, surely then can it not be done when *Salus Regni periclitabatur*? This is the true State of the Question.

Before I go further, I am not ignorant, and therefore cannot but be sensible with what Disadvantage I come to argue this Case, every Man being a Party interested that hears me; but I fear not but that I shall satisfy all Parties, I have Truth to conduct me, *Et magna est veritas & prævalabit*.

The Method whereby I may maintain the Right of my Master, and the Crown, is this; I shall first ground it upon Reason; every human Proposition is of equal Authority, only Reason makes the Difference.

I shall ground my Reasons, *First*, upon the Law of Nature: *Secondly*, of State; and *Thirdly*, of publick Safety, Necessity, and Conveniency. Neither shall it be against the Statute Law, Common Law, or any of the Hereditary Rights and Liberties of the Subjects of England, but consonant to, and warranted by all. I shall not only prove it *ex rationibus cogentibus*, or as Lawyers say, *ex visceribus causæ*, but *de similibus ad similia*. I shall confirm it by a Beadroll of Examples and Precedents of former Ages, and compare them with this, and see if the Case be altered.

First, I shall shew it from the Foundation of the Kingdom, to that which they call the Norman Conquest; from the Norman Conquest to the time of *Magna Charta*, made 9 Hen. III. from *Magna Charta* to the Statute *De tallagio non concedendo*, made 25 Ed. I. from the Statute *De tallagio non concedendo* to the first granting of Tonnage and Poundage; from Tonnage and Poundage to this very Day, and that the Petition of Right doth no ways concern the Dispute. I shall confute all Precedents, Objections, Reasons, Inconveniencies, Authorities or Records, of which a great Number were cited, that there shall not be a Syllable left; and in that, *First*, I will either shew that the Record is mistaken, or impertinent and not to the Question: Or *Secondly*, Those that are pertinent, I will either agree them, or take the Force of them away, that none of them shall be able to stand in the way of the King in this way of Defence.

The fundamental Reason is the exact Rule of the Law in the 10th Report cited by that learned Gentleman Mr. St. John, *Salus populi suprema lex*. All other Laws positive are subordinate to this Law, and are to be regulated by it. We are not to talk of positive Laws, till we have a Kingdom to use them. *Glanville* saith, *Regiam Majestatem non solum Armis oportet esse decoratam sed & legibus*; Arms to defend us, Laws to protect us. *Bracton* fo. 1. In *Regibus duo sunt necessaria, Arma & leges*; and gives the Reason: If no Arms, the Kingdom would be left as a Prey to the Enemies. And truly it is a strange Imposture, that the Law should so provide, that the King by his Writ can give us a Remedy for White-Acre and Black-Acre for a Clod of Earth, and not be able to give a Writ to defend the Kingdom when it is in imminent Danger. Nay, positive Laws are abrogated by Reason, when the Safety of the Kingdom and People are in Danger. As in *Rome*, in the Night a Man might not come over the Walls, but if an Enemy did approach the City, then it was lawful for him to do it.

In the next place, I take that Ground which is taken in all Laws; the Common-wealth is to be preferred before all private Estates. 13 Hen. III. fo. 15. the Opinion of *Shelley*. Rather than this shall suffer, the Law will turn some Prejudice to particular Persons, who are but a part of the Common-wealth. 21 Hen. VII. fo. 28. 8 Ed. IV. fo. 23. 29 Hen. VIII. *Dyer* 36. If the Enemy doth approach, for the Defence of the Kingdom one Man may make Bulwarks and Forts on another Man's Soil; and shall not the King keep the Outworks at Sea, lest the Enemy should land at our Doors?

Again, by the King's Command, Suburbs may be razed: In 88, when three great Land-Armies, 20000 Foot and 1000 Horse, 30000 Foot and 1000 Horse, and 20000 Foot and 1000 Horse were raised. Now lest any Army should land in other Places, Directions were given to keep them from landing; but if they could not keep them from landing, then that they should burn down Houses, and come and destroy all whatsoever, that they might not have Food and Provision to stay there. Where is the Law of Property in this Case, which is so much talked of? The Publick and Private are so nearly connext, that they can hardly be separated; the publick Loss falls immediately, and by Consequence upon particular Persons. Be a Man in what Condition he would be, if a publick Loss comes to the State, tho' it falls on his Wedding-Day he shall suffer in it. It is impossible to save private Fortunes if the publick be lost, *unaquaque amat Comm' bona totius*, &c. And another says very well, no Man repines at that which is done for the good of the Common-wealth. If a Subject then can be enabled without Parliament to make Bulwarks and Forts in another Man's Ground, shall not the King that is *Pater Patriæ*, do the like for the Defence of the whole?

My third Reason is to confirm, or rather mind your Lordships, that the Crown hath many Powers and Prerogatives over the Estates of private Persons. May not the King enter into another Man's House, or at least Out-Houses, and dig for Salt-Peter, because it is for the Defence? 11 Report fo. 81. *Bowles* Case, and enter into his Lands and dig Royal Mines?

There is *Proprietas Domini* belongs to the Subject, but he hath not the Power over all, without the Property *Ratione Protectionis, Jurisdictionis*,

&c. Private Interest must give place to a common Good; the private Prejudice that any Man hath, is very well repaired by the publick Utility that comes to the Kingdom. Fishermen may justify their going into the Lands of others, to fish, because it is *pro bono publico*. 8 Ed. IV. 18, 19. 29 Hen. VIII. *Dyer* 36. 21 Hen. VII. 28. A Man may pull down the House of another Man, when the next House to it is on Fire; *Jam tua res agitur paries cum proximus ardet*, the private must suffer for the publick Cause. 22 Ed. IV. fo. 2. b. 26 Ed. I. fo. 45. If two Men are fighting, a Man may part them, and put them into several Houses, because it is for the good of the Common-wealth. If a Madman be abroad, he may be taken, whipp'd and imprisoned, lest he do Violence to himself and others. 22 Ed. IV. fo. 45. A Chirurgeon may cut off one Member to save the rest, 22 Aff. *Ploverden* 56. Necessity is the Law of the Time and Action, and Things are lawful by Necessity, which otherwise are not; *Quicquid necessitas cogit, defendit*; and the Law of the Time must regulate the Law of the Place in such publick Things. If a Storm arise at Sea, to cast out Goods into the Sea is lawful for the Safety of the other Goods; and they whose Goods are not lost, shall be Sharers with the others. If it be for safety of Lives, all must be cast out, *Duffield's* and *Mowse's* Case; but if the Party hath taken more in than is fitting, and that be the Cause of casting away the Goods, and not the Tempest, there the Party hath his Remedy. 48 Hen. III. there was a sudden Summons to be in Arms both at Sea and Land; they plead, that there was not a just time of Summons; the King tells them, that no Man shall excuse himself for want of convenient time of Summons; nay, they shall not alledge the time of Harvest, &c. it being safer to be somewhat diminish'd in Estate, than the Publick to suffer: *Necessitas est Lex temporis*, whatsoever is done for publick Safety is best; other Laws are Tributary, and must give way to the Law of Necessity: What talk we of Formalities, when we are like to lose the Kingdom, when the keeping of the Laws would end the Common-wealth.

But this needs not, for I shall shew that his Majesty hath trod in the Steps of all those Kings who have worn the Diadem, and sway'd the Scepter of this Kingdom.

In the next place, I shall shew divers Exemptions à *Custodia Maritima*, not only antient but late: I will put you one, that is, *King's College* in *Cambridge*, 21 Hen. VI. When these Grants are made, it extends to the ordinary Defence of the People, and not extraordinary; no more than if the King grants an Exemption to a Man that he shall not be of a Jury, yet if there be no other, that shall not excuse him. *Matth. Paris* 838, he speaks of Privileges granted to the Archbishop of *Canterbury*, *London*, &c. All are granted in *liberam Eleemosynam*; they are bound to do nothing but to pray, and yet are not exempted from publick Defence, *Nec adeo libertates & propter publicam utilitatem Regni & per ea resisteret bestem*. I shall give Mr. St. John's Argument, an Answer by and by; yet by the way, if *Tenures feud' Militar'* did begin as was alledged out of *Britton* in the Conqueror's Time, how was the Kingdom defended before? If Wards and Marriages, and Accidents thereupon did not go to the Foundation of the Kingdom, what was before?

The King is as much Lord of the Sea as Land, *aque Dominus Maris & Telluris*. *Selden Mare Clausum*,

Clausum, 6 Ric. II. *Dollor and Student*, lib. 2. fo. 51. 5 *Report* fo. 108. It is observed by a great Lawyer, of what Consequence it is to have Power at Sea. The Naval Dominion of *England* is of great Consequence and Use; for it is called *Dotem Regni*. If therefore the Kingdom of *England* consists of Land and Sea, I hope we shall not stand at half Defence, to defend the Land and leave the Sea. *Rot. Parl.* 2 Ric. II. M. 25. It is a great Advantage to have Defence at Sea, else we should have hot War at our Thresholds; while the Sea is open, Men may go to plow, and have the Courts of Justice open.

The Kings of *England* of themselves, by their Prerogative Royal, in Times of War, denounced, intended or suspected, for the preservation of the publick Safety, may seize the Lands of Prior Aliens, 48 Ed. III. fo. 10. 22 Ed. IV. 43, 44. 14 H. IV. 36. And can a King of *England* take the Possessions of Aliens, and cannot he enforce his natural-born Subjects to defend the Land and Sea? God forbid; nay, if we would *parva componere magnis*, we should find in Cases of lesser Consequence, if they have relation to the Defence, he may do it. As the King may lay a Charge upon the Subject for walling a Town, the Reason is, because they have Benefit by it in time of Danger; and hath not all the Kingdom Safety by the Navy at Sea? 3 Ed. III. *Aff.* 445. *Westm.* 1. cap. 3. 13 Hen. IV. fo. 14, 15. Sir *John Davies* Reports fo. 13. *Littl.* fo. 58. 33 Ed. I. 105. *Parl. Book*, *Walsingham*, 14 Ed. I. 60. 7 Ed. III. *Pat. M.* 2. And the King did not only command it, but took an Account of it, if it was not done, and took it into his own Hands, *Trin.* 27 Ed. I. M. 14. *ex thesaur* Murage of *Carlisle* taken into the King's Hands. *Pat.* 14 Edw. I. *pars* 1. M. 14. and the Surplusage paid into the *Exchequer*. And this agrees with the Reason of all Laws, where they have a Benefit they must contribute to the Charge, 10 *Report* fo. 141. out of 44 Ed. III. nay for lesser things, as for Paveage and Pontage, the King may impose that for a publick Good, and the King may distrain all the *terr' tenants*, and Land-Owners, to make Contribution *secundum statum & Facultates*.

The King may dispose of the Preparation for Defence, he may compel Men to be Knighted, because it was for Defence. *Rot. Claus.* 19 Ed. II. M. 16. *Mat. Paris*, fo. 12. 37 *Westm.* 465. no Man is exempted from Defence, Judges are not exempted, yet Judges are not to fight; yet when it comes to necessity, they are not exempted. *Trin.* 5 Ed. IV. *Moyle*, 13 Hen. IV. fo. 23. Clergymen compelled; nay a Serjeant at Common-Law sworn at Common-Pleas, is compellable. Sir *John Hulbert* in Hen. VII. Time was compelled to be a Knight: 9 or 29 Hen. VI. *Rolfe* a stout Serjeant pleaded that he was a Serjeant at Common-Law, and not bound to be a Knight, but he is forced to it. But why talk we of these? there ought to be a Commonwealth before there are Laws, and Private ought to give way to Publick.

Again, imminent Dangers and Perils to a State do dispense with ordinary Proceedings in Law; *inter Arma silent leges*. Nay, if there be but Rumours of Wars, Laws are silent; we must look then to the Kingdom, upon Rumours and Opinions of Wars. *Pasch.* 15 Ed. I. *Banc. Regis Rot.* 70. *dors.* the *Scotch* Army they besieged *Rippon*, the People they promise a Sum of Money to them to depart, and give them in Hostages, and that Money should be levied among themselves; when the

War was over they would not do it, but were compelled to it. In 14 Ed. II. *Banc. Regis Rot.* 60. The *Scots* besiege *Durham*, but they must have ready Money, they would not take Hostages to depart; while this Peril was on them, they met together and swore, that what should be agreed amongst themselves every Man would stand to. It was ordered they should go into the Houses of others, and take what Money they could find for that Purpose; they took from one Man 60*l.* oh, he was not satisfied, he had a Property in his Goods, he brought an Action, and at *Durham* it was adjudged for him; but when by a Writ of Error it was brought to *Westminster-Hall* into the *King's Bench*, Judgment was reversed. And in the time of Queen *Elizabeth*, greater things were done upon lesser Occasions.

The next thing is the Ships taken from time to time, and the Command of Persons, Watches, Beacons, shutting up of the Ports, which are the Gates of the Kingdom. 14 or 10 Ed. IV. *Pasch.* M. 12. *dors.* 3 Hen. V. 18. *dors.* A number of other things commanded by the King for Safety; when the Law considers what may happen, it is not material what doth happen; nay, if there be but a *vulgaris opinio*, it is enough; much more when the King, by his own Judgment, foresees it. 6 *Report* fo. 64. *Clark's Case*, there they are compelled to build a Hall at *St. Albans* for the Judges to sit in, much more in this Case. See *Clegate's Case* for Triumphs; and if for State, shall not the King command for Safety of the Kingdom? *Hil.* 12 *Jac.* *Hawks's Case*, for paving of the Way, he may take Corn out of the Sacks of those that come by.

Again, it is a *Droit Royal* to meddle with War and Peace, Subjects have nothing to do with it. *Rot. Parl.* 13 Ed. III. M. 5. 19 Ed. IV. fo. 160. or 6. *Brian*, Chief Justice, saith, That if all the Subjects of *England* do war with the Subjects of another Kingdom, this is no War; but if the King denounce it, it is War. 22 Ed. I. *Rot. Vaf. con.* M. 16. or 10. they must have a Power from the King: True, Hen. VII. brought Military Discipline to the Parliament to advance his own Ends. Sometimes Dangers are fit to be communicated to the People, and sometimes not. The King should best know what is done abroad, who hath his close Council of War; he knows what is done abroad, what can the People tell of these things? and it is very fit that Preparation be made before-hand. It is not good to find the Kingdom without a Navy, especially when such Combustion is abroad. 18 *Eliz.* cap. 23. It is as much to prevent Danger, as to remove it when it is in being. 1 Ed. VI. & 1 Mar. A desired Provision to be made before-hand, and this hath been the Practice of all Times. *Gervasius Tilburiens.* Black Book Hen. II. d's Time. *Danegelt* before the Conquest paid annually; but afterwards, when there was *Bellum*, or *Opiniones bellorum*, *Datum est nobis intelligere, audito rumore*, &c. are frequent in the Records; nay, if there be but *vulgaris opinio*. Ay, but perhaps Dangers will not come; but if they come unawares, where are we then? In the Case between the Earls of *Glocester* and *Hereford*, there was a great Turnult between them about the Marches of *Wales*; and this was contrary to the King's Command, and Exception was then taken; that there was no Record to warrant the *Sciri Facias*; the King did affirm it, *Et Dominus Rex in multis casibus est su-*

*Na' que fuit
pur Salvatione
del Royalms.*

pra legem, &c. Dominus Rex est Recordum superlativum & praeexcellens. It is Treason for any Subject to raise an Army, unless a Town be besieged. Henry the Seventh was a wise King, and he had his Spies abroad in times of Peace to see how things went, and his Army prepared; and the Preparation of a Navy does much more Good than the spilling of Blood. And so hath our Navy these two Years done a great deal of Good to the Kingdom, and Honour to the King.

Now I come to the Authorities; but first we shall observe what an Authority shall be in this Case. First, I conceive there may be, and are direct and full Examples in Point, for compelling the Subjects at their own Charge to guard the Sea and Land, tho' they are not ruled in particular Courts of Justice; nay, under favour, they are stronger than any Judgment: there were then no need of Suits in the Courts of Justice; if Men would pay, what need Judgments?

Secondly, I conceive, that tho' I find not direct Authority in printed Books, yet Records are as good Testimonies, and greater than Reports, that are but Extracts, and second Authorities drawn out of them; and those that concern *Jus Publicum*, come not into ordinary Debate, but remain *inter arcana Imperii*, and those will speak fully.

Thirdly, I shall observe that our Precedents are not only in open War and Hostility, but upon Opinions, Rumours, Relations, and Informations of Wars.

I shall shew this in all Ages to Queen Elizabeth's time; and if it be not so full in the Years of King Stephen and Henry IV. who were Usurpers, it's no wonder. If they had had Right to the Crown, as his Majesty hath, they would not have used Compliments, but *Fide & legiantia quibus nobis tenemini*.

Before the Conquest, I find that King Edgar had his Tenants, who swore to co-operate with him, *per terram & per mare*. King Ethelred he did command, that he that had 310 Hides of Land should find a Ship, and those that had lesser, should find other Arms, and at their own Charge, for every Ship eight Oars, *ut tempore Patris*, that was Canutus; and it was *Tributum Classiale*.

My Lords, for Danegelt, if those Kings that were called in by the People, did lay this on the People, much more our natural-born King, which shews it to be an undoubted Right; for it is not likely they would put that in practice which was not an undoubted Right. In the Laws of the Confessor by Mr. Lambert, and the Black Book in the Exchequer, it was sometimes one, sometimes 2 s. annually, *in usus Maritim'*; and still the Charge lies on the Subject: this shews an inherent Right in the Crown, and it was paid for several Purposes, but still at the Subjects Charge. And to say it should not be so because of the Word *Statutum* (*De Regibus Angliae statutum*) cannot be, for in those times *statutum*, as in Cicero, was a Constitution, there was no Parliament then; and if it now doth alter from that way, truly petty Circumstances, when the Substance is observed, alter not the Case. There must be a Defence, and it was not certain; doth not the Danger *fusci pere majus & minus?* and the King may say as Edward the First said, nay, I have heard him say, that he hath bought neither Manors, Lands nor Castles with it.

After the Conquest, Danegelt is supposed to be released by the Conqueror, because he dreamed he saw the Devil dancing upon the Danegelt; but the Black Book saith it was paid in the Conqueror's

time. It was then quitted, till there was *Bellum* or *opiniones Bellorum*; neither was it released by William Rufus, or Henry the First. King Stephen swore that he would release it at his Coronation, but *nihil horum tenuit*; nay, it was paid in Henry the Second's time, 4 Hen. II. Pipe Roll: and tho' the Name be alter'd, yet other things came in the room of it.

And now I will begin with *Doomsday-Book*, which began in the 14th of the Conqueror, and ended the twentieth Year. There were divers Towns and Shires charged, and there we see what Assistance they did give both for Sea and Land. In the Black Book fo. 56. he that waited on the King's Revenue, *liber non erit* for publick things. And in King John's time, which was a troublesome time, 5 Johannis Pat' M. 17. and Johannis Claus. M. 9. they gave a fourth part of their Revenues for Defence; and there was a Command for staying of all Ships, and to repair to a certain place appointed.

And to come to those great things when King John was deposed by the Pope; the King of France made Preparation, and the King of England made Preparation, and all Ships were imbricated, because he would not put all upon Land-Forces: and so in 88. Mat. Paris fo. 312. it is said, the People were *ad liberationes nostras*; but that Voyage was to Poitou; if it were *ad liberationes nostras*, yet the Command of the Persons and Ships were the King's; and true, all Mariners were to be paid, and no question immediately at the King's Hand, but it was first raised and levied of the People.

Whereas for Escuage and Knight's-Service, the Summons was *quod interfuitis cum equis & armis, &c. exinde proficiend' nobiscum*; but this was only to come with their Horses and Arms, by reason of their Tenures. And it further appears, that Earls, Barons, Knights and Freeman, and all that had Arms, were to come *ad defendendum caput suum & Regis, & quod nullus remaneat qui arma portare possit*; nay, those that had neither Lands nor Arms, yet all must come, and if they had nothing to maintain themselves withal, they were to be *ad solidatos nostros*, which shews all the rest were not at the King's Charge. 5 Johannis Claus. M. 1. *Quia ad arma jurat vel qui honorem poss'*: if the King could command for Land, he may for Sea, for both are one Kingdom. In Henry the Third's time there are divers Arrays. 14 Hen. III. Claus. 7. dorf. When the King went into France, there went a Command to all the Sheriffs of England to swear those that staid behind, as they were sworn in King John's time; all this shews they were bound to Arms.

In the Statute of the Conqueror, which they styled a Statute, that there should be no Taillage, Taillage must not be understood of those kind of Aids. That famous Year of 48 Hen. III. (and observe when) that Year is not only after *Magna Charta*, but after it was confirmed by him, 20 Hen. III. when he was of full Age. 48 Edw. III. Claus. M. dorf. Divers Captains and others not able to maintain themselves, the King commands they should be paid. *De Comm' Comitatus*. 48 Ed. III. M. 2. *de pecunia levand' circa tuitionem maris*, the King commands there, that they should come out of their Counties: the Summons is twofold; First, of Escuage, which is *secundum debitum*. Secondly, General for Defence, *Cum necesse fuerit*. 48 Hen. III. Claus. M. 3. *pro Militib' Sancti Johannis & M. 6. dorf. quod omnes qui nobis & Co-*
ronæ

rone nostræ jure astringant, &c. all Freemen must do this Service. 48 Hen. III. *Claus. M. 3. dorf. Nul-lus excludatur sexus vel ordo.* 48 Hen. III. *Claus. M. 7.* the Citizens of London, and the Men of Greenwich, were commanded to keep the Thames that none should enter *per ora eorund'*; the Men of Greenwich plead, that they were distrained upon common Summons for their Service in Kent; and the King commanded that they should be freed in Kent, and join in Defence of the Thames. *Claus. 48 Hen. III. M. 11. dorf.* to excuse one who pretended he did attend at another Place with all his Strength; this shews that he ought to attend the Defence: nay, 48 Hen. III. *M. 4.* when they refused to come, the King commanded to seize their Lands, and take the Profits, and answer them in to the Exchequer. 48 Hen. III. *Pat. M. 5.* he commands them to attend, setting all things apart. 48 Hen. III. *Pat. M. 10. or 5.* like Writ to Ipswich, Dover and *per Costera Maris*; nay, when some went away when their 40 Days were expired, the King tells them, that *propter inopinatos causus*, they should stay. *Pat. 48 Hen. III. M. 4.* one hundred Marks by the Abbot of St. Austin's for Stipends for those at Sea, for Defence of the Sea. *M. 3. dorf.* when they would have gone away, they were commanded upon pain of Forfeiture of all they had to stay. *Bract. lib. 5. fo. 336.* *Cum fuer' in exercitu cum Domino Rege, &c.* speaking there of Law-Suits, what may be a good Excuse for Absence, faith, *ex causa necessitatis Rei-publicæ causa, aut cum Rege in Armis.* In the Time of Edward the First, Statute of Winchester, finding of Arms began not upon that Statute; but how, and in what manner they ought to be rated, was there appointed. 23 Edw. I. *Claus. M. 4. de contributione faciend'* to Yarmouth, a Command to the Collectors of Money *ad Custod' Maris*; and he that was in Gascoigne was discharged of Grace, but not of Right. *Pat. 23 Ed. I. M. 4. Ita quod omnes compellere possitis ad custod' Maris cum necesse fuerit.* *Pat. 23 Ed. I. M. 6. pro Willielmo de Stoaks fuer' custodes Maritimæ & M. 5, & 7. Custodes Maris de Fernemouth,* and divers Men taken both Archers and Slingers. *Pat. M. 5. de hominibus eligendis ad arma, M. 7. omnibus & singulis Marinettis,* between London and the Mouth of the Thames. *M. 6. de Navibus capiendis, Claus. 23 Ed. I. M. 5. Maritt' faciend' in diversis Civitatibus.* *Pat. 24 Ed. I. M. 16. de partibus Maritimis inveniend' & custodiend'.* *M. 6, & 17. de Navibus & Galleis inter villam de Lyn & Barwicke.* Trin. 24 Edw. I. Rot. 62. Inter B. pro Rege; there a Writ issued to such and such Men to find ten Horsemen; one affirmed, that he had some in Scotland, and some at Cobham in Kent; the King makes Inquiry whether it were so or no, and finding he had not so many as he said, commanded that he should be distrained, not only for the Contempt to the King, but for the Danger the Kingdom might lie in for want thereof. 24 Ed. I. Rot. 78. Power to compel Men to make Defence *juxta facultates*; and the County of Berks, which is an Inland County, upon refusal a *Capias in manus* was awarded to answer it in the Exchequer, and the form of Wages to be set down. 24 Ed. I. Lord Treasurer's Remembrancer. A Writ from the Barons to assess all the People without the King, News being of 10000 Men coming. *Claus. 25 Ed. I. M. 26. dorf. William de*

Ripo. It was recited, that the People have been at a great Charge; and because Winter came on, the King willing to spare them, Watches and Beacons were commanded to be set up and kept, and the People to depart, but to return again upon notice. Rot. Pat. 25 Ed. I. M. 5. Custody of the *Maritime* was with six Ships; by which it appears that *Custodia Maris*, and *Custodia Maritima*, are Terms convertible. The Abbot of Roberisbridge's Case, 25 Ed. I. Rot. 70. the Abbot brought a Replevin against one in — that lies in the Con-fines of Kent and Suffex. The Officers did own, by reason of the War between France and Eng-land, the Abbot was assessed three several Years, at several Sums, nay, the fourth time, and no hurt done; but now if the Writ goes out but two Years together (*ob inauditum*) but what doth he plead, doth he deny the Writ? no, he pleads he was assessed for other Lands; he found a Horse *ad custodiam prædictam*, so that the Horse was for the Land Service, and the Money for the Sea. I conclude as Selden, *aut ad ipsum Mare, aut ad tam liitus quam Mare.*

After the Statute *de tallagio non concedendo*, Pat. 27 Ed. I. M. 3. *de Navibus congregandis.* Pat. 31 Ed. I. M. 20. *Malefacientibus in Marchiis Angliæ,* a Commission went out that all shall be in Arms against Scotland. In antient Times there was such a Connection between France and Scotland, that we had always a double War, and therefore could not expect all Forces in one Place. In the Time of Ed. II. Pat. 2 Ed. II. pars 9. M. 26. *pro Rege de Navigio providendo vestris sumptibus faciend'.* I see with what Policy Mr. St. John went, and what multiplicity of Records he cited, and opened them with as much Skill as ever I knew any Man; but I desire to go in the Path of naked Truth. I shall make it appear to all the World, that the King hath done nothing but what his Predecessors have done; and that there is not more Testimony to prove Littleton's first Case, that the Heir at Law shall have his Patrimony, than there is to prove this the King's Right. Pat. 15 Ed. II. M. 15. dorf. all between sixteen and sixty to be ready. Parl' Rot. 5 Ed. II. M. 4. Ordinance that the King without the Assent of the Barons could not make War, but that was repealed and damned. Rot. Parl' 15 Ed. II. M. 31. It's said it was prejudicial to the Royal Power of the King, and a Blemish of his Royal Sovereignty. Rot. Claus. 17 Ed. II. M. 10. when they were warned to be ready. 19 Ed. II. Rot. Pat. pars 2. M. 6. to all Bishops in England to be ready for the Defence. Claus. 20 Ed. II. M. 2, & 7. *de hominibus qui domi remanserunt, &c.* should contribute to those that went, it was to forty or fifty Counties; *Nos considerantes, quod justum & consonum rationi non est,* that those should expose both Body and Purse for the Utility of the Kingdom. In the Time of Edward the Third, Rot. Claus. 2 Ed. III. *de Navibus inveniend'*, a Com-mand that all Ships of 40 Tuns and upwards, with Men Munition and Victuals, should be in readines at their own Charge. M. 2. Mariners are warned to come *per duos menses*, at their own Charge. 7 Ed. III. Scotch Roll M. 19. *de Portubus contra adventum, &c. & datum est nobis intelligi, &c.* it appears it was done *tam per mare quam per ter-ram*; and a Direction to all Archbishops to be at-tending, and the *Posse Comitatus* to be array'd, *se-cundum statum & facultates.* Claus. 9 Ed. III. M. 13. dorf.

dors. all from 16 to 60, to be array'd *armis competentibus*.

And now I come to that famous Year of 10 Ed. III. Rot. Sco. M. 21, or 33. Men for Land and Sea. Rot. Sco. 10 Ed. III. M. 21. dors. *omnes ex debito defensionem astringuntur*. Rot. Sco. 10 Edw. III. M. 23. *De proclamatione faciend'*, to all Inland and other Counties. M. 20. to Lynne. M. 14. dors. to all, *prout fieri consuevit* to all Counties, *nos considerantes quod ratione legiantie sue astringuntur*. M. 1. dors. through all Counties the like observed, especially *nequimus resistere Correctiones, &c. sine auxiliis vestris*, M. 2. *de Navibus supervidendis*, and in that are the very Words of the Writ. M. 25. *de portubus custodiend'* Inland Counties as well as others, Berks, Wilts, Lincest. Northam. &c. M. 16. *Navibus supervidendis nos advertentes circumquaque aut hac tempora*. Rot. Alman. 10 Ed. III. pars 1. M. 13. Rot. Claus. 12 Ed. III. pars 1. M. 13. dors. Rot. Alman. 12 Ed. III. M. 33. pars 2. *versus bo- reales duplici eskipamento*; and to contribute, and those that refuse, to assies them *juxta statum*. Rot. Claus. 12 Ed. III. M. 14. Archers. Rot. Alman. 12 Ed. III. pars 2. M. 6. Order that but one Bell should be rung. Rot. Alm. 12 Ed. III. pars 2. M. 3. *supervidend' quod omnes ariat' considerantes quod omnes, &c. se & sua exponere astringuntur pro salva- tione*. Alman. 12 Ed. III. pars 2. M. 10. because *hostes nostri multitudine non modica, &c.* All that have *Redditus, &c.* were to attend. Alman. 13 Ed. III. M. 1. *de supervidend' vill' Southamp.* Claus. 13. Ed. III. M. 38. dors. A Writ directed *Custodibus terræ maritimæ*. The Abbot of Ramsey lived at Huntington, yet distrained for Sea-Service in Nor- folk. Rot. Claus. 13 Ed. III. M. 14. the County of Oxon, an Inland County, and yet commanded *Custod' terræ maritimæ*. M. 17 Ed. III. Banco Regis Rot. 15. a *Superfedeas* granted one. 17 Ed. III. M. 24. Wages recovered of a Town for forty Days. Scot. 20 Ed. III. M. 14. *versus Scotos*. M. 21 Ed. III. Rot. 4. Banco Regis *quam, deteine Soldiers pay, er- go, complain*, M. 31. Payment of Wages. Rot. Parl. 22 Ed. III. M. 4. there the Commons were at great Charge for guarding the Sea, and pray Remedy, but not for the Right but for the Excess. Rot. Franc. 21 Ed. III. M. 24. dors. 22 Ed. III. Rot Pat. pars 2. M. 1. Rot. Franc. 22 Ed. III. M. 5. dors. *pro Johanne Coke*. Rot. Franc. 26 Ed. III. M. 5 & 4. *quia est vulgaris opinio*; and this recited, *nos considerantes, &c. quod omnes per juramen- tum, &c.* and this was for the Sea, and goes to all Inland Counties. And as they talk of Kings in the Field, Kings use not to go into the Field in Person. Rot. Franc. 34 Ed. III. M. 34. *pro Clero arriando*. Rot. Claus. 33 Ed. III. M. 89. dors. Rot. Claus. 43 Ed. III. M. 1. *de Navibus arrestand'*. Rot. Claus. 43 Ed. III. M. 14, or 13. *de hominibus arri- andis*. Rot. Claus. 45 Ed. III. M. 8. *ut intelleximus*. Rot. Parl. 46 Ed. III. M. 20. the Commons com- plain of their Charge, and say, that the Sea was so noble, that all the World called the King, the King of the Sea, &c. they pray as of Grace, &c. Rot. Franc. 47 Ed. III. M. 20. for guarding of the Sea- shore. 50 Ed. III. pars 1. M. 105. 31 Ed. III. pars 5. M. 25. the Charge is not put upon the People without common Consent. The King is not to do it but for the grand Necessity and Defence of the Realm. In Richard the Second's Time, Rot. Claus. 1 Ric. II. pars 1. M. 7. Scarborough. Rot. pat. 1. Ric. II. pars 1. M. 12. Rot. pat. 1. Ric. II. pars 1. M. 42. dors. Beacons. Rot. pat. 1 Ric. II. M. 13. dors. Rot. Franc. 2 Ric. II. M. 15. Rot. Scot.

4 Ric. II. M. 9. King of Castile, *pro compellendo homines pro custod' maritim'*. 7 Ric. II. M. 9. *Totus Clerus apponere manus adjutrices*, Archbishop of York. 8 Ric. II. M. 5. Archers.

The second Day's Argument of Sir Edward Littleton, Knight, his Majesty's Solicitor-General, before all the Judges, in the Exchequer-Chamber, on the behalf of his Majesty.

May it please your Lordships,

THE last Day I left off at the End of Richard the Second: I do not love to re-peat, yet in regard the Records that are of weightiest Evidence for the King to Men of Under-standing, are perhaps not so clearly understood by every one that hears them, I shall sum up what hath been read. It hath appeared by the Re-cords that have been read, that the Sea and the Land have been guarded by the Commons, when Danger did appear to the King: If the Danger was great, all the Commons, no Age, no Sex, no Order to be spared, all Ecclesiastical Persons bound to defend. If the Danger were less, those Parts nearest unto it to defend, no Reason to trouble the whole Kingdom, when a few will serve the turn: Those that refused were com-pelled by Imprisonment, Seizure of Goods and Lands. The Writs have expressed fully and sig-nificantly, that no Wages ought to be paid by the King; that when there was apparent Danger, it appeareth by some Records, that one Man should not serve for another; Care taken by Com-mission, that all Equality should be used in mak-ing of Contribution; and when Complaint, as 25 Ed. I. was made against it, it was remedied; yet it was not *Ratione Contributionis*, but *violentiæ extortionis*.

This constant Usage of former Kings is of much more Authority and Weight, than scatter'd Judgments here and there, or judicial Proceedings in any Court, and these are not wanting. Not-withstanding, I shall now proceed and come to the Time, wherein so many great Lords did die, and so much noble Blood was spilt in Civil War, from Henry the Fourth to Henry the Seventh; *Hen-ricus Rufus, Regna Jacobus*. There was not then such great Cause to look to Preparation for Sea, for the War was then in the Bowels of the Land; and the Sea and the Land make but one Kingdom, and the Reasons are the same for both. And for Henry the Fourth, when he was newly come to the Crown, it appears Rot. Claus. 1 Hen. IV. pars 1. M. 12. dors. Writs are directed to the Arch-bishops of Canterbury and York, and other Bishops; and it recites, that the French had prepared a great Navy which was seen on the Coasts, and intended to invade the Kingdom; and that Abbots and Priors should be array'd, *sine deliberatione, &c. & juxta statum & possessionem, &c. & triand' Millenis centenis*. Rot. *viagij* begins 1 Hen. IV. to 11 Hen. IV. M. 20. *de Proclamatione faciend'* to go against the Rebels of Wales, *de arraiaione faciend'* in the same, and Barons assigned to the Custody of the Marches called *Battelfield*; less Reason for this Place of any, for they say there were Lords Marches to defend it. M. 14, 23. *de proclam' faciend'*, to go with the King in Person against Henry Percy a Rebel; and there was an Array of Men by the Sea Coasts to resist the Enemies, &c. and

and in the same Roll, *De hominibus congregandis*, divers other Proclamations, *de hominibus defensibil*. In the same Roll, *De Militibus infra Comit' Lancastrie arriand'*, upon the Insurrection of the Earl of Northumberland, to bring them to *Pomfret*. M. 10, & 27. again to go to the Prince Henry the Fifth. And in 1 Hen. IV. this goes to Northumberland, Derby, Lancaster, by Robert Duke of . . . to invade the Kingdom. My Lords, Noblemen, Valets, &c. & omnes homines defensibiles, between 16 and 60, that was *juxta statum*, upon warning of two Days, which was in *defensione Regni nostri*, to go with the King. M. 20. *de hominibus levandis & congregandis*; and of this Nature 4 Hen. IV. M. 11. dorf. & 10. 5 Hen. IV. pat. M. 28. dorf. pars 2. Principal Men joined together to array and muster all over England. This hath appeared by the constant Common Law of the Kingdom.

Before Parl' 5 Hen. IV. 24. the Commons pray that the Commissions of Array should be considered, and the Judges advised with, and a Commission made for the future, *ad arriand' & triand' qui de Corpore sunt habiles*, &c. *juxta statum & facultates*, &c. & *ad assidend' & proportionand'*, with Power to distrain. 7 Hen. Fitz. Her. Thorney Title *Protection*, the Subjects of England not to go out of England with their King. This was upon the King's going to aid the Duke of Flanders, Report 7. fol. 7. Calvin's Case, not to go without Wages when they were to follow the King. In Henry the Fifth's time there were great Wars with France; but when the King went, he took great Care that England should be provided for. Pat. 3 Hen. V. M. 17. dorf. pars 2. *de araiatione faciend'*, Care is taken that all should be arrayed, and being arrayed, should continue so arrayed. Stat. 1 Ed. I. it provides that they shall not go out of their Counties but upon the sudden coming of strange Enemies; and upon Warning, they were not only to array them, but to lead them to the Sea-Coasts out of their Countries, when and where it should be necessary, *cum aliquid periculum eveniat*, notwithstanding the Statute, which is our Case; nay, our Case is much stronger: And 3 Hen. VI. is *verbatim* with the other. 6 Hen. V. Pat. M. 8. dorf. pars 101. 3 Hen. V. 16. dorf. this was upon the Threatening of the King of Castile, to all the Counties of England. 7 Hen. V. *Vaga Regis*, divers Privy-Seals to all the Counties of England, to inform the King what able Men of Ancestry there were, *ad defensionem nos in propriis personis suis ad defensionem Regni*, and the Return is *pur defence de son Roalme*. In the time of Hen. VI. Rot. Pat. M. 37. dorf. pars 2. *de Araiatione faciend'*. 7 Hen. VI. pars 1. M. 7. dorf. Rot. Pat. there is *quia datum est nobis intelligi*, for the Isle of Wight. Rot. Pat. 7 Hen. VI. M. 5. dorf. pars 1. 13 Hen. VI. M. 3. dorf. *de Militibus congregandis & ducendis versus Scotland*. Pat. 13 Hen. VI. pars 1. M. 13. dorf. *Contra Militiam Inimicorum*, a full Command to array all, and to bring them *ad Costeram Maris* and other Places, & *juxta gradus suos*. 14 Hen. VI. pars 1. M. 20. 21 Hen. VI. M. 40. dorf. Rot. Pat. 28 Hen. VI. M. 11. dorf. Rot. Pat. 29 Hen. VI. pars 1. M. 45. dorf. Rot. Pat. 37 Hen. VI. M. 6. pars 1. dorf. all Arrays, A Book-Case 28 Hen. VI. 11. b. pl' 22. Divers of the Clergy had Churches to be freed from the Payment of Tenths for the Defence of the Kingdom, and the Clergy did grant ii s. in the Pound without Act of Parliament, and this sent by *Mittimus* into the Exchequer. P. 26 Hen. VI. Rot. 10. & Trin. 11. for levying of Money upon *Sciri Facias*. 36 Hen. VI. M. 2. dorf.

Regis 1. Part. Array in the Isle of Thanet, and compel them by Distress, *pro defensione Regni*. 37 Hen. VI. Pat. M. 1, & 6. dorf. A Writ to many Counties, because of the great Hurt done to the People by the Sea-Coasts, and the great Preparation to do more Hurt; thereupon Command to train and array all Parts of England, *pro defensione*. And the 39 Hen. VI. Pat. *de potestate* to array the Isle of Wight, being invaded *juxta gradus & conditiones*, &c. 39 Hen. VI. M. 9, & 11. dorf. A Commission to Edward Duke of York, who claimed the Crown, and it was adjudged him. 31 Hen. VI. *Pro araiatione faciend' quod person' fil' iniquitatis diffentientes*, &c. therefore is a Command *pro securitate persone nostre & populi nostri ad invocandum omnes defensibiles* to destroy them. Pat. M. 9. dorf. *de villa de Stamford ad custodiend'*. M. 1. dorf. a Commission and Command given to Edward Duke of York, Ed. IV. which gave Power to raise Men and Money at Bristol, Hereford, and other Places; which was cancelled, and other Commissions given in the Room. In the Time of Edward IV. Rot. Pat. 1 Ed. IV. M. 8. dorf. for reducing Henry the Sixth's Power, *Congregare* all the People. 1 Ed. IV. M. 8. South-Wales on the Marches 1 Ed. IV. Scot. Rich. Duke of York, *Custos West-Marchie ad omnes homines defensibiles*, in Cumberland and Westmorland between 16 and 60, *sint prompti in defensionem Marchiarum*, &c. against Percy Earl of Northumberland. Rot. Scot. 10 Ed. IV. there are *Custodes generales vers' Scot.* for arraying all Men as there should be Cause. Pat. 3 Ed. IV. M. 3. dorf. continue *parati ad defensionem persone nostre & Regni*. 8 Ed. IV. fol. 23. a Book-Case, a Subject hath Power to make a Bulwark in another Man's Ground; the King hath as much Power over all the Kingdom, as any particular Man to make Defence. 9 Ed. IV. Pat. M. 11. Arrays. 10 Ed. IV. Pat. M. 13. Arrays *in salvationem Regni*, when he was like to lose his Kingdom. A Commission to raise Power against his great Adversary and Rebel Henry VI. who did lately enjoy the Crown by Usurpation. 22 Ed. IV. Rot. Pat. pars 1. M. 2. *pro Conducto-ribus & Waffatoribus Piscatorum*, and at the Subjects Charge. Pat. 1 Rich. III. pars 1. dorf. against the Duke of Buckingham *quocunque Comitatus* and this *juxta statum & facultates*. In Henry the Seventh's Time. Henry VII. was a wise Prince, his Majesty's Progenitor as well as his Predecessor; he staid not till he saw the Tops of the Ships, or the Drums beat; he provided for the Safety of the Kingdom betimes; when the War was denounced between Charles King of France and the King of the Romans, tho' he was allied to both, he prepared to defend his Kingdom. Rot. Pat. 1 Hen. VII. dorf. a Command to the Sheriff to make Proclamation throughout all England, That because we are informed of the War between Charles King of France and the King of the Romans, and great Hurt may happen to this Realm, and the Subjects thereof; commanding all Subjects to keep Watch and Ward upon the Sea-Coasts, and all Beacons to be made ready to be set on Fire, as in old Times, and this after Tonnage and Poundage was granted to him for Safety: and I am sure there are greater Wars about us now, than there were at that Time. Rot. Pat. 7 Hen. VII. *Intus de potestate commissa* to the Earl of Surrey to go to conquer France. 7 Hen. VII. cap. 1. a Statute in Print. 8 Hen. VII. Rot. Pat. pars 1. a Command to Richard Fitz-Hugh and others, to keep all in Array for Defence against Scotland, which intend to invade the Realm,

ut informatur. Stat. 1 Hen. VII. cap. 16. every Subject is bound by his Allegiance, to assist when need requires, In the time of Hen. VIII. Rot. Pat. 4 Hen. VIII. a Proclamation to the Maritime Counties to be in a readiness, considering the French King had in readiness a great Navy to enter this Kingdom the next Month ensuing, &c. and certain Captains deputed to lead them; and they were all to be in a readiness at an Hour's Warning upon their Allegiance. Rot. Pat. 4 Hen. VIII. the same Commission to Bouchiers, &c. in Latin, 14th of Hen. VIII. which is not in this Roll, but a Book of Proclamations; for before Edward the Fourth's time all between sixteen and sixty were to be ready at an hour's warning. 15 Hen. VIII. the Inhabitants of Stamford, Nottingham and Salop, &c. to attend the Earl of Surrey upon an hour's warning. 30 Hen. VIII. *Pallace treasur' omnes homines ad arma*, to be ready *ad serviend' nobis in Scotland*, as need shall be. Stat. 35 Hen. VIII. cap. 13. Remissions of Loans, reciting and considering, *est Duty & honor del People*, to assist their King in Body, Goods, Lands and Substance in his Wars; and there it was only for offensive Wars. Rot. Pat. 36 Hen. VIII. pars 2. 37 Hen. VIII. in Mr. Moyle's Book. 4 & 5 Phil. & Mar. Commissions of Array to go to all Gentlemen, but now but one Lieutenant of a County; and that Power which the Lieutenant now hath in England, was the same with the antient Commissions of Array in Substance, for it is no new thing. These are in force by 5 Hen. IV. and Common-Law in Queen Mary and Queen Elizabeth's time; and they did not go by the legal Array, but by the Power of the Council-Board. 3 & 4 Phil. & Mar. 1557. Council-Board. Calais was besieged on the sudden, the Enemy making Pretence of going into the Low-Countries, there went presently a Command to the Lord Warden of the Cinque Ports 5 Jan. to make Proclamation in Kent, that all from 16 to 60 should repair to Dover to save Calais, upon pain of Death. 8th of Feb. 1557. Letter of Thanks given to Sir John Edgecombe for diligently mustering 1000 Men. 19 Sept. 1558. Northumberland served without Wages. 1 Sept. To continue Watch. 8 April 1558. Whittypoole for not finding Demy-lance, is called to the Council-Table. These are to shew what Proceedings there have been in former times. Rot. Pat. 7 Eliz. pars 5. A Commission to muster all Men against Scotland. 11 Eliz. Rot. Pat. tho' not on Record, yet in a Book in the Crown-Office in the Chancery with Mr. Willis: A Commission to array Men, and to provide all things necessary, *prout Necessitas*, &c. and to inform themselves what Armour they had, and this to be done for our better Service: but with those Commissions there went Instructions, amongst which, observe this one; 'We require you to consider how necessary this Service committed to you is at this time, for the Benefit and Safety of our Realm, wherein we think the more Earnestness is the more requisite, because of our Subjects long continuance in Peace, and the notorious being in Arms of our Neighbours about our Realm.' If these Times be not worse, I leave it to any indifferent Man's Consideration. 27 Eliz. Watson Roll. A Warrant to the Lord Chancellor to make Lieutenants and Deputy-Lieutenants, which are the old Commissioners of Array turned into English. And in 1588, when that great Armada came, all the Realm was in Arms, and at the Subjects Charge. 31

Eliz. cap. 14, 15. the Subjects granted a Subsidy, in Consideration of the Queen's Charge. And the Subjects were then at great Charge, both for Land and Sea, and she took it by the Power of her Council-Table. The City of London was desired to find ten Ships, and of themselves they desired to find twenty; this was the Affection of those Times, they did not dispute but were ready to obey. 28 April 1558, a Letter to Sir Robert Wingfield, whereas divers Towns in Suffolk were charged to set out a Ship, and that divers were poor and could not, a Command that the richer should do it. A Letter to the Earl of Huntington, that York should contribute to a Ship charged on Hull. A Letter to other Towns to contribute to Colchester; they refused, yet were compelled to do it for advancement of so necessary a Service. The Clergy in eighty eight joined, and the Archbishop was Captain. And there were Letters for demolishing of Suburbs. Statute 3 Jac. cap. 6. where the Charge of the People in Queen Elizabeth's Time was remembered, London was charged, and Foreigners and Strangers were charged also to contribute, for that the Charge was common. In 1588, 3000 l. Conduct-Money levied for the Earl of Bath; they did not stay here till the Tops of the Ships were seen, but they made Preparations in 87. In 1599, great Troops were assembled at London, for Defence of the Queen, when the Tumult was about the Earl of Essex; and in 1598, the Charge being common, the Charge ought to be borne in common: Nay, the Inns of Court were charged with Arms; upon the apprehending the Earl of Essex, a Letter went to the Benchers of the Inner-Temple for that purpose, and all the Gentlemen found Arms. Amongst these Letters great Levies of Horse and Foot at the Country's Charge. And where she would not have their Persons, she had their Purfes and Power to extend accordingly. 1595, Amongst the Papers of the Lord Nottingham, the People set forth a Ship at their Charge; we have the Letter only to shew they did it, and how much each Man did contribute. In King James's Time there was not much; the Times were not only peaceable but pacificous, his Motto was *Beati Pacifici*. 10th of July, 2 Car. A Proclamation issued, that all People should make speedy repair to several Places, and should continue during the Danger. And for a binding Authority, 12 Car. the Resolution of all the Judges under their Hands, and inrolled in every Court at Westminster: a Man should have thought that that should have given Satisfaction, it would have done so in former Times. And truly, that the King hath done nothing more, but what the Kings of this Realm have done before, is most apparent to all those who will read our Law-Books. How often have the Judges been assembled by the King's Command, both in the outward and inward Star-Chamber, and there asked Questions? 2 Rich. III. fo. 10. 8 Hen. VIII. 190. b. 101. the King was there, and reasoned there. Is this a new Thing for Judges to deliver their Opinions? But his Majesty hath been pleased likewise to give way, that it might be brought to a publick Debate in a judicial Way; he hopes there are very few that oppose it, do it out of any averfeness from the publick Service, but to satisfy themselves, and so to submit.

To answer Mr. *St. John's* Argument; before I come to answer in particular to what was objected by this learned Gentleman, who hath taken a great deal of Pains, and made as much use of it as was possible for a Cause of this Nature to bear; I shall in the first place give a general Answer.

I say, that the Testimony by Records given on the other side, whereof many are vouched, which I am glad to hear of; and that Men look into a Business of this Nature. To make such a Search is for the Honour of the King, that there is, according to Law, the freest Access to the Records, that ever was in *England*;

* *The Lord of Holland.*

and that great * Lord doth know that the King commanded with his own Mouth, that free Access should be to the Records in this Business; and I appeal to the Officers that keep the Records, whether I did not only deliver that Command from the King unto them, but desired them my self to shew to the other Party whatever I had.

I say, these Records, take them at the best, they are not of such Weight in point of Right, as the other are which are for the King; for if a King shall voluntarily, and in case of his Subjects, or special Grace, do any thing, yet I conceive that is not of such Weight, as when he produces a constant use of compulsive Power from the Crown, and obey'd by the People: for if any of the Kings have spoken in gentle Language, as King *John* when he was deposed from his Crown; I conceive that will not be so much as gentle Words used in the Writs.

I shall answer particularly to all the Records that have been cited: it doth much concern the King, that this Argument be answered fully.

The first Thing that was said, was, that to seize Goods without Suit or Cause, is void in Law; but this was not used as an Argument, but an Introduction. But in the next place, he comes to a high Objection, that in his Majesty there is *voluntas interna*, and *externa*; his inward Will which he doth declare in his Chamber, and his legal Will, and withal, that the King cannot judge himself, 2 *Rich. 2. fo. 10, 11*, which was grounded upon that Book-Case.

The King cannot judge in his own Person, but hath left it to your Lordships, that are sworn to do equal Justice between him and his People; but to say, that the King cannot judge himself, I question. Can that be wanting in the Fountain, that issues in the Stream? that I utterly deny. Is it not said, *Coram Rege* in the *King's-Bench*, and in the *Star-Chamber*, *Coram Conciliis nostris*? This is a new Doctrine; and shall not the King judge? Did not *Ed. 4.* sit in Person in the *King's-Bench*, in a Trial of *Rape*? and that famous Justice *Popham* sat at the King's Feet, and other Judges at the King's Side, and therefore called *Justiciarii a latere Regis*? Sure he forgot King *James*, who adjudged two Cases in the *Star-Chamber*, that of *Beltingham's* and Sir *Tho. Lake's* Case. The Book doth no way warrant his Inference; the Book doth say, the King shall not judge, but saith, that if a Man be convicted before the Judges, the King shall not set the Fine, because he heareth not the Case. This no way concerns our Case.

That no Law can be changed but by Act of Parliament, as a Naturalization, and a Legitimation; nay, no Writ of Error but in Parlia-

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ment, till by the Statute of 27 *Eliz.* and that the Parliament is *Curia Regis*, and cited 34 *Hen. 8th Crompton's* Jurisdiction; the King is at no time in such State-Royal as in Parliament: All that was made out of this, was, that this was a Change of the Law, *viz.* the Writ for Shipping.

We believe it is so far from being a Change of the Law, as that it was the Custom of all Ages in former Times. Now he says the Parliament is the highest Court, and the King is there at highest both for Magnificence and Power; but yet out of the Parliament, the King is King of *England*. It doth not follow, because he may do it in Parliament, that therefore he can do it no where else; and it is to prove a Comparison, to say, that the King should have the ordering of War as a Generalissimo over his Subjects and Vassals; all the Generals have their Power from him.

Oh! but the King hath Provision for War.

This is but a cunning Insinuation, to make a Survey of the King's Revenue, and to insinuate with the People; and he begins with Knight's-Service, Tenures, and these in dangerous Places, as *Dover, Durham, Chester.* 35 *Hen. 6. Britt.* that the King should not only have his Wards Lands to breed them up, but to maintain the Wars in the mean time; and that Knights-Service 37 *Hen. 6.* were instituted for ordinary Defence as Horsemen. And because the Kings of *England*, out of their Care to have Men trained up, had Horsemen to follow them, that therefore they shall have no Aid when the Kingdom is in Danger, is a strange Inference; shall we have no Footmen, no Archers, no Slingers to be used in War, no Guard at Sea, because he hath some Tenures of Horsemen? This doth not discharge the Subject; this is but for forty Days, and was instituted to suppress the sudden Incurfion from *Scotland.* 19 *Rich. 2. Guard. 165. pl. Tenure*; they do restrain particularly Esuage and Knights-Service to *Scotland* and *Wales.* 22 *Ed. 1.* for *Gascoigne* afterwards discharged, but not for Mr. *St. John's* Reason. *Rot. Claus. 5 Ed. 2. M. 27.* these were discharged of Esuage, because the King was not there in Person, and because it was extraordinary. *Rot. Scot. 5 Ed. 1. M. 27.* that Record doth shew the Kings of *England* did conceive that they were somewhat less than Enemies that refused it; for foreign Service I never meant to object it.

Then he saith, that Esuage is to be assessed in Parliament, though for the Defence of the Kingdom.

If that were the proper Question, I could shew when Esuage was not by Parliament, for it was by another Reason. It was altered by an Act of Parliament, 17 *Johannis Statute de Running Mead, Nullum Scutagium*; for it was not so before.

Also it concerneth the Subject as well as the King. 9 *Hen. 3. cap. 37.* The true Reason of assessing in Parliament is this, other Men were to have Esuage as well as the King; now it is true that Rule, No Man shall be Judge in his own Case, but therefore not the King; that holds no Proportion: and Kings are said to do no Wrong. The true Reason why it was assessed in Parliament, was, because the Lords would take too much. This is from the Business, I pass it over.

Then he alledged, that the King is in actual Possession of the Wards.

C c c c

That

That they should go towards the Maintenance of the War, he cannot shew any Authority worth the valuing, neither *Bracton* nor *Britton* hath any such Thing; for 35 *Hen.* 6. the Words are *purceo, &c.* The Argument will be but thus; because the King out of his especial Care, out of his own Land provided some Tenures for that Purpose, therefore he shall have nothing from the Subject. The King did never give, nor could give other Mens Lands for those Tenures; for it is most apparent, the *Normans* came not in by Conquest. *William* was no Conqueror; for after he came in, Men did recover the Lands which were their Ancestors. That was the Wisdom when *Henry* the Fourth took the Crown by Conquest, when he would have alter'd the Laws; No! take our Laws, and take our Lives. This is an Argument no way conducing to the Purpose, because he hath some Horse by Tenure, therefore neither Foot, nor Provision for Sea-fight, nor Trained Bands, because Provision is made by Tenure. This is contrary to all Reason and Experience: What Obligation hath the Soakman and the Plowman's Tenures, what do they pay to defend them? no Consideration for it; these are rather Insinuations than Arguments.

Then it was said, there were like Tenures for Sea, and he cited two or three; one to hold the King's Head at Sea, and some such like, as if two or three Tenures were like to defend the Sea.

It was also said of the *Cinque Ports*, that they have many Privileges allowed them for that Purpose, 13 *Ed.* 3. *Parl. Roll.* 11.

Is the *Cinque Ports* Service a competent Provision to defend a Kingdom against Hostility? I know no Reason but the whole Body should defend itself. 13 *Ed.* 3. *M.* 9. it appears expressly, that the Commons made Defence at their own Charge. No Man can be discharged of keeping a Thing, that he did not keep; so because the Subject is said to be discharged, is an Argument that he was charged. That of the *Cinque Ports* is not for the Defence of the Kingdom, but for Intercourse of Merchants, not *Quando Salus Regni periclitabatur.*

Then they object, that Tenures in ancient Demesne were talliable without Consent, and their Service for the King's Provisions in their House.

No Reason that should excuse them from the General Service; for tho' it be true, that the King's House employs such Tenants, yet the Kingdom must be supported by them and the rest of the Subjects together.

Then he did object, there was another Way of Supply of extraordinary Means, as Mines in other Mens Lands; and here he remembered *M.* 3 *Rich.* 2. *Prerogative Comm'*, difference taken between annual and casual Revenues for Defence.

Then he objected, *Rot. Parl'* 6 *Rich.* 2. 11, 42. that the King would live of his own Revenues, and that the Mines, &c. should be for the Defence of the Kingdom.

Onslowe, who argued the Case, said that the King was the most excellent Person both at Sea and Land; therefore the Royal Fish at Sea, and the Gold and Silver Mines at Land, were given to him, because he was able to give a Stamp on Money. And so 2 *Rich.* 2. they of *London* pray'd that the King would not put them to Charge, but live on his own, and so your Authority vanisheth into Smoak.

The King must live, forsooth, of his ordinary Revenues. *M.* 3. *Rich.* 2. which expreßeth, that the King at that time would do so; that the King, by Advice for Salvation of the Kingdom, would use these things given unto him; that indeed was a reasonable thing for that time, but must it be now turned for a Necessity?

6 *Rich.* 2. *M.* 42. *pars* 42. that good Government be about the King; then they petition that he would live upon the Revenues of the Crown, and that all Wardships, Releasees, Marriages, &c. should be for the Defence.

The King is very willing to do and ordain in this Case, as by the Lords of the Realm may be thought best for his Honour and Profit; this is not a granting of the thing, but a referring it to his Lords, at best it is but a temporary Desire!

But oh! he hath the old Customs, and Petty-Customs, Tonnage and Poundage; of the Legality of taking of it he will not speak. If the King doth impose it on the Merchants, he needeth not to take it of his other Subjects. Duties to the King in this Year, came to 300,000*l.* and that Tonnage and Poundage was granted for ordinary and extraordinary Defence. 3 *Rich.* 2. 5 *Rich.* 2. 1 *Mar.* granted on Condition, that by the Statute of *Winchester*, they were bound to have Arms, and no such Statute for the Sea.

I shall answer all this; but for Tonnage and Poundage, I shall refer it for a particular Place. They say, the Courts of Justice are maintained by the King, the King hath a Profit thereby, but the Maintenance of them cometh out of the Subjects Purse; and the First-Fruits were for the Defence of the Faith, that no Heresy should creep into the Church. Therefore, because the King is Lord of the *English* Sea, he must defend it at his own Charge, and not command the Body nor Purse of his Subjects towards it. A pretty Argument! He saith, the King hath the old Customs, which are the ancient Inheritance of the Crown, and so for Petty Customs, and that these must go for the Defence of the Sea. See a Judgment in the *Exchequer*, in *Edward* the First's Time; search into the *Fine Roll* 3 *Ed.* 1. and see for what Causes these old Customs were. It was never said till he spake it, the old Customs or lesser were for this Purpose. And for this saying that the Statute of *Winchester*, 13 *Ed.* 1. doth enjoin keeping of Arms, and thereupon all Defence comes, that Statute was repealed by *Philip* and *Mary*, and set a foot by King *James*, and again by him repealed. I shall shew before the 13 *Ed.* 1. many Records for Land-Service long before; for that Statute doth only set a Form of Arms, and is not the Beginning of Arms. So for the Objection of the King's Revenues, be it more or less.

Now I shall come to Tonnage and Poundage, the darling Argument; which I affirm was never given nor taken, of itself simply, on extraordinary Defence; I have seen all the Grants of it: it may be when there have been Wars abroad, and then the Subjects in Parliament have given Tonnage and Poundage with Tenths and Fifteenths, they have been all said to have been for the Defence. Tonnage and Poundage hath been given and taken merely for an Intercourse of Merchants; and in that Sense the King said, we do and must pursue those Ends for which it was granted to the Crown. I shall make that appear by Reason, and out of the Grants themselves and other Authorities.

If Tonnage and Poundage were merely for the Defence of the Sea, how was the Kingdom to be defended before in the Time of the Saxons? At the first it was 6*d.* a Year, then to 2*s.* and 3*s.* for Tonnage and Poundage; then 3*s.* upon a Ton of Wine, and 8*d.* a Pack on Merchandize, that was all for Tonnage and Poundage, the rest was for old Customs. If this was for Extraordinary, how was the Kingdom defended when this was given for half a Year? Truth, it was for Defence of the Kingdom, that is, with relation to the Intercourse of Merchandize; the Recital *fac. faith*, it hath been taken time out of mind. Hath Tonnage and Poundage been given time out of mind? Then it was before Richard the First's Time: *H. VI.* he had it for Life, the Statute doth express it as plain as may be; Time out of mind is beyond the Memory of any Man living. The very Interpretation of the Statute explains it to be for the Safety of the Sea, and Intercourse of Merchants. In all Ages before the granting of Tonnage and Poundage, the Kings, upon a general Defence, have had other Aids than this by their own Power. Ordinary Charge for an ordinary Defence.

I could have given a legal Answer, that it was not given unto the King; no Act of Parliament for it.

Yea, but it is taken *de facto*. Shew your Instruments then by which it was taken; that had been a general Answer.

But I shall carry the King's Honour along with his Power and Practice: *Rot. Franc. 2 Ric. 2. 7 Hen. 4. M. 23. Rot. 11.* Tonnage and Poundage granted to Merchants to guard the Sea for Intercourse of Merchandize; which sheweth plainly it was for that Purpose. To put it without all manner of Question, 6*Ric. 2. M. 8. Franc. Roll. pars 2.* Merchants and Mariners had *Custodia maris*, and the King granted them 6*d.* a Pound: Doth any Man think that he would trust the Safety of his Kingdom with Merchants and Mariners? It was merely for the Guard of the Sea for Merchandize; express Exception in the very Grant, that they should not be bound by this to help against Invasion of Enemies, unless a Royal Power come, *regali potestate excepta*; therefore this was no extraordinary Service. 7*Hen. 4. Rot. Parl.* is in the same manner. And in the *Cloze Roll*, that the *Custodes maris* should put there a lawful Power for the Safeguard of the Sea against the Enemies of the King, except a Royal Power; then Notice to the King, so it must be understood merely for Intercourse of Merchants. I can shew you a Book-Cafe for this, 9*Hen. 6. 12. Quer. Case Title Custom. Brañ. 26.* he faith, That Aids and Subsidies are granted to the King, to the Intent that the King, by his Admiral, should guard the Sea, to the end that Merchandize may pass and repass; not a Word of the Defence of the Kingdom. And in *Anno 11.* the King was at great Charge with his Navy; cast up the Accounts of the Sea-Duties, and then it will appear there is not left to him a Penny for the Defence of the Sea. Impositions and Prizage of Wine was to furnish his House, and not for Defence of the Sea. Not only upon this, but there was an ancient Writer that wrote the *Doctor and Student*, whose Name was *St. Jermin*, who wrote in Henry the Eighth's Time; he tells you, *lib. 2. cap. 15. fo. 153.* The King, out of the old Customs of the Realm, as Lord of the Narrow Seas, is bound twice in the Year to scour the Seas, but not against all outward Enemies, but only to

put away Pirates and Petty-Robbers. History of Tonnage and Poundage. 25*Ed. 3. Parl. Roll. M. 11.* the Commons did pray, that 6*d.* of the 2*s.* a Sack of Wool, and of a Ton of Wine granted, that the Merchants might have safe Conduct over the Sea, if it would please the King; the Merchants for that would make their own Conduct. All the Rolls go in that manner. 3*Ric. 2. 2 Hen. 4.* and they cannot shew that Tonnage and Poundage was ever granted for extraordinary Defence, unless for some great Defence.

Next he alledged that Sea-Duties were born by every Man in the Kingdom, and that *secundum statum*. 22*Ed. 3. M. 4. Parl. Roll.* which says it was in Charge of the People, & *nemy des Merchants*.

All Men must bear proportionably their Share in the Charge of Defence; what Consequence is this? because the first or second Year out of the Subjects Purse for their Commodities, therefore their Lands shall be discharged in Cases of extraordinary Defence.

Oh! say they, but this may be done by Parliament.

By a *May-be* a Man may answer any Argument; but a *May-be* will never answer a Bill. 23*Ed. 1. Rot. 3. dorf.* the Writs were in *October*, the Parliament at *St. Martin's* in Winter. In that to the Archbishop of *Canterbury*, the King doth but a little compliment with the Clergy, and telleth them he knoweth what Dangers were abroad; the Business of Shipping was done before the Parliament, so the Parliament might consider of it afterwards. That it was done afore, appears; this Parliament was not held at the Day, but the King doth prorogue it till after *St. Andrew's Day*, because he was busy in preparing his Shipping; so they came about Shipping when it was gone to Sea before, for the Writ of Summons was the 1st of *October*, the Day of Meeting after *St. Martin's*; that to the Archbishop was the 31st of *September*; the Ship-Writs *Aug. 28. and Sept. 31.* then the rest, the 3d and 6th of *October*; but all long before the Meeting of the Parliament, and so all grounded upon [it may be.] And to say that the King, because he did a thing voluntarily, therefore he must be necessitated to it, I know not what Argument it is. *Henry VII.* indeed did bring things to Parliament for the Advancement of his own Ends; did *Queen Elizabeth* send any of her Commands out of Parliament? and yet the Subjects gave her Subsidies.

24*Ed. 1.* Summons there for the Clergy to come if the Truce did not hold with *France*.

I think it not fit at all times, when it standeth upon Intelligence, to communicate it to the whole People. 26*Aug.* Summons to Parliament, divers Writs in *February* and *April* before, no Money granted in these Parliaments; therefore to tell us it might be by Parliament, is a poor Argument.

Walsingham faith, Allegiance bindeth the King to Protection, as well as it doth the Subject to Tribute.

The Subject hath a double Protection from Injury and Wrong, in Times of Peace by his Laws, and in Times of War by his Power: Must this be done by the King's single Person? No, it must be done by the Bodies of his Subjects at their Charges. Indeed it is fit that particular Soldiers should be paid.

Oh! but they tell us, that *Fortescue*, Chief Justice of the *King's-Bench*, to shew the Law of *England* to be better than the Law of *France*, faith,

that nothing could be taken from the Subjects but by Parliament.

That is in the ordinary Way; doth he say, that no Man shall contribute to defend himself in imminent Danger? *Ne verbum quidem.* 27 Ed. 1. M. 7. Pat. there the King saith he did not buy Lands, Manors, or Castles with it, but did it to defend the whole Realm; no more doth our King, but only to defend himself and the Kingdom.

In 33 Ed. 1. Rot. 10. It is objected that a Clerk sued for his Salary, and had it allowed him: And the King supports his Courts by the Fines.

But they came from the Subject. And may not the King give a Salary when he pleaseth?

14 Ed. 3. cap. 1. and this were prest to prove, that Aids, tho' granted in Parliament for Defence, should not be brought into Example.

These were not to be spent for the Safeguard of England, but Scotland and France; and so it comes not to our Case.

48 Hen. 3. When the Tenants came with greater Charge than their Service required, *non trabatur in exemplum.*

True, if Tenants by Knights-Service at that time did no greater Service than they were bound in time of Danger, it is but Reason that it should not be drawn to be yearly, to make their Tenures higher.

Plowden fo. 315. *Wiseman's Case.* A Covenant to stand seized to the Use of the Queen, in Consideration she is Head of the Commonwealth, held no good Consideration to raise an Use, because there wanteth *quid pro quo*; and the King, *ex officio*, is bound to do that.

Under my Lord *Coke's* Favour, it was not in the Case. The Case was upon divers good Considerations, and he put this in by way of Admittance. I can shew when this was declared to be no Law.

Next, they alledge, the King is in Possession of the Service of the *Cinque Ports*, and of Tonnage and Poundage, and this appears not to be expended; and of other Duties for the Defence of the Sea, and *Lex non facit scilum.*

Tempus belli, I reserve for another Place, for that is one of the three Things considerable in this Argument. That learned Gentleman, Mr. *St. John*, did confess that (as Necessity requires) when the Safety of the Kingdom is in danger, the Subject is bound. If it were material to make it appear whether any thing were spent or not, it should have been pleaded at the *Exchequer*, if he would have taken any Advantage upon it.

But admitting they had been all expended, yet the Property of the Subjects Goods, saith he, cannot be altered out of Parliament. He did agree the Kingdom must be defended, and did yield, that for the Manner of it, it did not belong to the People. 6 Ric. II. 2 Ed. I. Men and Money belong to the Wars; the Commons did acknowledge it belonged to the King for ordering in all times; the Caution of former Ages was to demand it in Parliament.

We shall shew in all Ages, the King did it without Parliament. This is a pretty thing, that the King is to direct the War, and yet shall have neither Men nor Money without asking his Subjects Leave. And for that of Property being taken away, in the opening of my Argument I cleared it, I shall not trouble you with Repetition of it.

Oh! but they tell us, the King hath borrowed Money to spend in the Wars, and promised to repay it, and that without a *Salvo* of his Right;

this is an Argument they think worth Consideration. 48 Hen. 3. 16 Pat.

I know no Law that barreth the King from borrowing of Money, as he hath Occasion. Is it not of Necessity that the King must borrow, notwithstanding both Ordinary and Extraordinary? Must the King carry Millions about him? His Occasions may be such as he must borrow, and also fit it is that it should be paid again. Doth any Man think, that if the King doth borrow 10000*l.* of any particular Man, he must not be repaid again? 48 H. 3. M. 15 or 16. Power is given to the Earl of *Leicester* to resort to the City to borrow Money. Great Reason, because it is the Chamber of the King.

But the King's Money not coming in, he desireth to borrow so much of the City, and it shall be paid when the other Money cometh in; the End was for the Defence of the Kingdom.

But that therefore the King cannot command Aid from his Subjects, because he borrows of his Subjects, is no good Argument.

Then he saith, the Law delights in Certainties, as in the Aids *pur file marier*, and to make his eldest Son a Knight; these are certain, 25 Ed. 3.

All Defence is uncertain, till we know the Offence; certainly he must be a wise Man that can do it. How shall a Man know how to defend, and not know what the Defence will require? whether ten or twenty Thousand? and must it not be proportionable to the Offence? Is not this *suscipere majus & minus*? where is the Argument, that because Aids, which were uncertain at Common Law, are made certain by Act of Parliament, therefore must this be certain, for which there is no Act of Parliament?

Oh! but the Taillage in ancient Demesne and Burgage, they are certain; and Mr. *Hampden* he was assessed at xx*s.* it might have been as well xx*l.* this is uncertain, it doth rest only in the King's Mercy.

The Writ taketh care they shall not assess unequally: If Mr. *Hampden* be too high assessed, Mr. *Hampden* might call the Sheriff in question; but the Sheriff of *Bucks* is rather to be fined for setting him at so low a Rate as xx*s.* We know what House Mr. *Hampden* is of, and his Estate too; for any thing I know it might have been 20*l.* well enough.

But to the legal Part, some must be trusted with it, and who should be but the Sheriff? and the Parties not without Remedy if over-rated.

Then they come to Authority by Jurisdiction, and that they that have Privileges are not Talliable, *nisi pur grand Cause*, and that Escuage must be set by Parliament, which is by Act of Parliament; 17 *Johannis*, that it was called *Magna Charta*; and so it was in *Matth. Paris*, and confirmed by Hen. 3.

He speaketh of it as a Thing of Story, and these were for foreign Wars, as so not to our Case.

Oh! but it was admitted every Man was to keep Arms. 13 Ed. 3. 11 H. 7. cap. 18, and whilst they are in their own Counties, to be drawn out of their own Charge; but not to be drawn out of their own Counties without Wages.

Henry the Seventh, afraid of his own Title, makes a Law, that no Man should be questioned for being with the King in Arms: this was to take away the Occasion of the People's talking, whether they went upon just Ground.

That

That many Armies have been paid by the King. 2 Ed. 6. cap. 2. 28 Hen. 8. the Rebels in the North the King promiseth Satisfaction. 11 Hen. 7. cap. 1. the Duty of the Subject is recited in it.

What Argument is this? we shew in all Ages where the King commanded his People to attend him or his Lieutenant, and you tell us that he paid other Armies. 19 Hen. 7. doth extend to Wars without the Kingdom, as well as within. 11 Hen. 7. this last did expire with his Death, this doth appear plainly, this was by especial Gift by the King. 4 Eliz. Dyer 211. Expressly it did not extend to the Service of any other King but him.

25 Ed. 3. cap. 8. None constrained to find Men at Arms, but those that held by such Service.

This must be understood with relation to the Tenure, they were not to come upon common Summons for Eſcuage; but when the whole Kingdom was in Danger, that they should not come, was no Excuse.

Oh! 26 Ed. 1. *Reynod de Gray* durst not levy Men without Pay*. The Marginal Note clears this, and so no part of our Question; and it appears by *Walsingham*, fo. 74, 75. that the King was actually then in Scotland, where he fell from his Horse, and lost two of his Ribs.

In the next place they say, *Trin.* 31 Ed. 1. there is a Refusal to go without Pay. The Wardens of the Marches of Cumberland and Westmerland writ to the Barons, that whereas the Scots lay near the Marches with a great Army, that the People would not march out of their Counties without Pay.

This is easily answered; there were the East Marches, and the West Marches of Scotland, several Counties belonging to each: What Reason had they to go out of their own Marches, unless they had Money for the keeping of them in their Absence? *Rot. Pat.* 10, or 11 Ed. 2. pars 2. M. 26. for War of Scotland. 9 Ed. 2. the same discharged in the County of Norfolk. 13 Ed. 3. M. 38. the Abbot of Ramsey, because he remained in his own County discharged; it was no absolute Discharge, but *dum sic intendit*. 21 Ed. 3. *Rot. Franc.* Some are discharged from the Custody of the Sea, because they were *prompti* at home; some for finding Hobellers and Archers, and this was by reason of a Grant in Parliament; some were discharged, because of their Stay at home to guard the Coasts. This proveth the Right of the personal Service, and of the Contribution.

Another Objection is that of 21 Ed. 3. *Rot. Franc.* that they should not be kept continually in Array, but suffer them to stay in their own Counties; but they were to go as soon as there was any notice of an Enemy.

This was for the Wars of France, and not for the Defence of the Kingdom.

Oh! but 20 Ed. 3. M. 6. *Rot. Scot.* there were *Exploratores & vigiles*, which were *Incolarum*; but how *de assensu & voluntate*? But this was nothing, for it was with Assent in the Northern Parts, and had been done in former Times against Scotland. Then the 100 Roll of *Feverſham*, which I conceive rather maketh for us, than against us; for the Castle of Tunbridge is to levy 15*l.* for the King, *pro salvatione* of the Castle, and to levy it by Distress. 14 Ed. 4. cap. 19.

the King could not compel the Subject to sell Victuals for Wars, nor to provide for the Castle in the Town, 29 Ed. 1.

That was for Scotland for Payment of Victuals, and who can command a Purveyance but the King? and that of the Castle, it was the Victualing of his own Castle, and Subjects were bound to victual their Castles. 8 Ed. 2. *Rot.* 99. the Marches provided for Victuals, and particular Men paid for Victuals, but they do not shew from whence that Money came.

The next is Horses for the King's Service marked, that if they were lost they might be satisfied for. 24 Ed. 1. *Robert* — lost a Horse worth xx Marks, and received Satisfaction in the *Exchequer*, somewhat also for Wages, M. 26 Ed. 1. *Rot.* 105, 106.

That is only a *Concordat* how Men should be paid, what the Horsemen should have, and what the Footmen; for *Yorkshire*, *Northumberland*, and *Cumberland*, were to have no Wages from the King, but to go against Scotland: yea, that is another thing, *Si contra Scotos*; and that Distinction, upon stating of the Case, will go throughout. 14 Ed. 3. 34. for Castles. 24 Ed. 2. 72, 78. *dors.* *John de Sandall*. *Berwick* was taken from the Scots, and for furnishing of *Berwick* Castle, the People are compelled to trust him.

Oh! but the Prisoners taken in the War, and Hostages, were at the King's Charge. 8 Ed. 3. Allowances in the *Exchequer* for it. 5 Ric. 2. cap. 11. examined in the *Exchequer*.

The King, if he hath a Prisoner taken in the War, he is to have his Ransom; shall not the King pay for his Charge? 4 Ed. 2. *Rot.* 12. *Roger de Salvage*, a Scottish Prisoner, the King bore his Charges; so because the King payeth the Charges of a Prisoner for which he hath Benefit by his Ransom, therefore he is to defend the Kingdom.

Dyer 162. A Man in Execution cannot be forced to go to War.

Our Writ doth not desire to send Men in Execution to go to War, for there are enough besides them.

Then they object the borrowing of Money, and the King paid again for it, *pro negotiis urgentissimis*.

The King may have occasion to borrow Money, and reason he should pay it; nothing to the Question.

But the Case is, whether all the People, for their Wives, and for their Families Safety, and for the Safety of the whole Kingdom, may not be compelled to contribute to it? The Abbot of *Glocester* gave Money to maintain a Damſel, the King took this Money for the present, and paid it back again. This was *ad exonerand' conscientiam*: that for things taken away without Warrant, the Minister should answer for it, not pay and repay, but shall hold themselves satisfied with Reason.

But they object, that 26 Ed. 1. a Commission went out to inquire, *de Rebus captis, sive pro custodia Maris, &c.* and the King saith, that *il fera taunt que se tenderont a payse pur Reason*.

True, *se tenderont a payse, &c.* which is not to be understood, that the King will pay or repay; but that they should hold themselves satisfied *pur Reason*, that is, he would give them Reason why they should be satisfied.

* *Baronibus elegendis pro hominibus Scot.*

The Third Day's Argument of Sir Edward Littleton, Knt. his Majesty's Solicitor-General, in the Exchequer Chamber, before all the Judges, in the Behalf of his Majesty.

May it please your Lordship,

I Shall go on where I left; only inform you of one Record, 1 Hen. 4. The Writ that went for the Array of the Bishop of *Canterbury*, which doth recite, that whereas there was Danger upon the Sea, he and all his Clergy should *Manus apponere adjutrices*. I speak of this, because it was at so low a Time as Hen. 4. and it was *pro salut' Populi*.

Coia' Pl' 14 Jac. Between *Weaver* and *Ward*, Command came from the King and Council, that the Train-Bands in *London* should be muster'd for the training and making of them ready to defend the Kingdom. One in the training hurt his Companion, and he thereupon brought his Action against him: And this was pleaded in Bar, that he was muster'd by special Command; and this was adjudged a good Justification, because it was for the Preservation of the Land. 28 Hen. 8. which recited that the King did pay them in *Lincolnshire*; but for the other, he saith, that he shall remember their Pains.

I shall now go on. It was objected, that by the Statute of *William 1.* the People should enjoy their Lands freely, *sine omni injusta exactione sive tallagio*.

This was for Money to be received for a general thing; but that it was not for this thing appeareth in one Chapter, that Knights-Service Tenures should do what belonged to it. The rest sunt *Fratres Conjurati ad Monarchiam Angliæ defendend'*. 14 Ed. 3 Chap. 1. 25 Ed. 3. 1 Ed. 1. *Walsingham* 184. All these are set aside by the Statute, and concern not our Question. Ours is rateable and proportionable, according to old Practice. And it is one thing to compel a particular Man, and another thing to set an equal Rate upon the whole Kingdom.

Ult. Febr. 3 Car. A Commission of Loans for the Defence of the Kingdom.

They mean the Commission, which was a Consideration to levy Monies, by reason of the Necessity of the Times.

It appeareth in the Journal Book to be for Impositions, or otherwise to raise Monies not concerning this Question. It appears by that, that the King gave a gracious Answer unto it; and that it was done for the present time only, a Warrant for Advice only. It was done to raise Money in general; but no Determination of Right, and said, at your Desires it shall be cancelled.

Then there was a Commission for Loans, 5 Feb. 2 Car. and this they say was for the Defence of the Kingdom.

It appears it was for the Defence of the *Palatinate* and *Denmark*, and for that a Bishop was sentenced for his mistaking; Mr. *Pym* brought up the Articles against him.

I shall now come to an Objection, worthy the making by Mr. *St. John*; and because it is a thing not truly understood, but taken at random, I shall crave your Lordship's Patience: and that is the Statute *de tallagio non concedendo*, 25 Ed. 1. made after

the King went into *Flanders*, and agreed upon here by the Prince as Viceroy, and afterwards sent into *Flanders* to be sealed by the King, as it is put in some Books. The Words are general: No Talliage to be taken without the Consent of the Lords in Parliaments,

For this I desire the Liberty to inform you of the Story of the Times, to make a better Answer. This is not all, in some Statute-Books it is not mentioned; in others, no King's Reign mentioned. And in *Ed. 1.* no Year of it, and now they would apply it to the 25 Ed. 1. and this they would ground upon the compelling of Aid, 23 and 24 Ed. 1. And the Commission in 24 Ed. 1. did issue upon that, and consequently that this Aid was the Aid complained of, and then redressed.

Walsingham, a Monk of *St. Albans*, they rely upon for this, that wrote some seven-score Years after the thing was done. Sir *Edward Coke* saith, Chronicle Law is not much to be regarded. True he saith, Chronicle Histories may shew us the Times, but if it tell us what the Law is, we are not to believe them. No Historian, that I ever knew yet, ever read the Records, and therefore no true History; for the most part they are taken up in *Paul's*, or the Street.

To take something in Consideration, by way of stating the Case, upon the Statute *Confirm. Char.* and the other *de Tallagio non concedendo*, that is, that no Aid shall be levied but by Consent in Parliament.

The first Statute is, that no such Aid shall be levied, the Nature of it, and the Acts themselves rightly compared, there remains no Scruple against the Case.

Three things for the true understanding thereof must be consider'd. First, what kind of Aids had been in use before 25 Ed. 1. and for what they are taken.

Secondly, how and what Remedy was given by that Statute.

And Thirdly, how far that Statute *de Tallagio non concedendo* is in Force and Authority in this Case.

For the First, it appeareth in the common Story, that in 21 Ed. 1. the King of *France* had seized all the Dutchy of *Gascoigne*, upon Pretence that he did not appear at his Parliament at *Paris* upon a Summons. Thereupon the first took a Courfe for the regaining of his Dutchy, and the War continued with various Success, till 25 Ed. 1. And he had also War with *Scotland* and *Wales*. For tho' *Wales* was taken 12 Ed. 1. yet there was one *Madox* who pretended himself to be of the Blood of the Prince, till 23 Ed. 1. and till that Year they were not quieted. And he having all these Wars against *Flanders*, *Gascoigne*, *Scotland*, and *Wales*, some at one time, some at another, and most altogether, divers Aids and Supplies were taken upon these Occasions of several Natures; some were by voluntary Grants of the People, some were by Impositions and Levies by the Names of Talliages or Taxes to be paid to the King, some by Assessment of Lands, as the Abbot of *Robertsbridge*, 25 Ed. 1. All this appeareth by the Commission to enquire of Extortion.

And besides all these, some by Prizes of Goods and Money taken from the Possessors without any Payment, Rates, or Taxes. Nay, there was then ransacking of the Monasteries, and taking of the Monies found there; Mr. *St. John's* Case for Money taken out of their Treasury: and besides all these

these, there were some by way of Ransom, as Mr. *St. John* rightly observ'd, and shewed his Learning and Industry, that the Clergy upon their Denial were put out of the King's Protection: And they did ransom themselves by giving a fifth Part of their Goods. *Pat. 25. Ed. 1. M. 11. pars 2.* The People being thus grieved with such Aid and Prizes so extraordinarily taken for the Maintenance of Foreign War, obtained that it might be enacted, that such Aid in a relative Term may not be granted nor taken without their Consent, by the Statute of 25 *Ed. 1.* and *Confirma' Char.* Observe this one thing, the Markets of *England* three Years before had granted the King *Subsidium pro guerra*, upon every Sack of Wool five Marks; three Marks upon Woolfells; upon every Pack of Skins five Marks: And this was granted of their own Free-Will, and this was to continue for two or three Years. 22 *Ed. 1. M. 2. Sine Roll.* where it is there related. Next Year, before *Confirma' Charta*, all the Laity, except Cities, Boroughs, and ancient Demesne, had granted to the King in *Subsidium pro guerra*, the 11th Part of their Goods, 24 *Ed. 1. M. 2. pat. Pars 2.* And the Summer before *Confirma' Chari'* an 8th granted by all the Laity, except the Cities and Boroughs; and they granted a Fifth, and this was still for the War, 25 *Ed. 1. M. 11. Pat.* The Application is this: Those many Aids of these several kinds having been granted for the War, divers Men of that Time did doubt and fear, that however they meant it but for a certain Time, yet being not so clearly expressed, it might bind them for the future; and that they so doubted, appeareth by *Confirma' Char'*. And forasmuch as divers of our Realm are in fear, that the Aid and Taxes which they have given us before time towards our War and other Business, of their own Gifts and Good-Will, might turn to a Bondage to them and their Heirs; and likewise for the Prizes taken, we do grant for us and our Heirs, that we shall draw no such Aid, Taxes, nor Prizes, into a Custom, for any thing done heretofore, be it by Rule or any other Precedent that may be found.

Then, my Lords, for no occasion such manner of Aids, Taxes, or Prizes shall be taken, but by common Consent; but it endeth not so, saving the ancient Aids and Prizes due and accustomed. This being the State of the Case, be pleased to observe the Complaint of the People; this kind of Aid, it is plain, was never meant there, when *salus Populi periclitabatur*, and may be levied notwithstanding the Statute: For the Act is only against such kind of Aids as had been voluntarily granted by the People, some by Merchants, and some by others, that they should not be taken against their Wills hereafter, but by Consent in Parliament. Such is a Relative, it is not general no Aids, but no such Aids.

Secondly, It refers to those that were voluntarily granted to the King for *Scotland* and *Wales*, and his other Wars.

And another Reason why these Aids that had been for the Custody of the Sea, could not be said to have come of their Good-wills: For observe the Abbot of *Robertsbridge's* Case, it appears plainly it was done against their Wills, for the Custody of the Sea, by virtue of the King's Writ.

August before *Confirma' Char'* those that had given an 8th Part, they did obtain expressly Letters Patents, that such their free Gifts hereafter might not be in *servitutum*, 25 *Ed. 1.* that is the very

thing doubted in *Confirma' Char'*. Now those that had granted an 8th, had no Reason to do it, for they had a Charter to free them, but the other had not: And therefore the Statute might well say, some did fear. So upon the whole Matter, there are no other Aids but these voluntarily granted at that time, none in the Body of the Act but those granted with a Good-Will, for those Foreign Wars; and the Forty Shillings receiv'd by the King upon every Sack of Wool, with three Marks granted 22 *Ed. 1.* was by the Merchants only for the War in *Gascoigne*; and thereupon it was enacted, that the King should not take such things but by Consent.

There is also in the Statute *Confirma' Char'* an Exception, that all ancient Aids due and accustomed were excepted; and therefore what kind was meant in the body of the Act, the Exception makes clear, ancient Aids excepted; this was an ancient Aid; and therefore never meant there to introduce a new Law, that no Aid should be taken, but no such Aid. No Imposition should be taken; but the Practice of all Ages shews this hath been levied ever since, from time to time, which is an Interpretation of the Words of the Law. This I do open, to make way to the Statute *de Tallagio non concedendo*. Thrice in the Statute is this Word (such) but that they should make use of that Statute *de Tallagio non concedendo*, of it self, without relation to that, whereas it will appear it is a mere Extract out of this, and no Statute it self: For Debate of that; this *de Tallagio* is the same with that *Confirma' Char'*, it is a plain Extract of it, or some other thing at some other time. Sometime in some printed Book, *nullum Tallagium*, no Aids shall be taken by the King; sometimes without Notes of Time when made, and at the best it is no more, but it is said it was made in the Time of *Ed. 1.*

If we shall compare *Confirma' Char'*. and the Articles that were in this, we shall find it to be nothing but an Extract out of that Statute, and that it was no Act of Parliament. And to make it appear it was an Extract taken out of it, observe the general Heads *de Tallagio non concedendo*.

First, The Charter against Prizes. Secondly, Another against Wool. Thirdly, A general Confirmation of the Laws and Liberties. Fourthly, A Pardon to divers Lords there.

These are the things in which they would make it a Statute of it self, all expressed in *Confirma' Char.* they do not differ in Substance. A sixth Head is the very Year of the 25 *Ed. 1.* for the Pardon of those Lords was made 5 *Nov. 25 Ed. 1.* this same was sealed by the King Word by Word, proved by the Statute-Roll, the very same Roll that hath *Confirma' Char.* the next *Fol.* The Monk did mistake this Statute. No Man will believe a Monk, that wrote seven score Years after, against a Record.

I shall shew what was sent over into *Flanders*, and that was *Confirma' Char.* and did bear Date the 10th of *October*, the King being then in *Flanders*, and was there sealed by the King himself. That it may appear, there is no manner of question of it, here is the very Copy of the Statute-Roll; and the whole *Confirma' Char.* is recited *verbatim*, in Witness, 10 *October 25.* of our Reign: Whereas *Walsingham* saith, that this very Charter, Word for Word, was sealed in *Flanders*, under the Great Seal of *England*, 5 *Nov. 25.* of our Reign, and sent back into *England*. For this Statute-Roll against that time, doth expressly say, that this was the Charter that was sent over into *Flanders*, and hath the same Teste, Word for Word; and this

was sent back into *England* to confirm it further. The next thing that followeth upon the same Date and Roll, is the Pardon of the Earls; this was dated 5 Nov. after this *Confirm' Char.* was sealed.

They have not yet shewed that this Statute *De Tallagio non concedendo* was ever entered upon the Roll; nay, it could not be enter'd: Who would think that an Extract of an Act of Parliament should be enter'd upon the Roll? If they can quit Mr. *Walsingham*, they are wise Men; they must carry the Practice of all Times. Where did any Man see that this Act of Parliament was ever shewed to discharge Men of the Defence of the Kingdom since 25 *Ed. 1*? Did no body know this Mystery to plead, not to defend the Sea and their Land? Did no Man hear of this till now? Shall this, against all the Practice of the Times ever since, take away such a Flower of the Crown, as to compel People to grant Aid for the Defence of themselves? A harsh Construction!

If this should be true, it would destroy even Acts of Parliament: To what Purpose is that Statute made of the 25 *Ed. 3.* if that were totally taken away before? And if no Aid, those Aids *Pur Fil-le Marrier, &c.* are taken away also

Nay, if this be an Act of Parliament, when was it made, before the 25 *Ed. 1.* or since? It appears not when: It is *individuum Vagum*, I know not what, but in Truth an Extract. Nay, if this be an Act of Parliament under these Words, no Taillage is equivocal as well as Aid; that is proper Taillage that is laid upon Villages. 25 *Ed. 3.* 100 *Avowry. Entries* 406. b. 8. *Ed. 2. Execution* 15 *Ed. 3.* 106 *Avowry.* A Rent may be released by the Name of Taillage: No Mention of this in all Ages.

Then it was objected, that 25 *Ed. 1. M. 7. pars 2.* expressed in the King's Proclamation 12 *Aug.* before ever he was going into *Flanders*, that he was sorry for the Aid demanded of his People.

Let him remember for what Reason he did demand those Aids which he was sorry for; they were Aids granted not for the Defence of the Kingdom alone, but for the Defence of the Kingdom mixed with foreign Defence, by reason of Wars with *Gascoigne, Wales, Scotland,* and elsewhere; for that it was for foreign Wars. Upon this followed the Commission, 26 *Ed. 1. Pat.* that went to all the Kingdom, which makes for us.

There are three Parts in that Commission: *First*, To observe if the Officer did any thing without Warrant, they should return it. *Secondly*, If done wrong, the King would answer it. And, *Thirdly*, They should be satisfied with Reason if the King did warrant it. The Answer thereunto given was upon another Construction made of the Words of the Record in the Parliament 2 *Ric. 2.* The Cause was this: the Chancellor declaring the Cause of Calling the Parliament, he doth shew, that the King, in the End of the last Parliament, had assigned some Lords to be of his continual Council for the Year following; the Number was seven that were assigned, and they were sworn to give good Counsel for the Aid of the Kingdom. These Counsellors treating of the Peril of Enemies from all Parts, and the Matter requiring Dispatch, they durst not undertake the ordering of so perilous a Thing, therefore ordered a Grand Council to be assembled. The Grand Council was assembled, to whom was shewn the great Peril and Mischief of the Kingdom apart, by War,

by Land and Sea; and that nothing was remaining in the Treasury for the Maintenance of War: For a final Conclusion, that they might remedy this Mischief, they say, that it cannot be done without Parliament; this was the *Englisch* of it, and in the mean time an Army might be landed: And for the present Supply of the Charge of such an Army, they lent the King great Sums, which by great Security and other Things, he did engage himself to pay: Upon this the Lords did advise how it might be done with the least Charge to them all, and how the King's Right of his Crown, and other Inheritance beyond the Seas might be safe, and the King, Kingdom, and themselves defended, to the Confusion of all their Enemies: To this Purpose the Treasurer was directed to be ready to shew what was expended the next Parliament, to be bestowed for the Marches of *Scotland, Wales and Ireland*; and said in that great Council, they could not remedy that Mischief without charging of the Commons, which cannot be done, say they, without Parliament.

It is plain, by the Story of that Time, and the Words of the Chancellor, that it was for the Maintenance of the War in *France, Scotland and Ireland.* And tho' the Defence of the Kingdom be mentioned with these Wars, yet the main Supply was for these foreign Wars.

In the next Place, a little before in the Parliament, the like Aid for the like Occasion was desired by the King, 2 *Ric. 2. M. 24, 25. Parl. Roll.* What did the Commons say now? They ought not to bear such foreign Charges. The King gave them a fair Answer, admonished them, for *Gascoigne* concerned the Kingdom of *England*, for that is as a Bulwark to the Kingdom of *England*: *Burbacon* is an old *Fort de Hors*; for the Aid demanded in that Parliament was with this Relation as consonant; both together concerned the Defence of the Kingdom, that they might be Bulwarks for the Kingdom of *England.*

In the next Place, who spake these Words? The Lords, said they, could not remedy the Mischief without a Parliament. The Lords assigned by the Parliament, they must not do it; it is dependent upon the other Part, the Lords could not do it that Way.

But shall we come home, and speak plain *Englisch*? We know this was 2 *Ric. 2.* a young Prince. It doth appear expressly, that these things were brought into the Parliament for Advice, which were fit for Royal Authority, for Expence for Wars, and for Counsel, and for governing of his Realm. It appears further, by the very Chancellor's Speech, that the Council had been heretofore ordained for the guarding of the Kingdom, 2 *Ric. 2. Rot. Parl.* This Parliament taking notice of the King's tender Age, they took much Power unto themselves. There was to be a Council for the governing of the Kingdom in general; but the Counsellors should be chosen to govern the State for two Years, and these Counsellors not to be removed from the King without the Parliament: and more than that, his Treasurer was to be governed by the Parliament, and his Counsellors chosen in Parliament.

At the End of the Petition of Right, neither Lords nor Commons, jointly nor severally, can make a new Law without his Consent; and that your Lordships, and none but you, are the Interpreters of the Law, wise King *James* did declare.

The next Thing considerable is, *Tempus Belli* to defend it. It is when the Condition of the Time is such, that the Current of Justice and Law is by such Violence stopp'd, as Judges do not sit, nor Sheriffs dare execute their Office, nor any Court is open, especially the *Chancery*, which is *Officina Justitiæ*.

It was said there was a Time when the King might command this Levy, to which they did agree: They did agree the King might command this Levy when he hath proclaimed a War, tho' no Stroke stricken, no Danger, nor Armies, nor Opinion of any Force coming; this doth put it into the King's Power by their own Consent. And by all Reason, 19 *Ed. IV. 6. Brian's Opinion*. How many Wars have been proclaimed in this latter Age? No War denounced in 88, tho' consulted of in *Spain*; and they did not think fit to denounce a War, saith Sir *Walter Raleigh*; those Days are past. Now they begin by the Sword, not by the Trumpet or Herald.

In the next place, they say, if the King be in the Field with his Banners display'd; this they say was *Tempus Belli*. Cannot the Course of Justice sit then, but there must be a Peace? 39 *Ed. III. Rot. 10*. Did not the Court of Justice sit then? Our ordinary printed Books shew what Causes of Law then were. And in *Henry the Sixth's* Time, in all our Civil Wars, and in *Henry the Seventh's* Time, they sat then. But the true Time, to make it *Tempus Belli*, is to make a War against the King.

In the *North*, towards *Scotland*, when the Enemy approaches, is it necessary that it must be a Time of Peace, because the Court of Justice sits at *Westminster-Hall*? There may be then a strong War in the *North* and *West*, as ever was in *England*, when the Court of Justice sits here. That *Tempus Belli* may be in some Places of the Kingdom, and in some Places not, appeareth 33 *Ed. III.* and who shall discern if there be any Danger?

They agreed in general, the King may do it, and that the Power of Discerning is in his Majesty: I shall leave it in the King, till Mr. *St. John* finds a Third Person to do it.

13 *Hen. IV.* for the Murage, they say that this doth only charge those Things that are *venalia*, for Men are not compelled to go to Market.

How shall they then live? True, it is not compulsory to go thither, but it is compulsory to pay the Money.

1 *Ric. II. M. 176. pars 2.* A Petition from the City of *London*, to have all Owners of Lands to be rated with them in the Danger of Wars, not having Lands in Tenure to do it.

This doth make for us; that not only Merchants, but every Man in the lieu of Tenure to do it. The Lord *St. Albans* saith of *Hen. the Seventh*, that Kings may fall from their absolute Power when they see Cause, but not be compelled to do it.

They say Supplies are called those things, *sine qua non* the Kingdom may not be defended: And because there is a Way by Parliament, therefore no other Way.

They say it will not be affirmed, that the King hath the same Power for an Offensive, as Defensive War: I affirm, nor defend nothing; the Parliament is a great Body, and the Kingdom may be lost in the Interim.

Then they alledge there is forty Days for Esoimage, and the like for Parliament. Many times Things are impossible, and inconvenient to be done by Parliament.

Vol. I.

First, Impossible; the Necessity may be such that it will not brook the Delay of a Parliament. 48 *Hen. III.* Summons to the *Cinque Ports*. They come Day and Night to the King when any Danger is.

It hath been said, that there are seven Months between the Test of the Writ and the Ships being at *Portsmouth*; in that Time a Parliament might have been summoned.

The great one, and the true Answer is, that this resteth still in the King's Judgment. If the King hath Intelligence that foreign States will set out the next Spring a Fleet, and for Conveniency of his People, sendeth seven Months before-hand to raise this Aid; hath the People any Cause to complain of this? Mr. *Hampden* hath not paid the Money yet, being two Years after.

If they should have gone by Parliament, see what Rubs in this Case might be. Forty Days are spent before the Parliament sits: Then when they meet in Parliament, there is a Ceremony in chusing of a Speaker, Solemnities in these take up Time: Then the Lords take Things into Consideration, then they must have Conferences and Disputes with both Houses; before they agree, the Kingdom may be lost: In the mean time, suppose this comes in some reasonable time, to make Assessments first in the Cities, then in the Burroughs, then particular Assemblies, then Divisions; and after all this, there must be Collectors appointed to levy the Money; what a great deat deal of Time is spent in all this, every Man may see.

Our County, say they, is an Inland County, and they cannot find a Ship suddenly; and therefore the greater the King's Mercy and Favour to lend them his Ships instead thereof. When all this is done, and Ships provided, reasonable Time must be allowed to sail from the *North* to *Portsmouth*; but this doth solely rest in the Judgment of the King.

31 *Hen. VIII. cap. 8.* An Act of Parliament not to take away any of their Inheritance or Lands.

Here is no Lands or Goods taken away; only let them contribute to the Defence of themselves, and all is done. Mr. *Hampden* hath had none of his Goods touched.

They say, for Shipping it was done in King *John's* Time at the Subjects Charge; but they do not meddle with Land-Service at that time. 15 *Johan. 13. dorf. Rot. Claus.* King *John* had Business beyond the Sea. That this was rather for beyond Sea, than the Kingdom, appeareth thus. The Writ saith, to have such Ships as would carry eight or six Horses, and that must needs be for some foreign Service; and not for Land-Service at Home. And it appeareth, *Rot. Claus. M. 1. dorf.* the King was well landed at *Rochel*.

For the Terms of the Law, which concerns Hideage and other Things, *Bract. 37.* and some Services introduced by common Consent, I will not trouble you with it.

To come to the Case of the Abbot of *Robertbridge*, that Arms was laid on by the Statute of *Winchester*. That will not serve, Arms was long before that Time. They say the Assess was in time of War; the *French* had burnt *Dover*, 23 *Ed. I.* and that the Assessment was not made by the King's Authority: but it appears it was by the King's Authority, by Virtue of his Writ. 25 *Ed. I. Lo. Treas. Rememb.* *Leybourne* was Admiral of all the Kingdom; and was *Custos Maris &*

Maritim' for some Parts: but that it was for Land-Service, and not for Sea-Service.

Custos Maris & Maritim' are Terms convertible; he that doth one, defends the other.

They have left no Stone unturn'd to take away the Force of this Case. They tell us now, the Clergy was put out of the King's Protection this Year, and so it appears in the *Exchequer*; but they have not shewed any such Writ delivered into the *Common-Pleas*, only *Spencer's* Word of Mouth, that they should have no Privilege there. Suppose it were so in other Courts: 25 *Ed. I.* it appears plainly, that the Clergy came all to be in the King's Protection, and gave Ransoms; and this Cause was not till *Michaelmas* after. And whereas it is said, this Abbot's Case did only concern the Land-Service, it proveth both the one and the other; Money for the Sea-Service, Horse and Man for the Land-Service.

Oh! they say, 29 *Ed. I. Mag. Char.* was not observed; and instanc'd *John de Gray*, and *Philip's* Case.

Whatsoever was the Practice of that Time, is not material. And for that of the Charter of the Forest, they say, tho' it be there said, *Nullus amittat vitam vel membrum pro venatione nostra*, yet one was beheaded.

But what is all this to the safe Custody of the Sea? Nay, they have not shewed your Lordships, that there was any thing in that great Charter for the Custody of the Sea. 51 *Hen. III. fol. 84. Britt. 117. Flet. & Fitz Her.* Lord *Coke* on *Littleton*. Perhaps question might be about this in the *Exchequer* at this time; the Case of *Shoreham* discharg'd of Land-Service, because they found Shipping.

They that were nearest Danger, most fit for that Defence; as the King, in the tenth Year of his Reign, sent only to Maritime Towns.

2 *Ric. II. M. 42.* They say *Beverly* was discharg'd, because it was an Inland Town, therefore no Inland Town ought to pay. A Writ directed to *William Ruffel*, Admiral, commandeth only the Sea-Coasts.

13 *Ed. III. M. 35. Rot. Claus. Part 1.* afterwards discharged, because of other Service. And for that of *Beverly*, a Complaint that they were to contribute to such a Town to find a Ship; they say they have Privileges, but the special Reason why it was freed, was for Reverence the King did bear to *St. John de Beverly*.

Mr. *St. John* knows it; 120 Ships granted to the two Admirals, *North* and *West*, for Service beyond the Sea. 31 *Ed. I. de inveniendis* Horses, because of great Business in his Wars abroad, he bound them to make Galleys for foreign Service. True, the King at this time was in *Scotland*, and kept his *Christmas* there. Then come to 31 *Ed. I.* as tho' he should do it by Service of the *Cinque-Ports*: *Newcastle upon Tyne* at their own Charges; but when into *Scotland* at the King's Pay, then they came to this. 10 *Ed. III. M. 6. Rot. Claus.* sent for Ships into *North-Wales*, and *South-Wales*; the Writ did say, that Wages used not to be paid for such Service; and did express in his Writ, Satisfaction should be given unto them, not of Right, but *de Gratia*; and reciteth that Clause, that the People were bound unto it. 2 *Ed. III. 16 dorf.* That there should be three hundred Pounds to relieve the Fishermen, the King should not have it of the People of that Town. They say all these Records being Matter of Fact, did occasion the

making of many Statutes of Redress. 14 *Ed. III. cap. 1.* great Aid for *Scotland, France*, and *Gascogne*; 15 *Ed. III. M. 9.* contrary to *Mag. Char.* 22 *Ed. III. M. 4.* 36 *Ed. III. M. 9.* no Goods to be taken without Consent: These are Things comprehended within the Petition of Right. 37 *Ed. III. M. 2.* speaketh only of the great Aids. 23 *Ed. III.* Galleys made: they say the King paid for them; that is, upon the King's own Promise; but they say that is *nudum pactum*. Then they say, is the King's Word nothing? 13 *Ed. III. M. 9.* called a Parliament, propounded as on the King's Part; they are not liable to the Defence of the Sea. If the Commons have nothing to do with the Guard of the Sea, why is it propounded unto them.

20 *Ed. III. M.*—That the Guard of the Sea henceforward be made at the Charge of the King, as hath been promised, and there the People discharged. They do not affirm in their own Case there was any Right. 21 *Ed. I. Rot. Franc. M. 9.* 2 s. on Merchants Wools, and 6 d. Poundage for a certain Time, and to cease *tam quam*, &c. 22 *Ed. III. 2 s.* upon a Sack of Wool may cease.

All these Things were granted for foreign Wars; and if the Cause should cease, then the Thing should cease. 2 *Hen. IV.* Commission for Building of Galleys, the King would confer with the Lords about it: Then 19 *Hen. IV. 17. 21.* touching the Guard of the Sea, not bound unto it.

4 *Hen. IV. 28 M.* Tonnage and Poundage not to be taken without common Consent. A Protestation of the Commons doth not bind the King; and concluded with *nullum tempus occurrit Regi*.

The First Day's Argument of Mr. Holborne, on the Behalf of Mr. Hampden, before the Judges in the Exchequer-Chamber, in the great Case of Ship-Money.

May it please your Lordships,

I N Obedience to your Lordships Commands, I am ready, tho' not not as I desire; nor as the Cause deserveth, to argue it; it being impossible for one in so short a Time to be fitted to make a Reply to the Life of the Cause of an Argument, so long, so learned, and so full of Records, wherein neither Labour nor Learning was wanting. I may say of him, as one said once, *Etiā hac defēsa fuisset.*

I shall now rather shew your Lordships what I should do, than what I shall for the present. I shall proceed well, hoping the Subject will excuse, and your Lordships greater Care supply my Defects, which have been without any Default.

My Lords, the Case upon the Records stands thus: In *May* last there issued out of the *Exchequer* a Writ of *Scir' Fac'* to the Sheriff of *Bucks*, to warn my Client to shew Cause, why he should not pay xx s. assessed upon him by the late Sheriff of that County, for the finding of a Ship of War mention'd in the Writ, 4 *Aug. 11 Car.* sent into that Inland Country, and the xx s. certified into the *Chancery* to be unpaid, and sent over into the *Exchequer* by *Mittimus*, to be levied there. Mr. *Hampden* hath appeared, and demanded Oyer of the Writ 4 *Aug.* of the *Mittimus*, &c. and upon the Reading of them all, hath demurred in Law generally; and the King's Counsel have joined in

Demurrer:

Demurrer: and I humbly conceive Judgment ought to be given for my Client.

My Lords, I shall proceed to the stating of the Questions, which are three: the first, which is a chief one, is this; whether, upon the whole Record, the Case do appear for the King; that 4 Aug. 11 Car. being the Day of the Date of the Writ, the King could charge the County of Bucks to find a Ship at their Costs and Charges? By way of Admittance, if he could, yet whether the King can give Power to the Sheriff to assess the County as in this Case? By a further Admittance, admit that the King have Power to charge and assess, whether he can levy the Money unpaid by this Course of *Certiorari* and *Mittimus*, as he might do if it were his own proper Debt? Of these three Questions, whereof the two last remain untouched, and not argued by us, I chiefly intend to insist.

For the first Question, tho' argued fully, yet I doubt, as yet, whether it standeth rightly stated; not but that I conceive Mr. Solicitor had good Colour to state it, as he made it, partly by the Record, yet somewhat out of our Admittance; yet by Admittance only, and so expressed.

Again, another Reason which I conceive, there was a Necessity on the King's Part, so to make it as Mr. Solicitor stated it, or else to wave the Debate.

The first Question is, whether or no, upon the whole Record, the Case so appeareth for the King, that 4 Aug. 11 Car. being the Date of the Writ, the King could by his Writ charge the County of Bucks for the finding of a Ship of War?

This, on his Majesty's Part, hath been stated in these Records, whether the King finding in his Judgment the Safety and Preservation of the Kingdom and People, necessarily and unavoidably to require this Aid commanded by this Writ, might not command such an Aid by the Writ, for saving and preserving of the Kingdom and People; wherein, I confess, there is not one Word but hath its Weight.

As to this Question, thus made, I shall take three Exceptions, which are things taken in to be granted, which I shall not argue if I can avoid them.

That at least, in the King's Judgment, the Safety and Preservation of the Kingdom was in danger'd 4 Aug. that is, that the Kingdom was in danger to be lost. If it be so that the Kingdom was in such Danger, and that the Danger was so instant and unavoidable, that it necessarily required this Aid by this Writ; that is, it required a present Charge of Shipping presently, 4 Aug. 11 Car. to be forthwith commanded, and that Occasion could not expect a Parliamentary Consideration and Supply; these be Things wherein we differ. And, lastly, for the Truth of it, the Certificate was sufficient in a legal Way.

My Lords, to find out whether the Record doth warrant these three Things of great Importance. First, I shall seek for them in the Writ 4 Aug. and next in the *Mittimus*; there is no Colour elsewhere to look for them.

To open the Writ rightly will clear these Differences, as I humbly conceive, without any great Argument. And first, for the Writ dated 4 Aug. 11 Car. I shall read the Words, wherein the Danger of the Kingdom is expressed, and then explain what Words give that Sense that is taken out of them.

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Quia datum est nobis intelligi quod prædones quidam Pirati & Maris Grassatores tam Nominis Christiani hostes Mahometani quam alij congregati, naves & bona & mercimonia, non solum subditorum nostrorum verum etiam subditorum Amicorum nostrorum in Mari quod per Gentem Anglicanam ab olim defendi consuevit nefarie diripientes, & spoliantes: ac ad libitum suum deportare hominesque in eis in captivitatem miserrimam mancipantes. Cumque ipsos conspiciamus Navigantes indies præparantes ad Mercatores nostrorum ulterius molestandum & ad Regnum gravandum nisi citius remedium apponatur, eorumque conatui viriliter obvietur. Et consideratis etiam periculis quæ undique his guerrinis temporibus imminet, ita quod nobis & subditis nostris defensionem Maris & Regni omni festinatione quam poterimus accelerare convenit, nos volentes defensione Regni tuitione Maris securitate subditorum nostrorum salva Conduetione Navium, &c. Here are the Causes and Occasions; all that comes after is not material to the stating of the Question.

My Lords, in the opening of this Writ, it is true, there was mention of loss by Merchants of some particular Members of the Kingdom. And this loss by *prædones Pirati quam Mahometani & alij*; and tho' *alii*, yet Pirate still and no more; then it saith *ipsi*, still those Pirates daily prepared Ships, but not armed with Men. What to do? To molest the Merchants, and, *ad gravandum Regni* as Pirates still hitherto. I conceive there is not a Word of Danger from any Empire, but from Pirates; not a Word of Danger to the Kingdom, but to Merchants: however, all this is *quod intelleximus*. The Record goes on thus, *Consideratis etiam periculis &c. imminet*. This Part, as I conceive, is not so positive, the Dangers are but *Consideratis*, nor the Danger to the Body of the Kingdom. No Word of that; or if to the Kingdom, yet nothing in point of Safety, only but in point of Molestation: none of all these appears. And besides, the Clause is too general, not expressing any particular Danger, from whom or how. However, be the Danger to the one or to the other, be it to the Kingdom or to the Merchants, be it for Trouble or for Safety, hitherto I may say there is no mention of any such instant Danger, as necessarily did require this instant Command in the Writ, not so much as in the King's Judgment. For ought that appears, a Parliament, even in the King's Judgment, might have been called, and Consideration taken for a Defence. Here be all the Premises upon which the Conclusion must arise; and hitherto nothing material to make a Danger to the Safety of the Kingdom, and so instant, that a Supply *nunc aut nunquam* must come in.

Altho' the Premises, I conceive, are only considerable, yet the Conclusion will be but this, *convenit accelerare*; but it is fitting to hasten: but no such Necessity, tho' it be *convenit accelerare pro defensione Regni*. If that were material, it cannot be construed, but with relation to the Premises on which it is built. And whether in fear of Trouble, or Danger, or Loss, *non constat*: and tho' it be *cum omni festinatione*, yet it is *qua poterimus*; and that is *possimus quod jure poterimus*; that is, with all the Haste that by Law you can make: which way this is, your Lordships have heard.

Now, my Lords, it appears on the Record, that there was no such instant Necessity, but that a Parliament might have been time enough; for that it was observed between the Test of the Writ and the

the Rendezvous, there were two hundred and odd Days, whereas a Parliament requireth but forty; in the Remainder of these two hundred Days, the Parliament might have considered of the Means of Defence. But I leave it to your Lordships to judge, notwithstanding those Expences of Time cunningly reckoned up to your Lordships by Mr. Solicitor; and tho' it be true, that Things are oftentimes long in Deliberation, yet Nature tells us they can be sooner. If there be a Necessity, we know that will force.

I have but opened this Writ 4 Aug. I am now come to the *Mittimus*: The only Doubt which I conceive in the *Mittimus* is, that where the Case stands but thus, in this Writ is recited the Tenor of the Writ 4 Aug. and then the Writ goes on, and saith, *Quia salus Reg' periclitabatur*, and that is all the Clause in the Record that gives Colour to the Case so to be made. And to the whole Record we have demurred.

Here it hath been said, we have confessed all by the Demurrer; and if that hold not, the King, who is the Judge of the Danger, hath said so, he hath certified so under the Great Seal: and on these depends the Weight of both these Processes.

To this I have many Answers, but I shall select a few from many others, on which I shall rely. My first Answer is this; here the Words are, that *Salus Reg' periclitabatur*. These Words in shew seem to be positive, but in substance but relative; and are rather but a Comment on the Writ, or an Abstract in point of those Dangers mentioned in the Writ, for the Clause was brought in on the Return of the Writ; and if we have the Writ it self, the Comment thereupon, or further Explanation thereof, is not material.

My second Answer is; I doubt, I say no more, if the King put particular Reasons into the Writ 4 Aug. whether the Law (I speak of legal Course) doth permit any after Writ to put in further Clauses of the same Nature with the former, to the same End.

If the Case be thus, then our Demurrer will be no Confession of any such Danger.

In the next place, admit the Words in the Writ had been positive, and materially expressed; yet, according to our Rules of Law, it cannot make use of that Sense they are now applied unto: For the best, the Word *Salus* being only proper to a physical and natural Body, is applied here to a Body Politick. It is but a Metaphor which the Law will not indure in Writs, for it would bring in great Mischiefs. In Writs and in Pleadings, Metaphors are dangerous: We know not how to take Issue upon it, and therefore is not regularly allowed; but I leave it to your Lordships Judgments.

There are no Words of the Danger of the loss of the Kingdom, that is, such instant Danger: for apply the Words to a natural Body, as *Salus J. S.* is in Danger, it doth not presently imply, that he is in such instant Danger of Death. A Doctor will say a Patient hath not his Health, yet no Danger of Death, it is the common Speech; the same Sense it must have in a Body Politick. If the Words were good, and did imply a Danger, yet not such a Danger as may hazard the loss of the Kingdom; for the Words are only *Salus Reg' periclitabatur*, and the thing may be never in Action, which twenty Years hence may lose the Kingdom. A Man may say, that the Safety of

the Kingdom is in Danger. At the best, the Words will not make the Case as it is put.

Mr. Solicitor, out of his great Care, searching into every Hole where he thought we might peep out, doubting our Demurrer would not be a Confession sufficient, he take in another Help, which is this, that if this be so declared by the King's Opinion, and under the Great Seal, that this alone had been sufficient. For this there hath been urged, the legal Weight of the King's Affirmation, and of a Certificate under the Great Seal; and both be concluded in this Case.

My Lords, before I answer to this Matter, I profess, for my Client and my self, that we make no doubt of the King's Word, and believe there was Danger, tho' not so apparent to us; but only loth to allow it as sufficient in a legal Proceeding, lest what his Majesty, in his own Worth deserves, by after Princes might turn to a Disadvantage.

That which we urge is, how far in form of Law this may be allowed, we shall argue, and that briefly, for the Case needeth no help.

For this Point I take it for Leave, under your Lordships Favour, that in legal Proceedings, and regularly, his Majesty's Opinion, and Certificate in Things of Fact, is not binding.

Yea, but they say, it is Matters of State and Government.

For that, to ask the Question, whether or no raising Forces thus is left to his Majesty, that stands and falls on the main Cause.

My Lords, I do agree, in divers Cases the King's Affirmative shall be conclusive in Matters of Fact, that is, when it is not so triable elsewhere; as in a Writ *de Rege inconsulto*, to stay Proceedings, when the King certifies Matter of Fact, the Writ must be obeyed, but then, withal, the Matter is triable elsewhere. But these Cases will not match ours. As for that great Case 20 Ed. I. concerning the Lords Marchers, that the King was *Recordum superlativum*, to say no more, it is but an Allegation of the King's Counsel.

My Lords, the Reasons whereon I shall most rely, to avoid the Sense of the Writ, *Salus Reg' periclitabatur*, is thus, That tho' it doth now appear by the *Mittimus*, that 4 Aug. the Kingdom was in Danger of being lost, yet it is not sufficient in Law, nor can our Demurrer hurt us; because it must have so appeared in the Writ, 4 Aug. it self; for the Writ and Declaration in Law must ever contain precisely so much of Matter as is necessarily true to warrant the Demand.

In this to see the Mischief, if a Danger now declared makes the Case, how shall the Subject know by the Writ 4 Aug. whether to obey or no? The Law binds not a Man to divine: And if this subsequent Declaration shall mend the Case, then the Subject shall be a wrong Doer, *ex parte facti*, which is against the Reason of our Books. I shall remember the Cases put by Mr. *St. John* to another Purpose. A Commission sent forth without Cause expressed, that Commission is not good; and it is not denied by Mr. Solicitor, that a Cause must be set to make it good in Law. And if your Lordships be pleased to look on the Precedents, as I know you will, which the King's Side shall bring unto you, your Lordships will find the Danger turned from the first Writ to the last. Nay, in the Writ of this Year I am told it is so, out of their

their Opinion, fearing the Writ 4 Aug. was not so good as they would have it. They put it into the *Mittimus*, which they knew could not do good; but they did it only to cavil.

But lastly, admit the King had said the Kingdom was in such instant danger of Loss, and that there was an instant necessity of the Command this way, and that this could not have expected Consideration in Parliament; yet if the contrary appears in the Record, then neither was the Demurrer a Confession, nor the Certificate conclusive.

I could stand on many other Things, as that the Danger should be more particular, for so are all the old Precedents. To say, *Salus Regni* is in Danger, is too general; as in a Protection, they must alledge, in what place the Party protected is employ'd.

Secondly, In the *Mittimus* it should not be that *Salus Reg' periclitabatur*, but how *Salus Reg' periclitabatur*, I believe it is meant so; but we must now look to Rules of Law. True it might have been in Danger before, but not *tunc*; as in the Case of Indictment upon the Statute of 8 Hen. VI. for an Entry upon *Whiteaker, existens tenement*. J. S. the Laws will not take notice of the Time, without saying, *tunc existens*, at the time of the Entry.

My Lords, in the Conclusion upon this Discourse, it appears, I have so pared the Case, that in the Writ dated 4 Aug. there appears no Danger of the Kingdom being then lost; and that in the *Mittimus* there are no express Words of Danger to the Kingdom instant or unavoidable. If it were so, it cometh not time enough; for it should have been in the Writ dated 4 Aug. And if there had been such expressing of such instant Danger in the Writ 4 Aug. and in the *Mittimus*, yet not material, if otherwise on Record. And lastly, this Certificate doth not conclude us.

Thus then to shew what the Case is, and what it is not, I have put out of the Consideration of the Case, all Considerations of such Danger to the Safety of the Kingdom, as are unavoidable.

I have left nothing in the Case but Consideration of protecting Merchants against Pirates, but for ordinary Defence of the Sea. If the Case doth fall thus, I humbly conceive, that in this place, I might, without further Argument, with some Confidence, venture my Client's Case upon your Lordships Judgments, notwithstanding any thing objected on the King's Part.

Then, by your Lordships Command I shall proceed: having laid aside the *Mittimus* and *Salus Regni periclitabatur*, and taking the Case only on the Writ 4 Aug. which, as I take it, is nothing of Danger to the Kingdom, but for protecting Merchants, and for common Defence. The Case stands thus.

That tho' there be no actual Invasion, no known or declared Enemy; yet the King out of his Judgment, 4 Aug. 11 Car. apprehendeth and foreseeeth Danger to the Kingdom in point to be lost; and that the Danger is so instant and unavoidable, that it requireth this Aid. Whether the King out of Parliament by his Royal Power can command this Supply?

I have endeavoured not to mistake Mr. Solicitor; it were an Injury to requite him so ill. In my Argument I shall desire leave to hold his Course, because the two main Questions are both of one Nature, tho' different in Degree.

Our Question is, in case of common Good against Pirates. Upon the whole, my End is to shew, that by the fundamental Policy of England, the King cannot out of Parliament charge the Subject, no not for common Good, unless in special Cases, and of a different Nature, or upon different Reason; nor for a necessary Defence, tho' in the King's Judgment the Danger be instant and unavoidable.

My Lords, in the debate of these two Questions, I have learned of Mr. Solicitor not to say all that I could, but so much as is necessary, and as he hath chalked out the Way.

I shall inquire of this Power by Arguments upon Practice constant and allowed in time of good Government, when the Liberty of the Subject was not trampled upon; and shew it by Acts of Parliament, Reason, and Authorities in both.

My Lords, I am now come close to the Arguments on the main: Before I begin, give me leave to profess that I am in a Dilemma. The Question will be, what the King can do in these Cases, by his Royal Power? it much concerns him. And I have learned out of a Speech of his late Majesty, what it is to debate such Questions. Not to argue it were to disobey the Assignment of the Court, and to desert my Client and his Cause. For my part, as your Lordships see I have laboured to decline the main Question, I should be glad it might so sleep.

I shall not offer it, if happily the Case falls off in the penning of the Writ, and not of the King's Power. I doubt whether the way of Argument shall do the Crown a disservice.

Out of my Duty to his Majesty, and Service to your Lordships, I humbly offer, whether your Lordships may not think it fitting to determine the Question upon the framing of the Case, before it be further argued; and here I shall rest, or upon your Command am ready to go on.

Here the Lord Chief Justice Finch said, we do not use to judge of Cases by Fractions.

My Lords, since it is your Command I shall obey, and go on, notwithstanding the *bicorne Argumentum*, which on each side threatneth.

I hope his Majesty will excuse us, for arguing of that which cannot else be determined. And as he hath given way to an Argument, I hope his Goodness will excuse us, while we do our Duty for our Client. And if I err in my Materials, or in the way of my Arguing, it is from the defect of my Wisdom, I cannot be wiser than God hath made me, and not out of any disaffection to the Service.

My Lords, I hope neither his Majesty nor your Lordships will think it a Point of a higher Nature: yet thus far I assure your Lordships, that if any Matter or Consideration of State come in my way, I shall tread as lightly as I can; yet I must crave Liberty to pick out some to refer to your Lordships Consideration, and shall forbear those things that are unfit.

Here the Lord Chief Justice Finch said, Keep you within the bounds of Duty, as befits one of your Profession at the Bar at Westminster, and you shall have no Interruption.

My Lords, I shall be very wary and tender. I shall now open the Division and Parts of my Argument.

My Negative Part is this, That the King cannot out of Parliament charge the Subject, not only for the Guard of the Sea against Pirates; but also not for the ordinary Defence of the Kingdom, tho' the King judge the Kingdom unavoidably in Danger to be lost. And in this I must take in the Defence; as well the Defence at Land as Sea.

My positive part is this, The King regularly is to be at the Charge for guarding the Sea against Pirates; and for the Defence of Land and Sea against Enemies, so far as he is able: And that the King hath Provision for both, especially for the Sea-Service.

In the Prosecution of these two general Parts, I shall not only propose my own Considerations, but join them with Mr. *St. John's*, as I can further infer them, or justify them against Mr. Solicitor's Denial or Evasion.

And this Course will necessarily bring in many of his Arguments, which I would be glad to spare, if the Cause would bear it, because your Lordships should not think that I do nothing but repeat. In this way I shall humbly endeavour to clear each Part, by giving a Reply before I descend to other Particulars. And where I conceive a new Objection, which will not fall within any former Answer, I will raise it, and endeavour to lay it. Into these general Questions will fall many others of great Consequence.

First, Such as not being the main, I will not draw upon particular Debates. Where there is any thing concerning State or Reverence, I hope to admit such, and save my Client's Cause.

Having thus unfolded my form of Argument, I descend to my Negative, That the King in none of these Cases without Parliament, can charge the Subject.

I will prove it from Reason, which is the Master of all Authorities, as Mr. Solicitor said. And from Reason drawn from the Fundamental Policy of the frame of this *English* Government, in the necessary Attendance of the Publick Advice in Parliament upon the Royal Power.

And Secondly, from the absolute Property the Subject hath in his Lands and Goods. From these two things I shall draw my Reasons.

For the Political Advice in Parliament, I shall humbly decline all School-Disputes. The Spider may make Poison out of that which the Bee makes Honey. I shall omit the Consideration of some Points.

I shall take my Rise from the Judgment of King *James 1619*. in his Speech in Parliament; wherein his Majesty agrees, that the King *in concerto*, can do no more than the Fundamental Laws of the Kingdom alloweth: and I assure my self his Majesty desireth not more.

Before I enter into the Argument further, Whether the Law hath intrusted the King out of Parliament in either of the Cases put: I here profess for my Client and my self, that while we speak of Political Advice, and how far a Governor subject to Error and Will may use a Regal Power, we do always with thankfulness to God acknowledge our present Happiness, to be blessed with so just a Prince; and we fetch it from our Hearts. And were his Majesty so immortal as he deserves, and

sure that his Successors may be Heirs to his Virtues as well as to his Crowns, we should wish the Royal Power might be free from Political Advice, and Unlimited.

Here the Lord Chief-Justice Finch said, This belongs not to the Bar to talk of future Government; it is not agreeable to Duty, to have you bandy what is the Hopes of succeeding Princes, when the King hath Children of his own that are like to succeed him in his Crowns and Virtues.

My Lords, for that whereof I spake; I speak as looking far off many Ages, five hundred Years hence.

My Lords, because I might run into further Error, if I should not take your Advice, I shall slip over much; and the Sum of all is,

First, An Argument from the Policy of *England*, in the necessary Attendance in the particular Advice in Parliament.

Secondly, It will be from the absolute Property that the Subject hath in his Goods, taking that for granted, against the Book of *Cowel* written in the Time of King *James*, who under the Word Parliament, speaking of the King's Power out of Parliament, saith, the Power in Parliament is but a pious Policy. But this was complained of, and by Proclamation the Book was denied. Your Lordships also know of another Book that was sentenc'd upon the same Occasion.

The use that I make of it, is this. If the Frame of *English* Government stands in the Royal Power, and the Subject hath Property in his Goods; then the adequate Reason of both from these is, that therefore the King can without Parliament charge the Subject in his Estate, tho' in pretence for common Good, no more than a Prince five hundred Years hence, if subject to Error or Will, may if he will, upon any Occasion or no Occasion, at what rate he will, charge the Subject to the height.

As to the Advice Political, if the King can do this alone, what is become of the Policy for which the Political Advice was made attendant to the Regal Power? *Ne Respublica*, &c.

Secondly, If the Subject hath a Property in his Goods, how is it in the Power of any one alone to charge that? This Reason I must not leave, for on this the Case stands or falls; tho' there be many Books and Cases, yet all are from Reason, but especially when these stand together.

The Reason seems so strong, that it ever holds in ordinary Power. It holds *pro bono Publico* & *pro Defensione*, he cannot make a Charge in ordinary things; and Mr. Solicitor did not deny the force of this Objection. The Answer stands thus.

Admit it be agreed, that by the Policy of the Kingdom the King cannot charge the Subject, yet the King may, without Advice in Parliament, in Cases extraordinary; where, in his Judgment, the Safety of the Kingdom is in instant Danger, and that the Business will not admit of the calling of a Parliament. He fortified this part of his Distinction with strong Reason; for in such Cases Property must yeild, for *Salus Populi suprema lex*; & *necessitas, lex temporis*; & *quod cogit defendit*, all are true; and to this some home Cases were put: As for building of Bulwarks upon another Man's Land, and burning of Corn in

88. And then foreseeing the Incounter of a Reply, he saith, the Subject must not say; that altho' the Power be in the King, he will enlarge his Power, for the King can do no wrong.

This *prima facie* hath a fair shew, and may go far; yet I hope to give it a full Reply. By this Distinction the whole Frame of Political Advice is, under favour, destroyed. I shall shew the contrary by Reason and Experience.

For the Distinction between Danger, ordinary and extraordinary, where the King doth think a Danger and a Parliament cannot be called: That Distinction, I say, must needs destroy the Policy in the whole; for as I conceive, the End of that Policy was but this; for else, what could it be? As it will ever be in the Will and Desire of a good Prince to do all Good for the Subject, to whom this Advice by Parliament can do no Hurt; so what Case soever should happen many Ages after, for that Posterity will look upon it, it should never be in the Power of any Governor to become subject to Will or Error, if he would so do to hurt the Kingdom. That Policy was not made so much for a good King, but looking what might happen many Ages after.

If you allow such a Prince Power extraordinary, and make him Judge of the Occasion; then in Substance, tho' Provision be made, yet after his Declaration we must make further Provision.

Yet may some say, here is a *Possè* and *Esse*; because he may, so he will.

True, it is unmannerly to say so of any ordinary Man; but under favour, it is allowable to say he may, if he will: Then if we leave him that Liberty, in such Cases he hath no Restraint, but his Will.

But it is said, the Law will not presume any such thing.

The Law doth not presume a Will, but the Law looks on Things that may be, as well as on Things that will be. True, the Law-Books say, the King can do no Wrong; which proves, that it is possible for a Governor in his Inclination to incline to Wrong, and therefore the Law hath taken a Care that he should do none; for he cannot make a Disseisin nor Discontinuance. There may be an Inclination to Entry; but the Law, because he should do no Wrong, hath made this Act void: which is not a Disability in the King, but a Prerogative, to make him come the nearer to the Divinity in the Attribute.

I shall offer the Judgments of several Ages in England; they ever thought it a dangerous thing, when they thought any Restraint fitting, to allow any Exception whatsoever, tho' Cause for it, left the Party, that was meant to be restrained, should be judge, and then go out when he would. *Thomas of Beckett*, he would not swear to the Laws of King *Hen.* the Second, unless he might put in this Expression, *Salvo honore Dei*. The King never meant to violate any of these; but if that had been allowed, the Clergy had been Judges of that, therefore they would not be satisfied: at this Day we have an Experience of the opinion of Kings themselves in this Case.

I shall proceed to the Practice of our Kings. In all Acts of Parliament, where they had ever a Desire to declare the King limited or restrained, if they did admit of any Exception, they would have it in Words so punctual, that they would not

admit of any Matter of Evasion, for fear hereby his Proceeding might be at large. In the grand Charter of King *John*, *Nullum Scutagium imponatur*, there was a Clause of Exception; true, there was a Reason to except how all (not as *Ed. I.* would have done) saving the Aid due and accustomed; but the *faire Fitz Chevalier*, &c. and so was *Mag. Char.* tho' not in the Roll, so careful they were to have no Words that give any such Light.

I come to the Statute of 25 *Ed. I.* against Aid, saving the antient Aid due and accustomed: no doubt but in these Words there was no more saved than Law must allow the King, and the Parliament did so mean; yet when that same Act came out, the Subject was not satisfied, and therefore the Statute *De Tallagio non concedendo* was made to take away the Exception in that Act. The Statute 28 *Ed. I.* after the Confirmation of two Charters, and divers Additions, there comes at last a *Salvo Jure Corone*. Your Lordships will find in History how all this was satisfied. And 29 *Ed. I.* at a Parliament held at *Lincoln*, the King made a Confirmation without a *Salvo*, and yet none will deny the Right of the Crown; the Lords did intend to preserve that. Thus your Lordships see the Opinion of this Kingdom, from Time to Time, how careful they ever were in all their Acts, to leave any Way whereby that which they did intend for their Good might be avoided. Now whether in this Case there might not be an Avoidance, I humbly leave it to your Lordships Judgments.

But before I go further, it may be demanded; how came in those Savings into those Acts, if the Parliament did not like them, and if they were put in here was a Trust?

I shall give a double Answer in the Case; tho' a *Salvo*, yet it will differ from our Case: the King was not Judge there, but your Lordships are Judges between the King and his People: but in this Case the King is to be Judge of the Necessity.

But to give you the true Answer, the Exception never came in originally from both Houses, but from the Lords themselves; this may seem strange. It was the Difference of those Times and ours in making Acts of Parliament; those were not Times of granting all, or denying all, but to answer some as to some part, and sometimes an Exception. And this being read, the Act drawn up upon the whole by the King's Council; and this Mischief was found out 5 *Hen. IV.* and from that time all Petitions were wholly granted or denied. So your Lordships see how these Savings came in, not by the Subjects, but by the penning of the Acts by the King's Council. The last Example is in late Times in the late Parliament, in the Petition of Right now printed, which was long in Debate in Parliament against Loans and Billeting of Soldiers. After the Petition had passed the Lower House, that those things were against the Law, there was a Proposition in the Upper House concerning the Addition of a Clause of Saving. Upon the Journals it appears, that there were several Conferences between both Houses, where the Reasons are mentioned, and do appear. And in the several Conferences the Commons did not yield; but the Petition passed absolutely; and the Reason was, because to put in that Saving was to undo the Petition.

To conclude this, to shew the Experience of such an Exception, *sine assensu*, what it hath wrought in former Ages, as that of *Normandy*, tho' foreign; yet to shew what such a thing did work there. It had the same Privileges we claim, and much of their Law came in here with *William* the Conqueror. *Lewis* the XIth taxed them high; they made Complaint, he, on the Complaint acknowledged it, and would tax them no more but on great Occasions: What followed, those Histories plainly declare.

Having, as I hope, taken off the Bulk of that Distinction, I shall further shew how it doth not stand with the Practice of the Common Law. It is a fundamental Rule in our Law, rather a Mischief than an Inconvenience: For when nothing can be so absolute in Government, but that there may be one Case or other wherein there is no Provision made, all the Care Men take is to chuse the least. Now his Rule is rather a Mischief than an Inconvenience. Now Mischief is that which perhaps may fall out never; or if it doth fall out, yet seldom; for if it were a thing that might commonly fall out, it were an Inconvenience. On this fundamental Rule, the Law concerning Lands and Liberties is thus grounded. True, there might be a Mischief for want of this Power in a Case extraordinary; but the Mischief perhaps never, or seldom falleth out. But to allow the other, would be an Inconvenience daily. I desire your Lordships to cast your Eye upon a learned Writer, *Comines*, Fol. 107, 131, 180, 181. where in the whole, putting them all together, speaking of the Danger that might come to a State for want of Power to raise Supplies for Resistance, giveth a Commendation of the Government of *England*: True, he doth go so far, saith he, it is hard in a defensive War, that any Preparation, which must be great and long about, can be so acted, but that Princes may take a timely Notice, to call together, and advise by Parliament. In the *Low-Countries*, where they have Wars, tho' they have an Excise for ordinary, yet they do it not for extraordinary, without Consent in Parliament.

My Lords, I go on: admit an Enemy ready to land, no Possibility for a Parliament; see how the Case will now stand. I shall leave it to your Lordships Consideration, whether there be an absolute Necessity, *infra & extra*, to command, and then to shew there is a Command, and by what Law; and by that Law that is more strong than the positive Law of the Kingdom; and doth work more in Point of Fear. I do put this by way of Admittance.

In that Case there goeth out a Writ, a *Mandamus Regantes*; but it is in *Articulis necessitatis & quatenus a Mandamus Regantes*, not *sub pœna forisfacti*, of all you can, but for your own Preservation, and Safety of the Kingdom. These Writs have gone forth in such Times, when there hath been a near Danger, and that hath served the Turn; for that Instinct of Nature, that did make some Part of the Kingdom desire Government for Preservation, the same Instinct of Nature, doth infer to Contribution for Defence: Nay, that is a stronger Law than ours; for that Law which ariseth from one's own Breast, as it doth command, so it doth compel: There need no Law without, when there is a Judge within. Now in Times of Necessity, there is a Law that doth compel; nay, there is a stronger Penalty than our Laws can imagine; for our Laws can make but a

Penalty of all that you have; but how? To the King. But when there is a Danger from an Enemy there is not only a Danger of losing all that one hath, but of losing Lives and Lands, and all that we have; and all into the Hands of the Enemy.

Put the Case an Enemy was landed; to shew what the Powers are by our Laws in that Case for Defence; when there is particular Appearance of instant and apparent Danger, in that Case, particular Property must yield much to Necessity. These Cases our Books warrant, as building of Bulwarks on another Man's Ground, and burning Corn. In 88. there was an actual Danger, and then it was just to take Corn or Grass, or any thing to raise Supplies. But where do any of our Books say, that upon Fear of Danger, tho' in the King's Case, a Man can, without leave, make a Bulwark in another Man's Land? I do not read. As your Lordships may observe in this Case, of apparent Danger, the Power of the King; observe withal the Power of the Subject, and out of what Principle this doth grow; whether out of a Form of Law, or out of Necessity. In these Cases of Instant Danger, and actual Invasion, it is not only in the Power of the King, but a Subject may do as much in divers Cases. For if there be an actual War, the Subject may, without any Direction, do any Act upon any Man's Land, and invade any Property towards Defence: It is the Law of Necessity that doth it. Nay, in that Case, the Subject may prejudice the King himself in point of Property. If an Enemy be landed, and a Subject take away the Horses of the King, he may justify it in any Action; as in case of a Castle or City, if they can justify there was a Necessity, they may pull down the Walls, or blow up the City. In this Case there is no manner of Mischief if Subjects Goods be taken by the King, or any Man; and in that instant Necessity be employ'd to the publick Good. *Levis timor* will not serve; for then a Man cannot enter for fear of Force, but for such a Fear as ariseth from an actual and apparent Danger; then there can be no Loss to the Subject in that Case. Secondly, On the other side I shall shew, what Goods were taken for publick Use, were taken by way of Loan, and Satisfaction was made for them.

The Second Day's Argument of Mr. Holborne, on the Behalf of Mr. Hampden, before the Judges in the Exchequer-Chamber.

May it please your Lordships,

TO remember the Question whereupon I left off my Argument the other Day, whether the King of *England* can charge the Subjects for finding of Ships at their own Costs, only upon the King's Judgment of an instant Danger.

First, Whether for Defence of Merchants against Pirates. Secondly, For ordinary Defence of the Sea: And, Thirdly, For Defence extraordinary against an Enemy, only out of the King's Apprehension of an instant Danger, which cannot, in his Judgment, expect a Supply elsewhere.

Not to repeat, yet in a word or two, I shall open my Proceeding on this Question; and the rather, for that I find some Misapprehension, as if I had granted more than I meant, which is fit to clear.

The

The Sum of all was but this, That the King could not charge the Subject in any of these Cases. The Reasons I urged were but shortly thus: That the Subjects of *England* having an absolute Property in their Goods and Estates, and the Policy of Parliamentary Advice being to prevent Charge only, then on no Occasion one might err by Weakness, by Evasion or Will: That therefore the King could not charge in any of these Cases, without Parliament; for that so he might charge, if he would, as on Occasion so on no Occasion, as to 7*l.* so to 17*l.* That if this held in ordinary Charges, you may not exert extraordinary Occasions, tho' instant in the King's Opinion; for so a King intending to do nothing by his Policy without Parliamentary Assistance, he may, if he would so declare, charge at Pleasure, on no necessary Occasion, or beyond all Proportion. This Distinction I endeavour'd to take off, shewing it did destroy the End of the Policy.

That there was no Necessity of such a Distinction here, I shewed. There was one thing which I forgot, for destroying of the Distinction from Necessity, and leaving the King Judge of the Necessity; that in Judgment, so to do it, is all one as to leave it to him arbitrarily, if he will, which is that only which was intended to be prevented; if he will, was part of the Charge, if not the principal, in the Lower House of Parliament, against the Divine for his Sermon. I have seen the Charge, for holding the King had a Power in case of Necessity, and leaving the King Judge, and so at Liberty and Pleasure, if he will. This I do but touch here, for I must make use of it in the main; and under favour, shall make the Case somewhat like.

For the other two Matters, that when Danger is apparent, there was no need of positive Laws, I urged it thus; not admitting any thing, wherein I desire not to be mistaken. Admit no Writ of positive Command, yet the Subject will be then under a stronger Law, which as it doth command, so it doth compel, that is, the Law of Necessity, which is the strongest of all Laws; with which the Judgment carrieth an Execution, and that this Law commandeth under a greater Penalty: for tho' not under pain of Forfeiture to the King, which as to the Cause of Forfeiture, is but *ad terrorem*; yet under the true Pain of Forfeiture of all to the Enemy, from whom we must look for no Mercy.

Lastly, That of an actual Invasion, and Necessity withal, that not by any positive Law of the Kingdom, but of the general Law of Necessity, which is above all Laws, for the publick Good private Good doth yield on all Parts. Of these two last I have but touched here, to shew what I mean; I shall speak further of them both towards my Conclusion, in my Answers to Mr. Solicitor's Objections.

I shall now proceed to make good out of our Books of Law, that the Law doth not leave it in the Power of the King (in respect of such a King as possibly may be) to lay any Charge upon the Subject, but only in such Cases where the Law hath made such Provision, that if he would he cannot miscarry.

In this place, because it is taken for a Maxim, that the King can do no Wrong; and therefore the Law doth repose this Trust in him, of charging without any Danger at all: I shall shew, that the same Law doth take notice how, and in what Cases the King can, as much as in him lieth, do amiss;

and where the Law is sparing to leave the King any Power to lay a Charge on the Subject, even in small things, when the *Quantum* rests in his Judgment. It is true, the Law doth allow the King to command Payment of Monies in some Cases; yet where the *Quantum* or Occasion is subject to a Trial; the Ground of all this is, that the Law sees the King may incline to mistake, tho' as a King he can do no Wrong.

This may seem a Nicety, but under favour it is clear. This resteth in the Distinction of a double Capacity of a King, as a natural Man; and to say in this respect he cannot err, is strange! Human Nature is not capable of that Prerogative at the best; and they are subject to natural Infirmities of the Body, and must die: even so of the Understanding and Will. And so you see the Law must take notice of possible Mistake in Government; and this Possibility in another is no Injury to a good Prince, but sets off his Merits with a greater Lustre. This is not only true for smaller things, but even in the greatest. How many Acts of Parliament have we in Print (of which your Lordships are Judges) declaring the King's Mistakes in the Acts themselves by way of Complaint, and providing Remedy for the future, yea, in their own Times? To instance in one long since, cast your Eyes upon the beginning of the Acts of Parliaments of *Edward the Third's* Time, where we find a Statute for the Government of the Realm.

As the Law saith, he may incline to mistake in his natural, so it hath taken care, that in his politick Capacity he shall not. And therefore, lest possible Errors of the Natural Body should reflect on the Body Politick, the Law hath provided antient Means to prevent it, which was a Writ of *ad quod damnum*. *Na. Br.* saith, that if any Damage be to the King's Subjects, the Patent is in Law naught: As if the King grants a Fair, and there is an *ad quod damnum* brought, to inquire what Fairs were kept by it; if found a Damage, the Patent is void: The Books are full of such Cases. It is true, that in some Cases, the Books do allow the King to lay a Charge upon the Subject, yet not in every Case for publick Good; but only in some few, which indeed have been antient, and indeed of the very Essence of necessary Traffick and Intercourse, between one Part and another of the Kingdom; as Murage, to keep the Commodities sold the safer: Toll, for a Fair or Market towards the maintaining of it: Pontage and Paveage, for the bettering of Passages. And in all these Cases the King may grant a Sum of Money to be paid; yet as it is in this common Good, somebody must have the Power to grant, and that can be none but the King. So if the King should grant on no Occasion, or howsoever, which is enough for me, a Sum too great, greater than the Benefit the Subject shall receive, it is void in Law. If the Subject hath not a *quid pro quo*, then no Charge; 5 Report: and in this Case there is a Judge of the Justness of the Proportion, besides the King: And this is when a Patent cometh to be questioned, if the Toll be laid too high, then the same Patent is naught. Thus then you see how far it is that the Law doth agree, that the King shall lay Charges upon the Subject, only out of common and ordinary Necessity, there must be somebody to have Power. But then there is a further Remedy of a Mistake.

Here, before I leave this, I will make a double Use thereof. First to shew, that if the Law doth

not permit the King any absolute Power in this Trifle, shall the King do it in so great a Matter, where you shall have no Judge but himself of the Occasion and Proportion?

I next observe, where the Law permits the King to charge in any Case arbitrarily, it is but where this Power doth arise by original Contract, and precedent Consideration and Agreement for Land; and then not *quatenus* as a Subject, but *quatenus* as a Tenant, only as *Ratione Tenure*, in respect of the particular Signory and Dependence, not in respect of the general Signory of the Kingdom.

My Lords, it is true, at the Common Law the King had a Power and Liberty to charge, till he was restrained by Statute, which was Aids *pur Faire Fitz Chevalier, pur file Marrier, pur Ransome*, and taxing of antient Burroughs: And these Aids too, were in respect of particular Signory, *quatenus Tenentes*.

The next thing that I observe is, that the Policy of the Kingdom so little delights in these Incertainties, tho' it ariseth out of Contract and Consideration, that in Case of these Aids, the Law would not allow that Inconvenience of leaving them to an arbitrary Charge, but in some Case settled a Proportion. It's true in Case of Ransom, because no Man can tell the Certainty of that, it is left at large.

This I further observe, by the Common Law, where the Charge is in respect of the Tenency; yet if the Charge comes often, as the King pleaseth, there the Law did not leave it to the King's Judgment; as in Escuage, which is a Profit arising to the King in respect of the Signory. Tho' the Law allowed the said Aids, *pur Faire Fitz Chevalier*, and *pur File Marrier*, because they could happen but once; but Escuage that might happen often, the Law would not allow that to be uncertain; it must be assessed in Parliament, as in the Charter of King *John*, which was always held to be no more than the Common Law.

My Lords, upon the whole, I desire your Lordships to consider how unwilling the Law is to leave the King a Liberty to charge, even in the King's Case, at Common Law; and how restrained by Act of Parliament, where the Common Law before did give Liberty.

Next observe, that the Law, in none of the said Cases, nor I believe in any other, doth permit a Power to lay an immediate Charge upon the Subject, but only in laying a Charge to be paid in respect of the Benefit which he hath received, which is fit to pay, and none are compelled to receive it or pay it; for if he will not have the Benefit, he may refuse to pay it even in Cases between King and Subject. In the Case of Toll, Pontage and Paveage, it is not laid so on the Subject, that he shall pay it whether he will or no; but as there is a Benefit by the Pontage, &c. which cannot be maintained without Charge, 'tis therefore just, that those that have the Benefit should bear the Charge.

Lastly, I shall offer, that even in Cases where the King doth lay a Charge *quatenus Rex*, it is not so left unto him, either for the Occasion or Proportion, as that if he will lay never so much, he may; for if it be unreasonable, the Law doth make it void, as in case of Toll, if unreasonable.

My Inference is this: If the Law be thus careful in small things, as Penny Matters, whether or no the Law will make no Provision in the Main, but leave the Subject to the absolute Liberty of the King, to charge the Subject when he will say the Kingdom is in Danger, and where there is no Judge at all? I will conclude with Book-Cases, in the Point, that the Law doth not leave a Power in the King to charge, tho' it be in the King's Judgment? *pro bono publico*; as in the Case of granting an Office. The King cannot at this Day regularly create an Office in itself with a Fee, but in Law it is void; tho' the Office in itself hath a Shew, nay, it may be *pro bono publico*. P. 11 Hen. IV. 15, 16. and in 14. a Grant of an Office of Measurage with a Fee void; and that very thing, 13 Hen. IV. was complained of in Parliament, that it was against the Law, because it was in Charge of the People; to which the King answers, Let the Laws and Statutes be performed. In the Roll, amongst the Adjudicates, the Reason is expressed, *quia sonat in prejudicium Populi*. 16 Ric. II. the King grants to one a Rate upon every Barge that passed the Bridge, in Consideration that the Patentee had taken upon him the scouring of the River, in that Case the Patent was repealed. So in the Case of Rights to be kept for the Benefit of Seafaring-Men, this was in Charge of the People. This Patent was complained of, and your Lordships know the Order upon it. I omit many Cases, and conclude with that of *Fortescue de Legibus Angliae*, cap. 25. speaking of and commending the Policy of the Government of *England*, he prefers it before that of *France*; and shews the good Fruits and Efforts of it; and lays down this for one, That the King cannot charge without Consent in Parliament. And he was a Man allowed for extraordinary Judgment, who sheweth Instructions for a Prince for future Government, being trusted more with the Government of the Prince than any other. I conclude these Cases with this Observation.

This denying of Power of laying Charge on the Subject, is not only in the Case where the King would raise Benefit to himself, which a Man may call *tallagium vel auxilium*; but in Cases of Charge which lies on the Subject, tho' not for the King's own Benefit, tho' also it be in Cases *pro bono publico*, as in the Cases put before.

I shall now come from the Books, by which I have shewed what is the Common Law, that by these Grounds the King cannot charge the Subject. I shall now offer the Consideration of some things, which are Acts of Parliament, or have the Force of Acts of Parliament.

I shall begin with that of *William I.* for a Conqueror I shall not call him, for that Name came in about *Ed. III.* his Time; for there being an *Edward* before, because they could not tell how to give him a Distinction from the Confessor, they called him *Edward III.* after the Conquest, by Direction of Sir *Roger Owen*, the great Antiquary. That which I shall urge is, that which he granted *Anno 1.* of his Reign, That all Freemen should hold their Lands *ab omni injusta Exactione seu Tallagio*, nothing to be demanded but that which was by Tenure, as in *Eadmerus* by *Selden*. Now whether or no this be an Act of Parliament, I shall not dispute; yet in those Times when a thing was granted between the King and the Subject, tho' it had not all the Formalities that now it hath, yet

yet it was binding: however, this is called the Conqueror's Laws, and I take it for a Law.

Then it resteth to examine the Words, whether the Words will serve the Purpose, to clear the Subject in point of Sefs. It is said, they should be free *ab omni injusta Exactione seu Tallagio, ita quod, &c.* By this all Charges, but such as were by Tenure, are called Exactions. The Rule is, *ubi lex non distinguit nec nos debemus.* This is a Grant, if not of Right, yet of Grace, and must be taken largely, *favores amplificandi.* The Subject could not have demanded of him, especially that of forty Shillings, if it had not been the Law of the Land before.

I shall humbly leave it, whether this be not the Law by which *Edward* the Confessor laid down the *Danegelt*; for the *Danegelt* was not only against Pirates and Sea-Robbers, (they were indeed Pirates and strong at Sea) but also against all other Enemies. These called the King of *Man, Archipirata*, that is, a powerful King at Sea; and that these Pirates were only strange Enemies; and it was to raise Men, not *obviare eruptioni*, but *irruptioni*, not so much to keep them within their own Kingdom, as to keep them from falling on the Land. And by the History of those Times when this was raised, it was by reason of the *Danes* landing in *Northumberland* and *Essex*; and so upon that Irruption of the *Danes*, *Danegelt* was raised. It is called by *Camden*, in his *Brit' irruptione hostium*; and *Lambert*, in his *Saxon Laws*: but let it be *irruptione*, or *eruptione*, or be it *Danegelt*, to keep them from coming out, or landing here, both of them were for the Publick Service. When this had been so much complained of in *Edward* the Confessor's Time, it is clear he damned it. And *Ingulphus* is an Author without Exception, and *Tilburienfis* not to be compared to him. *Ingulphus* was a great Courtier and Favourite of *William* the Conqueror's; and to think that he had not a better Knowledge of what the Confessor did than *Tilburienfis*, who wrote many Score Years after, is much. And it is strange that *Ingulphus*, who was so much bound to the Confessor, should carry a Law down to *Edward*, so much to the Prejudice of the Confessor, if he had not been sure of it. *Tilburienfis* was urged, as if he spake, that it had been paid to the Conqueror; he wrote in *Henry II.*'s Time. And, my Lords, observe that he was an Officer in the *Exchequer*, and for the Rules of the *Exchequer* he teacheth them well; but for History against *Ingulphus* I leave him.

If this were laid down by *Edward* the Confessor, then I conceive, this Law of *William I.* was but the Law of *Edward* the Confessor; and there was no Ground for him to require a Law to lay any Charge but what was before. *Tilburienfis* makes this good, for he himself saith, that the Conqueror laid it down, and took it up again. If it were laid down, I would know by what Law or particular Direction it was laid down, if not by this; for nothing in all the Laws of the Confessor can cause to lay it down but this: and thus far he standeth with *Ingulphus*.

I shall further shew these Aids and Taillages were meant here. It is a clear Ground, that, *exceptio format Regulam in non exceptis*, an Exception often doth enlarge the Meaning of the Word beyond the ordinary Sense. As if I do grant to *J. S.* all my Trees, here my Apple-Trees pass not; but if I grant all my Trees except my Pear-Trees, there my Apple-Trees do pass, because this shew-

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eth that meant all my Fruit-Trees. In the Word Trees I apply it, that here is a Discharge of all Taxes, except by Tenure. Now I shall shew that Tenures were for Defence and Service of the Kingdom in the proper Place, when I shall shew what Provision and Means the Law hath allowed the King for Defence.

My last Observation is this. This was not a Charter between the King and his Tenants, but betwixt the King and Kingdom; and so something must be laid down that was due to the King.

There are two kinds of Aids, one from Tenants, the other from the Commons; one was by Command from the King without any more, the other by Act of Parliament.

But here Mr. Solicitor hath taken that grounded Argument, of which I have found a contrary Sense, that is, *Sumus fratres conjurati ad Reg' defendend'*, wherefore these Aids not possibly meant here; but this is contradictory. By Inference to overthrow a thing express is against the Law. The Words are express, that there shall be no Taillage; then by an Inference to say, that the Defence of the Kingdom is not meant, is hard. True, all by their Allegiance are bound to defend the Kingdom, all are to fight for it. Acts of Parliament tells us, where and how we do it, and when; but that we must give Aid, is another thing.

It is one thing to supply with the Body, another thing to give or pay Money; and if there be any Invasion, *pro posse suo*, every Man is bound to Defence; but whether for every Defence of the Kingdom we must give an Aid, is another thing. Acts of Parliament will be the best Expositors of things so long since; for as Custom and Use will make a common Law, so likewise it will declare an antient Act of Parliament.

Now I shall come to that of King *John*, *quod nullum Scutagium vel Auxilium ponatur*. The Credit of this Statute I shall first clear. It is not only in *Matth. Paris verbatim*, who wrote in *Hen. III.*'s Time; but the Original was shewed under Seal the last Parliament by Mr. *Selden*, and these very Words were read, *Nullum Scutagium, &c.* And, my Lords, tho' this be no where on the Roll, yet that no ways lessens the Authority of it. It is no part of the Essence of a Statute to be found on Record; if all should be burn'd by Mischance, what would become of the Laws? Tho' the Rolls are all burnt, yet the Judges know what are Acts, and what not, tho' they have nothing to make it good by, but their own Manuscripts or printed Books, or Traditions. A Man cannot plead against an Act of Parliament, *nul' tiel Record*; and that is the Judgment in the Case, in 8th Report, *Prince's Case*. The Duchy of *Cornwal* stands supported by an Act of Parliament, not upon Record. That which I shall shew to make this an Act of Parliament, appears out of the Words: there are two things, *Scutagium* and *Auxilium*; and *Scutagium* riseth from the Tenants, and *Auxilium* from the Subject. To shew that *Auxilium* is laid down by this, it appears, that he could not assess Scutage without Parliament. I hope to shew that Scutage was for the Defence of the Kingdom, and is such a Provision, that no King hath a better, and such an one as will raise in *England* above 40000 Men.

Ay, but saith Mr. Solicitor, not assessed but by Parliament, that is, not meant to bind the King, but the Subject; the King can do no wrong.

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Doth any Man think that the Commons did come to the King to bind themselves, and leave the King at Liberty?

I come now to argue from the Exceptions, *Exceptio format Regulam in non exceptis*. This Exception shews the Latitude of the Words to be a Discharge of all Aids, that there had not been Care had of the particular Aid, *quatenus a Tenentibus*; they were afraid, even those were swallowed up. True, I do not conceive that was a thing of necessity; but as the King may have it in if he would, so the Subject had no reason to deny it him, for it was but just, and was never meant to be taken from him. Nay, the Lords themselves had reason to take care themselves, that this was not discharged; for in all these Cases the King hath no more than a common Person, for he hath his Aid *pur file marrier*, and *pur faire ransom*, and that appeareth, 21 Ed. I. A Release from a Lord unto his Tenant: so that there was Reason that the King and Lords should have Care of this; yet they were afraid those Words would be so strong against publick Aids, that they would take away private Aids.

Last Reason that this *Auxilium* must be said publick; look in all the King's Desires, when they did desire Aids, still their Introduction is for the Defence of the Kingdom; which is a Cause of calling the Parliament; which appeareth by Speeches there on Record. Nothing can be intended of these private Aids for himself. I have done with the Charter of King John.

I next come unto *Mag. Char. 9. Hen. III.* For *Magna Charta*, I humbly conceive that this Charter, at the first, when it was granted, was no more than *verbatim* the Charter of King John, and originally had in it this very Clause of *Nullum Scutagium*; my Reason for it is this.

First, upon all Histories, that after King John had granted a Charter, the Pope would have discharged him of it, as far as in him lay, but that still the Lords and Commons made Claim. He died, *Hen. III.* cometh in. A Difference ariseth between the King and the *French*. Then it was proposed, that this Charter should be confirmed; Histories say, that at his Coronation he gave his Oath to confirm the Charter of King John. Then in the 9th Year of his Reign, the Lords demanded it; he was unwilling, because it was gotten *per dureffe*: But the King said, we are sworn to do it, and therefore must confirm it. And in *Matt. Paris* it is said expressely, that the Lords did call for the Charter of King John, and there it was read and confirmed *verbatim*. And *Matt. Paris* lived in the King's Court, and was *adeo familiaris*, that it is said, he eat with him at his Table; and at that time he wrote this Book, and sure he durst not have written it, had it not been true; but we find it not now upon Record: how this might possibly slip, I shall tell you.

First, We have no original Inrollment of *Mag' Char'*, no *Mag' Char'* but that of King John's. If it be true, which Histories say, that *Hen. III.* did revoke his Charter, it is possible these Rolls might perish in that time: the Authority of the King at Oxford did enforce them to bring in their Records; doubtless they would not leave the Inrollments.

The next Step to look for it is 28 Ed. I. confirmed there, and is exemplified; the Original may be lost in so long a time: what became of all Parliament Rolls, till 4 Ed. III? All perished by Fire or some other Mischance; things were

afterwards put together, and upon the Roll. This was not the original Inrollment of 8 Hen. I. and written in the Roll where Acts of later time are written, and with the same Hand. If it were once in King John's Time, it must be left out somewhere.

Observe this one thing more, that is, as this of *Scutagium* and *Auxilium* doth concern the Subjects in their Lands, there is a Clause also that concerneth the Subjects in their Persons, *Nullus liber homo imprisonetur*, that might be taken for ordinary Imprisonment; then there cometh a Provision for the King that he should not do it, which is *non super eum Mittimus*, such Words as that a Man knoweth not what to make of them: but in the Charter of King John, it is *nec eum in Carcerem Mittimus*. In this great Thing we see the Mistake, and how the other happened, I cannot tell.

I now come to Ed. I.'s Time, wherein I hope to make good those Acts of Parliament that we have vouched; and here lieth a main Endeavour. The First was of 25 Ed. I. which is not denied to be an Act, nor cannot. The other is *de Tallagio non concedendo*, which is so full, that it cannot be evaded, and therefore is denied to be an Act. First, for the Act of 25 Ed. I. which is against Aids and Tailages not to be taken without Consent of the Kingdom, I humbly conceive, that by these Words Aids and Tailages used in former Acts, that these were meant of things for a publick Defence of the Kingdom, complained of, and not denied. I shall bring home the Roll of the 25 Ed. I. that the King doth not promise to pay them *pur Reason*, to have Words for their Money; but that they must have a reasonable Satisfaction: I will shew that was the Sense given upon the Record.

First, for the Practice of the Times, that there were Ship-Writs went out, these Writs went forth in a more terrible Term than any I ever saw, *sub pena forisfacture vite & membrorum*. 24 Ed. I. was the Writ. I am sure that such a Writ, by the Common Law, would not have been mentioned, that if they did it not, the King should hang them. This Writ was the Grievance upon the Subject, and this Act refers to that. True, there were other Grievances, 4to. and 5to. but this was one; and that these Aids, which were then for the Defence of the Kingdom, were included within the rest, appears. The King, in reading the Articles, speaketh, that what was done was for Defence; tho' true he had Wars in *Poitou*, and in other Places beyond the Seas, yet as true that it was a War to be kept from hence by Defence. That part was for Defence cannot be denied; and yet no Distinction to be made between a Foreign War and Defence, and both equally a Grievance to the Commons.

After this Act of 25 Ed. I. there cometh out a Commission, and this was in Pursuance of the Promise that the King did make at his going into *Flanders*, and that was to inquire of those Grievances in the Articles, and among the rest; there was *de lanis & coriis* taken away *pro defensione Maris*; and to that the King saith there, *pay pour Reason*. There hath an Answer been given unto this, and much stood upon, that the King should say upon this Commission to inquire of Grievance *pro Custodia Maris*, if it were so *il fera taunt ils teneront appayer pur Reason*. That this should be no more, than that

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the King would give a Reason why he did it, I question. As if he should send forth Commissions, and afterwards dispute it, or if he did do it, whether lawful or not, that is not the way of sending out Commissions. Suppose that the King should say he would give them a Reason for it, this Commission did go forth to enquire of those Grievances. And if the King had not said he would have given any Satisfaction, yet it is enough that it is inquired of as a Grievance. It is a wrong upon the Subject, Princes may lay Taxes, yet the Subject doth not call for Satisfaction. A Princely Word that it should be done.

But when the King doth say *pais pur Reason*, to think, that that is no more than that he would give some Reason for it, is a very strange inference. In a Bargain they use to say, you shall hold your self content with Reason, you shall not have your own Demand, but he is satisfied one way or other; so here.

To begin with a Record. 21 Ed. I. Parliament Book. A Petition of the Commons, and they did desire Restoration of all their Monies. 25 Ed. I. there were Two *de lanis & victualibus* within that Commission; so the Monies and the Things taken were inquired upon by that Commission, 26 Ed. I. were for Defence, and here *Ordinatum est per Concilium quod Rex satisfaciet eis quam citius poterit*. Upon this Petition they desired Satisfaction. For Goods taken upon the aforesaid Commission, 26 ordered by Parliament, that the King should satisfy them so soon as he can, so that they should hold themselves content, *Ita quod se contentos haberent*. So that you see, not Satisfaction by Reason, to justify them, but the King should satisfy them one way or other. It is that they should have something for it, and not that they should have Reason shewn them why they should have nothing.

But I rest not here, there is one Parliament-Roll remaining before 4 Ed. III. and that was 8 Ed. II. *Pro Priore & Fratibus Sti Johannis Jerusalem*. It is there set forth, that Ed. I. did command his Treasurer and Barons of his Exchequer, to make Satisfaction for Wages taken in *Scrutinio* to the Clergy and Laity, *veluti pro lanis & coriis*; and that Satisfaction should be part by Money and part by releasing of Debts; so as thus the King had no meaning, 26 Ed. I. to pay back Money presently, but would give them Satisfaction one way or other, by Payment of Debts, or releasing of Debts, as was explained by that of Ed. II. Another Record P. 27. Ed. II. Rot. 36. Satisfaction was there given for an Eighth and a Fifth.

Those things which were taken before 25 Ed. I. complained of, and that confessed by Mr. *Sollicitor*; so as I conceive, tho' it had been enough that there had been an Inquiry of these things as upon a Complaint, tho' there had been no more Answer. If any Answer make it better, it is no Answer to say, that they should have Satisfaction by Words, but either in Money or releasing Debts; if none at all, Confession had been enough.

I shall now come to talk of Mr. *Sollicitor's* Exceptions to the 25 Ed. I. where he endeavour'd to shew that this Money for Shipping could not be intended within the Body of the Act; and if it was, yet it was excepted in the Saving of the Act.

The Objection stands thus. No Aids were charged but such as were granted, and we do not shew that these were granted; and there is

a Word beyond that, (Prizes) and how far that extends, I leave to your Lordships Judgments.

But if in the Body of the Act, yet excepted in the Saving all antient Aids due and accustomed; for the saving such an Aid due and accustomed surely was meant there.

In this Answer lieth this Question, whether these were the antient Aids due, or not, by the Common Law? this will stand or fall on the Body of the Argument. I shall tell you what these Aids were, and they cannot be these; there were other Aids mentioned in the Charter of King *John*, as *pur faire Fitz Chevalier*, &c.

That which takes off all, is, If these Aids were part of the Grievance, tho' for the Defence, they cannot be meant in the Saving, for that destroys the purpose of the Act. And for that Saving, it never came in by the Commons, nor the Lords; but the Form being so, to grant in part, and as the King would grant it so they must take it: Histories do say they did not like it, and so they desired an absolute Act.

It was said, that Aids and Defences were meant of Foreign ones. If the King and Council were so wary as to put in such a Saving as before was not in the Act, it shews what Care they had to have that they could not have. If by the Laws they might have them for Foreign Defence and not at Home; they that put in the Saving would have put in a Distinction. I shall leave the Consideration of this Act to your Lordships, how far it shall extend to Aids for the Defence of the Kingdom in that Case.

I shall go on, and conclude with the Statute *de Tallagio non concedendo*. That Act of the 25 Ed. I. was indeed so well penned, that it gave Mr. *Sollicitor* a very probable Colour to make those plausible Answers. The Lords did desire a better Act, not with these Words, no such Aids; for such is a relative Word, and those are dangerous Words.

Next, if no more be meant by the Saving than *pur faire Fitz Chevalier*, &c. and yet to have left these in the general, and not in the particular, had left a way open to question what they had been. And in *Walsingham* it appears the Lords were not contented with it, tho' it was signed and had passed the Great Seal. It is true, that at this time a Pardon did pass to those Lords; the Words are so strong, that this was denied to be an Act: and much said, and very colourable too, to that purpose.

It is true, that this Act is no where on Record, that we find; but for that an Answer hath been given before.

It is said, that is no Act, but only penned as a Charter; that Exception was once made by the King's Council on another Occasion.

Aims of Parliament were then penned so; *Mag. Charta*, and *Charta de Foresta* are but in form of Charters.

Yea, but we cannot tell when it was.

How many Acts of Parliament are there which we know not when they were? Historians best tell that. It is hard to find it when the Records are lost. But this will appear to be in the time of Ed. I. There is the Pardon to those Earls in 25 Ed. I. We know that the Rolls of those Times miscarried and were lost, and sure it must be after the Statute of 25 Ed. I.

But then there is an Exception from the diversity of the penning; sometimes *nullum Tallagium ponitur*, sometimes *ponatur*.

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We know, upon the entering of the Rolls, there have been divers Mistakes in the entering of *ponatur*; if it be with a Dash, it may easily be mistaken, and so only *vitium scriptoris*, and nothing else.

Then let us inquire what it was if it be no Act. It is said it is no Act, but an Extract out of 25 Ed. I. and that he urged several ways upon several Occasions.

By the penning of it, it doth appear, that he that wrote it was a Scholar, and not mistaken, to make a thing absolute that was relative; for *nullum* to make it *tale*, and to make that without a Saving that had a Saving, is a strange kind of Saving.

Yea, this cannot be an Act; for at that time there was a Pardon granted to several great Lords.

If that be true, which History saith, when this Act was published, the Lords were not satisfied with it; and these were the Lords to whom the Pardon was granted that were not satisfied. And to make their Pardon the stronger, they did weave it into the very Body of the Act: and for *Walsingham*, he is of great Credit among the Historians.

They say further, that this is no Act, for this takes away those three Aids, *pur faire Fitz Chevalier, file marrier, and pur Corpus redimend*.

This is not so, Acts of Parliament speak of it, and Practice speaks of it, and therefore no Law; and Practice of *Ship-Writs* ever since, and for Defence of the Kingdom.

For the Aids, that is a good Act; yet those were not intended nor included within that Act, and therefore that Practice is not contrary, because it is not within the Words of the Act, nor in the Meaning of the Act.

For the Aids therein questioned, the Question was between the King and the Commons, and not between the King and Tenants; then that being the Question, there must be a Consideration according to the Occasion and the Doubt made. But to take thus *Nullum Auxilium ponamus*, these are not Aids put on the Tenants, but Fruits of a Signory, as the Duty riseth not from the King's Command, but from the Laws, and so not within these Words *Nullum Auxilium ponamus*. And so all the Practice ever since will well stand with this Act.

And to say Shipping is not meant, because of the Practice since, is nothing. Let me establish once the Laws, and no matter for the Practice. If the Laws be once settled, we must reduce Precedents to Laws, and not Laws to Precedents.

And for the Practice yet, still the Subject makes a continual Claim against them.

My Lords, to prove this is an Act, *Walsingham* entered it in his Time, who did not write very long after it. Tho' it hath been said that he was a Monk, and what he wrote he took up in the Street and Market-Place; yet I will not think so of *Walsingham*, who was ever held an Historian of very great Credit. And no Historian whatsoever durst set down any thing for an Act of Parliament, if he had not a sure Warrant for it. It had been little less than Forgery.

In the next place, it hath been said, Histories are no good Authorities in Law.

True, they shall not tell me what the Law is, yet they are good to tell us of *Res gestæ*, whether or not there hath been such things done. He tells us, not that this was for Shipping, or not for

Shipping, but tells us there was such a thing. I have searched after this Act, and I have found in an antient Manuscript in *Hen. IV.* Time where it is, and it goes there under the Name of *Statutum de Tallagio non concedendo*; and I find it mentioned no where, but still find it mentioned as a Statute. I have an Abridgment of *Hen. VIII.*'s Time, and there it is put in as a Statute. I will not urge positively, but probably, and that an Act in *Hen. IV.*'s Time, 13 *Hen. IV.* A Complaint of laying Taxes on the Subject; the Answer is, Let the Laws and Statutes be observed: this is that positive Act that doth reach it more than any other.

But the main Answer that I rely upon, is, that if they deny the Truth of an Historian for *Res gestæ* as this. If from time to time it hath been conceived an Act, what more strong? What makes our Common Law, but general Opinions and Allowances? And should we doubt of many things, whereof we find the Acts of Parliament themselves, I am afraid we should shake many things done by the Common Law. That which I rely upon is, the Judgment of the late Parliament, to which your Lordships will give all Reverence. This, my Lords, did not pass *sub silentio*, but was made a Question, and something proposed on the King's Part, whether an Act or not? in the Conclusion it came into the Petition of Right. The very Statute mention'd in that Petition was this, *de Tallagio non concedendo*, made in *Ed. I.*'s Time. How far this Question passed at the Committee, it is better known to your Lordships, and is the thing whereon it is built. If this had not been an Act, it had been dangerous to have put it into the Upper House; but it being there read, your Lordships know what was done upon it.

The Petition being thus debated in both Houses, I shall leave it to your Lordships Consideration, how far you will make this Question to go in this Case. And his Majesty did not deny the same, but both King and Council agreed it is a Law.

Mr. Holborne's Third Day's Argument in the Exchequer-Chamber, before all the Judges, on the Behalf of Mr. Hampden.

My Lords,

AS the other Day, so now again with your Lordships Favour, I shall be bold to sum up my last Day's Argument in a very few Words; and by the way clear my Meaning, wherein I was any whit obscure, as also add where I was defective, yet briefly in both.

My Lords, the general Question the other Day, being concerning the King's Power to lay a Charge of Money upon the Subject; and my general Ground against it being but this, that tho' the Laws did intrust the King in many great Powers in Government, and with the whole Government, according to the Laws; that yet by doing of Acts, which charge or prejudice the Subject in his Estate, the Law did see that it was possible that Kings, as Men, might err, and therefore did make Provision, that their Acts, if against Law, should be void, as in Case of a Disfeisin or Discontinuance, or where they were to pass Grants, that there should go before an *Ad quod damnum*; and also, that if they were passed,

fed, and were to the Prejudice of another, that regularly in that Case, the Law did make them naught, and that they were to be repealed.

And I shewed how this did hold, especially in laying Charges upon the Subject. I shewed that the Law was not willing to leave the King Power to charge in any Case, notwithstanding where the Occasion might be common, and did require, for the Maintenance of Traffick and Commerce between them, so to hold them still as within one Body. The Law must leave in some Body a Power to charge, which would be left in none but the King as supreme Governor. The Cases for this were the Monies to be paid for Murage, Pontage, Paveage, Ferriage, and the like. That in those Cases, tho' the King was trusted with a Power to lay a Charge; yet the Law did not leave the Charge arbitrarily in the King's Breast, so, but that if it were unreasonable, the Grant was naught, and the Proportion was to receive Trial by another, upon whose Judgment it must stand or fall, which were either the Judges or a Jury; like to that Case which I might have put, but did not, of a Fine uncertain upon a Copyhold. I also shewed, that in some Cases the Law did allow to demand arbitrarily upon some Subjects, Sums of Money, yet that was not upon the Subjects, *quatenus* Subjects; but upon some Subjects, *quatenus* Tenentes, which did rise upon the *Jus ventulare*, as to marry his Daughter, to make his Son a Knight, or for Ransom, or upon those who were little better than Villains, the King's Burgeffes, whom the Law did not so much regard; yet the Policy of the Kingdom, in those Cases, did afterwards restrain the King to a Certainty, by Act of Parliament.

Afterwards I went to the Cases which were in Point, that the King could not lay a Charge upon the Subject, tho' for a publick Good; and instanced in the Case of the Grant of the Office of Measurage, with a Fee, adjudged void, *quia sonat in Oppressione Populi*. 22 Ed. III. Pat. 31. The King granted to one Pawley, an Office of Alneage of Worsted; and because in Charge and Burden of the People, and a new Grant, adjudged void, and was repealed.

I begin with that of 4 Will. I. which I now find more clearly to be an Act of Parliament, out of an antient Manuscript of the Church of *Litchfield*, mentioned to this Purpose in *Eadmerus*. Here I endeavour'd to answer to Mr. Solicitor, when he said, that there was another Law of the Conqueror's, which explained this; and shewed, that the Charges for the publick Defence were not meant, because it is said in another Place of the same Law, *quod omnes sunt fratres conjurati ad Regnum defendendum*. To this my Answer is, that they are so for their Bodies, *Fratres conjurati*, to serve, but not to be charged. Yet I must confess it is *pro viribus & facultatibus*, to defend the Realm; where *pro facultatibus* may seem to imply, that they were bound to be subject to Charges, *secundum facultates*. Under favour, *pro viribus & facultatibus*, are but Words of like nature; *viribus*, that is *facultates*, natural Powers, not Substance; for it is not only that they should be *Fratres conjurati ad Regnum defendendum*, but also *ad pacem dignitatem Coronæ, &c. & ad judicium Reg' & justitiam faciend.*

I went next to the Charter of King *John*, which I observe to be but Common Law; it's inrolled, remaineth under Seal, and is recited *verbatim* in *Matth. Paris*.

I went next to the Acts of Parliament, 25 Ed. I. against Aids and Taillages; there I laboured to shew, that the Act was made against Aids and Taillages, tho' for the publick Defence; and that was out of the Articles, whereupon the Statute was made, and upon the King's Answer to the Articles: Next out of the Commons, which was after the Statute, to enquire of the Grievance mentioned in the Articles, to the end there might be Satisfaction, which was promised upon the Articles; where, in the Commons, the whole Inquiry was *de gravaminibus*.

It is enough for me that this Commission was grounded upon the former Articles, and that here this very thing, *pro defensione Reg'* was *inter gravamina*. It had been strange, when the King had confessed upon the Articles, that he would not legally justify them, and upon the Commission, in Pursuance of the Articles, had called them *Gravamina*, and so to be inquired of, that now when they were found he would justify them in any Point, and say, *a pais pur reason*, give them a Reason for what he did, as Mr. Solicitor saith.

Next I did conclude with the Statute *de Tallagio non concedendo*; and there my Labour was to prove this to be a Statute: and I am sorry I spent upon it so much Time, if that had not been denied by Mr. Solicitor to be a Statute. But now I understand, by the King's Side, that this was no Statute, but made and sealed at the same Time with that of the 25th, and meant to be no more than that of the 25th.

This seemeth strange: For why should they be both at one time? Next, how came they so much to differ, if made at the same time? Why are there some things in the Statute, *De Tallagio non concedendo*, which are not in the Statute of the 25th?

But the Teste will clear all. First for the Teste of that of the 25th, it was *Teste Ed' Principe*, and sealed by no more than the King: To this the Archbishops and Lords put their Hands and Seals. But, however, I am glad to hear it now confessed to be a Statute; for then we have no more to do, but to see whether the Charge of the Defence were within the Meaning of these Words, wherein sure the Words are general enough; and what Reasons have been given, why by the Expositions of these, Charges of Defence should be excepted, you have heard; and what my Answers have been unto them, I leave to your Lordships Judgments.

I come now to Ed. the Third's Time, 17 Ed. III. *Parl. Roll*. Whereas Commissions have been awarded to the People and Shires, to prepare Men at Arms for *Scotland* and *Gascoigne*, or elsewhere, at the Charges of the Shires, contrary to Law; the King hath not, before this time, given Wages, whereby the People have been at great Charge, and much impoverished. The King wills, that it be done so no more.

Ay, but it was said, this was to *Scotland*, and to *Gascoigne*; and that this was foreign War; and that was denied, tho' not admitted.

I answer, that in those Times, *Scotland* held in Fee of the Signory of *England*; and in those Times the King of *England* was *Dominus directus Scotiæ*: And so Ed. I. when he determined that Quarrel between *Bruce* and *Baliol*, and gave Judgment by Writ, settled *Baliol* King of *Scotland*, and did justify it; and it is remaining in the Rolls of *Scotland*, in Mr. *Squire's* Office. When there

there was a Treaty of Peace between *Baliol* and *Ed.* the First, he refused to acknowledge the Signory of *England*; and there the Parliament resolves he should rather have a War than lose this. So see *Selden* upon *Fortescue*. War in *Scotland*, not foreign War, but like to that in *Wales*; and so was it ever since held, since the Conquest, to be within the Signory of *England*. By the Statute of 12 *Ed.* I. and by the Statute of *Hen.* VIII. it appeareth to be within the Fee of *England*. War against one another, cannot be called a foreign War; as in the War to *Scotland*, *Wales*, and elsewhere, which is not meant of foreign Parts; for then it would have been expressed where, as well as *Gascoigne*. And by the Histories of those Times, we shall find there were Armies carried to no other Place. Nay, to shew this elsewhere is meant in *England*, see the 1 *Ed.* III. Parliament-Roll before this Parliament. The *Scots* invaded *England*, as appears by a Writ of *Ed.* III. where is mention of an Invasion, and thereupon requires Aid. If there be Wars in *Gascoigne*, and if occasions to *Scotland*, and in *England* too where the *Scots* are, and this a defensive War. Further for the Wars of *Scotland*, if that should be called a foreign War; if the King should go thither and make a War, yet by the Rules of the King's Council, if a War in foreign Parts is but to prevent a War at home, this War is not foreign, but for Defence.

Another Act made on this Occasion, that the King wills, 1 *Ed.* III. cap 5. that no Men henceforth shall be charged to arm themselves, otherwise than formerly in the Kingdom of *England*; and not to be compelled to go out of their Counties, unless upon the sudden coming of an Enemy, and in case of Necessity, and then to be done as in Times past: This Statute coming in the same Year when the Complaint was made for carrying Men out of their Counties at their own Charges.

Here I observe, that the Subject shall not go out of his County, not only at sudden coming of Enemies, but likewise on Necessity, and both together. And when it is said, it shall be done as formerly, it is an Allowance that they had formerly been paid. So then, if this be a stronger Case, admit here an actual coming of Enemies, nay sudden; nay, here is a Necessity, and the Subject is to go out of his Country, *pro posse suo*, yet he had his Allowance.

Perhaps it may be asked, why should not the Subject pay? Is not the Kingdom in Danger? Are they not to defend it, *posse suo*?

They are so in their Counties; and if they go out, the Law hath provided a Supply. Parliament-Roll 13 *Ed.* III. there was a Time when there were known Enemies, actual Wars in *France*; they intended to divert the War by bringing it home to our own Doors: The Enemies threatened much, nay, did much Hurt; yet did not *Ed.* III. command these Supplies this Way, but called a Parliament, and there Consideration was had in Parliament for Supply, and that the Kingdom has Ships enough, if they were willing; and this was in way of Defence.

From all this I conceive that it is strongly inferred that he could not force them: And when the Lords and Commons did meet, to take Consideration for the Wars against *France* and *Scotland*, the Commons laid the whole Charge on the Cinque Ports, they disclaim'd to have any thing to do with it. And for the Land-Service, they

said, let those of every County reside there, but no Charge on the Subject in pursuance of this. *Claus.* 13 *Ed.* III. M. 11, & 14. *Dors.* The Town of *Bodmin* doth shew the Execution of this Judgment; it being agreed, that the Sea-Towns, and bordering Shores, should look unto it.

I shall agree, that some Inland Towns are bound by Use and Tenure, but no otherwise, 4 *Ed.* 3 cap. 1. that the People are not compelled to make any Aid out of Parliament; and that the Aid granted shall not be drawn into Example; and that the Aid granted is for the Defence of the Sea.

But it hath been said, that they are Aids granted for foreign Wars, for the Wars in *France*.

True, they were in part granted, some for the Wars in *France*, and part also for Defence on this Side. And where there is no Distinction, why not for the one as well as the other? It must, under favour, be conceived for either, or both. And between this Time of 14 *Ed.* III. and 25 *Ed.* III. your Lordships have heard from Mr. *St. John*, some Complaints in Parliament, for charging the Counties with Hobbellers, and going out of their Counties, which are not really compleat, only for Proportion, in regard of their Success, but also for the Thing itself.

2 *Ed.* III. M. 21. The Commons pray to be discharged of the Guard of the Sea; and that the King would keep it at his own Charge. This shews the Judgment of both Houses, and the Weight of it is very great: For when there is any difficult Point concerning the Liberty of the Subject, it is referred by the Judges to the Parliament, to be there decided; of that Reverence is the Parliament.

But it hath been said, this is rather a Matter of Prayer than Right.

Under favour, the Matter shews that they claim in point of Right: And it is to be supposed, that they would not make such an unreasonable Request, as to lay that wholly on the King, if they of Right ought to do it. And if Words were put in a fair Language, it was but a fit and humble Language for so great a Prince as *Ed.* the Third was. But *Ed.* the Third gave no Relief: yet that doth shew the Judgment of the two Houses; and as there was no granting, so there was no express denial. A handsome Prayer, and a handsome Answer. 14 *Ed.* III. Parliament-Roll, there it appears there was a Charge of 2 s. on all Woolfells, and this for Defence of the Sea; and in the 15th taken away in the Parliament.

I shall conclude this with the 25 of *Ed.* III. No Hobbellers were to go out of their Counties, unless by common Consent. This Statute is general for Defence; there is no Exception; if an Enemy do invade, the Parliament believes the Kingdom is provided for.

Yea, saith Mr. Solicitor, the Subject is not charged to go out of the County, that is, upon Summons, *ad Exercitum*; for Summons is twofold. First, a Summons *ad Exercitum*, and then a general Summons. By the Summons *ad Exercitum*, only those were to go that did hold by Tenure; and they say it is *encounter droit*, to be charged out of their Counties.

It is true, about this time there are some Records of 16 and 18 *Ed.* III. in the *Exchequer*, where Charges are laid on the Subject for Hobbellers, and such things: But you shall find in the *Exchequer*, that the Money came thence, which was before

before the Statute; these things were the Grievances complained of. So the Practice there will not expound the Statute, for the contrary Practice did beget the Statute. But the last of these, in 24 *Ed. III.* who was an active Prince, and maintained Wars, and so had great Occasions for Moneys, and so charged the People higher than they would endure; for which he did afterwards repent, and desired to be prayed for; and therefore there were divers Impositions on Merchants; all which I pass over, only this out of the Roll, 50 *Ed. III. M. 24.* It is the Lord *Latimer's* Case, a Privy-Counsellor and Chamberlain to the King; there was a Complaint in Parliament against him for divers things, whereof one was for laying an Imposition upon Merchandize. In his Justification he pleads the Command of the King; and for that Particular he was sentenced, imprisoned, fined and ransomed; so careful were they to revive that Law. And that Sentence of his, 2 *Ric. II.* made the great Lords so unwilling to talk of the Defence without Parliament.

And so I come to that of 2 *Ric. II.* upon which I must insist, for that it is of great Weight. It doth appear, as well by the Consultation itself, as by History, that the Realm was in great Danger from several Parts; as from *France, Scotland, &c.* and that the Danger was so instant, that it could not stay for a Parliamentary Supply: Therefore the Council of the King were to consider of it, they know not what to advise; they meet together, they had no Time to call a Parliament; but the Lords, both Temporal and Spiritual, and Sages of the Realm, considered what to do, when the Safety of the Kingdom laid so at the Stake. The Resolution of these Lords and Sages, who were, as I conceive, the Judges, *propter excellentiam*, conclude that there was no way but by Parliament; and all this was for Defence, and against an instant Danger, which could not expect Summons of Parliament. And the Lords themselves rather lend Money out of their own Purfes, than adventure that which *Latimer* did; which indeed was the Ground which made them wary.

To this there were many Answers, yet all will fall off. 'Tis true, that it is no Act of Parliament; yet such a Resolution, that had it been 300 Years before, would have done much. The Weight of this is thus: If this had been a Parliament, there is little doubt what this Resolution would have done: For the Matter we have the Resolution of the Upper House, and how the Commons would have resolved in a Point of Liberty, we may easily conceive. Here we have the Judges Opinions in point of the Legal Power of the King, what the King would do, as well as what he should do: And in things of this Nature, the Judges are the King's Council. And as in the great Council, (the Parliament) they sit there for Counsel in things that belong to Matters of Law, so at this time in this Assembly, which was instead of a Parliament, these were not left out, being best able to declare the Rule; and this was about two Years after *Edward* the Third's Death: he could not then have any other than the Council of his Grandfather; and of these their Resolution was, that the King could not charge the Subject out of Parliament: And though it was no Act of Parliament, yet it had the Honour to be so accounted, else it had never been entered upon the Parliament-Roll.

VOL. I.

But it is said, by way of Objection, that *Richard* the Second was then an Infant.

True, he was so, but he had a brave Man for his Protector, *John of Gaunt*; and he had doubtless a select Council, and they were as fearful as might be, that nothing should be done that might wrong the King in his Prerogative.

It is true, they had a Power of doing things by Parliament, yet that was no Act to restrain the King, but an Act of Necessity: the King was an Infant, and therefore it was requisite, that during his Minority nothing should be done but in Parliament, especially that concerned the Kingdom; which was not a usurping of the Regal Power, but a provident Care of the Kingdom and him: and they do protest in that Roll against Incroachments upon the Royal Power; and to say that is good, which is to an ill intent, is a strange Construction.

They say that this Consultation was for foreign Wars; for that *Brest* and *Calais* were in danger, and to be provided for: and for foreign Wars, it is agreed the Kingdom could not be charged.

To this I answer, admit a Mixture of Wars, yet every one looks home first; we have a Care of our selves first: but they would have made no such difference if the Debate had been for both. However, the Lords conclude the King cannot charge without Parliament.

But I cannot leave this Objection, but shall give a particular Answer. Tho' *Brest* and *Calais* might be in danger, yet that was no part of this Consultation, for it is said in that Consultation, that in a former Parliament, sufficient Provision was made for them. True, they were in danger, but provided for in Parliament before; and that which clears all, under favour, there is not a Word in that Consultation, but is merely for the Defence, and no Relation to a foreign War.

I end this King's Reign with the 8 and 9 *Ric. II. Rot. 10.* where is a Consultation with *John of Gaunt* for foreign Wars, and others mixed together: it appears the Subject is not chargeable out of Parliament.

And so I come to *Henry* the Fourth's Time. 2 *Hen. IV.* hath been urged, and an Answer given to several Commissions for *Calais*, and for the Defence: there was then a Complaint, and a Desire that those Commissions might be recalled. 'Tis true, we find not this granted expressly; but as no Grant, so no Denial; and as we take it, it was granted. This Time of *Henry* the Fourth did yield many Instances that the King cannot charge, tho' for the publick Defence. I shall remember a Record which the other Day I vouched. *Par. Rol. 13 Hen. IV. M. 43.* it was upon an Action of the Case which we find in the Books, 11 *Hen. IV.* which was pleaded in 13 *Hen. IV.* there was an Office of Measurage erected and granted, and a Fee granted in it, this was complained of in Parliament: First, an Action was begun at Law 11, and in 13 *Hen. IV.* a Complaint in Parliament; and they complain that this was against the Statute, that no Taxes nor Taillages should be laid upon the Subject; and the Answer is, Let the Statute be observed. This Use I make of it; this doth not only shew the Confession of the thing, that this ought not to be laid, but that this Statute, *De Tallagio non concedendo*, was to be a Statute: and this Statute was not for Aids that come to the King in particular, but against any Charge laid by the King upon the Subject, tho' it be *pro bono publico*; and upon the Record, the

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Judgment was delivered so, because *sonat in præ-judicium Populi*.

I shall remember, the Grants of Tonnage and Poundage to *Hen. IV.* and the Grants usually to him were temporary and upon occasion, and not for Life, until afterwards; and in his Time they were for the Defence of the Sea and Kingdom: and it was granted upon Condition, that it should be confessed it was granted of Loan, and not of Right. 9 *Hen. IV. M. 16.* and 11 *Hen. IV. M. 45.* and 13 *Hen. IV. M. 10.* which is the fullest; they make a Protestation it shall not be drawn into Example; yet all that time were imminent Dangers.

But it was said, we cannot shew that purely, and simply, and solely, it was ever granted, but with a Mixture of other things, as that of Tenths and Fifteenths.

But the Parliament was so wary, that they did sever them, and lay the Tenths and Fifteenths by themselves, and Tonnage and Poundage by itself; for tho' they are the same Acts, yet upon the Matter they are several.

I am now come to *Henry* the Fifth's Time, and for him there is not much, but like *Henry IV.* Parliament Roll, 1 *Hen. V. M. 17.* a Grant of Tonnage and Poundage for the Defence of the Realm, and Safe-guard of the Sea, with a Protestation that they should not be charged for the time to come. I think after this time we find no more Protestations or Grants upon Condition.

But that which I argue from these Grants made in this manner; is, Sure it was the Opinion of the Parliament, that they were not bound, and the King by his Acceptance doth acknowledge so much: No Landlord accepts that from the Tenant as a Gift, which he may command as a Duty; and to take it on Terms so advantageous for the Subject, and not only give an Acquittance for it, but put it on Record as in point of Right.

But here is an Affirmation of the Commons; and tho' they cannot make a Law, yet that which they do, and the King accepts, shall be of a strong Proof.

Again it is true, you shall not charge the Subject with Tonnage and Poundage without Parliament; but shall not the Subject be charged another way.

To what end would that Protestation have served, that the King should do it another way? And it is all one, if the Commons bear the charge of Defence, whether they bear it by Tonnage and Poundage, or otherwise; for that which falls on the Particular, falls on the other. To charge them thus, were as if the King should say, tho' I cannot charge you this way by Tonnage and Poundage, yet I will charge you another way.

In the time of *Henry* the Sixth there's little.

I come next to the Time of *Edw. IV.* wherein, tho' there is not much upon Statute, yet there is a Speech of his that shews much of this. 7 *Ed. IV. Parl. Roll 1.* there was a Speech made and cited; the King first protests, which was not immediately upon his coming to the Crown, that he will live of his own, and not charge the Commons but in Cases extraordinary, and those Burdens too should be *secundum morem Majorum*; and that he hopes they will be as tender of, and kind to him as to his Predecessors, saying that he would lay no Charge upon them, but in extraordinary things.

This shews, that what was granted by the Commons, tho' upon extraordinary Occasion, was not out of Duty, but out of Tendernefs; and this was a good while after his Victory, and could not upon the Matter be called a Brokage. And this falls not under the Answer of Mr. Solicitor, that Money was borrowed of the poor Men, and reason that they should be paid again.

But those Loans were by way of Commission, and not to some poor Men, but they did concern the general. And tho' *Rich. III.* had Reason to bring in good Laws, because of the Defect of his Title, yet my Lord of *St. Albans* called it a kind of Brokage to get the Peoples Good Will; yet, however, this must be a Declaration of both Houses of Parliament; and it was not so much offered by *Rich. III.* but because *Edw. IV.* had made many Borrowings.

I come now to *Henry* the Seventh's Time; that which hath been pressed, is the 19 *Hen. VII. c. 11.* Provision that the King's Servants that were to attend upon him in the Wars out of the Counties, should be paid; then if they were to have it, then *à fortiori*, they that were not to attend. This shews that the King is to be at the Charge, and not the Subject.

The Answer is, this extends to foreign Wars, and then no Reason but that they should be paid; and so will not serve our Turn.

If there be such a Difference between Foreign and Home Wars, why do not the Acts of Parliament make a Difference? the Words are general and extend to Wars out of the Realm and in the Realm; and where the Laws do not distinguish, neither, I hope, will your Lordships.

Now I come to *Hen. VIII.* who was as unwilling to beg, as powerful to command. 13 *Hen. VIII. cap. 20.* the King desires for some Necessity of Government, and against an instant Occasion, to have Power to make a Proclamation for Government, and to do it under Penalties. A Law reasonable for that time, tho' it continued in *Ed. VI.*'s Time. As he would have Liberty, which he could not have without Parliament, to lay these kind of Penalties on Men; so the Parliament was as careful to give him no Liberty to lay any Charge upon their Estates, Lands, or Goods. So as, tho' for the natural Government they leave him a Power to lay Penalties upon others; yet to lay any thing upon their Goods, that which is *meum & tuum*, he had no Liberty, which is a Declaration of the Opinion of the Parliament, that by the Common Law he could not do it.

But in the Preamble of the Act it is said, that there is some intimation of the Power of the King, if he will; and upon that Preamble indeed *Cowel* would have built the Royal Power of the King. But *Cowel* was mistaken, and had his Reward.

It is true, there is something in the Act that speaketh of the Regal Power in Necessity, but not absolute; and that too came in by the penning of it on the King's Side. And 21 *Hen. VIII.* your Lordships know his Power, and how he was not to be resisted in small things. If he could pull down those Abbeyes, what could he not do? Therefore it was not for them to question with the King upon the penning of his Preamble, but a Dutifulness in them to conform themselves. And when there was Provision enough made against that in the Act afterwards, it had been a Weakness of the House so to do.

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Yea, the Act was that the King could not charge the Lands nor Goods; but there is no such thing in our Case.

It is true, there is no immediate Charge laid upon the Lands or Goods, but in Substance and Consequence there is a Charge. It is all one to me in Substance, where my Life and Benefit is the same in either Way. And if I am taxed *secundum statum & facultates*, I must pay the Money out of my Estate; and in the penning of an Act *non litigatur de verbis sed de intentione*. And if I am charged and pay not, my Goods are taken away and sold; so it is all one to me, as if it had been laid upon my Goods.

For the times of *Ed. VI.* Queen *Mary* and Queen *Elizabeth*, and his late Majesty King *James*, I shall put my Observation of all these into one. I find not much upon the Parliament Rolls for these four; few Statutes were made, yet in every one of these is offered one Act of Parliament, which is a stronger Proof than any of those which have been urged, and such Proof as doth only come home to the Defence of the Kingdom, in case of extraordinary Defence, in case of Necessity, and in case of Invasion. All this ariseth out of the Consideration of the penning of the Statute of Tonnage and Poundage, in the beginning of every of their Reigns. The Act that I mention, is 1 *Jac.* where it is said to this Effect, that there may be Times of Necessity where Treasure is not to be wanting; and it is unfit the Treasury should be unprovided at any time upon necessary Occasions; and therefore they grant unto the King Tonnage and Poundage, but how? Not for *quid pro quo*, not merely for Defence, but towards the Defence of the Kingdom. Then by the Judgment of the Parliament this being not granted formerly, but towards this Defence, and towards his great Charges: therefore, by that, the Charge by the Laws ought to lie upon the King.

Now, my Lords, if the King were not bound to the Defence of the Kingdom, whether or no would he accept it on these Terms; and whether it seems not more than probable, that in case of Necessity the Charge may not be laid on the Subject. 1 *Ed. VI. Cap. 13.* *Mariae Cap. 18.* 1 *Eliz. Cap. 19.* 1 *Jac. Cap. 33.* are the several grants of Tonnage and Poundage.

I conclude this Part with the Times of his Majesty that now is, which in the point of Defence have been stronger and greater than before, both in point of Laws, and in matter of Example. I take my beginning in this upon that Parliament 3 *Car.* upon the Petition of Right, and his Majesty's Answer and Judgments to that are something home.

The Commission of Loans and Benevolence, the Necessity of the Time did require an instant Supply; and it appears by the Commission, that there was a Necessity which could not stay for a Supply another way, and your Lordships know what was done in this. This Commission was not to borrow of a few, but it was general, with an equal and proportionable Weight; and this, as it appears, was for the Defence of the Kingdom.

It hath been said, that mention is made of supply for the *Palatinate*, and to send Aids to *Denmark*.

True, it is so; but that of the *Palatinate*, and that of *Denmark*, do upon the matter concern us;

for that War being upon our Resolutions, there was a kind of Ingagement laid upon us.

In that Commission, there appears more than a possible Danger to the Kingdom; there was a Necessity, yet this was laid down, it held not; and in pursuance thereof there was an Order, whereof we have a Copy; it is in the Exchequer moved by the King's Attorney for staying the Proceedings for Money spent about Loans, which was by his Majesty's gracious Command, wherein his Majesty did prevent the Commons desire.

The Petition goes on, that there were Soldiers billeted in several Parts, and there was a Charge; and this was after a late foreign War, an Enemy then known and declared; there was a Necessity for instant Defence, and to stand upon our Guard; the Enemy might in a short time have been upon our Coasts: yet your Lordships know what was said to that.

And as the Petition looks back to those things that are taken off their Hands, so it looks forward and provides, that no such things should be taken hereafter by the Power of the King alone, altho' upon matter of Necessity. And all this was a Petition not of Favour merely, but in point of Right, according to our Laws and Statutes, which are the Statute 25 *Ed. I.* the Statute *de Tallagio non concedendo*, and *Magna Charta* the ground of all. And to all these his Majesty promiseth such things should be done no more. And they not content with this, his Majesty gives this Answer, *Soit droit fait*.

I cannot leave this great Strength thus, but bring it home to this very Case. The Substance of this Petition being for charging of the Subject out of Parliament by the Royal Power, when this Petition had passed the Lower House, it came to the Lords; and upon some Motion, there was a Proposition of a Saving to be put in the End of the Petition, Saving the Sovereign's Power, which his Majesty is intrusted with for the Defence of the Kingdom. All this your Lordships know, that after several Conferences, in the Conclusion the Petition passed without any Saving.

My Lords, upon what Reason this Saving was left out, your Lordships may see by the Record; which your Lordships and the rest of the House best know, and whether upon this Reason or not.

That the Laws the Petition went on, whether the Saving would stand with those Laws.

My Lords, it appears that the first Answer was, that the Laws should be put in Execution; yet in the Close there is put in a Saving of the Prerogative, but this Answer did not satisfy; and therefore there was a general Answer, *Soit droit fait*. But now what was granted by the last Answer more than by the former, only that the Law was left more absolute?

As to that Commission of Advice for consideration of Means to raise Supplies, and it was for Defence, and a necessary Defence, and that did not bear delays, that Commission was laid down by his Majesty; yet in that there was no more than this Consideration, how Supplies might instantly be raised, which could not indure delays by Impositions or otherwise, that is still lawful ways. If there had been any to lay a Charge on the Subject by way of Loan, then that Commission had not been excepted against; yet his Majesty was pleased to lay down this upon the desire of the House.

I conclude with that which I conceive to be the Judgment of both Houses in point. It is the Judgment of both Houses against the Sermon touched upon by Mr. *St. John*, which I shall press as far as it will be applicable to our Case.

The Sermon was to shew the Power of the King in case of Necessity to lay a Charge on the Subject without a Parliament. When this came into the Lower House, this was the main and principal Charge, I say not the sole Charge. When it came into the Upper House, there it was pressed against that Divine by the King's Council; and it appears by the Journals of the Upper House, that the Crime was, that he should shew the King's Power to charge the Subject without Parliament. It appears by the said Journals, that the Doctor's excuse was, that he meant nothing but to shew what Kings might do in extreme Necessity of Danger. And your Lordships may read in his Sermon, that he speaks of Necessity, not attending the slow Motion of Parliamentary Advice; so that it is pinched on extreme Necessity: but neither one Excuse nor the other did serve his turn. The Offence is acknowledged, Submission made in both Houses, and the Sermon called in by Proclamation.

Ay, but saith Mr. Solicitor, this Sentence was for other Matters.

I say not, but that the Sentence was for this thing alone: there were other things, but they were only by the by; only occasioned by this. Now how far this Case comes to our Case, I leave to your Lordships Judgments.

Mr. Holborne's Fourth Days Argument in the Exchequer-Chamber, on the behalf of Mr. Hampden, before all the Judges.

May it please your Lordships,

I Have thus far gone on in my Proof from Reason, Books, Cases and Authorities, all being of highest Nature, that is, by the Laws of *England*; that the King cannot charge his Subjects without their Consent in Parliament, tho' it be *pro bono publico*, or for Case of Necessity. It now remaineth that I offer, what either the Practice hath ever been in the best Times, and the contrary Practice decried from time to time.

In this I shall do a Work of Supererogation. It is not material what the Practice is, if the Laws be once settled. A Law once made, over-ruleth all Practice afterwards. And as a Law is Law before Practice, so it is Law against Practice: yet because Practice may be an Expounder of Law, especially where the Words may seem general, I shall shew from Age to Age, that the Subjects without their Consent could not be charged.

From the Practice of the Kings themselves, even in all Ages, that on extraordinary Occasions they have resorted unto Parliaments; and when they could not do good by that, they have made many Borrowings, as appears by the Parliament-Rolls. What other Courses they have taken, your Lordships have heard upon the former Argument. And when the King received these Supplies, it came voluntarily, and with Protestation, that those things should not be drawn into Example.

I shall go now to the Practice of the Subjects Part. First, I shall go as high as the *Saxons* Time. That of *Danegelt* did begin by a common Consent: and in the very Laws in Mr. *Lambert*, it is said *Statutum est*. Tho' it always did not signify a Statute, yet when it was written by one that knew the Laws, and writ of the Laws, it must be so taken. *Tilburienfis* saith, as it was the Act of the King, so it was the Petition of the Commons; *Statutum est a Regibus*, still the King. It is strange in that time of *Ethelred*, when *Danegelt* was so great and common as it was, the Subject being easily drawn unto it, that the King should not ask it, when he might have it for asking. But this *Danegelt* being raised by *Ethelred* upon emergent Occasions, as it was not like to be always, so the Provision was not for all Times. After him came in some of the *Danish* Kings, and they continued the *Danegelt*. And what became of those that were the Collectors of the *Danegelt* between *Ethelred* and the Confessor, doth appear in *Huntingdon*, and how the People did decry it in general; then it was laid down *ut gravissimum*, as appears in *Inglufbus*.

Edward the Confessor he laid it down. At the Conquest, still they go on with the *Danegelt*. It was part of the Terms made by the People with several Kings, that it should be laid down, and King *Stephen* did promise to lay it down; tho' notwithstanding they did now and then take it up. In *Hen. II.* Time yet still more Complaints, and that was left out of the Charter of King *John*.

The Use of all this is, That tho' there were a Practice under pretence for Defence of the Kingdom, yet the People did decry it; it was not such a Practice as could bring in a Law.

When *Danegelt* was thus laid down for the time of King *John*, *Hen. III.* and *Ed. I.* in which times Practice for Shipping will not be material, for in all those times the very Shipping itself was decried. *Parl' 25 Ed. I.* there the very Charges of the Subjects for Shipping were the Complaint, the Complaint is the thing I am upon. After the 25 *Ed. I.* and the Statute *de Tallagio non concedendo*, the course of these Proceedings did alter; for before in 24 he sent forth Writs under a great Penalty, and 29 *Ed. I. M. 10.* he contracts for his Ships, and they go at his Charges. *P. 76. Ed. I. Rot. 35. Reginald de Grey* when the *Scots* entered the Kingdom, he was commanded to bring Seamen out of their Counties, and he durst not without Money; and thereupon he had Money out of the Exchequer.

But the Answer was, this was for *Scotland*.

For that no doubt this War was at Home, for in the 26 the *Scots* had entered the Kingdom. *Br. Trin. 32 Ed. I. Rot. 11.*

I come now to *Ed. II's* Time, there is not much against us, but for us. This I shall observe, that the first Writ that went out was 9 *Ed. II.* It is true, a *Mandamus* went out for Shipping, and against an Enemy, and for Defence of the Kingdom, but how? Not a *Mandamus firmiter injungentes*, nor *sub pena forisfacturæ*; but a *Mandamus rogantes*, and the means of compelling *quatenus honorem nostrum & Salvationem vestram diligitis*. So you see how the Course of the Law altered in that time.

I come to *Ed. III.* for I will but touch upon every Time, and offer but one Thing to shew the Practice in it. As I find a Statute in the beginning

ning of his Reign, concerning Provision made for Wars, so I find an Execution. *Rot. Sco. 1 Ed. III. M. 8.* there went out two Writs, and they were concerning raising of Shipping, and in respect of the *Scots* entering that Year. This is that I put it for, to shew that upon that Occasion *1 Ed. III.* Soldiers were paid, altho' for the Wars in *Scotland*. It doth recite that the *Scots* had entered the Land that Year, and did make further Preparation; and if they could not have their Peace on their own Terms, they would proceed. *Consideratis etiam periculis*, for it was in *articulo necessitatis*; he giveth a Command that there should be Ships, but it is a *Mandamus rogantes*, nothing at all by Compulsion or Forfeiture in the Writ, *Sicut honorem nostrum*. It appears by the Writ, that he said, he sent Money at that time for the Victuals for the Soldiers; and this very Writ was *pro Salvatione Regni*, and that we could not be safe without Shipping; and this was in a pure and innocent Time.

I will not say, that in all the Actions of *Ed. III.* he never broke this Rule: your Lordships know what Wars he had, and what Necessities, and what those Necessities brought him to; but he was so far from justifying of himself, as it appears by *Daniel's History*, that he sent to the Archbishop of *Canterbury*, to pray for him, and desired the People not to think ill of him for laying those Charges upon them in Case of Necessity. *12 Ed. III. Rot. Alm.* Your Lordships shall see upon that Acknowledgment, how he began to alter his Course. *Parliament Roll, 13 Ed. III.* tho' he laid Charges before now, he calls a Parliament, and desires Supplies for Shipping that way; and that Acknowledgment *12*, will answer home that famous Year of *10 Ed. III.*

Next, my Lords, to shew the decrying of the People in this time of Shipping itself, in the Rolls of *21* and *51 Ed. I.* there the People said they were not to bear the Charge; so it was no Practice, for the Commons did decry it. That for Hobbellers, they were at the Charge of the County before *25*; but that they were complained of in Parliament, wherein the Statute of *25 Ed. III.* was made. But all that I aim at in this is, whatever the contrary Practice was, to out-balance it by the contrary Opinion, and Claim of the Kingdom; and the Practice I hope shall not be able to make it Law.

I come now to the Time of *Richard II.* for his Time I shall remember but one, *Tr. 7. Ric. II. M. 15. de contribuendo ad Custodiam Maris*, there is a Recital of *Danegelt*; and that the Subsidies that the King had were not sufficient, and therefore commanded an Aid, but to do it *gratuitur*.

I do observe, that all Ship-Writs do end in the Time of *Ed. III.* one or two perhaps may be after, and therefore I do end with the Practice of those Times; but from those Times downwards to *Hen. VIII.* this was offered, and not denied. That there are several Records, how the Kings of *England*, both at Sea and Land, did bear the Charge of Defence; and all the Answer was, that it doth not appear how the King doth raise the Monies.

For the Time of *Hen. IV. 2 Hen. IV.* *Parliament-Roll.* A Complaint of the Commons, of a Commission for building of Gallies for Defence: And their Complaint was, that it was done without Consent of Parliament, which ought not to be

done, and this Commission is repealed. This shews the decrying of the Subject, and that the Practice hath been, that the Defence was at the Charge of the King.

I have thus finished the Negative Part of the Argument, that the Subject is not compelled to find Shipping for Defence at their own Charge.

Next for the positive Part, that the Charge both in Cases ordinary and extraordinary lies on the King, and that by the Common-Law; and that the King hath Provision and Consideration for it.

My Lords, for Provisions regularly, whatsoever Estate is in the King in the Politick Capacity, is in him as *Rex*, and not in him in his natural Capacity; and what is in him so, is for the Benefit of the Kingdom: and that hath ever been the Ground of the Acts of Resumption, and some of Resumption made by *Hen. VII.* where Lands were aliened by him, he made a Resumption; and those many Privileges that the King hath in him, are as *Rex* in his Politick Capacity. All which Cases are put together in *Calvin's Case* in the 4th Report, and not only in *England*, but in all Christendom: All Estates in Princes are held for the Benefit of the Kingdom, as well as for themselves; and that is not denied by King *James* in his Answer to *Perroy*; he would have it absolutely to be to that purpose. All that is to the Advantage and Honour of the King, is for the Benefit of the Kingdom.

My Lords, from the Consideration of the Interest of the Kingdom in the Estate of the Prince, the Parliaments have so often offered their Service to the King: And the Parliament in former Times did require a Hand in the naming of a Treasurer, they called it *antiquus Mos*. And it was *5 Ed. III.* in a Parliament, but repealed *15 Ed. III.* And for antient Lands of the Crown they were not devisable out for that Reason; and that none should buy the Land of the Crown, for it was not alienable in that Time.

My Lords, in the Form of our Government, the King in the Supposition of the Laws had all these. By the Books cited by Mr. *St. John*, all were in the Crown, and being so, they were for the Service of the Kingdom; and that is the Reason that all Land is held immediately or mediately of the King. As a Lord of a Manor, when he hath a Circuit of Ground, he lets one Part to one Man to plow in Knights-Service, and part he keeps for himself. So the King when all was in him, he disposed of some for the Service of the Kingdom. Hence ariseth the Tenures originally. As they kept in their Hands Palaces and Demesne, so for publick Service they made distribution of certain Lands for publick Defence; some by Knights-Service, some by Scutage, some by Cornage, and some for Castle-guard and Grand Serjeanty, all for the Service of the Kingdom; and Tenures *per Baronagium*, which was an eminent Service, as appears by the Books of the Knights Fee. Petty Serjeanty for meaner Offices, and Grand Serjeanty for greater Offices.

Divers Lands were given to find Ships, as in *Doomsday-Book*, besides the Cinque-Ports, which were to find a certain Number; and so some Inland Towns did find Ships, but how? As by Tenure, not generally as Subjects. And tho' Mr. *St. John* did urge one or two Precedents by way of Example, yet he said not there were no more.

Mr.

Mr. Solicitor did give an Answer, that all those came out of the Estate, what was that Charge to the Publick?

It is true, if the King had that for himself originally, he said well; but if it was in him originally *pro Regno* as well as for himself, then it is otherwise.

But it hath been said, what are a few Men, or one Ship?

But it appears in *Doomsday-Book*, the King hath a great Navy. There were sixty thousand Knights Fees in the Conqueror's Time; and tho' divers Serjeanties are turned into Rents, yet the Revenue is the same. I shew it for this, that there was a Provision made in the Institution of our Frame of Government, but for the guarding of the Sea more particularly.

The King for the guarding of the Seas hath all the natural Profits thereof; as all great Fishes, Whales, Sturgeons, &c. and all other Profits of the Sea, if the King would take them; and so Letters of Marque: and tho' some of them are got into the Subjects Hands, yet originally they did belong to the King. So the old Customs by the Common Law, *Antiqua consuetudo*: and so holdeth Sir *John Davies* in the Customs of Ireland. So Prizes and Impositions are for the Defence of the Sea. So Tonnage and Poundage, which was originally granted for ordinary, but oftentimes upon emergent Occasions it appears it was granted *pro Salvatione Regni*, and not granted amongst other things, but by itself. But in latter Times, when it was settled upon the Prince for Life, then it was for extraordinary Defence, and to have Money in readiness for an instant Occasion: for it is said, in the very Grant to King *James*, that the King must not be without Money; and therefore, towards his Charges upon an instant he must have it. And tho' it was granted on particular Occasions, yet that is enough that it was granted on great Occasions; and this was granted out of their Love to him. The Words of the Act 1 *Jac.* speak of a sudden Invasion; now whether this is by Sea or Land, it is general.

My Lords, I shall now upon the whole observe what I have made good, either upon those general Statutes, that the King shall lay no Charge, or rather by the Books, that the King cannot charge for little things; or upon the Practice of Times, where in every Time the King hath been at the Charge, and when it hath been on the Subject they have decried it. How you, my Lords, believe it in point of Right, I leave it to your Judgments.

My Lords, I shall go on to the Answer of Mr. Solicitor; I have made a Reply to all his Answers to our positive Part. It remains I should offer an Answer to his positive Part.

First, I shall give a general Answer to his whole Argument; for if the Case be, as we conceive it is, that the Point of *Salus Regni* is not now in question, the Argument will fall off.

How far *Salus Regni* is in the Case, notwithstanding, I shall argue over, and examine the nature of his Proofs.

I am sure he had none from Parliament, either Act or Declaration of both Houses; what there is, is against him. The Answer of the King, with the Judgment of both Houses, is a main thing in point of Right. I did not receive any legal material Record, but that of the Abbot of *Robertf-*

bridge, not any Book-Cases in Point, where it is said the King shall charge, but the Books 13 *Ed.* IV. I shall answer these First, Practice next, and Reasons last.

To begin with the Case of the Abbot of *Robertf-bridge*, which was opened by both Sides. It was 25 *Ed.* I. the Abbot had Land agifted *ad Custodiam Maris*; and in an Action brought, the Abbot pleads that he had found a Horse for the same Land. Here is an Argument, that the Abbot doth admit that the King might agift *ad Custodiam Maris*: now if that Admittance in this Case should be of any Authority to alter your Judgments, I shall leave it. The Abbot's Counsel did no more than a discreet Counsel would have done. If an Action be brought for Words, and it appears the Action will not lie, what then? If the Abbot had a Plea that he was agifted to find a Horse, what Reason had he to put himself on matter of Law with the King? So the Authority can be nothing against us; and at the best the Case did rest there, and went no further.

For the Book-Case, 13 *Ed.* IV. where it is said, that the King can lay a Charge, that Book is with reference to Toll; and such things are nothing to our main Case; and that Book will prove strongest against the King. The main Case was concerning a new Office of Measurage erected with a Fee, this was *pro bono publico*, yet an Action brought; it began in 11 *Ed.* IV. then cometh the Parliament in 13. and this was complained of to be against the Statutes, that provide that no Taxes should be laid. The Answer is, Let the Statute be observed.

To the Case of Toll, which for common Necessity to maintain Traffick, and because there must be a Power in some Body, and without a Fee not possible to maintain the Charge, it is allowed it may be done by the King: but in our Case here is no common Necessity, here is a thing that may seldom or never happen. The ground of granting Toll is this, because it is *pro bono publico*; yet if not for common Necessity, the King could not do it.

Next, the Toll is not so much a Charge, it is *quid pro quo*: in the 5th Report it is said there, that it is no Charge for the Benefit in the thing itself will quit the Charge.

Again, Toll is but *inter minimum*, this of Weight; and tho' an Argument will hold *a minori ad majus* in the Negative, because a Man cannot do a less, therefore not a greater, but not in Affirmatives, because he can lay those, therefore greater, *non sequitur*.

Next, for Toll; no Man is forced to pay Toll, because no Man is compelled to come to the Market; if he will come voluntarily and receive the Benefit, then there is Reason he should pay it; but this is not our Case.

Lastly, The Law doth allow in this Necessity, in case of Toll, to the King a Power to grant, yet the Law doth not leave the King absolute Judge of the *quantum*: For if the Toll be not proportionable to the Benefit, the Patent is to be avoided, as in case of a Fine uncertain. Now, my Lords, in our Case here is no Judge of the Proportion but the King; so the Argument is thus:

If the Law admit not the King to charge but in common Necessity, then not in Cases that may happen but seldom or never; if not in small things, then not in greater.

I come

I come now to Practice: And for Practice, where there is no Opinion, either for Records or Books to warrant it, it is something weak, especially when there is no urgent Occasion.

For the Practice, I shall give this general Answer: If I can satisfy your Lordships by Authorities of Parliament, how the Law standeth; the contrary Practice, either before or after, is not material; and for that, I must leave it to your Lordships.

Your Lordships have heard us read the Words of the Acts of Parliament, and explain our Meaning thereon, and we have brought them home to our Case: It will be hard to make an Exception if the Act be general.

For, my Lords, the Practice, it consists of two Parts. *First*, Arrays of Men. *Secondly*, Of Shipping, and for Shipping; *de Navibus congregandis*, or *municiendis* and *inveniendis*.

For Practice of Arrays, I shall lay them by, and give them a general Answer: for there were very few if any that went from the Beginning of *Rich. II.* but only to see if they be armed, & *prompti*, and that is made by the Statute of *Winchester*. It is one thing to see that they be armed and in readiness; and another thing, at whose Charge they shall go: that appears not out of those Arrays. There is no doubt but the Subject, on the Statute of *Winchester*, ought to be ready with Arms, and in his County to make Defence; and upon Occasion he ought to go out of his County, but at whose Charge, that is the Question. And if those Writs of Array were the same with the Commissions now to the Lieutenant, yet I know not how; this is my Argument in the Case: and so your Lordships see that a great Number of the Arrays falls off this way.

But if Arrays had been, and at the Subjects Charge, yet against the Statute; I leave it to your Lordships to judge, how far Practice shall be an Argument.

But for Shipping, for Writs *de Navibus congregandis*, those are nothing; for the Matter is, whether they shall be paid before they go, and many of the Ship-Writs are of that Nature. No doubt but the King may command *ad congregandas Navis*, to use them upon occasion; but the Matter is, at whose Charge they shall be. And for all the Writs that are to find Ships, I hope those Writs are not concluding.

My Lords, for those Writs that are *sumptibus propriis*; a Writ, and no more, without Execution, is not a Practice sufficient to make a Law, no more than a common Evidence, when to prove Right by Usage. Now whether or no they have shewed a general Execution, by obeying and doing it at their own Charge, or Money levied upon them, I leave it to your Lordships; I see no Proof. It may be, such Writs might be; but that there was an Execution of them at their own Charge, or Money levied on them, we see no such thing. And if Writs were to find Shipping in these Times, it is like the Moneys were returned by the Counties, and so the Receipt might shew it, especially if Inland Counties, where nothing could be had from them but Money.

But, my Lords, to examine on those Grounds, whereby a Practice must make a Law: If this charge be within the Words of the Law, no Practice can take this out of the way of Exception. The Practice must either shew that was the Common Law, and so *Generalis Consuetudo*, or must declare the Meaning of a Statute by con-

stant Consent; which must be of those that could consent, and those which did not express a Dis-sent.

We are now upon Inquiry as on Practice, tho' the King cannot generally lay a Charge, yet whether he can do it in this Case, to make an Exception of Law; it must be done by Use and Practice; as to make a Law, Practice doth not make Common Law, but as it is a Proof of common Consent: for all Laws are made two ways.

First, By express Consent of Parliament: Or, *Secondly*, By Use, from Time to Time, whereby it doth appear this was excepted, and the Use becometh a Common Law: So as still, if an Use doth make a Law, such Use it must be as doth prove a tacit Consent.

Next, as the Use must bind the Kingdom, so it must be general over all the Kingdom; it is not enough to be at some times and seldom, but it must be *semper eadem*. And, *Lastly*, It must be reasonable.

I shall examine on these Rules, for these are undoubted Rules to examine a Law by, the Writs of *Hen. III. Ed. I. and Ed. III.* In all these Times the Practice, as to this, will not make a Law; here will be no Proof of a Consent.

First, For *Hen. III.* to 28 *Ed. I.* here the Subject, as before the Complaints, which begot the Charter of King *John*, was upon the Charges imposed on the Subjects; so afterwards, until the 25 *Ed. I.* the Law of the Liberty of the Subject was not settled: For tho' King *John* did grant his Charter, yet the Pope did dispense with him, and he broke it, and so it rested till 9 *Hen. III.* So all this time the Subjects of *England* were under Power; and what in that Time he might do by Durefs, was not by Consent.

Then, 9 *Hen. III.* he made a Charter, yet from time to time he broke it, tho' he desired to be communicated if he did it; and so it rested until 25 *Ed. I.* and then with much ado was gotten a *Confirmatio Chartarum*: yet this satisfied not at all. Till 28 *Ed. I. Mag. Chart.* not observed. I could shew divers Cases point-blank against these.

The Statute 28 *Ed. I.* saith expressly, that this Charter was not observed; and it was once a Punishment for those that were the Breakers thereof. Now when Acts of Parliament declare that the Law of the Liberty of *England* was not observed, I shall not need to shew any Record how it was broken: So that all the Practice in *Hen. III.*'s Time, tho' much, yet that will not serve the Turn; for that Government was more of Force than Law.

But for that of *Hen. III.*'s Time, I shall give a further Answer; the very Courts of Justice were shut up, then it was *in flagrante Bello*.

And for *Ed. I.*'s Time, all the main ones considerable were immediately before the making of that Statute; if rightly apprehended, they did particularly occasion that Statute; so the Subject did deny it, and it is a Dis-sent.

After 28 *Ed. I.* little considerable; and *Edw. I.* when he made 28 *Ed. I.* when the Charters were confirmed, yet he had his *Salve Jure Coronæ*, which did not please the Subject: And afterwards, notwithstanding he made some Grants in Parliament, yet sometimes he did revoke. Your Lordships know what a great Renunciation he made; but as some of our Historians observe, when he had Occasions for Moneys he did grant, but otherwise did not; so that in all his Time the Subjects did

did not consent, but as much as they could, did dissent: and in the 25th, you see how the Practice did alter for commanding of Ships.

Next for *Ed. II.* for his Time, we see how he went. In the Beginning of his Reign he sends but a *Mandamus Rogantes*. In the End of his Reign, whether his Government was more of Law than Power, I leave to your Lordships; that little Practice that way, if it doth come home, is not sufficient to make a Law, who was under Will.

Next for *Ed. III.* for him in his best Times, you see how he went, he laid not the Charge on the Subject at the first; afterwards there is no Age wherein there were so many Complaints as in his Time, from the first to the last: and not only in this of Shipping, which, as often as it was, there was still Complaint, but in Impositions on Merchants, whereupon Lord *Latimer* was imprisoned: so that in point of Charge, the Subject did enforce him upon it in time of Necessity. So that in those Times the Practice will not be any Argument against us.

That of *10 Ed. III.* he confessed that he had laid too heavy Charges on the Subject, and did ask Forgiveness; so here was no Consent, but a several Dissent by their several Complaints. And if I take off these three Kings Reigns, I take off all the force of Practice concerning Shipping; for from that time afterwards you will find very little, for what cometh afterwards is but for Matters of Arrays.

The next Thing is, that every Practice that must bring in a Law, must be constant and continual, so long together as may bring it into a Custom.

Now out of what your Lordships have heard, if you conceive in the Times of those three Kings, that they had one way and the Subject another, then there is no constant Practice to lay it on the Subjects: And for Arrays, I conceive them to be no part of the Case.

And for the next; if Practice make a Law, it must be general through the whole Kingdom; for that is our Case, we are in an Inland County; and observe how few Writs we have that went over the whole Kingdom: Nay, have you any that proveth it indeed? That they went to some Inland Counties it is true, but that they went to all throughout the Kingdom, you shew not.

Now if you will have a Practice to bring in a Law, you must not bring your Practice by pieces; at one time in one part, and at another time in another part: for that in one part of the Inland Counties alone will not be justifiable, for that was to lay a Charge on the one, for the Maintenance of the whole; and that is against Reason, and the Reason of this Writ. So to charge the whole Kingdom, you must shew they went over the whole Kingdom, and were obeyed by the whole Kingdom; for Obedience in some Parts, will not bind all, so once or twice will not do it; for the Writs that have been produced, many of them went to the Sea Towns only.

Next, my Lords, admit that the Practice had been constant from King *John's* Time down to *Hen. III's*, so to this Day; under favour, as the Case standeth, your Lordships could not find such a Practice as could now introduce a Law. The Custom, which must be of a Manor, you must not shew the Beginning of it, that within Time of Memory the Thing was not so. True, if the Time

had been long, and I cannot shew when it hath not been, that is Time out of mind.

To examine this upon the Rule; it hath been said, that from the Time of *Hen. II.* *Danegelt* was taken: True, it was taken, *de facto*, but not *de jure*. The Subject was not at that Time charged both with *Danegelt* and Shipping too. Then our Course of charging the Subject to find Shipping, must begin since that Time.

But peradventure it will be said, as Sir *Henry Spelman* in his *Glossary*, that when *Danegelt* went down, this other came in. And peradventure it will be said, this is enough to shew this begun, tho' but in Memory; then it is but to see upon what Warrant of Law this begun.

If *Danegelt* had not been legal, then this to come in instead of that which was not legal is not sufficient. Now for *Danegelt* it was not legal, and so *fallit Fundamentum*: if it had been legal, yet not so pursued in the Course as is legal, so that there is no Ground for it on Right or Wrong.

That *Danegelt*, when it went, it went over all the Kingdom, and in a proportionable way to all; yet these Writs for Shipping were commonly to the Sea-Towns, and but some times to some Inland Towns. If *Danegelt* were on the Land, and certain, this is on the Person, and uncertain; this respects both Lands and Goods, the other not. There is no such Assurance of equal charging in this, or in the other, if *Danegelt* had been legal; yet whether this coming in lieu of *Danegelt*, being of a far different Nature, be legal, I leave it to your Lordships Judgments.

Next to examine it upon another Reason, upon the Reason of the Practice. If the Practice went over the whole Kingdom from time to time, there was the more Equality; but if the Practice went over the Kingdom, but by degrees sometimes to one part, sometimes to another, tho' over all the Kingdom at Times, yet this is not sufficient to make a Law. For that Act which is unreasonable in itself, and not agreeable to Justice, will never make a Law; for a Law will never arise out of an Act illegal. Now, my Lords, when a Charge is laid upon Parts of the Kingdom, which the Whole should bear, it is unreasonable. I will not deny, but in Manors, where you are to have a Custom, sometimes on one Piece, and sometimes on another; this may be good, though it goes not over the whole Manor; because in this Act there is nothing against Justice, for here one Man doth not bear the Charge for the whole; but 'tis otherwise in our Case.

My Lords, I shall go further; as for the Inland Towns, so for the Sea-Towns, we do not find a general Practice of all Sea-Towns together, sometimes to one, sometimes to another; if any to all, yet not to all oftentimes.

My Lords, admitting Arrays would be material in this Case, as I conceive they will not; yet under favour they will be no Precedent for the defending of the Sea, the Case doth differ.

For though the King be Lord both of Sea and Land, and hath in them both the sole Dominion; yet in the Sea he hath the whole Property, and in a manner all the considerable Profit and Privilege; the Subject hath but the Passage of the Sea, and the *Minima* to take Fish, not considerable in point of Benefit: But for the Land, that is our own, and the Land of the Kingdom is the House of the Kingdom. As for the Charge of the Land

Land to find Shipping, there will be a great deal of difference between Sea-Towns and Inland Towns : As those that live in Sea-Towns are in more Danger from the Sea, so they have more Profit and Privileges ; and that is the Reason that in the Parliament 13 *Ed. III.* the Sea-Towns should do it in regard of their Profit and Privileges.

And for the Command to find Ships, the positive Law is to make those to find Ships which are chargeable, as your Sea-Towns, and for Inland Towns to find Arms ; because both are not fitted alike, there is no Reason that they should be charged alike. Upon this Reason is the Case of *Beverly* put before 2 *Ric. II.* where the Complaint is, that they are charged for Shipping, being a dry Town ; they say they were charged *indebitè*. 10 *Ed. III.* *Shoreham*, they plead they never found Arms, but Shipping, and a good Discharge. And in *Mat. Paris*, upon Wars with *France*, the Sea-Towns complain, and desire Help ; so that the Burden lies on them if on any. My Lords, I have gone over in a general Way, as well as I can, and endeavour'd to answer the Practice ; to have gone over all in particular would have required longer Time than your Lordships can spare.

The Reasons now only left to be examined ; for if no full Authority, nor sufficient Practice, Reason alone will not argue against a fundamental Rule : for we are not now to examine on Reason what is fit, and what not, but to see what is the Truth.

The first is, that *Salus Populi suprema Lex* : the Question is not what we are to do by Necessity, but what is the positive Law of the Land ? The Question must now be as before ; What Power is in the King, and did our Forefathers in that Time of Peace and Government leave in the Crown, not in Case of Necessity and publick Danger ; when with them, *Salus Populi* was *Suprema Lex*, and upon that they did ground the Rule of Government ? In this Case, whether or no, in their Consideration, they did conceive for the publick Good, to leave the Power in the King or not, to lay a Charge on the People ; there the Rule came in, *Salus Reipublice Suprema Lex* : And that which they looked on most, was the Benefit of the Multitude. So that now, my Lords, it is not to dispute, whether it be better or worse, but that it was.

And to shew there was no such great Necessity as can countervail the Possibility of Prejudice the other way : If there do come such a Danger, then the Subject is at that time under a Law of Preservation of Life ; and all which makes the Subject as willing to obey, as to submit to Government in the Creation. This Law is of an higher Force than any positive Law can be.

But admit that this cease in this Case, and all positive Laws of Property yield to the Law of Necessity ; yet I admit nothing, tho' I might admit much, and not prejudice the Case.

Tho' no positive Law doth charge, yet in case of imminent Danger, if I should say my private Property is become publick, it is no Mischief, for so it is in some Cases : for in this Time of imminent Danger, the King and Subjects are under a Law of absolute Necessity, and publick Safety. In all human Reason, when the Danger is in *Proxima potentia*, we may prevent it ; thus if another Man's House be on Fire, mine may be pulled down to stop it ; so that we may see by

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what Grounds we do go in case of absolute Necessity. If the King doth command any thing concerning the Property of Goods, in respect of Danger, the Execution may not be by any positive Law merely, which in such Cases do cease in *furor Belli* ; for those are acted by Formalities, and *inter Arma silent Leges*. And in these Cases, as the King may command my Property, so may the Subject command the Property of another : The Books are so, 8 *Ed. IV.* for hindering the Landing of an Enemy, Bulwarks may be built on my Land without Consent. So the Power is not only in the King in these Cases of Necessity, but in the Subject : and the Books say not that the Power is only in the King, but I can do it, and the Law of Necessity is the Warrant.

Then, my Lords, it resteth considerable in this Case, what shall be said to be a Time of Necessity. I speak still by way of Admittance, for I grant nothing.

It must be in a Danger now acting, or in *Proxima Potentia* ; as Fire, tho' not burning, yet ready to burn : that is, there must be a War, *furor Belli*. Note, That when the King makes Proclamation of War, or the King is in the Field : and that indeed was not Mr. *St. John's* Meaning, it was taken further than he meant it.

It must be in such a Danger, when this Power is of Necessity to be used, as in case of Fire ; there must not only be Fear of Fire, for one House must be first actually on Fire, before the House can be pulled down, but withal such a Danger ; that if this be not pulled down, the other will be lost : And as in case of an Enemy, a Subject, out of Fear of an Enemy, cannot build a Bulwark on another Man's Land, but when he is a coming. So that none of these Cases will match ours.

The Property yieldeth not in Fear of Danger ; but such a Danger, as Help must come in *nunc aut nunquam*. This Time is not when the King will think there is Occasion to exert this Power, as in the Case in 88. Tho' the Queen and State did command the burning of those Goods and Provisions, if an Enemy landed ; which was a lawful Command, and justifiable to be done, so they did land ; but could not command them to burn their Corn before an Enemy did come.

Your Lordships know the King may command in case of Danger the Destruction of all Suburbs, rather than an Enemy should come in them. But if there be a Fear only of Wars, if the King should command it, how far that is justifiable, I leave it to your Lordships Judgments. All this Difference appears out of the Case of the *Gravesend* Barge, *Duffield's* Case, 12 *Jac.* If there be a Storm, or a Leak in a Ship, that the Danger be actual, it is justifiable for the Master to throw out the Goods ; but if he sees a Cloud arise, and out of Fear of a Storm he threw out the Goods, I doubt on a Jury which way this will go with the Bargeman ; but if a Storm do come, or a Leak spring in, in that Case the Bargeman may do it. So you see upon what Law my Property yieldeth.

That Position generally taken, as it is said, may be of a great deal of Consequence ; for it doth not rest there, solely upon yielding of the Laws of Property : for all positive Laws do cease in that Danger ; then the positive Laws of my Liberty and Person also do cease.

Now, whether or no you conceive all Laws of Liberty and Person cease in this time of Dan-

ger, when the Danger was but conceived and not actual, that I leave to your Lordships Judgments. And if that Rule be general, then why not the other?

So we may see the difference from our Case; for in that Case there is no manner of loss to the Subject, for he shall have Allowance for his Loss, or make Suit to the Parliament, and they can recompense him; for what is taken for the publick Good is but borrowed. As in Case of Shipping, if my Goods be cast out to save the Ship, every one of the Ship is to bear a Share; so in our Case, either the King must do it, or the Parliament: so there is no Prejudice.

So upon the whole, my Answer is, admit the Rule of *Salus populi suprema Lex*; yet the Law of Practice doth not yield, till there be an actual Enemy, or *flagrans Bellum*. It is not enough that there be but an Apprehension.

There were divers other Reasons urged, (but those two of *Salus populi suprema Lex*, and of private Property must yield to publick Safety) were the two *Rationes cogentes*; the other were but *a pari & a simili*; and all those I shall pass over which were only for Convenience, as the granting of Toll, or a Corporation to make Ordinance for the Good of the Corporation: all these will not come home in the manner. My Lords, in all these Cases *a minore ad majus non valet, negativum valet*.

But there are only two Reasons urged, which require an Answer: The Trust that the Laws put in the King in greater Matters, *viz.* the shutting of the Ports; and the *Droit Royal* of Wars and Peace.

For the shutting of the Ports, there is more difference in point of Prejudice of the King than the Subject. The King cannot shut the Ports but to his own Prejudice. Again, the shutting of the Ports without cause of Necessity, the King hath the Loss as well as we; for by that he loseth his Customs, and by shutting them he can gain nothing at all. And besides, there is no Law at all that hinders him from that. But there is a Law faith, that he shall not tax the Subject without Consent in Parliament.

The next is the *Droit Royal* of Wars and Peace. It is one thing to say, the King can make War and Peace; another thing to say, he can charge. In War and Peace the King is equally charged with the Subject, nay more; and for those things there are no great Reasons, but that in the first Form of Government they might be well suffered. For that Cause touching the King's Power over Coinage, there was a Necessity to counterpoise the like thing in another State; in that Case the King loseth, and we lose. The King may dispense with Penal Statutes, and make them as none. Doth any Laws say he shall not do it? The Reason differeth in that Case; there is a common Necessity that there should be a Power in somebody, for Acts of Parliament are but *Leges temporis*. It is one thing for the King to have Power in point of Favour, and another thing in point of Charge; so in case of Pardon, there is no hurt if he doth pardon, God forbid that he should not have Power to shew Mercy.

My Lords, there are in the Case two Points more which I shall move. Whether or no, admit the King could command the Subjects to find Ships, he can give Power to the Sheriffs to make

the Assessment as in the Writ? The Ground is upon this, that in all Cases of politick Charges the Law takes an especial Care to make an Equality. In Parliaments of old, they were always careful to make Provision that way, as upon Fifteenths and Subsidies. And in *Danegelt* they went such a way, as there could be no Inequality; they went by taxing of Hides. Now if the Law doth make this a legal Way of charging, it allows the like Way for Assessment that is allowed in other Cases, such a Way as wherein there can be no Inconvenience. Now how a Sheriff hath that Knowledge to lay it on Mens Estates and Lands, I cannot tell.

My Lords, not to leave a Power in the King to lay an arbitrary Charge, but in the Sheriff to lay more or less on any Man; tho' the Law may trust the King, yet it is a Question, whether it will trust the Sheriff.

Nay, I ask if the Sheriff be an Officer of Law in this Case; yet the King may command any Man as well. Assessments are usually made by others, and not so much by the Sheriff. So I do conceive that this is a Thing that doth properly belong not to the Sheriff, he is not an Officer sworn, and it resteth not only in the Sheriff, but the Under-Sheriff. So that if the Law doth trust the King, yet whether or no this be the way to charge it, I leave it to your Lordships Judgments. If a Hundred be charged, they have Ways to lay it on themselves proportionably.

The next Thing is this; admit a Levy may be well made, whether the Money thus paid may be brought into the *Exchequer* by a *Sci. Fa.* I do think that this is the first Writ that ever was of this kind, I do not find it regularly.

My Lords, I think it is hard to find where there is a Writ that commands and prescribes the manner of Levy. It not only gives you Power to levy, but sets the way of Levying, by Imposition, by Distress, by Selling; for my part I know no Case can match it.

The First Day's Argument of Sir John Banks, Knight, his Majesty's Attorney-General, on behalf of his Majesty; before all the Judges in the Exchequer-Chamber, in the great Case of Ship-Money.

May it please your Lordships,

There was a *Sci. Fa.* brought against Mr. Hampden, and divers others, to shew Cause why those Sums of Money assessed upon them by the Sheriff of *Bucks* should not be paid and answered; it beareth Teste the 22d of May, 13 Car. and a *Sciri Feci* returned.

Mr. Hampden demandeth Oyer of the Original Writ 4 Aug. 11 Car. and of the *Certiorari*, and the *Mittimus*, and of their several Returns. The Writ 4 Aug. which went out to provide a Ship of 450 Tons, with Victuals, Men, Ammunition, &c. that Writ giveth Power to the Sheriff to make an Assessment upon the County, and giveth Power of Distress and Imprisonment in case of Non-payment. He demandeth Oyer of the *Certiorari*, which consists of two Parts; the one to certify the Sums assessed, the other to certify the Names of the Defaulters. And the Names of those that made Defaults were returned, and Mr. Hampden amongst

amongst others. He doth demand Oyer of the *Mittimus*, which doth recite the Tenor of the first Writ.

Upon Oyer of all these, both of the Writ 4 *Aug.* of the *Certiorari*, *Mittimus*, and *Sci. Fa.* and their several Returns, Mr. *Hampden* hath demurred in Law.

The Case that riseth upon the Record is thus. The King is Lord of the Sea (for that is part of the Record) the Seas are infested by Pirates and *Turks*, which commit Depredations, and take Goods and Merchandizes, both of the King's Subjects and others that traffick here, and carry them away into Captivity. There is Preparation of Shipping and imminent Danger, for so the Writ reciteth: A Danger that the King's Dominion of the Sea should be lost, or at least diminished. There was a further Danger, that *Salus Reg. periclitabatur*, whether in this Case the King *pro defensione Reg' tuitione Maris, securitate subditor' & salva conductione Navium*, may command his Subjects *per totam Angliam*, by Writ under the Great Seal, to provide Ships at their own Charge and Cost; and this do, when the King in his own Judgment conceiveth such a Danger, as doth necessarily require that Aid? That under favour is the Question upon the Record.

There is in this Record, whereof your Lordships are Judges, four Writs. First, That of 4 *Aug.* 11 *Car.* which goeth out of the *Chancery*, for setting forth this Ship of 450 Tons. Secondly, the *Certiorari* 9 *Martij* 12 *Car.* Thirdly, the *Mittimus* 5 *Maij* 13 *Car.* And Fourthly, that of the 22 *Maij* 13 *Car.* which is the *Sci. Fa.*

The Second and the Fourth Writ, which is the *Certiorari* and *Sci. Fa.* they are returnable. The First and the Third Writ, which is the Writ 4 *Aug.* and the *Mittimus*, they have no Returns; but they give Command, and require Execution shall be done, *prout de jure, & secundum consuetudinem Reg' Angliæ fieri consuevit.*

The First Writ, which is the Ground of this Business, it standeth upon two Parts: A Preamble, and the Body of the Writ. The Preamble that containeth, First, a Direction; and Secondly, the Causes and Motives of the issuing of this Writ. The Body containeth Six Parts. First, the Direction that is to the Sheriff of the County of *Bucks*, *nec non* unto the Bailiffs and Burgeffes of the Borough of *Buckingham*, and Mayor and Burgeffes of *Chipping-Wiccomb*, alias *Wiccomb*, and *pro bis hominibus* of all the County. Secondly, the Motives and Reasons inducing this Writ, which are nine in Number. 1. *Quia Pirate & Maris Grassatores, &c.* That these commit Spoils and Depredations by Sea, and take the Goods of the King's Subjects. 2. Because they carry the King's Subjects into miserable Captivity. 3. Because of the Preparation of Shipping that is made *undique* to infest the Coasts. 4. *Quia pericula imminet, &c.* 5. *Quia pro defensione Reg. tuitione Maris, &c.* 6. *Quia pro debellatione quorund' hostium satagem, &c.* 7. *Quia Progenitores nostri Reges Angliæ dig' Maris temporibus, &c.* 8. *Quia onus defensionis, &c.* 9. The most prevalent, *Quia hoc per legem & consuetudinem Angliæ, &c.* The Body of the Writ contains also several Mandates to the Sheriffs and Head Officers, *quod fide & legiancia, &c. & sicut nos & honorem nostrum diligitis.* The Mandates are six. 1. To provide a Ship of 450 Tons well manned and furnished with Provision, and

that was to be in readiness by the first of *March*, to continue for the Space of six and twenty Weeks, *ad proficiscendum cum Navibus nostris, &c. pro tuitione Maris, &c.* 2. That the Sheriffs and Head Officers meet within thirty Days, and set down what shall be taxed upon the Incorporate Towns. 3. A Command to the Head Officers of those Incorporate Towns, that within their Baliwick they make an Assessment upon particular Persons, and compel them to pay the same. 4. A Power to the Sheriffs to assess all the rest within the County, *juxta statum & facultates.* 5. A Command for the levying of these Sums by Distress, *& quos rebelles inveneris* to imprison their Persons. 6. That no Part of this Sum collected shall be converted to any private Use; but if any Money shall be remaining, it should be paid *inter solvandos.*

My Lords, the Reasons expressed in this Writ might justly satisfy any Man's Judgment without further Argument; but I shall clearly manifest there is no Clause or Practice by this Writ, but is verified by many Records, and is *secundum Legem & Consuetudinem Angliæ.*

The Question that is made, is of a high transcendent Nature; it concerneth the King, both in his ordinary and absolute Power. Whether the King in those Cases, where he in his Royal Judgment shall conceive a Necessity for the Defence of the Realm, may command Ships in this kind; whether by his Royal Power he may do it, or must require the Aid *per commune Concilium* in the Parliament. And I conceive his Majesty may do it, not only by his Kingly Prerogative, but *jure Majestatis.*

This Power is not only *inter Prerogativa Regis, sed inter Jura summæ Majestatis.* I find by many Records, that these Writs have issued out in all Succession of Times; in the Times of the *Saxons* before the Conquest: But I never find that this Power was judicially questioned in any Court at *Westminster* before now. I find Questions made touching Assessments, whether they have been equal, touching the Levying, whether within the Warrant of the Office; touching the Discharging of some, by reason of a Grant of Exemption; but to question the main Power, whether the King by his Royal Power might command this for the Defence of himself and the Kingdom, was never disputed before now. But his gracious Majesty, who hath declared himself, that he will rule his People according to his Laws, for the Satisfaction of the People, and to clear his Justice and Judgment, does suffer these Writs to go forth, to which Mr. *Hampden* hath demurred, and to be questioned in this legal Way to be determined by your Lordships, to which I hope you will give a clear End.

My Position shall be thus, That the King, as he is King of *England*, *pro defensione Reg' tuitione Maris, &c.* when his Majesty in his Royal Judgment conceiveth it a Time of such Danger, as doth necessarily require the Aid commanded in this Writ, that he may command and compel his Subjects *per totam Angliam* to set forth Ships with Men and Ammunition and double Equipage; and this may be done, as well by the King's Writ under the Great Seal, as by Consent in Parliament.

For the Proof of this Position, I shall reduce what I have to say to these Heads. First, That this Power is *inter Jura summæ Majestatis*, innate

in the Person of an absolute King, and in the Persons of the Kings of *England*. That this Power is so inherent in the King's Person, it is not any ways derived from the People, but reserved unto the King when positive Laws first began. And that in this Case the King is sole Judge of the Danger, and how this Danger is to be prevented and avoided: this is my first Ground.

The Second is this, that the Regal Power is not confined to the Politick Advice, that the King must be *in Catbedra* sitting in Parliament; but that it hath been always done, either *per ipsum Regem*, *aut per Regem & Concilium*, *aut per Dominos suos*, *aut per Regem*, when he shall please to call a Consultation of Merchants and Portsmen experienced in the Service.

My Lords, I shall present unto your Lordships, that this Power is so inherent in the King, that during the Time of Parliament, and in those Years when Parliaments were sitting, these Writs issued out by a Regal Power, without any Aid or Power from Parliament; and that Advice was not thought necessary in former Times.

3. I shall also shew unto your Lordships, that this Power is implied out of the Sovereign's Titles given unto him by the Common Laws of *England*.

4. And also I shall insist upon Precedents; and herein I shall desire your Lordships to take notice that these Writs have not issue out at the first any sudden Advice; but that there was a great Search made: First, by my Predecessor Mr. *Noy*, a Man of great Learning and profound Judgment; other Searches made by the King's Counsel and some others; and a great Number of Records were considered of maturely before these Writs issued: so nothing was done upon the sudden; and we that are of the King's Counsel, did think it fit that most of these Records should be cited in the first Argument by Mr. Solicitor, to the end that the Counsel at the Bar might give an Answer to them in their Reply: many more have been added by Mr. Solicitor, and many more I shall cite which have not been remember'd.

My Lords, in the vouching of these Records, I shall observe eight Things. (1.) That the Records we insist upon, are not grounded upon any private Custom, or upon any Charter, or upon any Covenants, but upon the Laws of the Land; and there is not in any of these Records any Recital that these Writs went out upon any of these Grounds.

(2.) That in all Ages before the Conquest, and in the Time of *William I.* that these Writs have issued *per ipsum Regem*, *per Regem & Concilium*, and did not issue upon any Advice of Parliament.

(3.) That these Records and Writs were sent out, not in case of *Hannibal ad portas*, or an Enemy discovered, or sudden Invasion; but upon case of Rumours, and in that a Danger might happen; so not in approaching of an Enemy, but in case of Preparation to provide against an Enemy.

(4.) That the King did command Shipping to be set forth in those Years wherein there were Parliaments, and sitting Parliaments, by his Royal Power, without Advice of Parliament.

(5.) That when great Subsidies and Aids have been given unto the King by Parliament *pro defensione Regis*, in the same Year that Writ went forth for the Defence of the Kingdom.

(6.) That these Aids have not been required only from the Maritime Parts, the Ports, nor from the Inland Counties only, but *per totam Angliam*.

(7.) That many times when these Writs issued, there have been no such Causes declared, as hath been in this Writ. I shall observe, that in many of these Writs no Cause at all is set forth in them, but only that they should repair to the Place of Rendezvous, and there receive further Directions.

(8.) I shall verify every Clause of this Writ by many Precedents. A *Mandamus*, and not a *Mandamus Rogantes*, Shipping at the Charge of the County, and Assessments made by the Sheriffs, as Commoners, and a Penalty greater, not only Distress and Imprisonment, but Extent of Lands, seizing of Goods, till the King was paid. These are the Things I shall observe out of the Precedents, when I shall come unto them.

My Lords, in the *fifth* Place, when I have laid these Foundations, I shall then dispel those Mists that have been raised, remove those Forces that have been muster'd, and answer the Objections of those Gentlemen, that will not be satisfied by the King's Writ under the Great Seal: And in the *sixth* give a particular Answer to the Acts of Parliament that they have cited, to the Records that they have insisted upon, and to the Reasons and Authorities they have alledged.

In the *seventh* Place, I shall answer their Exceptions that have been taken unto the several Writs, Records, and Proceedings thereupon, that have been produced by us.

And in the *eighth* Place, I shall collect some Conclusions and Reasons out of the Premises, and cite unto your Lordships some Judicial Records, that may satisfy your Lordships in point of Judgment. These are my Materials, I shall proceed to the Building.

My Lords, my first Ground was, that this Power is innate in the Person of an Absolute King. All Magistracy it is of Nature, and Obedience, and Subjection. It is of Nature. And before any municipal Law was, People were govern'd by the Law of Nature, and Practice did rule according to natural Equity: This appeareth in the Reports of Sir *Edw. Coke*, written by him, when he was Chief Justice, 7 *Rep. Fol.* 13. I will not take Occasion to discourse either of the Law of Nature, which doth teach us to love our Country, and to defend it, to expose the Hand to Danger, rather than the Head should suffer; nor of the Law of God, which commandeth Obedience and Subjection to the Ordinance of our Superiors; nor of the Law of Nations, which doth agree, that there must be Protection from the King; and Obedience from the People; and without Defence there can be no Protection; and without Aid of the People there can be no Defence: Nor of the Imperial Law, which saith, that in Cases *pro communi utilitate*, the King may *statuere* alone.

My Lords, upon this Subject I will confine myself to the Law of the Land, and insist upon such Records, and such Precedents, and such Reasons, and such Authorities, as I find both by Records of former Times, and in our Books.

First, In the Original Government of this Nation, I do not find that it was a Monarchy; I find the contrary, that there was a great Number of petty Regiments. And when *Julius Caesar* invaded this Realm, he writeth there were Four Kings in *Kent*; and *Strabo* saith the like, *Lib. 4.* so those Times

Times will not be material. During the Domination of the Romans, which continued five hundred Years, the Romans had their Prefects here in England. No Man will doubt but that they might command what they pleased, *Notitia utriusq; Imperij*, Fol. 161. that in their Times there were special Officers, called *Comites*, &c. Officers appointed by Sea, and other Officers by Land. Those that succeeded the Romans were the Saxons; and in their Times, both by antient Grants, and by Edicts of the Princes of those Times, it appears, that this Naval Power was commanded by them for the Defence of the Realm.

First, To begin with King Ina, A. D. 725, King of the West-Saxons. This King in that Year made a Grant to the Abbot of Glastenbury, *Quod. &c. sint quieti ab omnibus Regiis exactionibus & operibus quod indici solent*, except *Expedi' Arcium, & Pontium constructionem sicut in antiquo, &c.* which shews that these Expeditions were accustomed to be done. Wulfredus, who was King of Kent in the Year 742, granted unto his Churches, *quod sint liberi ab omnibus secularibus servitiis*, except *expedit' Pontium &c.* so in that Grant these Expeditions were excepted. Ethelredus, King of the Mercians, Anno 749. granted *Monasteriis de, &c.* except *ut supra*. So as in those Times these Services were common, and were done by a *Dileto Regis*. That the Churches should be free from all Services, except these three, Expeditions of building Castles, Bridges and Forts; *a quibus nulli unquam laxari possunt*. Egbert, An. 840. commanded a great Navy to be provided; and that for the Defence of the Realm, and Safeguard of Ships. Ethelwald, that was King of the West-Saxons, Anno 854. granted to the Church, that it should be free from all Service Temporal, except *Regalibus Tributis*. In the Time of King Alfred, who was the first Monarch, and King of all England; one who was a Privy-Counsellor in his Time, and wrote the Story of that Time, he, in the ninth Page of his Book, saith, *Quod Rex Alfredus misit Galleas longas Naves & Cymbas edificari*; and agreeing with this, is the History of *Affer Menevensis, Florentius Wigornensis* 316, and *Huntingdon* 351. wherein your Lordships may see by the Record, it was done *ex precepto Regis per totum Regnum*. This King made a Law, which is not remember'd by Lambert in his Saxon Laws, to this effect, That no Man, by Summons, by the Horn or Word of Mouth, should sit still in Matter of Theft, Bloodshed, or going to War, whensoever his Expedition should require; and there he doth mention it to be upon pain of Forfeiture of Life.

King Edgar, who styled himself *Anglie Basilicus*, he in the Year 959 provided a great Navy of 3600 Ships, as saith *Wigornensis*, and *Matth. of Westminster*; and he gave a Command, that every Year, at Easter, a Navy of three or four Thousand should be set out, and divided into three Parts, East, West and North: The Ships in those Times were not so great as now they be. The same Edgar, in the Year 973, granted to the Abby of Thorney all manner of Immunities, and that it should be free from all Services, except those three of building Bridges, Castles and Forts. And the same King, in his Charter to the Church of Worcester, granteth them to be free *ab omnibus exactionibus*, except *constructionem Pontium, Arcium, &c.*

My Lords, by all these several Grants, and what hath been done by those Kings, it doth ap-

pear that these three fundamental Services were ever reserved unto the Crown, saving the Grants to two or three Abbeyes, which had some particular Exemption. In the Year 1008, which was remember'd by Mr. Solicitor, there was then a great Navy provided by King Ethelred. The Words are thus: *Rex Ethelredus per totam Angliam ex 310 Hides, Navem unam, &c. preparare fecerat, &c.* that was for every 310 Hides of Land to build one Ship; and every eight Hides of Land to find a Man and a Corflet, and to meet at Sandwich for Defence against the Danes. This appeareth in *Huntingdon* 360. *Matth. of Westminster* 387. *Hoveden* 426. and *Malmesbury*, 100.

In this Record these Things are observable, *Rex parare facit, & Rex eos misit*; then *per totam Angl.* all England was to be charged. By the Glossary of that Learned and Judicious Antiquary, Sir Henry Spelman, it appears that *Virgata terra continet 24 Acras, quatuor virgate continent unam hidam, & quinq; hidas Feod. Militar.* Upon casting up of this, it doth appear, that there be in England 363600 Hides of Land; and every 310 Hides being to set out one Ship, the whole Number amounteth to divers Thousands, 11072; and every eight Hides, to set forth a Soldier, amounts to 45450 Men: but it is not the Number, but the Matter that is done by the King's Command, *per totam Angliam*.

In the thirtieth Year of King Ethelred, he made an Edict, which Mr. Solicitor caused to be read in Court, saying he had it out of an old Book in Cambridge, *Quod instaurant tiel number del Naves per singulos annos*. I read it to this Purpose, to shew that in the thirtieth Year of his Reign, there was a Naval Expedition to be always ready at Easter, and sheweth the Penalty of such as did depart without Licence.

King Canutus, Lambert Fol. 117, 118. *ex sapientum Concilio, &c.* ordained a Command amongst his Temporal Laws, Cap. 10. *quod presidia fiant, &c.* commands Ships to be provided; and Fol. 118. a Penalty upon all those that refused to pay 120s. which was a great Sum in those Days.

That which I observe out of these two were these: First, That they were made by the King, by the Advice of his Lords; that there were to be yearly Preparations for Shipping; and those that departed out of the Service without License, were to incur the Forfeiture of all their Estates. If these Edicts were Acts of Parliament, they stand unrepealed; and if no Acts, then they stand by Command from the King's Power.

My Lords, I have shewed you the Practice, as it was before the Time of William the First: He did not abrogate the former Laws, but was sworn to perform them. Nay, it was said that he did confirm *Antiquas Leges & Consuetudines Anglie*. So then, if these were the Laws, and this the Power that the antient Kings of England had before his Time, he did ratify and confirm it, but not diminish it.

This power of commanding of Shipping, for the Defence of the Realm, it is a principal Part of the Power Royal. This Kingdom, it is a Monarchy, it consists of Head and Members, the King is the Head of this politick Body; it consists of Clergy and Laity: The Head, it is furnished with entire Power and Jurisdiction, not only to administer Justice in Cases criminal and temporal unto his People, but likewise for Defence of both; and he may command the Power both

of the one and the other. This Power I find to be mentioned in the Register of Original Writs, written before the Conquest, 127 *b.* it reciteth, that *Nos considerantes quod ratione Regiæ dignitatis maxime ad providendum Salvationi Reg' nostri circumquaq; astringimur.* It appears by *Stamford*, in his *Prerogat. Cap. 1.* that as the King is the most excellent and worthiest Part of the Commonwealth, so is he also the Preserver, Nourisher, and Defender of his People. I find it in *Fortescue*, that they have cited; that a Commonwealth, without this Head, is but a Trunk, as the natural Body is a Cadaver. I find it in *Fitz. Her. Na. Br. Fo. 73*, or 173. that the King of Right ought to save and defend the Realm, as well against the Sea as against the Enemies, that it be not surrounded nor wasted.

How is this Defence against the Sea and Enemies of the Kingdom? Is the King bound to defend the Kingdom by Sea Walls at his own Charges?

No, the Power of Defence is a Superintendent Power in his Majesty, to authorize Sheriffs and Commissioners to see it done, but by his Power; yet at the Charge of the People. Register 127 *b.* it appeareth there, where the King commandeth the People by his Writs; the one directed to the Sheriff, and the other to Commissioners, and in both willeth and commandeth, *quod distringat A. B. & al.*, to distrain the Lands of all those that may receive Damage to repair the Sea-Walls, as well as the *Ter' Tenn'*. This Writ was before any Statute concerning that, for the Register was before the Conquest; and the first Statute that concerneth Commissions of Sewers, was made 6 *Hen. 6.* So it is by the Power the King had at Common Law, and not upon any Statute: And this was to the Sheriff, as well as to Commissioners; and that it was done at the Charge of the Country, and not at the King's Charge. *Pat. 33. Ed. I. M. 4. Dorf.* agreeth with the Register: The King doth there recite, *Quod ratione Dignitatis Regis, &c. & per Juramentum sumus astricti ad providendum Salvationi Reg'*; and there he giveth Power to Commissioners to distrain the People to make Defence against the Sea, at their own Charges. *Pat. 2. Ed. II. pars 2 M. 5. Dorf.* in the Case of *Wiseman*. Rep. 2. Fol. 15. the King, *ex officio*, ought to govern his Subjects in Peace and Tranquillity. 7 Rep. Fol. 9. Protection of the King is general over all the Kingdom, there is Reason why it should be thus: For the King of *England*, he hath an entire Empire, he is an absolute Monarch; nothing can be given unto an absolute Prince, but is inherent in his Person, as may appear by Books, Records, and Acts of Parliament: *Braët. Lib. 2. Fol. 55. b. Sciendum, &c. Dominus Rex super omnes qui ad Coronam pertinent.* This appears likewise in the Statute 24 *Hen. VIII.* there it is declared that this Realm of *England* is an Empire, and hath been so accepted in the World. *Stat. 25. Hen. VIII. Cap. 21. 1 Eliz. Cap. 1. 1 Jac. Cap. 1.* the Crown of *England* is affirmed to be an Imperial Crown; and Acts of Parliament are Proofs of the highest Nature. 16 *Ric. II. Cap. 5.* that the King holdeth his Empire immediately of the God of Heaven: And at his Coronation, his Crown is elevated as a Signification thereof. This is likewise acknowledged in the *Irish Reports, Fol. 60. Rex Angliæ est absolutus Monarcha in Regno suo.* *Fortescue* saith, the King of *England*, as well as any other

King or Emperor, hath all the Liberties within this Kingdom in *Imperio suo*. The Law of *England* makes the King of *England*, not as his Subjects are, a Natural Body, but a Body Politick, freeth him from all Imperfection and Infirmitie; he is immortal and never dies; the King ever liveth, *Com. 177. 11. Rep. Fol. 7. 21 Ed. IV.* and other Records.

My Lords, as he is an absolute Monarch, so all these, *Jura summæ Majestatis*, are given unto his Person by the Common Law.

First, He hath supreme Dominion, both by Sea and Land, as is proved by the *Mirror*, the greatest Part whereof was writ before the Conquest. Some things are added to it by *H. Horne* in the Reign of *Ed. IV.* he holdeth, that all Lands, and all Jurisdiction, and all Dominion is derived from the Crown: That whatsoever was not granted from the Crown, remaineth in the Person of the King. This *Supremum dominium* is so inherent in the King's Person, that if the King grants away his Lands, *absq; aliquo reddendo*, yet the Tenure must still remain to the King; 8 *Hen. VII. 12. 30 Hen. VIII. 45 Dyer.* This Dominion is not only upon the Land, but it is upon the Sea. And so the King he hath not only a Dominion at Sea, but he is *Dominus Maris Anglicani*; he is both Owner of the Sea, and of the Soil under the Sea. And so it was resolved lately, by my Lord Chief Baron, and the rest of the Barons in the *Exchequer*, in the Case of *Sutton Marsh, Mich. 13 Car.* That the Soil of the Land, so far as the Sea floweth, is the King's, and the King is seized thereof, *Jure Coronæ. Mirror 8. Braët. Fol. 8. Temps Edw. I. Avovery, 46 Ed. III. Com. 3. b.* That not only the Dominion of the Sea, but the very Soil belongeth unto the King.

In the next place he hath, besides his *Supremum Dominium*, a Sovereign Jurisdiction, and that extends both by Sea and Land.

First, For Creation of all his great Officers and Judges; Creation of the Admiralty, time out of mind. 20 *Hen. VII. Fol. 8. 12 Hen. VII. Fol. 17.* Power to make Justices could not be granted; and all these Powers resumed in the Statute, as inherent in the Crown. 12 *Hen. VII. Fol. 17.* there it is said by *Fineux*, that at the Beginning all Administration of Justice was in one Hand, that is, in the Crown. And surely this Jurisdiction did not begin in the Time of *Ric. I.* when those Laws were renewed by him at his Return from the Holy Land; but there were Admirals in *England*, and the Admiral Law by Sea long before. 27 *Ed. I.* a famous Record in the Tower, that the Commissioners for the Emperor, *Spain* and *France*, did appear before the King's Commissioners, and did acknowledge the Sovereignty of the King of *England* upon the Sea, did belong unto him time out of mind. And for further Proof of this, it likewise appeareth in that learned Book of Mr. *Selden's*, called *Mare Clausum*.

My Lords, the next inherent Power of the Crown are Pardons of Offences and condemned Persons, and Restitutions, which none can do but the King himself, 1 *Hen. IV. fol. 5. 20. Hen. VII. 8.*

The next is *Jus nummi percutiendi*, a setting of a Royal Stamp upon his Coin, the advancing of the Value of his Coin, and the debasing of it. 21 *Ed. III. 6.* That the King only can put a Value

lue upon it. 5 Rep. fol. 114. That the King, by his absolute Prerogative, may make any foreign Coin lawful Money of England, by his Proclamation, Davies Reports, fol. 20.

The next, *Jus summæ Majestatis*, is that of concluding War and Peace, which is absolutely inherent in the King's Person, which he may do without calling his great Council, 19 Ed. III. 6. and 7 Report 25. That all the Subjects of England cannot make a War, *Bellum indicere* belongs not to the Subject. And to make *Aliens, Denizens*, is a high Prerogative.

My Lords, this Trust that the King hath for making of War and Peace, and for the Defence of the Realm, both by Sea and Land, it is a great Trust, inherent in the Person of the King; no Man ought to mistrust where the Law doth trust.

There is an Objection made, That if it should rest in the Power of the King, he might do it when there was no Ground for it, and without Cause; and cause Forces to be mustered, and Ships provided where there is no imminent Danger, in such a manner, as that it might be grievous unto the People.

These are Objections clearly against Presumption of Law; for where the Law trusteth, we ought not to distrust. The King, as appeareth by all our Books, is the Fountain of Justice and Piety, and will do Justice unto all his Subjects, 1 Com. 240. All Justice is derived from the King, 13 Ed. IV. 8. The King can do no Wrong, *Bract. Lib. 3. Cap. 9. 8 Hen. VI. 20.* It's Royal Power, *De aver Correction deluy m.* He is the sole Judge, and we ought not to question him, *Bracton, Rex non habet superiorem nisi Deus*, 11 Rep. fol. 72. The King is the Fountain of Justice and common Right: And the King being God's Lieutenant, cannot do wrong, 17 Ed. III. 49. The King could not be made an Instrument of Covin and Fraud, but the Patent was void, *Littleton's Comment. 99. the 5th Report, fol. 14.* That Religion, Justice and Verity, are the sure Supporters of Crowns and Diadems, 24 Ed. III. 42. *Stamford's Pleas of the Crown, fol. 72.* At the common Law, the Law doth not distrust where the King doth commit one, but that it is upon just Cause, and so we are not to doubt it. And therefore at the Common Law, *West 1. Cap. 15.* a Man committed by the King was not repleviable: Nay, if he was committed by his Council that was his representative Body, he was not repleviable. Shall we then, when the Law hath committed this Power unto the King, who is the Fountain of Justice and Equity, who is mistrusted by the Law of the Realm, and the Commonwealth intrusts him; shall we think that succeeding Kings will do that which is not fit to be done? I say, if the Law trust him, we ought to trust him. At the Common Law, if the King commit a Man *per Bouche*, he is not repleviable.

But for a further Reason, those that are his Delegates or Judges, are not to be mistrusted. That which a Judge doth, as in his Office, shall not be assigned for Error. If it be so in the Delegate Power, much more in the Primitive and Fountain. 5 Mar. Dyer 163. the Court of King's Bench did receive a Record of *Nisi Prius*, the *Pessea* returned by the Clerk, and the Death of the Justice of Assize assigned for Error, and could not be received; and so, 1 Mar. Dyer 89. a Writ of Error to reverse a Fine; *prout in Dyer.*

That is the Reason of the Book, 7 Hen. VII. fol. 40. 10 Hen. VII. 28. *Fitz. Her. Na. Br. 126.* faith, he cannot assign for Error, nor shall be admitted to alledge any thing contrary to the Office of a Judge; as to say, the Judge did not give right Judgment, or the Clerk did not make right Entries, *M. 7. Ed. I. B. Rs.* and that is the Reason why a Man of *Non compos mentis* in a Fine, and suffering of a Recovery, it shall not be assigned for Error against the Acts of a Judge, 8 Rep. Dr. Bonner's Case. Records by a Judge; nor Justice of Peace, nor traversable. Good my Lords, then, if by the Laws of this Kingdom one shall not be admitted to receive an Averment against any Acts done by your Lordships the Judges, or against Acts done by inferior Judges; surely in this, where the King is absolute Judge, it shall not be allowed to say, there was no Cause of Danger, or that is done by the King which ought not to be done. *Bract. Lib. 1. cap. 24. est in Corona Regis facere Justitiam*; The King is so absolutely trusted with this Defence, that a Subject cannot make a Fort or Castle upon his own Freehold without the King's License; that appears in the old *Mag' Char' fo. 162.* Inquiry made of those that do build Forts and Castles without the King's License, *Rot' Parl' 45 Ed. III. M. 34. 6 Hen. IV. 19.* and a Book of *Long. 5 Ed. IV. fol. 129.* that a Subject cannot make a Fort or Castle without the King's License; not in his own Ground.

My Lords, the King hath so discharged this Trust, that tho' there were no Account unto the Subject, yet these Ships that have been commanded were *ad proficiscend' cum Navibus Nostris.* The King hath been at greater Charge with these Ships going out, than any King of England ever was, as will appear by those vast Sums of Money the King hath spent in these Years, besides what hath been contributed to it by the Subjects.

My Lords, I have done with my first Position; that it is an inherent Right in the Person of the King of England; and that the King is the sole Judge, both of the Danger, and when and how it is to be avoided.

It hath been objected, that the King of England may do it, but how? It must be according to the Institution of the Laws of the Realm; there must be a concurrent Power, a Politick Advice in Parliament, and so it may be done. But the King, either by his ordinary Power or absolute, without the Assistance of the great Council, he cannot do it, as hath been objected.

And therefore in the second Place, I shall come to the second Thing I did propose; that was, That the King, as he is King of England, that he alone, for this common Defence of the Realm, without the Aid of Parliament, may *Statuere*, &c: That the King, by the Advice of his Council, when he pleases, may do it; that he may ordain several Ways by the Institution of the Common Laws, by his Ordinance, by his Proclamation, by his Patents, by his Writs, and in legal Matters by his Judges. That this may be done by him.

First, It is agreeable to Reason; for Kings were before Parliaments, and then surely they might have done it. As Justice doth flow from the Crown originally, as it was in *Moses*; so it is in the King of England, only in the King's Person. But afterwards the King did depute his Deputies; and gave others Power; this is no Con-

ceit of mine. 12 Hen. VII. Fol. 17. b. per Fineaux, there was a Time when there were no municipal Laws, when positive Laws were not established, when Kings did rule their People according to natural Equity; and then surely the King might ordain. No Man will question it: since there have been positive Laws and municipal Laws, the Kings of England they have ordained, as by those several Records cited appears. It appears by the Practice since the Time of William I. that the Kings of England in all those Writs that they have ordained, have prescribed the Time for issuing of these Writs, the Numbers of the Ships, the Times of meeting, the manner of Munition, and to stay for the Defence *quamdiu nobis placeret*. I have made a Collection of what have gone out by the King himself, what *per Regem & Concilium*, and what by Advice of his Council, and with the Advice of Merchants and Portsmen; but they are so infinite, and so many of them, that I will not trouble your Lordships with the Repetition of them.

These Ordinances for the Defence, they are suitable and agreeable to the Ordinance that the King maketh in other Cases, where the King alone doth ordain, as by his Proclamation. *Clausf. 24 Ed. III. Pars 2. M. 2. dorf.* The King by his Proclamation commanded all Earls, Barons, Knights, Esquires, and other Men at Arms, that none of them should depart into foreign Parts. *Fitz. Na. Br. fo. 85.* he agreeth it; and saith the Book, he that transgresseth this Proclamation shall be fined for his Disobedience. And this Command may be under the Great Seal, Signature, or Privy-Seal; for saith the Book, the Subject is to take notice of any of the King's Seals: so in all Ages he hath commanded no Victuals shall be transported. *Clausf. 24 Ed. III. M. 7. dorf. 5 Dec. 4 Hen. VIII. 11 Hen. VII. 23.* The King granted a Proclamation for a Justing; and if one of the two that be fighting be killed, it is no Felony. 5 Report 114. the King by his absolute Power may make any kind of Money current by his Proclamation. In the next Place, the King may ordain by his Patent alone. 40 Ed. III. fol. 17, 18. the King did grant a Privilege to the Scholars of Oxford, that they should have the Choice of the Inns in Oxford, which was before there were any fair Colleges in Oxford: saith the Townsman, this is my Freehold, the King cannot do it; say the Judges, this is by the King's Patent, and is in favour of Learning, and therefore a good Ordinance. So the Justice in Eyre may take up the principal Inn in a Town. Is there any thing more usual than for the King to give Power to a Corporation to make Ordinance for a common Good? 49 Ed. III. 162. Shall it be so in the Creature, and not in him that makes the Creature? A Case or two upon every one of them. The King may ordain by his Writ, and that appears 9 Ed. III. 16. a Writ of *Cessavit* against the Tenants of Northumberland. The Tenants had been mightily oppressed by the Scots; they petitioned the King, and said, they were not able to pay their Landlords their Rents, by reason of those Incursions upon them of the Scots, and desired stay of Suit; and there it appeareth, that the King did ordain by his Writ, that those Suits upon those Reasons should not proceed against the Tenants for non-payment of their Rents. Out of the same Reason are the Writs of Protection.

Then the King and his Council may ordain, for that I find, *M. 4. Hen. III. Fitz. Her. No. Br. Dower 179.* a Writ of Dower there brought by a French Woman. The Tenant of the Writ pleaded, that there was an Ordinance of the King and Council, *Quod nullus de potestate Regis Francie respondeatur in Anglia antequam Angl' respond' de jure suo in Francia*; that is, We Englishmen should not be compelled to answer any Frenchman or Woman in a legal Way, till the English were answered in France to their Suits there. 39 Ed. III. 7 per Thorp. The King and his Lords may make an Ordinance, which shall be as binding as a Statute. *Rot. Franc. 72 Ed. III. M. 6.* The King by the Advice of his Council did ordain *quod omnes Magnat. & al' qui habent terras & tenementa continue morat'*; &c. Upon this Ordinance I can shew above 40 Writs that have gone out to the Nobility, Clergy, Archbishops and Bishops, and to all the King's Subjects too that had Houses in the Maritime Parts. *Rot. Franc. 22 Ed. III. M. 16.* and 50 Ed. III. M. 47. dorf. 24 Ed. III. M. 6. that of 24 is to the Inlands within 16 Miles of the Sea Coasts. 40 Ed. III. M. 37. the like Writs awarded to most Maritime Counties, upon pain of Seizure of their Lands and Goods. So likewise for Provision for the Army; the King and his Council have ordained, both for Markets to be kept within such a Distance of the Army, and Wine to be sold there, and no where else. *Rot. Sco. 10. 12 Ed. 2. M. 13 dorf.* So they have set down the Number of the Men of Arms that every Town should be charged with, *Clausf. 13 Ed. III. pars 1. M. 14. dorf.* with a Command that they should distrain the Commonalty of that County for the Wages of those Men at Arms.

My Lords, if the King may at any time of Danger, by his Proclamation, by his Patent, by his Writ, by the Advice of his Council; surely in case of Necessity it is much more lawful; for *necessitas est lex temporis*, where a Defence by Sea and Land is required. 5 Ed. IV. 6. 14 Hen. VII. 29. Jurors by Law are to hold together till they give up their Verdict, yet otherwise, if the House be like to fall upon their Heads. 38 Hen. VI. 11. upon a *Precipe*, the Tenant may be excused if he could not pass the Waters.

My Lords, I find that in legal Matters the King and his Judges make certain Explanations upon the Statute of Gloucester, as appears by *Mag' Char.* And what was done then by the Judges Advice, hath the Force of a Law at this Day. So as you see by the Laws of England, as well in other Cases, as in Cases of Defence, the Law hath given the King of England this Power to ordain for the Good and Safety thereof.

I find that in all Ages, and in all Times, the Incidents to a Defence, as well as this principal Part, hath been given to the King himself, as he is King of England.

First, For the Murage of Towns: That the King hath commanded the Murage of Towns to be done at the Peoples Charge; the Precedents are so many, I will mention none of them; and shall he not command for the Defence of the wooden Walls of the Kingdom? *Rot' Alm' 12 Ed. III. pars 2. M. 10.* The King commands by Writ a Place to be fortified towards the War; and every Man having Rent there to contribute, or to be compelled thereto by Distress; that was commanded to be done by Writ, *Pat. 12 Ed. III.*

pars 3. M. 5. it appeareth it was done. The King imposed a certain Rate upon all Goods and Merchandize that came unto *Kingston upon Hull*, and commanded this should be employed to the walling of the Town; this was *de voluntate Regis*; this appeareth *Rot. Pat. 19 Ed. III. pars 1. M. 12.* There was the same Command for other Towns, as *Dover*, &c. the said Roll, *M. 22. Pat. 12. Ed. III. pars 3. M. 14. dorf.* A Writ for the repairing of the Walls of *Winchester* at the Subjects Charge. *Rot. ib. M. 15.* The King by special Grant gave Power to the Mayor and Burgeses to assess the Inhabitants towards the making of the Wall, and the Defence of the Town. *Claus. 1 Ric. II. M. 12.* *Oxford* was commanded by the King to be fortified at the Inhabitants Charge. *Claus. 12 Ed. III. pars 3. M. 32.* The King commanded particular Subjects to fortify their Castles at their own Charges in Time of Danger. *Pat. 18 Ed. III. M. 9.* The King taketh the Castles of the Subjects into his own Hands in Time of Danger, *ad evitandum damna & pericula quæ nobis evenire possint.* *Claus. 13 Ed. III. pars 1. M. 36. dorf.* The King by Advice of his Council did ordain, that the Town of *Southampton*, *pro salvatione ejusd.* should build a Wall.

My Lords, if the King may command the Walling of a Town at the Charge of the Inhabitants, he may likewise command the Defence of the Kingdom by Sea; so for other Incidents of Defence, as for erecting Beacons upon the Sea-Coasts. *Rot. Vas. 11. 12. Ed. III. M. 29. de Communibus in singulis; Claus. 1 Ric. II. M. 4. dorf. de Ordinatione per Regem & Concilium pro vigiliis faciend.* So likewise the King in all Ages hath commanded the imbaring of Ships for the Defence of the Realm, and for all publick Service; this appeareth *Claus. 14 Hen. III. M. 17. dorf.* all Ships arrested that could carry 16 Horses. *Rot. Sco. 10 Ed. III. M. 2. dorf. Omnes Naves pro defensione, &c. Rot. Alm. 12 Ed. III. M. 23. pars 1. & 12.* for the imbaring of Ships for the Defence of the Realm.

So likewise the King commandeth and appointeth who shall be Officers, who shall be Admirals of the Fleet, who shall be *Custodes Maris*, as appears *Pat. Ed. II. M. 7. dorf.* and in the same Roll, *M. 10. Pat. 15 Johannis M. 10. Pat. 48 Hen. III. M. 5. Claus. 23 Ed. III. M. 5. dorf.* and an infinite Number more.

Then that the Country paid the Charges of those who had *Custod' Maritim.* that appears, *Rot. Fra. 21 Ed. III. M. 31. dorf. Claus. 13 Ed. III. pars 1. M. 14. dorf.* The King when there was Cause he moderated the Expence. *Claus. 25 Ed. III. M. 16* The King did order how much, and how long the County should pay for Wages; and commanded the Stay of those that could have been gone before their Time: and this appeareth *Pat. 48. Hen. III. M. 4. Claus. 48. Hen. III. M. 2, 3. dorf.*

Then it appeareth by many Records, that this Guard of the Sea-Coasts was to be according as the King should order and direct, sometimes *per Regem*, and sometimes *per Nos & Concilium*: and this appeareth *Claus. 23 Ed. I. M. 5. dorf. Claus. 13 Ed. III. pars 2. M. 14. dorf. Pat. 29 Ed. I. M. 1.*

Sometimes the King out of his Royal Power hath been pleased to give Discharges to particular Men, to be discharged from this *Custod' Maritim.* this appeareth *Claus. 23 Ed. I. M. 5. dorf. Portsmouth* discharged, because their Ships were in the King's Service. *Claus. 8 Ric. II. M. a Discharge*

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for the Abbot of *St. Albans. Pat. 12 Ed. III. pars 2. M. 8. Pat. 12 Ed. III. pars 1. M. 14. Discharges de Custod' Marit.*

Then the Power of punishing those that should neglect those Commands hath been always in the King, and to be punished by his Commissioners, or by his Writs, and that in a high manner.

That there have been Commands by Distress, by Imprisonment, by Seizure of Lands, Goods, and Forfeiture of all that they had, this appeareth, *Pat. 48 Hen. III. dorf. Claus. 48 Hen. III. M. 3.* and a great Number in the Times of *Ed. II. and Ed. III.*

The King hath so far meddled in this Business, that tho' it hath been the Money of the Country, yet the King hath appointed the Pay-Master, *Claus. 48 Hen. III. M. 20. Claus. 16 Ed. II. M. 13.*

So all Arrays for mustering of Men between 16 and 60, have been in all Ages, and by the King's Command, to be in and continue in readiness so long as the King shall please, *Rot. Alm. 12 Ed. III. pars 2. M. 6. dorf.*

So, my Lords, it doth appear by these Precedents that have been cited, by these Records, and by these Book-Cases, that the Kings of *England* have in all Ages given Command, and made Ordinances by themselves, by their Council, by their Judges, and by their Peers; and these Ordinances have been obey'd.

My Lords, I promise upon this Head to make it good, that in these Times, and in these Years, wherein there were Parliaments, that tho' the Parliaments did determine Matters concerning the Land Forces, and the going of the King's Army into *Scotland*, that yet sitting the Parliament, the King hath commanded the setting forth of Ships by his Writ; this was ever left to the Royal Power. For the Proof of this, there was the 24 *Ed. I.* a Parliament, as appears in the printed Books of that Year; and in that Year the King commanded Ships by his Writs at the Charge of the Subjects. *Pat. 24 Ed. I. M. 17.* Command to take up a hundred Ships; and in *Pat. 24 Ed. I. ex parte Regis Rem. Exchequer-Roll 22.* Command *pro Custod' Marit' Hil. 9 Ed. II.* a Parliament holden at *Lincoln*, and yet in the same Year Writs went out to provide Shipping, as appears by *Rot. Pat. 9 Ed. II. pars 2. M. 26.* I find there was a Parliament held 12 *Ed. II.* This appeareth in the Book of Statutes, *Rot. Scot. 11 and 12. Ed. II. M. 8.* the King recites certain Inroads made upon the Men in *Northumberland*, *& quod de comuni concilio*, held at *York*, *ordinavimus*, &c. and assigns the Earl of *Pembroke*, and Bishop of *Norwich*, *ad requirend' Norff' & Suff' juxta discretiones vestras subsidium facere per Naves*, &c. *per tempus trium vel quatuor mensum.* At this Time there was a Provision by Parliament for the King's Service by Land, and for his Armies to meet him at *Newcastle*; and for two Reasons why *Navale Subsidium* should be necessary. First, to hinder the bringing of any Victuals into *Scotland*. Secondly, For the free Intercourse of Trade. So as you see, in this Year wherein a Parliament was holden, this *Navale Subsidium* was commanded by the King's Writ without an Act of Parliament; tho' this Writ was for *Norfolk* and *Suffolk*, yet the like was for *Dorset*, *Somerset*, &c. It appeareth likewise 10 and 11 *Ed. II.* which were those great Years of sending out of Writs, that then Parliaments were holden. And so it doth appear by the printed Book of Statutes; yet in that Year of 10 *Ed. III.*

4 G

Claus.

Claus. 10 *Ed.* III. *M.* 37 *dors.* A Writ directed to the Mayor and Bailiff of *Bristol*, with a Command, that all Ships of 40 Tons & *ultra*, should be seized. 10 *Ed.* III. *M.* 21. *dors.* Command that the Ships should be set forth for the preventing of Danger, and that no Foreigners Ships come in to aid the *Scots*, *M.* 21. *dors.* The same Roll, Command to the City of *London* to set out Ships at their own Charge. *Seco.* 10 *Ed.* III. *M.* 21. *dors.* Writs to the Sheriff of *Bucks* to send Horsemen and Footmen to the County of *Southampton*: so there were Men drawn out of their County, and the Refusers there were called Rebels. *Rot. ib.* Writs *de Navibus pro defensione Regni.*

My Lords, there was something more observable in this Year of 10 *Ed.* III. for some of the Writs that went out bear Teste 3 *Octobris* 10 *Ed.* III. and mention a Parliament, but did not go out by any Ordinance of Parliament; so that the awarding of these Writs 10 *Ed.* III. were fitting the Parliament, and by the Royal Power: which is a strong Argument, there needeth not Aid of Parliament for the King to command his Forces. 11 *Ed.* III. there was likewise a Parliament, as appeareth in the printed Books of Statutes, yet Writs dated 10 *Januarii* 11 *Ed.* III. *per ipsum Regem*, Ships are commanded *pro guerra super Mare.* *Rot. vaf.* 20 *Ed.* III. *M.* 6. *dors.* Proclamation to several Counties, that all Ships be in readines. In the 12th Year of *Ed.* III. there was a Parliament at *Northampton*, *Claus.* 12 *Ed.* III. *pars* 2. *M.* 1. the same Roll *pars* 2. *M.* 32. and yet the same Year the King commanded Shipping at the Charge of the Counties, as appeareth *Rot. Parl.* 12 *Ed.* III. *pars* 1. *M.* 12. *Claus.* 12 *Ed.* III. *pars* 3. *M.* 29. And in the 13th Year of *Ed.* III. there was likewise a Parliament holden, as appeareth 12 *Ed.* III. *M.* 9, 10. but printed Statutes make no mention of a Parliament then.

My Lords, in this Record these Things are observable, cited, and made use of by the Defendant's Counsel; a strong Record as any can be against them! In that Parliament the King he did pray the Advice of the Commons in Parliament touching his War with *France*, and the guarding of the Sea-Coasts; the Commons they make Answer, *Prient les Commons que ils ne Counsel doner al choses de quel ne pass Connuzance*, &c. They say further, And they grant that the Maritime Towns ought to make the Guard upon the Sea without Wages, and the Inland Towns upon the Land.

Two Things are observable in this Record. *First*, When the King doth descend so low as to pray the Advice of his Commons in Parliament, and Assistance for the guarding of the Sea; the Commons disclaimed it, and said, they have no Connuzance, &c. and yet the Defendant's Counsel did press, that now the King should ask the Advice of the Commons in Parliament; a Thing disclaimed by the Commons in Parliament 13 *Ed.* III. to have any Cognizance of. *Secondly*, That by this Record, the Maritime Parts ought to guard the Sea at their own Charges: This, tho' it was granted in their Petition, it was not granted by the King; for it appeareth in the same Year, *Rot. Alm.* 13 *Ed.* III. *M.* 13 *Dors.* that the King that Year hearing of some Preparations in *France*, commanded Ships for three Months. *Claus.* 13 *Ed.* III. *pars* 1. *M.* 14. That in several Counties Men were distrained for not Payment of Wages for the Archers and others that guarded the Sea-Coasts. It appeareth by these Records, that both

the Guard of the Sea, and the Sea-Coasts, was done *juxta Ordinationem nostram*, Order made by us and our Council. *Rot. Alm.* 13 *Ed.* III. *M.* 15. *dors.* the King appointed the Archbishop of *York*, *Hugh de Percy & al'* for that purpose, &c.

So, my Lords, I have done with the second Ground, that is, that the King is the sole Judge of this without his Parliament: That the Commons in Parliament have disclaimed to have any Cognizance of it: That in the same Year, when Parliaments were holden, the same Year these Writs have issued without Advice of Parliament.

The third Thing I did propose was those supreme Titles, which the Common Law of *England* giveth unto the King, which may enforce this. *Braff. lib.* 2. *cap.* 24. saith, that the King he is *Vicarius Dei*; his Power, as was agreed, is *Jure Divino*. God is the God of Hosts, and the King is a Model of God himself, 40 *Ed.* III. *fol.* 18. The King is the chief Guardian of the Commonwealth. The Sheriff hath *Posse Comitatus* under the King, the King's Vicegerent in the County: And he hath this Power, not only for the Execution of legal Process, but for the Defence of the Realm. 12 *Hen.* VII. *fol.* 7. This delegate Power of the Sheriff, is as well for Defence, as for the Execution of Process. Shall the Sheriff do it, and not the King? 10 *Hen.* III. *fol.* 1. *B. Hen.* VII. *fol.* 1. The King is the Conservator of the Law. 20 *Hen.* VII. *fol.* 4. *Rex est Capitalis Justiciarius totius Angliæ*; he is not only to maintain Justice in the Courts of Justice, but to protect and defend his People. *Stamford's Prerogat. cap.* 1. The King is the most worthy Part of the Body of the Commonwealth, the Preserver, Nourisher, and Defender of it: And by this they enjoy their Laws, Goods and Lands. 11 *Rep. fol.* 70. *b.* *Magdalen-College's Case*, *Rex est Medicus Regni & Sponsus Reipublicæ*. It is the part of a good Physician, as well to prevent Diseases, as to cure them; and the Office of a good King, as well to prevent Danger, as to remedy it. *Com. fol.* 130. He is the Soul that animates the Body of the Commonwealth; and we ought to move as he moves. 11 *Rep. fol.* 72. The King is the Fountain of Common Right, therefore we have no Reason to stain the Fountain.

I am now come to my fourth Proof, which is by Precedents, wherein I shall be somewhat long.

The Second Day's Argument of Sir John Banks, Knight, his Majesty's Attorney-General, before all the Judges in the Exchequer-Chamber, on the behalf of his Majesty.

May it please your Lordships,

TO remember I shewed by Charters, Aids, and a great Number of Precedents, that this Royal Power was in the King of *England* before the Conquest: And that tho' some were exempted from the setting forth of Ships by Grant unto some particular Men, or some particular Churches; yet these three fundamental Services of Expedition, repairing of Castles, and making of Bridges, were always exempted.

Then I shewed, by a great Number of Precedents, that not only the Principal, but all other Necessaries that concern the Defence of the Realm, both by Sea and Land, hath been always commanded by the King's Writ: for the fortifying of Towns

Towns and Castles, and the Murage of Towns, the Appointment of Admirals of the Fleet, and those that should be Guardians by Sea and Land; the Imbarring of Ships, and Arrays of Men, the erection of Beacons, and discharging of some upon just Cause, and by punishing of those that were refractory: And all this was done by the King's Command, *per ipsum Regem*, or *per Regem & Concilium*, without any Aid of Parliament.

Likewise, I have made it appear to your Lordships, that the King is the sole Judge of this Defence: That the King is not to be mistrusted in the Execution of his Office, as King; nor your Lordships as Judges, are not to be mistrusted. I have then shewn out of Precedents, that in those Years, wherein there have been Parliaments, and sometimes sitting the Parliaments, Writs have issued *per ipsum Regem*; and *per Regem & Concilium*.

I shall proceed to make good other Particulars, which I have opened unto your Lordships. *First*, That these Precedents that have been shewed, and which I shall shew unto your Lordships, have not been grounded upon any particular Covenant or Charter of Custom, but upon the Law of the Land, and upon such Reasons as are irreverfible, and bind all the King's Subjects, as well Clergy as Laity. For this I shall remember *Claus. 48 Hen. III. M. 3.* The Writs do recite, *quod tum Milites & liberi Tenentes quam omnes alij, &c. ad defensionem Regni teneantur.* *Claus. 9. Ed. III. M. 11. pro defensione Regni omnes teneantur.* *Scot. 10 Ed. III. M. 12. quia consonans Rationi, quod omnes tangit per omnes supportari debet:* And the same Roll, *M. 20. dorf. ex legiantia ad defensionem contra hostiles ingressus inimicor' manus exponere adjutrices, &c. Rot. Alm. 12 Ed. III. M. 1. dorf. omnes & singuli tenentur, &c. Se & sua exponere;* the same Roll. *m. 12. dorf. omnes & singuli ad defensionem Regni astricti.* And I think every Man will acknowledge himself to be bound out of his Allegiance. *Rot. Alm. 13 Ed. III. M. 13. dorf. ex legiantia ad defensionem Regni & vestri & vestrorum.* Same Rolls *M. 17.* And there be Writs unto all the Bishops of England, *quod invenerint homines ad arma pro defensione.* *Frankie Almoigne Tenure* was no Plea against this Service. *Rot. Franc. 46 Ed. III. M. 34.* There was a Writ directed to the Bishop of Canterbury, for the arming and arraying all Ecclesiastical Persons within his Province: The like to the Bishop of York in the same Roll. So it extends to all the King's Subjects, as well to the Clergy as the Laity.

Nay, Ports that were obliged to do particular Service, yet in case of extraordinary Defence, that there the Writs went out, not only to perform the ordinary Services, but Services *ultra debitum*. The Cinque Ports, by their Charter of *Ed. I.* were to set forth 52 Ships at their own Charge for fifteen Days; yet we find by several Writs, and in several Kings Reigns, that the Cinque Ports have been required to do further Services. Arrests have been of their Ships, *Ultra servitium debitum.* *Scot. Roll 10 Ed. III. M. 2, 3. dorf. and 28. dorf.* there is a Command, that all their Ships of 40 Tons should be arrested for the King's Service. And so likewise, *M. 22.* that all the Ships of the Cinque Ports, *tam majores quam minores*, should be arrested. *Rot. Alm. 13 Ed. III. M. 13. Omnes Naves quæ transire poterint,* arrested and brought to the Cinque Ports.

So then, to tell of particular Rolls, that these and these Towns were obliged to do these Services; this, under favour, is no Argument. For altho'

they be obliged to do the Service, yet upon other Occasion, the King took all their Ships, *ultra servitium debitum.* *Claus. 16. Ed. II. M. 13. dorf.* The King writeth to divers Earls, Barons and others in this Manner, *Quod sint tam citius quatenus poterint parati*, beyond your Service, with Horse and Arms, and come to our Town of Newcastle upon Tyne: So as this Writ was directed to all the Lords Spiritual and Temporal, and all the King's Subjects; not only with their due Service, but beyond their Service, to be at Newcastle. So your Lordships see the Motives, and Grounds, and Reasons of these Writs are universal; they concern not a particular Part and Subject, but all the King's Subjects; and they are *Legiantia sua debita*. So that is the first Thing I would observe to your Lordships, that these Writs and Precedents are grounded upon the Law of the Land, and not upon particular Custom.

The second Thing is this: That all these Writs have issued by the King's Mandate, either by the King only, or by the King and his Council, without Advice in Parliament; of which I have made a Collection: And it is better for me to attend your Lordships withal, than to cite them; because they are above five hundred, wherein I have distinguished what have been *per Regem*, and which *per Regem & Concilium*, and where the Advice of particular Merchants and Portsmen were required, *Scot. 11 Ed. III. M. 2. dorf. 19 Ed. III. pars 1. M. 26. dorf.* And in these, the Advice of particular Men were called to assist the King and his Council.

Now, my Lords, if before Time of William I. and since, and for so many hundred Years together, this hath been done; shall not these Precedents make a Rule?

That Precedents that are not against the Law, nor contrary to the Rules and Reasons of the Law, make a Law, this appeareth by 4 *Ed. IV. fol. 43.* The Lord-Chancellor sent forth a Writ of Error. The Judges took Exceptions both to the Matter, and the Manner, saith the Book, because it hath been always so; the Precedents make a Law. 33 *Hen. VI. fol. 20.* An absurd Return made by a Sheriff; yet because Precedents to warrant it, a good Return. 2 *Ric. II. fol. 7.* where a Duty was to be paid to a Corporation of Mayor and Commonalty, the Duty to be paid to the Body, and an Acquittance to be had from them; but because it had been used the Mayor alone to give the Acquittance, a good Acquittance. 2 *Rep. Haines's Case*; the King shall not part with his Interest without the Great Seal; but yet a Lease for Years, under the Seal of the Exchequer, is good by Custom. 4 *Rep' fol. 9.* that the Precedents of the Court are good against the expresse Words of a Statute. Having so many Precedents, I will not trouble you any longer, tho' I have reserved a special Place for answering of Objections; yet such Objections, as fall materially in the way, I shall give an Answer to, tho' I reserve the Answer to the main Objection to the fifth Place.

It hath been said, by Mr. Holborn, that here hath been a Discontinuance of Time; and that since the Time of 50 *Ed. III.* none of these Writs have issued.

Shall Discontinuance of Time take away the King's Right? If there have been no Use within the Time of the Memory of Man; yet if there have been an inherent Right in the Crown of England, shall the Crown lose it by Discontinuance of

Time, contrary to the Rule of the Law? 10 *Hen. IV. fol. 6.* Where the King is the Founder of a Bishoprick or Abbey, and is by common Right to have a *Corody*, tho' not used, and the King hath not demanded it in time of Memory, yet the King shall not lose it. *Fitz. Her. Na. br. fol. 5.* A Writ of Right brought by the King, where you must alledge *expleis & Seisin*, will not bind the King to alledge a *Seisin* in him and his Progenitors: for if once the King had a *Seisin*, Protracts of Time shall not discontinue it. 12 *Hen. VII. fol. 20.* The Statute of *Mortmaine* confineth the Lord to enter within a Year and a Day; but it shall not bind the King, for he may do it any time. 35 *Hen. VI. fol. 26.* If a Villain doth alien his Lands, it barreth not the King. Plenarty after six Months, no Plea against the King. 6 *Rep.* no Discontinuance of Time, if the King hath a Right. 7 *Ed. IV. 30.* If an Alien and another Man purchase Lands together, and the Alien dies, the King shall not be prevented by Survivorship: and in personal Goods, you shall raise no Prescription against the King. 35 *Hen. VI. fol. 27.* There is no Man can pretend a Title to the King's Goods, for Waifs, Estrays, or Wrecks; for no Prescription can invade the King's Profit.

But then they say the Precedents are not in all Times; for we have not shewn, nor cannot shew that in all Times these Writs have issued.

A strange Objection, in all Times! My Lords, it is a casual Service. In all Times, God be thanked, not that Occasion or Necessity of this Defence. Will you have us shew you Precedents for a casual Service done at all Times? 4 *Rep. fol. 10.* If a Man hold to do Service to his Lord, to go with him into the War of the King, this is out of the Statute of Limitation; for it may happen not once in two or three hundred Years: therefore the Law doth not require we should have a *Seisin*, for this very Reason, because it is casual. 33 *Hen. Br. Fealty 15.* That for Homage and Fealty, casual Service, they are out of the Statute of Limitations: so as now, by the same Reason that they would tie us to Precedents where there was no Occasion, by the same Reason the Tenants are to do Homage, or go into the Wars when there was no Occasion.

But besides, he is much mistaken, these Precedents do not end with *Ed. III. 7 Ric. II. M. 18. 13 Hen. VI. M. 10. 14 Hen. VI. pars 1. M. 14.* a great Number of Ships commanded then in the King's Service.

But it hath been said, that the People have always petitioned against it, and there hath been a decrying by the People; and they have petitioned in Parliament against it. And these things, that must be made good by Custom, must gather Strength by a Consent. And further, that when Petitions have been preferred, the King hath not denied the Petition expressly.

My Lords, I shall shew, when I come to give a particular Answer to those Records and Petitions that they have mentioned, That notwithstanding these Petitions, this Service hath been always continued: and for the Answer that he speaketh of, that they have not been denied; these are the very Words of the Answer, *Le Roy se aviserá.* We know whether this be an express Denial or no. So tho' the King took time to advise of the Petition of his Commons, this is no Argument, but that it is a mannerly kind of Denial. Besides, in these very Years of 10, 11 & 12 *Ed. III.* the

Writs went out for the Shipping Business, by the Royal Power.

Then it hath been said, that we can make no Precedents of these; for tho' Writs have gone out, yet it doth not appear that these Writs have been put in practice, or that any Execution of them have been done.

But the Service hath been done, as doth appear by the Monuments of those Times. Then it doth appear by other Records, that the Wages of Mariners have been paid by the Country. These very Years, *Rot. Claus. 20 Ed. III. M. 6, 7.* It doth appear, that some particular Men had particular Discharges, either because they were in the King's Service, or in *Gascoigne*, or lived on the Sea-Coasts; that they pleaded their Discharges, and had them allowed for that Reason, 23 *Ed. III. M. 14.*

So as, my Lords, upon this second Ground, that these Writs have gone forth thus constantly in several Ages; that there being such a Number of Precedents, the Discontinuance hath ever been when there was no Occasion. That the Precedents of the Courts of Justice make a Law, and Discontinuance cannot take away the King's Title. This is the second Thing I do insist upon, that these Precedents make a Law.

The Third thing I shall observe upon these Precedents is, That these Writs have gone forth, not only in Cases of an actual War, or in Cases of an Invasion, when the Enemies Fleet hath been upon the Sea; but by way of Preparation before-hand, when the Enemy meant to come; and in contingent Cases, when the King might conceive any Danger might ensue: But in these Cases Writs have issued out, will appear. *Rot. Claus. 48 Hen. III. M. 2.* The Writs are here in Court. *Cum necesse sit ad defensionem Regni esse promptum, &c. Claus. 23 Ed. I. M. 5.* There were several Writs directed to divers Earls, Bishops and others, *de custod. marit.* the Words are thus, *Quia volumus quod partes marit' in Com' Essex, &c. contra Inimicos diligenter custodiend. forsan si partes illas venire contingent.* 24 *Ed. I.* Remembrancer in the *Exchequer*; upon Information given, that there were 1000 Men in *Flanders* made Preparation to come unto *Yarmouth* to burn the Town, Writs sent forth by the Treasurer and Barons, *ex officio*, to be in readiness in case there was an Invasion. *Pat. 9 Ed. II. pars 2. M. 26.* Writs directed to all the Port-Towns between *Southampton* and *Thames*, to set forth Ships at their own Charge, for the better Defence of the Kingdom; and against those that commit Depredations upon the Sea, as well to Men of this Kingdom, as to others coming to this Kingdom. *Rot. Scot. 11 & 12 Ed. II. M. 8.* The King, by several Writs, directed to several Commissioners in several Counties, recited the Provision made for his Army at Land at the last Parliament, and saith, *Nos considerantes ad expeditionem præd. tam ad impedend. Scotos, quam pro custodiend. Maris, &c.* and so commandeth for that purpose, that Ships should be sent out of several Counties for these two Causes; the one to hinder Victuals from going into *Scotland*, the other for free Intercourse of Trade. It appeareth, 10 *Ed. III.* that the Ships of *France* were not upon our Sea-Coasts, but were in *Britain* in *France*; and yet the King, upon Relation that they had an Intention to invade the Realm, did send forth for the providing of Ships in most Parts of the Realm; this was only upon Information. *Rot. Scot. 10 Ed. III. M. 30. Ut audivimus; M. 23. Ut intelleximus; M. 16.*

M. 16, 22. *Quod audit. M. 18. dorf. 12. dorf. 5. dorf. in partibus transmarinis.* So by these Records, this Preparation of Shipping was only upon Information. *Franc. 26 Ed. III. M. 5. Quia vulgaris opinio Regnum nostrum Angliæ invadere,* therefore commandeth Shipping by Sea, and Forces by Land. *Rot. Franc. 10 Ric. II. M. 23, 24. Quia certi rumores quod Franc. infra breve tempus cum magnis Armat' hoc Regnum invadere, &c.* commands the Custody of the Sea and Sea-Coasts. So as it doth appear, by these Records, that upon an Information, or Conjecture of the King, he may send forth these Writs, and commanded his Subjects to be in readines, in case that Danger might happen; better so, than to receive a Blow, and then to make Preparation for Defence; we should buy that Wit with Repentance. *Prudentissima ratio, quia timer Belli, &c. preparavit.* And surely when the King sees those Preparations abroad, those great Armies in adjacent Countries, *qui nocere possunt,* great Reason we should be in Preparation.

This is not only consonant to Precedents, Wisdom of Times, Policy of State, *Venienti occurrere morbo,* but to the Reason of our Common Law. If a Man be in fear, that another Man lieth in Wait for him to do him a Mischief, shall he stay till he receive a Wound? *17 Ed. IV. 4.* In this case he may have a Writ to bind him to the Peace, *13 Hen. VII. fol. 17.* If a Man have a Warranty for his Land, shall he stay till he be impleaded? No, a *Warrantia Charta* lieth till he be impleaded. If Lord and Tenant in antient Demesne, and the Lord shall require more Service of the Tenant than he ought to perform; shall the Tenant stay till there be a Distress taken? No, he shall have his *Monstraverunt, Fitz-Her. Na. Br. 40 Ed. III. fol. 45, 46.* and this only upon Verbal Demand of Service.

Shall then the Common Law of England secure the Subject not to stay till a present Danger, but he shall have his *Warrantia Charta*, and *Monstraverunt* before Distress taken; and shall not the Common Law provide for the King, that he, in his Expectation of Danger, may make his Preparation against it? So surely these Precedents are according to Reason of Law.

The next Thing that I did observe out of these Precedents was, that in these very Years, wherein there have been Aids granted to the Crown *pro defensione Regni*, in those very Years these Writs have issued out by the Royal Power. *Claus. 48 Hen. III. M. 2, 3. dorf.* There was then a Tenth given by the Clergy *pro defensione Regni*; and yet in that Year he did command the Defence of the Realm, both by Sea and Land; and that appeareth, *Pat. 48 Hen. III. M. 6. dorf. and Claus. 48 Hen. III. M. 30.* In the 22 Ed. I. the King had given him in Parliament, *pro subsidio guerræ*, a Tenth of all moveable Goods, which was to be collected in the 23d Year, as appears, *Pat. 22 Ed. I. M. 2.* My Lords, this very Year, when this was paid, he commanded a great Number of Shipping for the Defence of the Coasts, and that appeareth, *Pat. 23 Ed. I. M. 6.* Writs were directed to divers Counties, as *Suffex, Southampton, Dorset, &c.* commanding them to be aiding and assisting to *William Thornton*, in the taking of all the Ships in those Counties, *Pat. 23 Ed. I. M. 7. a Com' Radolpho de Salwico ad providend. de Navibus, ita quod prompti sint quandocunq; mandamus.* So to be in readines with all Ships in those Parts, that were of 40 Tons. *M. 8.* Some Roll-Writs directed to most of the Sheriffs of England to be assisting to *John de Barwicke*, to the

chusing and sending forth of Archers, *ad proficiscendum cum Fleta nostra.* So as they were not only brought out of their own Counties, but all the Counties of England, *ad proficiscendum.* My Lords, this 23 Year, when this great Aid of Tenths, and Part of all the Moveables were granted, *Pat. 23 Ed. I. M. 7.* the King writeth to all the Archbishops, Earls, and others, reciting, that he hath committed the Custody of the Sea to *William de Stoaks, Ita quod idem Willielmus vos omnes,* naming the Archbishops, Bishops, Earls, &c. *prout necesse fuerit.* So as you see the greatest Subject is not exempted from these Commands, but should be *auxiliantes, respondentes & intendentes.* *Claus. 23 Ed. I. M. 5. dorf.* The King commanded the Bishops of *London and Norwich*, for the Safeguard of the Sea-Coasts. *Pat. 23 Ed. I. M. 1.* A Command to all Archbishops, Bishops, Abbots, Earls, Barons, Knights, and others; commanding them to be aiding to *Adam de G. Ita quod idem Adam compellere posset quoties necesse, &c.* So *Claus. 23 Ed. I. M. 5. dorf.* the like Commands. So as, my Lords, in those Times, which was 23 Ed. I. when there was an Aid granted by Parliament, it doth appear, those great Defences, both by Sea and Land, were commanded.

My Lords, 10 Ed. III. in a Parliament holden at *Nottingham*, there was a Fifteenth granted to the King for three Years, and so it was recited in the Record. And it appeareth likewise, *Pat. 12 Ed. III. M. 2. Pars 3. Claus. 12 Ed. III. M. 28. Pars 3.* it appeareth, that a Tenth and Fifteenth were granted to the King in Parliament; and this was *tam pro defensione quam arduis Negotiis.* *12 Ed. III.* The Prelates, and Lords and Commons at a Parliament holden at *Westminster*, gave the King ten thousand Sacks of Wool, said to be given *pro defensione Regni*, as appears *Rot. Alm. 12 Ed. III. pars 1. M. 1.* In the same Year there was granted likewise *pro defensione Regni medietatem lanarum*, the Moiety of all their Wool, *M. 31, 32.* In the same Year the Clergy, they gave the King in Parliament, *medietatem lanarum usq; vigint. mill. saccar.* as appeareth, *Rot. Claus. 12 Ed. III. Pars 3. M. 13. Rot. Claus. 12 Ed. III. Pars 2. M. 1. dorf.* And in this Year the King collected a Tenth and Fifteenth, that was granted to him by the Laity in Parliament for two Years; as appeareth, *Claus. 12 Ed. III. M. 30.* And besides all this, the Clergy gave the King a Tenth, *Claus. 12 Ed. III. Pars 3. M. 30.* These I cite the more particularly, because no Memory of them in the printed Statutes.

Were all these Aids granted, 10, 11, 12 Ed. III. *pro defensione Regni*; and shall the King in those very Years send forth Writs for the Defence of the Sea and Kingdom? And may not the King do it now, when he seeth such great Cause?

Now, my Lords, in this 12th Year, when all these great Aids were granted, *Rot. Alm. 12 Ed. I. 3. Pars. 1. M. 12. Walter de M.* was appointed Admiral of the Fleet towards the North, and appointed Commissioners *ad assidendum villas bonis & Catallis ad contribuendum, &c.* and commandeth all Sheriffs and Officers to be aiding and assisting. So in this Record it doth appear, that in these 10, 11 and 12 Years, Ships and Forces were commanded. *Claus. 12 Ed. III. Pars 1. M. 17. dorf.* Command by the King, that the Men of *Surrey and Suffex* should have their Goods seized, and Persons imprison'd, if they refused to contribute towards the Charge of Shipping. *Rot. Alm. 12 Ed. III. Pars 1, M. 2.* A Commission to *William de B.* and others,

ad assidendum omnes homines juxta statum, and to seize their Goods and Chattels, if they refused to contribute for the Wages of Mariners for the Ships.

So as your Lordships see by these Records, tho' there be Aids, Tenths, Subsidies and Fifteenths, granted by the Clergy and Laity; yet in that very Year, if an extraordinary Occasion comes, tho' Ships not upon the Sea, the King hath commanded the Defence of the Sea and Land at the Charge of the Counties. I have done with the fourth Particular.

The fifth Particular is this. This Aid, and these Contributions, they have not been required only from the Maritime Towns, but from the Inland Counties, *per totam Angliam*. And this is materially to be insisted upon, because we are now in an Inland County, in the County of *Bucks*.

My Lords, That this was done before the Conquests, your Lordships have heard. For *Alfred*, the first Monarch, *Anno 827. jussit Cimbas, &c. per totam Angliam. Asser. Menevensis fol. 9. Wigor. Floren. 316. Huntingdon 351.* That King *Ethelred* did the like, *Anno 1008. per totam Angliam*, every 310 Hides of Land to find one Ship. *Floren. fol. 9. Matth. of Westminster 387. Huntingdon fol. 360.* The Decree or Council, which was held at *H.* about the 30th Year of King *Ethelred*, was that Ships should be prepared against *Easter*. And those Laws, which are remember'd in *Lambert*, were before the Conquest, *cap. 10. fol. 106. Quod præsidii, &c.* So it was general and universal throughout the Realm, concurring with those antient Precedents and Council, since the Time of *William* the First. *Glaus. 48 Hen. III. M. 2.* For where a Record is to be applied unto several Purposes, I must mention that Record again. It appeareth by that Record, that *Bedfordshire*, which is an Inland County, was charged with the Guard of the Sea-Coast, and paid for Wages: Same Roll, *M. 3. intus M. 2. dorf. Rutland, Oxfordshire, Dorsetshire*, Inland Counties charged for the same Service. *Pat. 48 Hen. III. M. 7. Cambridgeshire and Huntingtongshire* charged for the like Service, and that they should do *prout per Concilium nostrum ordinatum fuerit. 24. Ed. I. King's Remembrancer in the Exchequer, Rot. 77, 78, 79. Title de associando pro custod. Maris*; and Writs went out for Ships in divers Counties; and amongst others to *Bucks. Pat. 26 Ed. 1. M. 21.* When there was a Complaint that the Subjects did suffer upon undue Service, the Commissions that are directed for Enquiry thereof, are directed to all the Counties of *England*, as well Inland as Maritime. *Pat. 23 Ed. I. M. 5.* That Men, to furnish a Fleet, were drawn and commanded from the most Parts of the Kingdom. *Rot. Scot. 10 Ed. III. M. 14.* Inland Counties charged with Shipping for the Defence of the Kingdom, as *Cambridgeshire, Huntingtongshire, Nottinghamshire, and Derbyshire. Claus. 13 Ed. III. Pars 3. M. 14. dorf.* and there *Oxfordshire* is charged with *Custod. maritim. Rot. Scot. 12 Ed. III. M. 12. dorf. Bedfordshire, Bucks*, your County, and *Derbyshire* charged there with the same Defence. *Claus. 1 Ric. II. M. 18.* There *Cambridge and Huntington* were to provide a Barge at their own Charge; and yet Seafaring Men there were none. Writs were then also directed to *Nottingham, and Derby*; tho' they had no Seamen, yet they had Money and Means to provide them, *Rot. Franc. 7 Ric. II. M. 18.* The King sends his Writs into most Counties of *England*, as well Inland as Maritime, reciting that the King of *France* was gone with an Army into *Flanders*, and that *Calais*,

was in danger; and commandeth all Knights, Esquires, and Archers, and every of them, according to his Estate and Faculty, to be sufficiently arrayed and armed, and come to the Port of *Sandwich, ad proficiscend.* My Lords, in this Record there was mention'd *Bucks, Bedford, Huntington, Cambridge, Nottingham, Derby, Leicester, Rutland, Northampton, and Berks*, all these Inland Counties. The Words of the Writ are, *Quod omnes tenentur pro defensione Regni, &c. Claus. 9 Ed. III. M. 12. per omnes supportari. Rot. Alm. 12 Ed. III. M. 12. vel 20. quod, &c.* All and every of our Kingdom, out of their Allegiance, to be ready to defend the Realm. *13 Ed. III. dorf.* a great Number of Ships.

By all which it doth appear, *First*, That the Service was commanded from those Inland Counties. *Secondly*, That the same Reasons which are given to bind the Inland Counties, are given to bind the Maritime Counties, *Pat. 23 Ed. I. M. 6.* for the taking of Ships in *Sussex, Devon, Middlesex*, and other Counties. If to be the Maritime Counties be in danger, surely the Inland Counties cannot be in safety. We are in an Inland County; and the Entry of an Enemy upon any Part of it, concerns the Safety of us all. And by the Rule of the Law, every one that is to receive a Benefit, is to give a Contribution. As the Case of *16 Hen. VII. fol. 13.* all Feoffees, whose Lands were liable to a Statute, the one shall have Contribution against another. If four or five Cognizors in a Cognizance, all shall have Contribution one against another. *40 Ed. III. Parceners*, upon whom a Warranty descendeth, they shall be equally charged. If a Man bind himself and his Heirs in an Obligation, having Lands partly by his Father, and partly by his Mother, and they descend to several Heirs, both shall be equally charged, as it is *3 Rep. fol. 13. Herbert's Case.*

So I go upon these Reasons, that it is consonant to Reason of Law, besides these Precedents, that where a Danger is to all, and all receive a Benefit, all are to be equally charged.

My Lords, to illustrate it by further Reasons, that tho' the Inland Counties, and Maritime Counties be charged, I find that the Ports, by the Charter of *Ed. I.* were to find 52 Ships. I find that when the Necessity of the Service did require it, then all their Ships were seized in the King's Service. I find likewise, that when there hath been a Disability in the Ports to perform the Service, as now they are, for then the main Part of the Trade was in the Port Towns, but now it is gone from thence, and gone to *London*; and few Ports have the Trade, but *London, Newcastle, Bristol, and Hull*; and shall it not now be required of the Inland Counties, since there is a Disability in the Ports? *Rot. Franc. 21 Ed. I. M. 23.* I find there, that *Plymouth*, and some of the Port-Towns, did bear more than *London*; for *Plymouth* found 4 Ships, *Dartmouth* 6, *Bristol* 4, *Newcastle* 3, *Norwich* and *Yarmouth* 4, *London* 2, *Harle-Poole* 2, *Sandwich* 2, *Dover* 2, *Rye* 2, *Shoreham* and *Arun-del* 2, and other Places found but one. It appeareth, *Rot. Alm. 13 Ed. III. M. 3. dorf. that Yarmouth* furnished, at their own Costs, 4 Ships, *Kingston* 2, *Boston* 2, *Lynn* 2, *Harwich* 2, and *Ipswich* 2.

My Lords, are these Ports able to furnish the King with so many Ships in these Days to do their Service? The Wealth of one Portfman in those Days, was worth the Wealth of a whole Town now.

Admit

Admit the Maritime Towns were bound to it; yet if there be a failing of their Ability, that they cannot do it, shall it not elsewhere be required? That it is agreeable to the Rule of the Law, before any Commissions of Sewers, where particular Men are bound to defend the Sea-Banks, yet before any Statute, in case the Man was not able, the Service was required from the County; for by it they might have either Gain or Loss. This appeareth by the Rules of the Common Law, before any Statute; *Register fol. 123. Quod distringat omnes, &c.* when one Man was to maintain the Banks against the Sea; if not able to do it, the rest that had Benefit by it, were to be distrained to do it, *5 Rep. fol. 99. 10 Rep. fol. 140, 141.* the Case of the Isle of *Ely* agreeable, that all that have *Salvationem & Damnificationem* shall contribute.

To this Purpose are those two Records mention'd by Mr. Solicitor, *Rot. Parl. 7 Hen. IV. M. 18.* that where there was a Subsidy granted to the King for the Defence of the Realm, it was assigned to Merchants, yet with a Salvo, unless Royal Power came. *Rot. Franc. 6 Ric. II. M. 8.* certain Merchants had the Custody of the Sea, except *Regalem potestatem*.

So the Conclusion is, if an extraordinary Defence, there may be no Cause to go into the Inland Counties; but if a Royal Power, or extraordinary Danger, tho' not imminent, the King may require an extraordinary Contribution, *per totam Angliam*, from all his Subjects.

But this hath been objected against, and some Records vouched; that is, say they, we will shew you many Precedents, wherein *Navale Subsidium* hath been required from Inland Counties, and they have been discharged thereof, as *Pat. 2. Ric. II. Pars 2. M. 42. dorf.* The Town of *Beverly* petitioned, because they were to contribute, being an Inland Town, towards the finding of a Ship with the Town of *Hull*, and were discharged thereof.

This is Truth, but not the whole Truth: for the Town of *Beverly* was discharged by reason of a Charter of Exemption granted unto them in *honorem S. Johannis de Beverly*, the King's Confessor; upon that Charter they were discharged.

They have objected likewise the Town of *Bodmin*, an Inland Town in *Cornwall*, was discharged a *Custod' Maris*: For this *Claus. 13 Ed. III. Pars 2. M. 14.* was vouched for it, that the Town was discharged of this Contribution.

For answer to that, it will appear, that one *Trussel* was then Admiral of the Fleet, and was by his Commission to be furnished from the Ports at their own Charge for three Months. My Lords, this appears, *Rot. Claus. 13 Ed. III. Pars 1. M. 35.* and so that Town, an Inland Town, was to be discharged. My Lords, likewise there were other Discharges; upon this Reason *Norwich* was discharged from finding of Men for manning of Ships, because the Admiral's Commission did not warrant it, *Rot. Scot. 10 Ed. III. M. 15.* for it only extended to the Ports; but yet *Norwich* was charged to find Ships, *Claus. 13 Ed. III. Pars 2. M. 14.* So *Colchester* was discharged for finding of a Ship, but it was because they were not within the Words of the Writ, as appeareth, *Rot. Claus. 13 Ed. III. Pars 1. M.* So to tell your Lordships a Story of a great Number of Land Tenures, discharged *de Custod' Maris*, and not to give your Lordships the Reason, it is nothing to the Purpose.

So, my Lords, having verified these five Points by the Precedents, and justified them by these

Reasons, and answered these Objections, I shall now come to the sixth Matter upon this Record; and that is, tho' no Cause be declared in the Writ, no Danger manifest, nor against what Enemies; that yet the King by his Writs hath commanded Shipping for Defence of Sea and Land; and in the King's Wisdom the Danger hath been reserved in his Breast, and not communicated to his People by his Writs.

First, I find that antient Precedents have been so, that it hath been reserved to the King himself, and those that he did depute to take care thereof; this appeareth, *Rot. Claus. 14 Joh. M. 2.* the King directed his Writs to *Herbert*, with a *Mandamus* to make ready all Ships for our Service, when we shall command; not a Word of the Cause declared, or an Enemy proclaimed. The same Roll, *M. 6.* the King by Writ, directed to several Parts, causeth all Ships that could carry six Horses or more to be sent unto *Portsmouth*; and the like Writs were directed to other Ports, *Rot. Pat. 15. Joh. M. 4.* The King appoints a Guardian upon the Sea-Coasts, and commandeth all Men that they should be *intendentes*; and other Writs in the same Roll, directed into many Counties with a *Mandamus*, *Claus. 17. Joh. M. 7. dorf.* Writs for taking of Ships, and bringing them into the *Thames* Mouth, without shewing any Cause: All this was done in the Time of King *Joh. In the Time of Hen. III. Rot. Pat. 13 Hen. III. M. 5.* a Writ commanding the Sheriff of *Kent* and *Suff. x* to arrest all Ships in those Counties to be at *Portsmouth*, to be ready to go into that Service we shall command. And it appeareth in the same Roll, that these Ships were able to carry but six Horses. So *Rot. Claus. 14 Ed. VIII. M. 13.* To our Bailiff of *Portsmouth*, and Keeper of our Navy, to make ready one good Ship, and to be ready to go in our Service, whither and when we shall command it. *Rot. Claus. 23 Ed. I. M. 5. dorf.* The King declares that he will have the Sea-Coasts in *Essex* guarded against the Enemy; and there commandeth them to be obedient to such an one, who had the Custody. *Rot. Pat. 23 Ed. I. M. 2.* The King writeth to all the Archbishops, Bishops, Sheriffs, Knights, and others, to be assisting unto *William de S.* who had the Custody of the Sea. So as by all these, it appeareth the King did give no Account to his Subjects, either of the Service, or the Time when. *Rot. Scot. 10 Ed. I. M. 13.* The King commanded all Ships to be arrested, and Men and Mariners to be sent to the Admiral of the Fleet, *ad proficiscend.* The same Roll, *M. 5. dorf.* a Matter fit for the Council, and not for the People to know. Same Roll *M. 20.* that they should do *prout nobis, &c.* the King oweth no Account to his Subjects of these things. *24 Ed. I. M. 19.* The King having commanded *E. S.* to take up 100 Ships fit for his Service, commandeth the Sheriff of *Northumberland* and others to be assisting. Same Roll *M. 17.* A Command to the same Effect, that all Ships should be taken between *Lynn* and *Berwick*. It was so likewise in the Time of *Ed. II. Pat. 9 Ed. II. Pars 2. M. 26.* Ships taken up at the Charges of the Inhabitants, to defend the Sea against Malefactors and Pirates. *Rot. Claus. 12 Ed. II. M. 11. dorf.* Writs directed to the Mayor and Bailiff of *Sundwich*, to make ready all Ships within their Port of 40 Tons, *Ita, &c.* that they be ready within three Days Warning to go, as we shall more fully declare; but the Service that was to be

be done, not mention'd. So it appear'd by other Writs to other Towns in the same Roll, 17 Ed. II. M. 11. Pat. 14 Hen. VI. M. 14. *Rex quia quibusd' arduis causis, &c.* doth assign John Hoxham to take up all Barges of 10 Men and upwards.

So in all these Times of King John, Hen. III. Ed. I. Ed. II. Ed. III. and Hen. VI. Writs have gone out generally; that the Service hath been concealed; and for Instruction, they were referred to the Council.

It standeth with Reason, for Resolutions of War are not to be communicated; his Majesty hath a separate Council of War from the Body of his Privy-Council.

Now, my Lords, for the Objection that hath been made against the first Writ of 4 Aug. 11 Car. that is, That the King hath not declared sufficient Cause for the issuing of this Writ: The King hath not communicated to J. S. and J. N. what the Employment must be; he must satisfy the Council at the Bar, which he ought not to communicate to his Privy-Council, but is reserved for his Council of War.

This is a Writ to command Obedience from his Subjects, and upon such Reasons as may satisfy any reasonable Man; and if fewer Reasons, it had been the better agreeable to all former Writs.

For the next Matter out of the Precedents, which is, that during the Times of the Sitting of Parliaments, these Writs have issued out by Command from the King, I have made it good upon my former Head.

The last Thing I observe upon the Precedents was this, That there was no Clause, no Particular in the Writ of 4 Aug. 11 Car. but was warranted by many Precedents: And that in this thing the King doth but *jubere per legem*.

First, For the Direction: It is, as in this Writ, sometimes upon one, or *probis hominibus* of such a County, sometimes the Direction is to Commissioners; sometimes one way, and sometimes another: and of this of the Precedents themselves, when your Lordships come to see them, I shall speak. They would have the King descend so low, as to give them a Reason why he doth it: some Reasons are expressed in the Writ; as *quia periculum imminens, quia pro defensione Regni, tuitione Maris, securitate subditorum, salva conductione Navium, &c.* My Lords, all these are expressed in the Record, 9 Ed. III. M. 12. Scot. 10 Ed. III. M. 20. Rot. Alm' 12 Ed. III. M. 1. Rot. Alm' 13 Ed. III. M. 13. I find in these Writs the same Matter, Power of Assessment, sometimes Levies by Distress and Imprisonment; nay, Seizure of Lands and Tenements, Goods and Chattels, that are expressed in former Writs: and that it was at the Charges of the Counties, both Inland and Maritime, this appeareth, Rot. Scot. 8 Ed. II. M. 9. *De Navigio providend. Pat. 9 Ed. II. M. 26. Pars 2. De Navigio providendo pro Custod' Maris.* Many more of these, Scot. 10 Ed. III. That the Wages of the Men that went in the Ships, and guarded the Coasts, were at the Charge of the County; this appeareth 10 Ed. III. M. 2. dorf. 60. Men appointed and sent to Portsmouth, and they refuse to go without Wages; but a Command came from the King, and commanded the Counties to pay them Wages. 10 Ed. III. M. 21. dorf. And his Predecessors not to bear any Charge whatsoever, tho' *pro defensione*. Rot. Alm' 12 Ed. III. Pars 1. M. 2. Those of Lynn, who refused to contribute towards the charge they were assessed by the Commissioners,

juxta quantitatem, were compelled to contribute; so Rot. Claus. 12 Ed. III. M. 8. the like *pro Custod' Maritim.* I might be infinite in these Particulars, but I will not trouble your Lordships.

Here they have made some Objections; tho' to answer the main Objection, I am not yet come. They say, this Power of assessing the People for Sums uncertain, ought to be no more than Escuage uncertain, and must be assessed in Parliament: And this Assessment for Defence, ought not to be by Commission, or the King's Writ. First, for the Authority, which is Littleton, he saith, fol. 20. *Que communiter dicit que Escuage serea assesse per Parliam'*

I do not find by the Register, where these Writs are; neither do I find them grounded upon any Act of Parliament. Some that are grounded upon Acts of Parliament, do recite them. But what if it be by Act of Parliament? A Service that is to be done by the Tenant to his Lord; what if this be so, that it must be assessed in Parliament? Your Lordships know that the Tenants must do according to the original Duties of them. And if this be, that the Lord shall not assess them but in Parliament, is that an Argument from a Tenant to a Lord in this Case?

This is a Service commanded not by Tenure, but by a King from his Subjects; this is suitable to the Reason of Law in other Cases: For those ancient Aids, which the Law doth require for the making of his eldest Son a Knight, or *pur file marrier*; are not those certain at the Common Law? Must there be an Act of Parliament to assess those Aids? The Books are otherwise.

But the King at the Common Law might require an Aid uncertain, and might assess it as he pleased. Glanville lib. 9. cap. 8. Brit. fol. 57. cap. 27. Brañ. lib. 4. cap. 16. So as at the Common Law they were uncertain. 11 Rep. fol. 68. D. It is said there, the Statute of Westminster 1 cap. 15. which puts reasonable Aid in certain, doth not bind the King; *a fortiori* we must not bind him to a Certainty for the Defence of the Realm. No Man tell what the Preparation must be, or the Charge thereof. If they can shew an Act of Parliament, that limits the King for the Defence of the Realm, they say something.

But they say the Sheriff is no proper Officer, not sworn to execute this Writ.

This is as wide as the other: for, my Lords, the Sheriff is sworn to execute all Writs that shall be delivered to him for the King's Service. And surely this Writ, if it come to him, he must at his Peril execute it.

First, The Direction of those Writs have been many times as well to the Sheriffs as the Commissioners, Rot. Scot. Ed. III. M. 13. Claus. 15 Ed. III. M. 17. The King commandeth the Sheriff of many Counties to furnish Men with Arms, Victuals, and other necessary Provisions, both for Sea and Land. 23 Ed. III. M. 5. dorf. 24 Ed. I. Rot. 7. 9. Ex' Remem' Regis 11. The Lands of the Sheriffs and other Officers, were extended because of their Negligence in doing of their Duties concerning those Writs, 25 Ed. I. Ex' Remem' Regis. A Commission went out to enquire of the Execution of the Officers in the Duty of their Places.

Besides these Writs at the Common Law, this is seconded by the Authority of the Common Law, Register 122, or 127. The Writs that go out to the Sheriff (for they go out to the Sheriff as to Commis-

Commissioners) it is left to the Discretion of the Sheriff or Commissions, as occasion shall require, *Register* 191. *Bre. de partitione*, before any Statute was made concerning the same, that Writ went out generally to the Sheriff; so that in all Times and Ages it hath ever been in these Cases, where no Certainty, left to the Discretion of the Sheriff and Commissioners.

My Lords, for the Manner of the levying *per Distractiones*, and by Imprisonment of those that do refuse: Is this new? It hath been so in all the Precedents that have been vouched, both by Distresses and Imprisonment. For the Distress: If the King makes a Corporation, and gives them Power to ordain for the Common Good of the Corporation; and if they make an Order for the Payment of Money, and that those that do not pay the same, shall be distrained; is not this adjudged a good ordinance? 5 *Rep. fol. 64. Clark's Case, Trin. 7 Hen. VII. Rot. 3.* There is a Benevolence granted to *Ed. IV.* for his Voyage into France, one *T. R.* did deny Payment, and he was distrained for his Proportion.

They except to the Penalty of the Writ.

The Penalties of former Writs have gone higher. *Inter Commun'* in the *Exchequer*, there was a *Mandamus* to assesse those that were employed in the Provision for Shipping; and the *Mandamus* was, *sicut nos & honorem nostrum & salvationem Regni diligitis.* In that Roll that is so often remembered, *Rot. Scot. 10 Ed. III. M. 11. dorf. quod, &c.* their Lands, Goods, and Chattels to remain seized in our Hands. And *M. 2.* under Pain of Forfeiture of Life: *11 Ed. III. M. 2.* to cast those in Prison that did refuse. *Rot. Claus. 12 Ed. III. M. 18. dorf.* Writs directed to *Henry Hufsey*, and others, to punish those that refused to contribute; and to imprison them, and to seize their Lands and Goods into the King's Hands. *Claus. 13 Ed. III. pars 1. M. 36. dorf.* to seize into their Hands the Lands and Tenements of the Refusers. *Rot. Franc. 21 Ed. III. pars 1. M. 11.* the King commands Ships, under pain to lose Life, and all their Estate, *Rot. Franc. 10 Rich. II. M. 23.* to imprison those that are contrary, under forfeiture of all they had. So as your Lordships see *Mr. Holborne* was very far mistaken.

My Lords, in the next place, they have laid hold on the Distance of Time: They say there was seven Months between the *Teste* of the Writ, and the Time of the Rendezvous; that the King in that time might have called a Parliament, and there might have been an Aid granted, and the Service performed in a Parliamentary Way.

But they may remember the 40 Days between the *Teste* and the Return of the Writ for summoning a Parliament; then the time spent in presenting of a Speaker; the solemnity used before they begin their Grand Committee; their Reading of a Bill thrice, the Debate about Passing of it in both Houses before it be granted; and after all this be done, and the Parliament ended, a Time for the levying of the Money must be had, and when it is levied, Time for the Return of it; and when it is returned, Time for the expending of the Money: and the Preparation will go slowly on till the Money be returned. 48 *Hen. III. M. 4. dorf.* There was a Command for guarding of the Sea-Coasts. *Claus. 23 Ed. I. M. 5. dorf.* The Port of *Yarmouth* commanded to find Ships for a certain Time, *Rot. Scot. 11, 12, 13 Ed. II.* They are put down in that Roll, *M. 8.* that there was

a Command for a *Navale Subsidium* for three or four Months.

So as, my Lords, for the Time of Preparation and for the Time of the Continuance, it hath ever been referred to the Wisdom of the King. My Lords, for the *Spanish* Invasion, that hath been so late in our Memory, I find by the Books that are kept in the Council-Chamber, that the Preparations were in *Octob. 87.* against the coming of the *Spanish* Fleet in 88, which did not set forth till *June*: I find no Parliament called that Year. And by Letters and Orders from the Council-board, those Ships, and Defence that was made, was *ad sumptum* of the Subject.

So, my Lords, by this that hath been said, it doth appear to your Lordships, that there is not any Clause in this Writ, either for the Direction, Motives, Mandates, or Penalties, but are warranted by former Precedents in a higher Degree.

My Lords, these are the Precedents that I have collected, and reduced to these several Heads. I shall now remember to your Lordships divers others. And in the first Place observe, that *William I.* came not to abrogate any former Law, but was sworn to observe *Antiquas leges Anglicanas*, that appeareth in *Lambert, fol. 125. prout.* So every Man by this Law, that was but a Confirmation of former Laws, must provide *pro viribus & facultatibus.*

I find by the Grant that *William I.* made to his Abbey of *Battel* of his own Foundation, a Charter to be free from *Danegelt & omnibus auxiliis.* If they had not been freed, they had been subject. I find *Pat. 7 Johan. M. 3.* the King authorized *Walter Scot* and others, *quod omnes Naves, &c.* which they should find, to arrest, and command all to assist, as they love us and our Peace in our Realm. 14 *Johan. M. 6.* as your Lordships have heard, all the Ships were arrested, that could carry six Horses, and to be at *Portsmouth, M. 2.* all the Ships in the Port were to go in his Service, without expressing for what, and unlade. *Claus. 12 Johan. M. 7. dorf.* commanded all Ships to be brought into the *Thames* Mouth. So here was not a laying down, but a Continuance of it. So in *Hen. III.'s* Time, *Claus. 14 Hen. III. M. 12. dorf.* all Ships taken that could carry sixteen Horses. *Claus. 15 Hen. III. M. 17. dorf.* Command for the furnishing of Arms, Men with Victuals, and other Provisions for forty Days. And here was the like Command to Sheriffs in several Counties. *Claus. 26 Hen. III.* the King commandeth the Men of *Yarmouth*, to have their Ships ready with Men and Arms; the same Roll, to find ten Ships to go to *Picardy.* *Pat. 48 Hen. III. M. 3. dorf.* Writs to the several Port-Towns, that no Ships should go Beyond Sea, but all to stay at home. *M. 5. dorf.* Those that returned from guarding the Sea-Coasts without Leave, were punished, by seizure of Goods and Chattels. *M. 4.* Same Roll, *dorf.* Provision to be made till further Orders be had. So it was not confined to Time, but Occasion, as need should require. And there be divers others in the Time of *Hen. III.* upon other Occasions, which I have remembered. In the Time of *Ed. I.* 21 *Ed. I. M. 23.* It appeareth there, that all the Port-Towns were appointed by the King and his Council, how many Ships every one of them should set forth. *Rot. Vaf. 22 Ed. I. M. 11. dorf.* The King of *England* in that Writ stileth himself *Dominus Regni Scotie, &c.* And sends his Writ to the King of *Scotland*, to let him know, the King

of France had taken part of *Gascoigne*, an Inheritance of the Crown of *England*, that he should *in fide & homagio*, be at *London* with Horse and Arms, &c. This Writ is very observable, the King of *England* is *Superior Dominus Scotiae*. A part of *Gascoigne* was then lost. The King of *Scotland* was required by this Writ, as well as requested, to give him Aid for the Recovery of those Grounds taken from him in *Gascoigne*. My Lords this Power is not confined only to *England*, but it reacheth, as GREAT LORD, into *Scotland*. Also into *Ireland*, *Vasc.* 22 *Ed. I. M. 5. dorf.* The King by his Writ commandeth divers Earls, and others, in *England* and *Ireland*, to do the like, to send Men to *London* with Horse and Arms. The same Roll, *M. 13. dorf.* All that claim to be of the Liberty of the Port so commanded. *Pat. 23 Ed. I. M. 1, 5, 7.* All Ships of 40 Tons were to be furnished and provided for the King's Service. *Claus. 23 Ed. I. M. 5.* Every Man is compelled to contribute. The same Roll, *M. 4.* those that did not inhabit in maritime Towns, yet if they had Lands there, they must contribute, resident or not resident, within or without the Liberty, all must contribute.

My Lords, in that Writ, which is *Claus. 23 Ed. I. M. 5. dorf.* I will observe these things: 1. A Command to all Bishops, Abbots, Lords Spiritual and Temporal, *Quod sint intendentes & respondentes ad custodiam Maris.* 2. In contingent Causes; *Causa, &c.* 3. The Writ saith, *quod omnes ad arma, &c. secundum statum, &c. ad transfretandum cum nobis*; and Possession of Goods and Lands to be taken for the Custody of the Sea, as in former times they were accustomed: so it is to be done in this manner as in Times past. 4. The Writ was directed to several Sheriffs, *per corpora, bona, & terras*, to distrain.

Next 24 *Ed. I. M. 15.* the King commanded the Archbishops, Bishops, Barons, and all the Commonalty, to defend the maritime Parts. *Claus. 24 Ed. I. M. 19. pro custodia Marit.* There was another of *Symon de Spencer*, which I remembered before 24 *Ed. I. Rot. 76.* Another of the like. *Ext' Remem. Regis, Claus. 25 Ed. I. M. 26. dorf.* the King moderateth the Expences of the Country when the Danger ceaseth. *Claus. 25. Ed. I. M. 12.* The King commandeth the Sheriffs of several Counties, and others, to bring all the Ships to be ready for our Service, when we command. *M. 26.* The like Command. *De custodia Marit. Pat. 31 Ed. I. M. 20.* Power given to *Thomas de B.* to raise Forces in *Cumberland* to resist the *Scots*; and those that did refuse, to seize their Goods. In the Time of *Ed. II. Claus. 2 Ed. II. M. 21.* the King commandeth divers Towns to set out Ships against the *Scots*; and after, by special Writs, some of those were discharged. *Rot. Pat. 9 Ed. II. Pars 2. M. 6. Pat. 16. Ed. II. M. 11.* A Writ directed to *Sir Thomas Weston* and others, to array all between 16 and 60, or to take their Lands and Goods, if they did refuse, *Pars 1. M. 7.* of the same Roll, *Claus. 20 Ed. II. M.* — the King doth there declare that those that stay at home ought to contribute to set forth Ships, and for the Wages of the Men employed. *Claus. 20. Ed. II. M. 6.* Writs directed to the Scholars at *Oxford*, they were not exempted, but commanded to keep *Southgate* safely. *Rot. Vasc. 18 Ed. II. M. 18.* The King writeth to the Archbishop and others, commanding them to have Horses and Men in a readiness, as often as need shall require. For Time of *Ed. III. Claus. 2 Ed. III. M. 13.* and *M. 22. dorf.* to *Southampton*, and to several other Towns, for their Shipping, a-

bove 40 Tons. *Pat. 3. Ed. III. Pars 2. M. 6.* The King commandeth the Sheriff of *Cornwal* to distrain Knights and others, that abide not upon their Lands in maritime Parts, and to imprison. Those Years of 10, 11, 12 and 13 of *Ed. III.* having been remembered 21 *Ed. III.* The King concerning the Defence of the Sea and Sea-Coasts, gave special Rules to be observed, both for the Number of the Ships and the Men, and the Quality of their Persons, and for the Proportion of their Wages; as appeareth, *Pat. 21 Ed. III. Pars 1. M. 26, 17.* where there was special Order taken for the guarding of the Sea and Sea-Coasts at the Charge of the Inhabitants. *Rot. Franc. 21. Ed. III. Pars 1. M. 11.* Command to the Sheriff of *London* to arrest all Ships in *London* to be sent to *Calais*, to resist the Enemies against us then about to come. *Rot. Franc. 25 Ed. III. M. 9.* The King reciteth, that *France* made a Preparation to invade the Realm, and gave a Power to some to raise Forces; and commandeth the Sheriffs to raise the *Posse Comitatus*, to assist the Commissioners. *Pat. 26 Ed. III. Pars 1. M. 7.* The King, by his Writs to several Counties, commanded all Men between 16 and 60 to be in readiness to resist the *Scots*. *Rot. Franc. 25 Ed. I. M. 31.* commanding all Officers and Ministers to assist *Andrew de Gulpho*, in the raising of Forces for Shipping. So as in that Roll likewise, your Lordships see that the Inland Counties were commanded for Shipping. *Rot. Franc. 28 Ed. III. M. 6.* the King appointed *Ro. Co.* and *Ro. A.* to arrest all Ships of 20 Tons and upwards, between such a distance, and to bring them to *Southampton*, *Rot. Scot. 29 Ed. III. M. 13.* Several Writs were directed to the Bishops of *Durham* and *Carlisle*, and others, for the arraying of Men. *Rot. Franc. 40 Ed. III. M. 37.* The King sent forth divers Writs, commanding *quod, &c.* with all their Forces, they should assist to the safe keeping of the Sea-Coasts, to resist the Malice of the Enemies. *Rot. Franc. 50 Ed. III. M. 47. dorf.* Command to make Proclamation, that all that have Land upon the Sea-Coasts should repair thither with their Families. So in all Ages, and at all times Writs have issued both for the Defence of the Sea and Land by the King's Command. In the time of *Rich. II. Rot. Parl. 6 Rich. II. M. 42.* that was objected as a Record against the King, but maketh clear for him: *Que dit que le Roy persons assemblees, en Parliament, est desire de vivre del reveneus del Corone car Escheats Marriages & Forfetures sont pur le Defence nostra Royalms.* The King answers, *Le Roy volet de faire in ceo Case come per de advise des Seigniors, &c.*

Your Lordships see they desire of the King, that he would live of his Revenues, that the Profits of Escheats, Wards, &c. might be kept for the Defence of the Realm. The King giveth them this Answer, That he will do in this Case by the Advice of his Lords, as shall be most for his Honour and Profit: So no Reason to make any Enforcement out of this Record, that the Profits of Escheats, Wards, &c. should go for the Defence, because the King maketh no absolute Denial unto it, saying, that he will do as he shall be advised by his Lords. *Rot. Franc. 7 Rich. II. M. 18.* That the Lords beyond the Seas be arrayed and armed according to their State and Faculties. *Pat. 8. Rich. II. Pars 2. M. 15.* A Command, that all between 16 and 60 be in a readiness. *Rot. Franc. 10. Rich. II. M. 23.* Arrays thro' all *England*. And so in the Time of *Hen. IV. Rot. Parl. 5 Hen. IV. M. 24.* for the arraying of all Men throughout *England*, and those that were impotent, and could not go, to contribute unto it. 3 *Hen. V. M. 36. dorf. Pat. 13 Hen. VI. M. 10.* General Commissions for the arresting

resting of Ships, without declaring the Cause. *Pat.* 14 *Hen. VI.* assign'd *Joh. de N.* to arrest all Ships in the Port of *Southampton*, to do Service as the King shall command, there was no Cause declared. *Pat.* 28 *Hen. VI. M.* 2, 13. Commissions to array, and those arrayed to keep in Array, with diligent Watches into several Counties. 1 *Hen. VII. pars* 1. The King writeth to Sir *Fitz Hugh*, to array Archers and Horsemen.

So that it appeareth by those Precedents in all Ages, that those Defences which have been made by Sea and Land, are not confined to Port Towns, and Maritime Places, but *per totam Angliam*.

In the next Place I shall give a particular Answer to some objections that have been made, as have not fallen in my way; and to the Acts of Parliament, Reasons, Records and Book-cases, urged by the other Side.

The Third Day's Argument of Sir John Banks, his Majesty's Attorney-General, before all the Judges in the Exchequer-Chamber, on behalf of his Majesty.

May it please your Lordships,

THE Matter that I did propose to insist upon this Day, was the answering of the Objections. I shall use no Preamble, no Repetition to introduce what I have to say: But in the answering the Objections, I shall first give answer to the several Acts of Parliament insisted upon, then to the several Records and Reasons that have been urged on the other side. And in the last place, I shall answer the Exceptions that have been taken to the Writ, 4 *Aug.* 11 *Car. Mittimus*, and Form of Proceedings.

The first Act they have insisted upon, is that of *William* the first, call it what you will, an Act or a Charter. The Words of it are verbatim in *Mat. Paris*, *Volumus & concedimus, quod omnes liberi homines sint quieti ab omni tallagio, &c.*

It doth no way trench upon the Royal Power: for as in the beginning of my Argument, I open'd to your Lordships, that this Power was inherent in the Kings of *England* before the Conquest; here is only a Concession that they shall be free *ab omni injusta exactione*. Now this is no unjust Exaction, for it is of common Right. And then the other Part of that Law doth explain it; for it doth say, *Quod sumus fratres conjurati, &c.* so for the Defence of the Realm. By the same Law they would urge to take away the Power, by the same Law it is reserved.

The next thing they insisted upon, was the Charter 17 *Johan.* or on *Magna Charta* as they call it; which indeed is mentioned in *Mat. Paris*, and may be under the great Seal. The Words of that are, *Nullum scutagium vel auxilium nisi per commune Concilium, nisi ad primum filium militem faciend' & maritand' fil', &c.*

This Charter, as it was acknowledged by themselves, was granted at *Running Mead*, where the Banners were display'd, when there was War or Rebellion between the Barons, Commonalty, and the King. It was not assented unto, the King sitting in Parliament: For Parliaments are not called with Arms, and in the Field. It was, in truth, an enforced Act from a distressed King. Shall this bind the Crown? I shall remember the Act of Parliament made 15 *Ed. III.* and there only were things that were in Parliament enacted derogatory to the Crown, as this is; That no Peer

should be questioned but in Parliament; That no great Officer be removed but in Parliament; That no Clergyman shall come before Temporal Judges. These were Things that were much derogatory to the Prerogative of the King, 15 *Ed. III.* That King the same Year, when he was better advised, did make a Charter which is in print, for the recalling of this prejudicial Act of Parliament still in force. It appeareth by the Parliament-Rolls and printed Books, where the King declareth it was drawn from him with an unwilling Mind, and was prejudicial to the Prerogative of his Crown; and therefore by that Charter it was repealed.

But my Lords, if that Charter 17 *Johan.* should be in force, why hath there been no Confirmation of it in so many Parliaments since? The Statute of *Magna Charta*, 9 *Hen. III.* hath been confirmed one and thirty times; why no Confirmation of the Charter 17 *Johannis*? And why have we not heard of it since that Time? The Reason for it is, that it trencheth too much upon the Prerogative of the King and Crown.

But take the Words as they are, what be they? *Nullum scutagium vel auxilium nisi per commune concilium Reg. nostri.* If these were an Act, doth it extend to take any thing away that belongs of common Right unto the Crown? And that hath been the Exposition of my Lords the Judges, of Acts of Parliament; that Aids due of common Right, are not taken away by general Words, *Commune, &c.* And therefore these Aids due of common Right, as this is, are no way taken away.

Besides for the Statute of *Magna Charta*, it is made 3 *Hen. III. cap.* 29. *Nullus liber homo capiatur, aut imprisonetur nisi per legem, &c.* The general Words of this Act of Parliament do no ways impeach the Royal Power, for this Royal Power is *Lex terre*.

Besides, in these Precedents, 14. *Hen. III.* 15 *Hen. III.* 26 *Hen. III.* 48 *Hen. III.* and all the succeeding Kings remembred in all of them, that these Writs went out to provide Shipping at the charge of the Inhabitants; so, surely, if they had been taken away by *Magna Charta*, the Writs after *Magna Charta* would not have used it.

But then there hath been objected, the Statute *de Tallagio non concedendo*. If it be 25 *Ed. I.* as it is printed, or 34 *Ed. I.* or as the Petition of Right doth recite it *temp' Ed. primi*, be it when they will under favour, there is nothing in that Act doth take away this Power: The Words are thus, *Nullum tallagium vel auxilium sine voluntate Episcoporum Baronum Burgensium &c.* Mr. Solicitor, in his Argument, upon probable Grounds, did make question whether this was an Act of Parliament yea or no: 1. In respect it was not inrolled amongst other Acts of that Time. 2. because by the penning of it, it may seem rather to be an Abstract. 3. Because when the other Acts of those Times were sent over to *Ed. I.* to be sealed and confirmed, no such Act was sent over.

My Lords, I will not lay hold on this, but will admit with them that it is recited in the Petition of Right to be an Act of Parliament: So I will admit, yet to wave nothing that hath been said, but by way of Admittance I give this Answer.

First, that it taketh away no Aids that are due by the Laws of the Realm; yet the Words are general: *Nullum tallagium vel auxilium nisi assensu Parliamenti, &c.* Here is not in this Act of Parliament so much as any Exemption of an Aid to

Knight the King's Son, or to marry his Daughter; yet in this the Law is observed, that these Aids are not taken away; and so it is declared, 25 Ed. I. cap. 11. which doth reduce these Aids unto certainty. So as your general Words of *nullum auxilium* will not do it, if this be an Aid due by the Laws of the Land.

Then I say this is not properly an Aid, but a Contribution of King and People for the Defence of the Realm, it is *ad proficiendum cum Navibus nostris*: then I say this Power is *inter jura summe Majestatis*, one of the highest Prerogatives of the King, and shall never be taken away from the King. 17 Hen. 7. Statute *Quia emptores terrar'* doth not extend to the King to take away his Tenure. If you will have such a high Prerogative taken away, you must shew it in the Acts of Parliament. Nay, my Lords, I say that in the Times of Ed. 1. this Royal Power is expressly reserved by Act of Parliament to the Crown; and therefore in after-times never intended to be taken away.

First, I shall inforce it out of the Statute of 25 Ed. I. cap. 5, 6. that doth recite, that Aids and Taxes that have been given unto us towards our Wars, and other Business of our own Grant and good Will, howsoever they were made, might turn to a Bondage, &c. We have granted that we shall not draw these Taxes into a Custom, &c. and do grant that for no Business henceforth, we shall take such manner of Aids, but by a common Consent of the Realm, &c. saving the ancient Aids due and accustomed.

This Aid is not taken to be an Aid, for this was never given to the King of England, but taken by Royal Power: the Statute of 25 Ed. 1. speaketh of such Aids as have been given, and excepteth such Aids as have been due and accustomed. And by the Precedents shewn, it appeareth these have been due and accustomed. It hath been desired in *fide legiantie*, and with a *Mandamus*. 2 Ed. I. cap. 1. this Statute doth confirm the great Charter, and the Charter of the Forests; but in the End of it in the Parliament-Roll, that notwithstanding all these things before-mention'd, both the King and the Council, and all they present at the making of this Ordinance, will intend the Prerogative of his Crown to be saved unto him.

A further Answer to the Statute *de Tallagio non concedendo*; the Practice that hath been since the time of Ed. I. in the time of Ed. II. Ed. III. Rich. II. and the Practice since, doth shew plainly, that it was never intended by the Statute to take away this Royal Power.

But then there was a Thing materially objected, if the Records would have warranted what had been said, and that was, *Rot. Parl.* 29 Ed. I. and then it was said, That tho' there be a Saving, 25 Ed. I. and 28 Ed. I. yet here is no Saving in this Act; so then if not for the Act 29 Ed. I. all was lost.

My Lords to this I say, *Nul tiel Record*. And therefore I shall desire, that this which they call an Act, 29 Ed. I. I may attend your Lordship's with. By this Record it doth appear that it is only a Record of the Perambulation of the Forest, and no repealing of any former Law; neither is any thing enacted by that Law, derogatory to the Crown.

The next Statute objected, is 1 Ed. III. cap. 5. the Words are these: That 'no Man shall be charged to arm himself otherwise than in the time of the King's Progenitors; and that none

' be compelled to go out of his Shire, but were 'Necessity requires, and the sudden coming of 'strange Enemies within the Realm.'

So this Statute is relative to what hath been formerly done: What hath been found done formerly, appeareth by the Records of King John's and Ed. the First's Time, that the Subjects were to set forth Shipping at their own Charge: then those Writs went out in King John's and Ed. the First's Time, as hath been shewed. And then this Statute alloweth in two Cases, one where Necessity requireth, the other upon coming of strange Enemies; and this Writ requireth no other, but where there is Necessity in the King's Judgment.

The next Statute is 1 Ed. III. cap. 7. which was objected, where Men at Arms were conveyed into Scotland and Gascoigne without Wages; the King saith, it shall be done so no more.

The Statute mentioneth Scotland and Gascoigne, foreign Wars, and so foreign to this Business; for tho' Scotland was subject to the Dominion of England, yet it was a divided Kingdom. 8 Rich. 2. Continual Claim. Com. 376. That a Fine shall be paid by a Stranger, because he was in Scotland at the time of the Fine levied. *Bract.* 436. An Abjuration into Scotland is good. 6 Rich. II. Protection. 46. That Scotland is out of the Realm; therefore this Statute that speaketh of Gascoigne and Scotland, speaketh of foreign War not of Defence.

The next Statute is 18 Ed. III. cap. 7. Men of Arms, Hobellers and Archers, shall be at the King's charges; the Statute speaketh likewise of going out of England.

But he that is upon the Defence at Sea of the Kingdom, it is no going out of England; for that see 6 Rich. II. Protection. 40. The sending of Men and Ships for the Defence of the Coasts, is no going out of England.

The next Statute is 25 Ed. III. cap. 8. no Man shall be compelled to find Men of Arms, Hobellers or Archers, otherwise than those that hold of such Service, without Consent.

My Lords, this Statute of 25 Ed. III. doth not take away any former Laws. These three former Statutes of 1 Ed. III. 18 Ed. III. and 25 Ed. III. are recited in the Statute 4 Hen. IV. and 'tis enacted, they shall be firmly holden and kept in all Points; so if these Statutes must be kept firmly in all Points, then the Statute of 25 Ed. III. doth not repeal any of these. Now that of 1 Ed. III. cap. 15. reserveth a Power to the Crown where Necessity requireth, and where sudden Enemies come. 26 Ed. III. Those Ships were sent forth, and commanded for the defence of the Realm, at the charge of the Subjects, *Rot. Franc.* 26 Ed. III. m. 4, 5. *Rot. Franc.* 28 Ed. III. m. 6. So as clearly there is no Part of this Power impeached by this Statute of 25 Ed. III.

Then they have objected *Rot. Parl.* 2 Rich. II. m. 3. That upon a Council of a great many Earls, Barons, and Sages of the Realm, assembled by the King's Privy-Council, it was there declared what Danger the Kingdom was then in, and that Money was wanting; they declared they could not remedy these Mischiefs, without charging the Commons, which could not be done, but by a Parliament.

This is no Act of Parliament; it is but a Parley, or Discourse, or Communication between the Lords and Commons; it was 2 Rich. II. in the Non-age of a young Prince who did not assent; for there was no Royal Assent unto it, so no Proof in this Case.

The next Record they objected was, *Rot. Parl.* 9 *Rich. II. m. 10.* there was a Tenth and a half, and a Fifteenth and a half granted to the King, upon Condition contained in the Schedule; which is, that the King should assent that the great Officers of the Kingdom should be named by Parliament. And Servants appointed for dispend of the Money.

If the King doth accept of the Subsidies and Aid upon Condition, doth this take away his Royal Power? There is no more done in this than was in the Parliament 21 *Jac.* for there the Officers and Treasurer were appointed by the Houses of Parliament.

But then further it doth appear, that this was granted, *pro viagio Johannis Regis de Castile, &c.* so that it was not granted for the Custody of the Sea, but for that Voyage.

The next Record they insisted upon was, *Rot. Parl.* 8 *Hen. IV. m. 2.* A Tenth and a half, and a Fifteenth and a half granted with a Protestation, that this should not be brought into Example.

This is nothing, no more than the other. A Parliament grants a Subsidy, with Condition it should be thus and thus employ'd; and the Protestation can no ways prejudice the Crown in this.

And 7 *Ed. IV. Rot. Parl. m. 7.* hath been objected; there the King's Speech is enter'd upon the Roll, that he will not charge his Subjects but upon great and weighty Occasions.

My Lords, this is nothing but a gracious Speech of the King to his Subjects, that he would charge them but in such Cases as should concern the Defence of the Realm.

The Statute next objected was, 1 *Rich. III. cap. 20.* that the Subjects from henceforth shall in no way be charged by any such Exaction or Imposition.

This is no Benevolence, but a legal Due.

Next they object, the Statutes of Tonnage and Poundage granted to the Crown for the Defence of the Realm.

First, In answer to this, I say, that there is no Act for Tonnage and Poundage that is now in force, neither are any Duties taken to the Crown upon any Act of Parliament. Those Acts for Tonnage and Poundage that have been granted, make for the Crown. And therefore, if your Lordships look the Statute 1 *Eliz.* and 1 *Jac.* it was given towards the King's Charges, for the Defence of the Realm and Safeguard of the Sea: It was given towards his Charges, it was not intended of extraordinary Defence. So, my Lords, these Acts, when they were in force, did give this but towards the Charges. It is so now; for this which is done, and those Contributions levied, are but towards his Charges: and that will appear upon account, that his Majesty for these three or four Years, hath expended more upon the Sea, than any of his Progenitors.

Besides, an Acknowledgment in these Acts, that this Defence could not be done without the intolerable Expence of his Majesty; these Aids are of Necessity, and are not to be lacking at any time.

My Lords, in the next place, they insisted upon the Petition of Right, 3 *Car.*

It was never intended, that any Power of the King, by his Prerogative, should be taken away or lessened by it. I dare be bold to affirm, for I was of that Parliament, and was present at the

Debate, that there was never a Word spoken in that Debate of taking away any Power of the King for the Shipping-Business.

Besides, it is declared, assented unto, and denied by none, that there was no Intention by the Petition of Right, to take away the Prerogative of the King. The King thereby did grant no new Thing, but did only confirm the antient and old Liberties of the Subject.

My Lords, these were the Acts of Parliament that have been objected and insisted upon by the other Side.

In the next place, for an Answer to scandalous Objections. It hath been said by Mr. *Holborne*, of these Statutes of 25 *Ed. I.* and 28 *Ed. I.* that at the Times of making these Laws they were positive, no such *Salvo* was in them of the King's Prerogative: That the Acts before *Hen. IV.* were penned by the King's Council, and those Clauses of a *Salvo* crept in by the King's Council.

These were bold and presumptuous Assertions of the Acts of Parliament made in that Time of *Ed. I.* that there should be any Clauses added by the King's Council, that should not be added to the Record. I have here the Parliament Record, that these Exceptions are recorded as fully as any Part of the rest of the Record, and those Laws confirmed since: therefore to make any such Assertions against Records, ought not to be done; he may object the same against *Magna Charta*, which is for the Liberty of the Subject.

In the next place they have objected out of the Parliament Books, 33 *Ed. I.* that upon a Petition made to the King, to have Restitution of Money taken, that the King did ordain the Treasurer should give Satisfaction.

I shall desire it may be read, and you shall see, those Moneys for which Direction was given for Satisfaction, were for Goods taken for the King's Use. *Rot. Parl.* 33 *Ed. I. fol. 105. dorf. per scrutin' pro guerra, &c. Respons. per Regem, Rex ordinavit per Concilium quod satisfactio fieri tam cito quam poterit.* So this Record was for Moneys taken for the King's Use, therefore Reason Satisfaction should be given, *Perambulat' Forest' Rot.* 20 *Ed. I. de Libertatibus Angl.* 18 *Febr. Lincoln.* So here is no taking away of any former Act of Parliament; it referreth to what shall be futrely amended and revoked.

The next they objected was, *Rot. Parl.* 8 *Ed. II. m. 8.* the Fryars of St. *John's* at *Jerusalem* did petition to have Satisfaction of 2354 *l.* taken by the King out of their Treasury.

Now, because this Record was vouched two Days together, I desire it may be read; and upon the reading, it will appear, to be upon another Purpose, *Sur' le Roy, &c.* there was Cause and Reason why the King should make Satisfaction.

The next Record was, *Pat.* 26 *Ed. I. m. 21.* and that was highly magnified by them: That there were several Commissions went out to enquire of *Gravaminibus*, of Wools, and of other Particulars, *de Custod' maris*; and in this it was affirmed, that (as all the King's Counsel took their Notes) these Clauses were omitted out of the Writ that concerns the Forfeiture of Lands, Goods and Chattels, or Seizures.

This Commission maketh nothing to this Purpose, for like Commissions daily come, where there are Taxes laid upon Men heavier than ought to be. Then a Commission to enquire of Grievances

ances in this kind, wherein an Answer of any thing unjustly taken shall be restored, but not a Word to impeach this Royal Power. And, my Lords, for the Penalties in the Writ, 31 Ed. I. m. 20. Power to seize the Lands and Goods of the Refusers, 20 Ed. II. m. 10. under Forfeiture of all their Goods, 10 Ed. III. m. 5. *dors. Claus.* 12 Ed. III. m. 18. *dors.* that the Penalties and Commands were as high in this Commission as before.

The next Objection was, that the Kings of *England* have always consulted with their Parliament concerning the Defence of the Realm, and that the Aids and Subsidies for Defence have been granted by Parliament.

This is no Argument to impeach this Royal Power; for if in time of War the King will consent to it, shall this take away his Royal Power? In the Times of *Edw. III.* and *Rich. II.* did that take away the King's Royal Power, that he may not ordain Standards of the Money himself? He may by his Royal Power erect Courts of Justice: Shall that take away this from his Power, because the Court of Wards was erected by Court of Parliament?

Next they objected *Rot. Alm.* 12 Ed. III. *pars* 3. m. 22. That *Edw. III.* was so penitent for what he had done, that he sent to the Archbishop of *Canterbury* to pray for him; and that the People would forgive him for laying those Taxes upon them, which his War compelled him unto, and he would never do the like again.

You shall see, it was only to pray for him for his Voyage into foreign Parts, (and he caused the Record to be read, beginning thus; *De excusando Regem versus populum*, and ending, *de gravaminibus*) dated at *Berwick upon Tweed*. Your Lordships see nothing by this Record, but the Desire of a Prayer; first to pray for the King for his Voyage beyond Seas; the other, concerning the Charges and Impositions. Surely this Contribution commanded in the Shipping-Business, was none of these Charges, Taillages, or Impositions. This his Desire to the Archbishop was not only in the 12th Year of his Reign, but the like in *Anno* 25, 26, and 50. so surely those Prayers of the Archbishop were for other Causes, and not for this, which was for the Defence of the Realm.

Next they do object *Rot. Franc.* 7 *Rich. II.* m. 13. That the King assigned Tonnage and Poundage to *Henry Earl of Northumberland* for guard of the Seas.

My Lords, it doth appear by the very Record itself, that this was only for an ordinary Defence, and not for an extraordinary Defence.

Then they insisted upon the Parliament-Roll 13 *Hen. IV.* m. 43. the Office of measuring of Linen-Cloth, a Half-penny upon the Buyer, and as much upon the Seller, and other Fees upon Long-Cloth; the Parliament, 13 *Hen. IV.* declares it to be a void Office, and that accordingly Judgment was given, 13 *Hen. IV.* Out of this he would conclude, that therefore there should be no new Office, and that an Office granted with a Fee is void in Law.

For answer to this: First, The Reason why that was a void Grant was this; it appeareth, 4 *Ed. I.* that the Office of Measuring of all Woollen and Linen-Cloths, was one entire Office. If the King will grant that to another Man which did intrench upon the former Office, a void Patent; therefore a strange Conclusion, that because

this Office was void, therefore no new Office to be granted, 22 *Hen. VI.* fol. 9. The Office of surveying the packing of all Cloth, a good Office, 27 *Hen. VIII.* fol. 28. The King granted to one to be his Surveyor, a good Office? *Fitz-Her.* saith because it had no Fee, therefore it was a void Office. And now at the Bar it is said, because it hath a Fee, it was a bad Office. If this Reason may hold, all antient Offices may fall. 34 *Hen. VI.* Office to be Marshal of the *King's-Bench*; 12 *Hen. VII.* 15. To be Warden of the *Fleet*. Nay, it taketh down all Offices that have been erected for the publick Good, and upon just Occasion, as the Office of *Subpenas* in *Chancery*, *Star-Chamber*, &c. All those within time of Memory must be shaken by this.

In the next place they object, that these Contributions, they are in Substance Impositions; and that the King should not impose upon the Subject by his Charter, or by his Writ; but it must be done by common Consent in Parliament.

Your Lordships have observed in all my Discourse, that I have not insisted any way upon any Power of Imposition, neither is it the Question in the Business: For no Man's Property is invaded, no Seizure of any Man's Goods, unless they incur it for Contempt; and by a wilful Contempt, the Subject may lose his Property. Therefore, *Dyer*, fol. 16. and 13 *Eliz.* fol. 296. if the King will command his Subject to come into the Realm, and he will not, he shall forfeit for his Contempt all his Goods; or if he be attached to appear in the Courts of Justice, and not appear, he shall forfeit his Goods, 34 *Hen. VI.* 49. 9 *Hen. VII.* 6. If a Man will wilfully condemn the King's Command by his Writ, he may be distrained; this he incurreth not by an Invasion of his Property, but in respect of his Contempt.

Then they alledged *Rot. Parl.* 50 *Ed. III.* m. 24. the Lord *Latimer*, he was sentenced for persuading the King to lay Impositions on the People.

My Lords, I have looked upon the Record, and there the Cause of the Sentence is declared, that he himself laid the Impositions, and did take upon him Royal Power; and therefore he was justly sentenced.

And for the Sentence of Dr. *Manwaring*, 'tis nothing to this Purpose. This Writ denieth not the Property to be in the Subject, but saith, the Subject hath the Property; and therefore commandeth the Sheriff to distrain him if he will not pay.

And for the Commission 2 *Car.* for the borrowing of Money for the *Palatinate*, this was for the Recovery of the *Palatinate*, and not for the Defence of the Realm; and besides, it was called in by special Order.

In the next place, they objected and shewed divers Records, that the King hath paid the Wages of divers Mariners and Soldiers. And I do agree it. Is that an Argument that he may not command the Mariners to be sent at the Charges of the County to furnish the King's Ships? This is against the Records that I have remember'd.

So likewise they have cited 21 *Ed. III.* *Rot.* 77. *Ex parte Remem' Regis.* The King commanded the Constable of his Castle of *B.* to build Ships, and the King to pay for them. So he doth at this Day; he hath built the *Sovereign of the Seas*, and paid for it.

They have objected Dr. Cowell's Book, which was called in. I wish they had read the Proclamation: There are three Causes expressed. First, Because he had writ Things derogatory to the Crown. Secondly, For———. And, Thirdly, speaking irreverently of the Common Law. Just like to the Men who do not spare to wade into all the deep Mysteries of Princes, who are Gods upon Earth.

For their Objection, that the King hath a Revenue belonging to his Crown, for the defraying of all ordinary and extraordinary Charges, and for the Guard of the Sea, as Tenures by Knights Service, Escuage, Wards, Marriages, antient Demefn, &c. Tonnage and Poundage, Service of the Ports, and Profits of the Sea.

My Lords, it is not for us that are Lawyers to look into the Secrets of the King's Revenue; he hath high Officers, as Treasurer, and Under-Treasurer, that look to the Secrets of his Estate, and they know well whether his ordinary or extraordinary Revenues do answer more than his annual Expence. The Story of *Atleon* might deter Men from looking into the Secrets of Princes.

For his Tenures, that Knight-Service Tenure was originally instituted for the Service of *Scotland* and *Wales*, 19 *Rich. II. Fitz-Her. Guard.* 165. and old Tenure, *fo.* 10. The Duties of Tonnage and Poundage are not given now to the King by Acts of Parliament; and when they were given, it was for the great Charges of this Defence. And besides, those Acts of Tonnage and Poundage only concern the ordinary Defence: the sending forth of the 75 Ships out of the Cinque Ports, it was but for fifteen Days, at their own Charges. And for the Profits of the Sea by Sturgeons, Whales, &c. is it a proper Defence for a Kingdom? And for the Service of the Ports, you may remember by the Records shewed, they were several times commanded *ultra servitium debitum*.

But then they have granted one Case, and, I think, but one; that the King may ordain a Toll in a Fair or Market, or grant Pontage or the like because there is an *ad quod Damnum*, and thereupon shall be an Inquiry *si Patria gravetur*.

The King may grant a Fair, without an *ad quod damnum*, if in his Judgment, &c.

Rot. Scot. 1 Ed. III. m. 8. A Writ directed to the Treasurer to pay for the Shipping at *Yarmouth*. My Lords, it doth particularly appear in the Record, that *J. S.* was Admiral, and going into *Scotland*; so the Defence was for a foreign War.

It hath been mightily insisted upon, that here needeth no Command to furnish Ships, by the King's Writ; every Man, by the Instinct of Nature, will do it, where there is a Necessity; no need of a Royal Power to command it.

Surely this Argument is made by the People, or to please the People. What will the Consequence of it be, but the introducing of a Democratical Government when every Man shall be his own Defender? The God of Hosts chose captains and Leaders to go before his People, and command them. But to give the People this Liberty, that every Man shall do as he pleases, and make a Defence by an Instinct of Nature, is a strange Position.

But it hath been said in these Cases, it is better to sustain a Mischief than an Inconvenience: By this Inconvenience every Man's Property is

taken away from him, as often as the King pleaseth, and in what Proportion he pleaseth.

This, tho' a Maxim in Law, yet it goeth but to Particulars: But the Loss of a Kingdom is both Loss of Liberty and Estate; this is not to be reckoned among the Mischiefs, for this Mischief destroyeth both Head and Members. Therefore I do marvel to hear the Rule of Mr. *Holborne*, Suffer a Mischief rather than an Inconvenience.

The next Objection was the Parliament-Roll 2 *Hen. IV. m. 22. Pur faire des Barges*; this was the Petition of the Commons, that the Commissions granted to Burroughs, Cities and Towns, for building of Barges, should be repealed. The King's Answer for the present is, They should be repealed, but for the future, for Case of Necessity he would advise with the Lords.

It doth not appear that these were granted for the building of any Ships for the Defence of the Realm. These are the Objections that have been made out of the Acts of Parliament, out of the Records, and Reasons they have insisted upon.

Now I come to their Exceptions and Objections against the Writs and Proceedings in this Matter. First they say, there was no sufficient Danger represented by the Writ 4 *Aug. 11 Car.* they say a Supply by the *Mittimus* comes too late; and that the Words of the *Mittimus* are not a good affirmative, *quia salus Regni periclitabatur*. And it doth not appear there was any Danger, 4 *Aug. 11 Car.*

For this I have given it an Answer, That it was not necessary to represent the Danger in the Writ. The King hath secret Intelligence, he hath his Spies abroad, his Ambassadors beyond Seas; he knows the Danger, we know not; nay, he knows that which is not fit to be discovered, and those Dangers by Preparation perhaps diverted another way: It's not fit by a publick Writ to reveal the Danger. But, my Lords, for the Satisfaction of his People, he hath expressed sufficient Cause enough in the Writ; *Quia Salus Regni periclitabatur*. They say there was no Danger represented at this time when the Writ went out. That is mistaken, for the Writ of *Mittimus* doth recite the Writ 4 *Aug.* and that faith, *quod quidem Prædones, Piratæ, &c.* Which shews that Danger was the Cause of the issuing of these Writs.

Then they except at this Word, *Salus*; it is a physical Word, and signifieth Health, and you must have no Metaphors in Writs.

Surely the Grammarians tell us, that *Salus* is taken *pro Incolumitate*, as well for Safety as for Health. Metaphors are usual in Writs; I dare be bold to speak, there are more Metaphors in the Register than in any Book: *Register* 61. *Turba*, &c.

Then they have left no Stone unroll'd in this Case: Now they say the King's Testimony, by his Writ, is insufficient for that. Under favour, the *Teste meipso* is without Exception; we are bound to give Credit to it. 1 *Eliz. fol. 105. Ne exeat Regno*; the King affirms *J. S.* will go beyond the Sea, faith the Book, this Averment of the King in his Writ is not traversable, you shall not aver against it. The Case remembered by Mr. Solicitor, was mistaken by Mr. *Holborne* in the Answer, *Hil. 20 Ed. I. Coram Rege Rot. 14.* He faith, these Words vouched in the Record, were but the Saying of the King's Counsel, and not the Opinion of the Court. Clear otherwise, for it was the Saying of the Judges; and then agreed, *Quod Dominus*

Dominus Rex est superlativum Record' & præexcellens. Will your Lordships give Credit to the Marshal of the King's Host, to the Certificate of the Captain of a Company, if the Men be in the King's Service, as 11 Hen. VII. fo. 5. to the Certificate of a Bishop, as in case of Bastardy; to the Certificate of a Mayor and Alderman, by the Recorder, as 5 Ed. IV. 30. and will you not admit of the Certificate of the King by his *Mittimus*?

The next Exception was taken to the *Scir' Fac'* that this *Scir' Fac'* ought not to go forth for this Debt; and gave two Reason for it. First, The Writ of 4 Aug. doth direct a Form of levying, which is by Distress, or imprisoning those that are Rebels. Secondly, It is no Debt to the King, and therefore ought not to be levied by *Scir' Fac'*.

My Lords, for this, this Duty is a Duty to the Commonwealth; it is *pro defensione Regni, Thesaurus publicus respicit Regem*; whosoever shall detain any publick Duty, he may be questioned by the King, as the Head of the Body Politick; for that it appeareth, 27 Aff. Pl. 17. it was declared that J. S. and J. D. had levied 100 Marks on the County for the Array of certain Archers; which Money did not come for the Profit of the King. Out of which I observe two things.

First, This Money that was for Archers: The Money was levied on the Body of the County. Secondly, Recover'd by an Indictment at the King's Suit, 27 Aff. Pl. 17. 11 Hen. IV. fo. 2. The Fees of the Knights of the Shire that serve in Parliament, they are reckoned among publick Duties; therefore the Goods of a Stranger may be taken within the Town to pay those Fees, if the Money be not paid; the Distress may be sold, for it is for a publick Duty, 11 Hen. IV. 2. So are the Books: *Regist.* 19. the King may command the Sheriffs to levy these Fees, as well within his Liberty, as *extra. Hil.* 23 Ed. III. Rot. 57. *coram Rege. Juratores Hundredi de S.* they make a Presentment that J. S. and J. D. Chief Constables of E. paid Wages to Archers which went not beyond Sea. So as by this Record it appeareth, these publick Duties are recoverable at the Suit of the King, *quia ad opus Domini Regis. Pat.* 14 Ed. I. M. 1. 14. the King commandeth an Account to be taken of the Murage, and how the Sums levied have been employed. *P.* 15 Ed. I. *coram Rege* 70. *dors.* Rippon was besieged, they gave Hostages; Promise made by the Town that these Hostages should be redeem'd, they were not: Complaint is made to the King, and it came to the *King's Bench*; and these Moneys being 700*l.* that was promised by the Town for the bringing back those Hostages, was ordered to be paid, because it was for the publick Service. So for other Things that are *pro communi utilitate, inter Communia Hil.* 5. *Lib.* 4. Rot. 4. *Aurum Regine*, due unto the Queen, may be levied by Process out of the *Exchequer* in the King's Name, nothing more usual.

This *Scir' Fac'* is grounded upon the whole Matter, the Writ 4 Aug. the *Certiorari*, and *Mittimus*; and commandeth that the Defendants shall shew Cause why they should not pay the Moneys assessed upon them for the Publick Service.

My Lords, I have done with the Objections. I shall come to the judicial Records, 24 Ed. I. *Ad custodiam Maris. Berks*, an Inland County, refused to contribute, the Names of those that made Default, were certified into the *Exchequer*; it appeareth by the Records, that Process went out of

the *Exchequer* in the strictest manner, *A capias in manus*, of their Lands, Tenements, Goods and Chattels; and that their Bodies, with Horfe and Armour, be sent to *Portsmouth*; for besides the doing of their Service, the Seizure of their Lands and Goods, 24 the same Year, *Exc. Remem. The-saur.* On the other side, J. de S. gives Information to the Chancellor of the *Exchequer*, and Barons, in absence of the Lord Treasurer, of the Preparation of Men in *Flanders*, (this being remember'd before to another Purpose.) It appeareth that after Consultation had, they did resolve to send forth two Writs, one was to the Town, the other to *T. H. Custos Maris*, to call all for Defence of the Maritime, &c. *Exc. Remem' Regis*, 24 Ed. I. Rot. 80. Henry Hufsey was seized of the Manor of *W.* in *Berks*, he was assessed to find a Horfe *pro Custod' Marit.* He complained in the *Exchequer*, that he had not the whole Manor, and yet he was assessed to find a whole Horfe; he did not come and say, I ought not to be taxed, but submitted to the Power, and desired a Manorial Contribution. 28 Ed. I. Rot. 72. the Abbot of *Robertbridge's* Case, remember'd on both Sides, divers times: under favour, the joining of the Issue in the Record is a very full Proof in the Cause; he brought a Replevin against J. S. for taking his Goods in an Inland Town in *Kent*; he pleadeth the Contestation between our King and the King of *France*, and *Leighorne* assigned Keeper of the Sea, that the Plaintiff was assessed unto 7*s.* 7*d.* Anno 22. to 13*s.* Anno 23. to 15*s.* and the Defendant being Collector did distrain; the Plaintiff did not say in bar of this, that he ought not to be taxed, but that he was assessed *ad inveniend'*, &c. for such Lands: the Defendant saith, the Plaintiff holds other Lands in the County, and for that Land he was assessed. Now this doth admit the Power of Taxing. *Hil.* 16 Ed. III. Rot. 23. *coram Rege*: The Jury of *Suffolk* did present that J. *Ruffel*, and others, 8 Ed. III. were Hobbellers, elected in the Hundred of *T.* and staid at home: They plead, Not Guilty. The Jury finds that J. *Ruffel* did perform the Service, but J. S. did not perform it, therefore committed to Prison, and paid a Fine unto the King. By this Record it appeareth, the Money paid to the Archers and Hobbellers was at the County's Charge. Methinks that the Disclaimer that is by the Commons, 13 Ed. III. Rot. Par. 9. & 11. is in nature of a Judgment in this Case; for there they did disclaim they had no Cognizance, and there likewise upon their own Concession, that the Maritime Parts ought to defend at their own Charges, as the Inland Parts, the Inland Counties. This Concession, 13 Ed. III. is a strong Argument, *Parl.* 21 Ed. III. Rot. 20. when the Commons did petition for a Guard for the Sea: The Answer is, *Soit guard fait*, and that was at the Charge of the Counties, as your Lordships know. 20 Ed. III. divers Ordinances made, which Ordinances made had the Force of a Law: The King and his Council did ordain, *Quod omnes illi, &c.* which have such a Quantity of Land should be assessed to find one Archer; one Hobbeller *decem l.* two Hobbellers *vigint. libr. unum hominem ad arma* 25*l.* This appeareth Rot. *Franc.* 20 Ed. III. part 1. m. 17. in the Counties of *Bedford* and *Bucks*. In the same Year, another Ordinance, that those that did reside with their Families, *cum toto posse*, within six Miles of Maritime Parts, were excused from finding of Men without.

My

My Lords, upon the Occasion of this Service, there were divers Refusals made, Certificate by *Mittimus* of their Names into the *Exchequer*; as in this Case, *J. T.* and *W. G.* were certified for Defaulters amongst others: upon this, the Court of *Exchequer* award Proceſs againſt thoſe Men and others, which was a *Capias in manus*, Seizure of their Lands and Goods; they came in, and pleaded, they reſided *infra ſex leucas*, with their Families and all their Powers: Iſſue joined; upon this, the Jury impannelled, and it appeared, thoſe that were found within ſix Miles, Judgment *quod ſine die*; but for others, they were imprifoned and fined; for ſo much Land as they had without the ſix Miles, for that they were charged. If I ſhould number to your Lordſhips all the Judgments in this kind, I might ſpeak here till to Morrow-morning. *P. 22 Ed. III. inter Communia*, in the *Exchequer*; *P. 25 Ed. III. M. 27. P. 27.* and 28 *Ed. III.* and there is a Number more in other Years, as 29 and 30 *Hen. IV.* And, my Lords, according to thoſe Judgments, *Trin. 31 Ed. III. Rot. 3.* the Writ went forth for diſcharging of ſuch as have reſided upon their Lands within ſix Miles. *21 Ed. I. Pipe-Roll*; ſome diſcharged becauſe they were in the King's Service.

So as, my Lords, out of theſe Records thus much may be collected. Firſt, They affirm the King's Power in aſſeſſing and levying. And Secondly, that they are grounded upon thoſe Ordinances made by the King and his Council. Thirdly, The Proceſs went out of the *Exchequer*, and in the King's Name. *M. 22. Ed. III. Parl. coram Baro.* Iſſue joined, whether *J. S.* had Lands to the Value of 40 *l.* to find Hobbellers; if he had, then he was to do it.

My Lords, I have now done with the Judicial Precedents; I have cited ſome few, amongst many others. It is now time, after ſo long Premifſes, to draw to a Concluſion: wherein your Lordſhips have heard. Firſt, That the King of *England*, he is an abſolute Monarch; and that by the Common Law of *England*, all thoſe *Jura ſumme Majeſtatis* are inherent in his Perſon. This *Supremum Dominium* for all the Land that any Subject holdeth, it is derived from the Crown; and, as *Plowden* putteth it, 12 and 13. that there is a tacit Condition in Law annexed to his Grant, that his Officers may do Juſtice to execute Proceſs ſurely upon his Grant. This tacit Condition may be ſubject to a Common Defence. Supreme Jurisdiction, both by Sea and Land, was never yet impeached, and from him lieth no Appeal. And originally, by the Inſtitution of the Laws of this Realm, what was once in his Hand, and was never granted from him, is ſtill in him; he hath abſolute Power of concluding War and Peace: All theſe are in him as he is an abſolute Monarch, and holdeth his Kingdom under none but God himſelf. It hath appeared alſo, that a principal Part of this Kingly Office conſiſts in the Defence of the Realm; that as his Jurisdiction is by Sea and Land, ſo is his Defence. And this hath been made appear to your Lordſhips, both by Precedents before *William* the Firſt, and ſince: *pro communi utilitate*, and, in Caſe of Neceſſity, the Kings of *England* may ordain, by their Proclamation, Writs or Patents, by the Advice of their Council, or Judges, in legal Matters. That the King is the ſole Judge of this Danger, both for the Prevention of it, and for the avoiding of it. Therefore for us to diſtruſt that he will command too great a

Power or Aid, it is a Preſumption againſt the Preſumption of Law.

It hath appeared likewise that all the Incidents of Defence are likewise inherent in his Majesty. We cannot build a Fort or Caſtle on our own Ground, without Licence from him. Your Lordſhips have heard the Precedents, particular and general; Precedents which have univerſal Reaſons, *quod omnes ex debito aſtricti ſunt*; Writs awarded by the King's Royal Power, in Times of Parliament, when Parliaments were fitting, and in thoſe Years when great Aids and Subſidies were granted to the King, many times no Cauſe declared, nor the Occaſion diſcover'd.

There is no Act of Parliament made to take away this Power: And the judicial Precedents which your Lordſhips have heard, have affirmed this Power.

My Lords, if there were no Law to compel to this Duty, yet Nature and the inviolate Law of Preſervation ought to move us. Theſe Vapours that are exhaled from us, will again deſcend upon us in our Safety, and in the Honour of our Nation. Therefore let us obey the King's Command by his Writ, and not diſpute it. He is the firſt Mover amongst theſe Orbs of ours; and he is the Circle of this Circumference; and he is the Center of us all, wherein we all, as the Lines, ſhould meet; he is the Soul of this Body, whoſe proper Act is to command.

But I ſhall need to uſe no Perſuaſions to your Lordſhips to do Juſtice in this Cauſe: And therefore I ſhall humbly deſire Judgment for the King.

The Argument of Sir Francis Weſton, Knt. one of the Barons of his Majesty's Court of Exchequer, in the great Cauſe of Ship-Money.

IN *Eaſter-Term* laſt, there was a Writ of *Scire Fac'* went out of the *Exchequer*, directed to the Sheriff of *Bucks*, reciting, That whereas divers ſeveral Sums of Money, ſpecified in a Schedule annexed to the Writ, by virtue of the Writ 4 *Aug. 11 Car.* were aſſeſſed upon the ſeveral Perſons, in the Schedule named, towards the providing of a Ship of War mentioned in the Writ, which Sums being ſo aſſeſſed, and not paid, by Writ of *Certiorari* 9 *Martii* 12 *Car.* under the Great Seal of *England*, the Names of thoſe ſeveral Perſons and Sums aſſeſſed are certified into the *Chancery*, and by Writ of *Mittimus* dated 5 *Maii* 13 *Car.* ſent into the *Exchequer*, and there to be proceeded upon according to the Courſe of the Law. The Sheriff of *Bucks* is commanded to warn the Parties named to appear, and to ſhew Cauſe why they ſhould not be charged with thoſe ſeveral Sums aſſeſſed upon them.

Hereupon Mr. *Hampden* appeareth, and demandeth Oyer of the Writ 4 *Aug.* of the *Certiorari* and *Mittimus*, and their ſeveral Returns; they being all read unto him, he ſaith that theſe ſeveral Writs, and the Returns thereof, and the Schedules thereunto annexed, do not contain any ſufficient Matter to charge him to pay the 20*s.* and thereupon demurred. Mr. Attorney-General ſaith, that they do contain ſufficient Matter to charge him. And thereupon the Demurrer is joined.

The Demurrer being joined, the Record was read in the *Exchequer*; and the Cauſe appearing to be of great Weight, it was adjourned unto this

Place in the *Exchequer-Chamber*, to have the Advice of all the Judges of *England*.

Upon this Record, I am to deliver my Opinion; and I take it there is sufficient Matter to charge Mr. *Hampden* with this 20s. And so I give Judgment for the King.

Here have been twelve Days spent in the arguing of this Case at the Bar: I will confine my self to two Hours and less, tho' not tied unto any Time. The Way to be short, is shortly to find out the Points.

But I must first observe, in what State this Cause cometh in Judgment before us. There is a Rule in Law, that if a Man shall demur generally to the Writ, he doth confess all other Matters in Fact that are alledged. The Reasons of it are apparent, Because Matters of Fact are to be tried by Jury, and Matters of Law by the Judges. So in this Case all the Danger alledged by the Writ, is confessed; and the Matter in Law is that which we that are Judges are to deliver our Opinions upon.

It hath been objected, by Mr. *Holborne*, That we are tied to the Writ 4 *Aug.* for that Writ is the Ground of all, and upon that doth all the rest depend. It is true, that if he had relied upon the Writ, it had been so. But his Demurrer is this, That the Writ, and the rest of the Proceedings with the Schedules, do not contain Matter sufficient: So that now they have not put to us the Writ 4 *Aug.* alone, but all the rest, to give Judgment upon. For the Writ of *Mittimus*, it is confessed, That in that there is an Expression, that *Salus Regni periclitabatur*, which is not in the Writ 4 *Aug.*

To this he hath taken Exception, that *Salus Regni periclitabatur*, the Danger is at the present Time of the *Mittimus*, and doth not say, *periclitatur*, 4 *Aug.* 11 *Car.* and therefore this Expression now in the *Mittimus* cannot make good the Defect thereof in the Writ of 4 *Aug.*

To this I answer, That the demurring to all, hath confessed all, and yet the Matter in the Writ is sufficient to express the Danger.

Then he objected, That *Salus* signifies Health, and not Safety; and that the Physicians term it so.

But *Salus* signifies Safety as well as Health. So it is englished in *Cooper's Dictionary*, and so it is taken by Poets and Historians for Safety.

The next Objection was to the Writ 4 *Aug.* That if there were a Danger, it must be plainly expressed in the Writ, &c. the Words are, *Datum, est nobis intelligi, &c.* How cometh the King to understand it? the Danger must be fully expressed.

For this I hold it more fit for a Statesman than myself to give an Answer to, that the King should discover his Intelligence; whether it is fit to make known to all the World the Danger the Kingdom is in. But yet I find that in the said Writ 4 *Aug.* there is expressed both Danger by Pirates on the Sea, and that the Dominion of the Sea is like to be lost: And that these are Dangers to the whole Kingdom. For the *Certiorari*, I find it is directed to the Shire, and the Writ of *Mittimus* to the Court of *Exchequer*; and therefore he could not take Exception to these Writs: whatsoever I shall take Advantage of, it must be contained in the Writ 4 *Aug.*

In this Writ, three Things, as Dangers, are expressed. 1. The Danger by Pirates. 2. The Danger of losing the Dominion of the Narrow Seas. And, 3. The great Peril in this Time of War.

For the Pirates, I shall not meddle with them; they are but petty Robbers, and still running away: The Ports must defend themselves against these; the Inland Counties are in no Danger of them.

I will not insist upon the Dominion of the Narrow Seas, tho' that is considerable; for in the Defence of that consists much the Preservation of the Kingdom. But I shall insist on the Danger of the Kingdom expressed in the Writ 4 *Aug.* thus, *Consideratis etiam periculis undique, &c.* there is Danger, there is Peril round about us; and it is by reason that there are now Times of War, we see Danger on every Side.

There are two Things trouble this Point. 1. The Subject suspects that this is only a Pretence, and that the Kingdom is not really in Danger.

2. That there being great Sums of Money raised upon this Occasion, this, in the end, will be drawn to be annual and perpetual: But if they were satisfied that the Kingdom were really in Danger, likely they would be content to pay the Money till the Danger be over.

For my part, I answer to these Objections, That it is an unworthy Supposition. I must be satisfied, and I am, that the Kingdom was in Danger for two things: One Reason is, Because it is so expressed in the Writ 4 *Aug.* It cannot be denied, but that the Kingdom may be in Danger. It hath been conquered, and so it may be again, therefore it is necessary it should be foreseen and prevented; and somebody must do it, and who better than the King, that hath the Care and Charge of the Kingdom? He saith the Kingdom is in Danger, and hath so declared it by his Writ; why I should not believe it, when the King hath declared it so by his Writ, I know not.

My other Reason that the Kingdom is in Danger is, That it is so *de facto*. It cannot be unknown to any Man, that these three or four Years last past, great Navies have been at Sea, and great Forces on Land. If we should have but an ordinary Defence at Sea by Shipping, no Man can tell or suppose, but that those Navies, being so great, may land where they will, and in as many Places as they will; what spoil would they make before such time as any Resistance could be made against them?

They objected here, That these Navies at Sea, they are engaged in War one with another; we are safe enough, we need not fear them.

I answer, They are, I think, engaged in good earnest; but who knoweth how soon these Wars may end? They may end by the Mediation of Friends, or the Death of some one Person. And when there is a great Navy at Sea, and Forces at Land, how easy is it to remember an old Quarrel, or to pick a new one?

These Things do persuade me that the Kingdom is in Danger, and a very great and just Cause to make Preparation for Defence. And if every Man would be so persuaded, they would not deny the Payment of the Money. An Example of this Nature hath happened in former times: In *Henry the Seventh's* Time, it appeareth, by a Record on the King's Part, *Pat. 1 Hen. VII. pars 3. duo*; there were Wars between the King of the

the Romans and the King of France; they were both Friends to Hen. VII. they ought him no Ill-will; yet by reason of these great Wars, great Forces at Sea, and great Forces at Land, the King would not trust them, but sent forth his Proclamation, to command that Watch and Ward be kept over the Sea-Coasts, and Command was to all his Subjects, that upon short Warning they should be ready for Defence of the Kingdom. So this may well be an Example for the Course that is now taken, for Defence of the Kingdom.

I shall now come to those Reasons, and to the Records that have been objected on either Side. I shall begin with the King's Side, because that layeth a Charge on the Defendant.

It hath been objected, That some of them are not warranted by the Record. First, say they, there is a Ship commanded to be provided, and Money must be levied: But in the End, when this great Sum of Money is collected, it must be disbursed, no Man knows how. No such thing in the Record.

To this I answer, The Record saith, a Ship must be provided, and the Sheriff is to rate the County, *secundum facultates*, towards the same; not a Word of any Money to be paid unto the King. It is a Ship that the Sheriff is to build, and to assess Money towards it.

They have said besides, Here is in the Writ a Command for the Imprisonment of the Party, and that his Liberty, dearer to him than his Life, and his Goods, wherein he hath an absolute Property, shall be taken away. These things, they say, are not warranted by the Writ, nor by any thing in the Record.

I answer, It is not warranted by the Proceedings in this Case; for the *Scir' Fac'* is not to shew Cause why the Party's Goods should not be sold, or he imprisoned, but why he should not be charged with the Money assessed upon him.

They say, That the general Defence of the Sea lieth upon the King; because he hath wherewithal to do it.

I would willingly disburden myself as much as I can of the Objections: A general Answer I shall give to these Particulars.

They say, The King hath personal Service, the Service of Tenants, by Knights Service, Escuage, Castle-Guard, Grand Serjeanty, Petty Serjeanty.

Is the King bound by these to the Defence of the Kingdom? He that doth look on their Originals, will not say so; For these are Tenures reserved upon the several Grants made by the King; and no more Reason is there that the King, by this, should be tied to defend the Kingdom, than there is for the Lords, that are Subjects, and have the like Tenure, that they should be bound to the Defence of the Sea.

They say, He hath besides these, Wards, Marriages, Reliefs, Fines, Issues, Amerciaments, primer Seisin, Fines of Alienation, Respites of Homage, all Fruits of the Tenures; which all must go towards the Defence of the Kingdom.

I answer, These Profits are casual; besides, if he be not bound in respect of the Tenure, as aforesaid, he cannot be bound by the Fruits of them.

It hath been objected, That the King hath the Profit of the Sea, as Royal Fishes, Whales,

&c. Wrecks at Sea, Treasure Trove, Royal Mines, &c.

I answer, These he hath by his Prerogative, and not for the Defence; neither are they fit for a Subject to have.

You say, He hath particular Service from the Cinque Ports and other Places, as from *Malden, Colchester*, and other Places; and besides, he hath all manner of Customs, and in Regard of these he is bound to provide for the Defence of the Sea.

It is true, the King must, for an ordinary Defence, use the Means the Law hath allowed him; but that is not now the Question: It is for an extraordinary Defence. The Question now ariseth, if it were asked any Man, Whether they do think in their Conscience that the King is able of himself, out of these, to prepare a Royal Navy, without help from the Subject? None are so senseless as to think it.

There be some other things, to which I shall give a general Answer.

It appeareth by many Records, that the King hath paid Wages to Soldiers, and sometimes hath hired Ships; and unless there had been a Consideration, the King would not have done it.

To this I answer, It was for ordinary Defence, and he is bound to do it; and if he engaged himself by Promise to repay unto them their Charges, I can say no more but this, That every honest Man that makes a Promise will perform it, and so is the King bound to perform his Promise: for that which Honesty binds others to the Performance of, Honour binds the King.

I shall come to those things to which a more particular Answer is to be given. The Charge lieth general upon the whole Kingdom, which I shall divide into three Parts. 1. The Ports. 2. The Maritime Counties. And, 3. The Inland Counties: And to these three I will apply the Records.

1. For the Ports; they are of two Kinds, the Cinque Ports, and the Ports at large. What Services are due from the Cinque Ports, is expressed in *Libr' Rubrica*. in the *Exchequer*, that they were to find 52 Ships, and 24 Men in every Ship, for fifteen Days; which cometh to 1188 Men.

The Ports at large are tied to no certain Service; it will appear by most of these Records which I shall apply, that the Cinque Ports have been charged with more than their Due, and the Ports at large equally with the Cinque Ports. *Pat. 25 Job. m. 6.* the King sent his Writ to the Cinque Ports, and thereby commandeth, *quod omnes Naves parate, &c. & homines*; he doth not here tie them to a Number, but all must go. *Claus. 17 Job. m. 7.* here the King sent his Writ *Baronibus suis de Rye*, a Member of the Cinque Ports, *Quod venire faciat omnes Naves apud Quinque Portus*; this was general, as the others. All the Ships, not tied to the Number of 52. *Claus. 14 Hen. III. m. 13.* a Writ went out to *Portsmouth*, being a Port at large, to provide a Galley, *& eam munire faciant cum hominibus, & quod prompti & parati sint ad proficiscend' cum necesse fuerit.* So here is a particular Charge upon *Portsmouth*, not bound unto it, to provide a Galley with all

manner of Munition. *Claus. 25 Ed. I. m. 5. dorf.* A Writ went unto *Guernsey*, a Port at large, to make a Ship ready as often as Need should require, *de contributione faciend' pro Navibus quoties opus fuerit. Pat. 9 Ed. II. pars II. m. 26.* A Writ goeth forth, and that was directed, *Ballivis & probis hominibus comit' Southampton*, to make *Provisionem Navigii sumptibus propriis*; no Promise from the King to pay this again. *Claus. 20 Edw. II. m. 7.* A Writ goeth to the Sheriff *London*, and that reciteth a Charge formerly laid upon the City, and upon *Kent*, for finding of 12 Ships; *London* to find 9 Ships, and *Kent* 3, and forty Men in every Ship, *ad sumptus illarum. Claus. 20 Edw. II. m. 8.* A Writ directed to the Bailiff of *Yarmouth*, which is none of the Cinque Ports, and they were charged with two Ships at their own Costs. And the same Command, in the same Roll, for all Ships of 50 Tons to be ready. *Rot. Scot. 10 Ed. III. m. 12.* That Writ reciteth the general Obligation that they are bound in to defend the Kingdom, almost in the same Words mentioned in this Writ; it reciteth, that every Man should be assessed *juxta statum & facultates*, so there was a Contribution; then cometh in the Clause *ultra illam pecunia summam debet pro serviciis*. It is true, indeed, the King did pay towards this, but it is expressed to be of his mere Grace and Favour. *10 Ed. III. m. 2 dorf.* A Writ to *Winchelsea*, a Member of the Cinque Ports, and that was *Quod omnes Naves sint paratæ*, both of the Ports & *aliarum villarum*; and the Reason is expressed, Because without their Help the King was not able to defend the Kingdom; and appointeth them, by that Writ, that the Ships should be ready victualled for thirteen Weeks; whereas the ordinary Time was but for fifteen Days. *Vas. 12 Edw. III. m. 8.* there a Writ goeth forth to the Sheriff of *Kent*, and to the Barons of the Cinque Ports, whereby they were all commanded to look to the Custody of the Sea-Coasts; here are the Maritime Towns and Port Towns joined together. *25 Edw. III. m. 22. dorf.* A Writ to *Southampton*, *ad congregandum Naves*. In the same Roll *m. 8.* more Writs to other Towns. *Pat. 12 Ed. III. pars 4. m. 3.* there was a Command that all that dwell within the Isle of *Thanet*, from 16 to 60, should be ready to defend the Sea-Coasts, and this was *juxta statum & facultates. Rot. Alm. 13 Ed. III. m. 12.* *Yarmouth* charged with 4 Ships, and in each Ship 24 Men: whereas usually it was but 21 Men in a Ship, now I think they are come to sixscore Men in a Ship. There are an infinite Number of Rolls to this Purpose, to charge the Port-Towns.

I come now to my second Division, which is Maritime Towns. *Pat. 48 Hen. III. m. 4. dorf.* A Writ went to the Sheriffs of *Norfolk*, reciting, That Ships and Soldiers had staid there long, and that they were intending to depart, because their forty Days were past; command was, that they should stay, *donec aliud inde mandatum fuerit. Claus. 23 Edw. I. m. 5. dorf.* There were Writs directed to the Sheriffs of *Southampton*, *Dorset* and *Wilts*, these three are all Maritime Counties: A Command, that they should raise three thousand Men to defend the Coasts. *Pat. 24 Ed. I. m. 17.* A Writ directed to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, to assist certain Commissioners to take up an hundred Ships, with a competent Number of Men, these are to Maritime Counties: The like Writs go to the Sheriffs of

Suffex and *Southampton*, and these for the Preparation of Ships, and to take them wherefoever they are to be found. *Rot. Pat. 25 Edw. I. m. 6.* Writs went to *Southampton*, *Devon*, *Cornwal*, *Dorset*, and many other Places that were Maritime Towns, for arresting of Ships, and raising of Men. But the Rolls, I might most insist upon, are only these; I'll but name them. *Pat. 24 Ed. I. m. 16. Ex parte Remem. Regis. & Rot. 78. Claus. 25 Edw. I. m. 26. Claus. 13 Ed. III. m. 14. pars 1. dorf. Scot. 10 Edw. III. m. 22.* By all which it appears, not only the Ports, but the Maritime Counties have contributed towards the Charge of the Defence of the Kingdom. And the other Side do hardly deny it, but that the Maritime Towns may be charged.

I will open it plain, that it is for their Ease to bring in the Inland Counties. This Cause is not of so great Consequence, as is conceived; for if the Port-Towns and Maritime Towns may be charged, then it bringeth but in the Inland Counties. In *England* and *Wales* there are fifty-two Counties, thirty-three of these are Maritime Counties; so the Inland Counties are but nineteen at the most, and they contribute but to a fourth Part of the Charge, for the Defence of the Kingdom. And so much to my second Division of Maritime Towns.

3. To the third Division, which is of Inland Counties, that they have been charged; I shall make that appear, that the greater Part of them have been charged formerly for this manner of Defence.

They objected, that the County of *Bucks* is an Inland County, and that Mr. *Hampden* dwells there; and therefore no Reason he should contribute to the Defence, no Inland County ever did it, say they.

There may be two Reasons, why, in former Times, the Writs for the most part went to the Ports and Maritime Counties. 1. Because they have the Benefit of the Seas by Exportation and Importation of their Goods. And, 2. Because they are continually in danger of Pirates and Robbers; and far nearer for a sudden Defence, than the Inland Counties are. But this cannot be held for a sufficient Reason, that they only that are near the Danger should be put to defend the whole Kingdom. I am sure the Inland Counties receive great Gains and Profits by the Commodities from the Port-Towns: and they are the more in Safety, the stronger the Sea-Coasts are kept: and therefore no Reason, but that they should contribute towards the Charge of the Defence of the Sea. For all the Writs, save one Commission, have gone to be for the general Defence of the Kingdom; then no Reason but Inland Counties should be charged. If they say they never did it, it is a strange Prescription, that because they never did it, they never will do it. A Man cannot excuse himself, that, because he never paid Tithe to such a Vicar, or such a Parson, that therefore he will never pay it.

I shall go to the Records that charge the Inland Counties. *Claus. 48 Hen. III. m. 2.* A Writ directed to the Mayor and Bailiff of *Bedford*, an Inland County; it doth recite, that divers of that Town were called to go with the King towards the Sea-Coasts, *contra hostilem invasionem, & nunc necesse est, & causas fortuit' ut levare fac' & expensas*; and appoint at what Rate they should levy it, the Horsemen were to have eight Pence per Day, and the

the Footmen four Pence. *Claus. 48 Hen. III. m. 7.* A Writ directed to the Sheriff of *Huntington*, whereby the Men of that County were commanded to go to *London*, and from thence to the Sea-Coasts, for the Defence of the Kingdom. *Rot. Scot. Exc. Remem. Regis 24 Ed. I. m. 78. dorf.* A Writ is directed to the Sheriffs of *Berks*, and this is to distrain Men to make good the Custody of the Sea-Coasts. *Rot. 26 Ed. I. m. 5.* The like Writs were directed to the Sheriffs of *Hertford, Essex, Nottingham, Derby, Huntington, Cambridge, &c.* and almost to all the Inland Counties, *pro custodia Maritima*, all to come to *London*, and to go from thence to the Sea-Coasts, for the Defence thereof. *Claus. 13 Ed. III. pars 1. m. 14. dorf.* A Writ goeth out to *Oxford, ad distringendum*, for Wages, *pro Custodia Maritima*; one Man was distrained, and he pleaded he had been charged in *Wilts*, and ought not to be charged in another County, and for this there went a *Superfedeas*. *Rot. Viagii 1 Hen. IV. m. 10.* A Writ was directed to the Sheriffs of *Nottingham* and *Derby*, two Inland Counties, and this was to proclaim *quod omnes homines, inter 16 & 60, parati sint, &c.* to go with the King, within the Kingdom, where he pleased. *Claus. 1 Ric. II. m. 18.* Writs were directed to the Mayor and Bailiffs of *Huntington* and *Cambridge*. This Roll is cited by the Counsel for the Defendant; and in part it maketh for the Defendant, and in part against him. The Effect of it is this, the Writ is directed to the Bailiff of *Huntington*, and this recites a former Writ to provide Barges, called *Ballingers*, with forty and fifty Oars a-piece, like to a Galley, at the Charge of the most rich Men, and this was *ad custod. Maris*. And the like Writs went to the Towns of *Nottingham, Gloucester, and Warwick*, and divers other places; these Vessels were not devised then, I find them used before in *K. Edward* the Third's time. In the Parliament Rolls, *2 Ed. IV. m. 22.* the Commons did complain, that a Commission was gone forth for the making of these Barges. True, upon a Petition of the Commons, the King saith, he will advise with his Lords, there is no more done; but upon this they cease. I have now done with the Precedents on the King's Side.

I shall now come to that which hath been said on the Defendant's Side for their Discharge. And, *First*, For the Acts and Petitions in Parliament, which are weighty and considerable.

First, For the Statute *de Tallagio non concedendo*, which was in the time of *Edw. I.* It hath been doubted, whether this be a Statute or no. I see no colour of doubt, but that this is a Statute; it is printed amongst the Statutes, and ever accounted for a Statute: and in the Petition of Right, it is recited for a Statute. And to say it is no Statute, because the Parliament-Roll is wanting; if it should be disallowed, it would draw a great Inconvenience with it: for private Men might embezzle the Records, and then if the Records were wanting, the Acts of Parliament should be void.

It is an Act of Parliament no question; but the Question is, whether the Provision made by this Writ, be within the meaning of this Statute.

And I conceive it is not; for there are two Words in this Statute observable, *Tallage and Aid*. By no *Aid* here, will you take away the *Aid pur fils marrier*, or *pur faire Fitz Chevalier*? By no *Tallage*, will you have it so, the King shall de-

mand no Sum of Money? Then if you will give it this large Construction, you will take away all Fines and Amerciaments that are due to the King, all lawful Impositions; and surely this was not the Intent and Meaning of this Statute: but it was only to take away all Taxes and Tailages that were unlawful. If they were lawful this Statute meddled not with them.

Now that no *Tallage* is to be taken, it appears in the Parliament-Rolls, *13 Hen. IV. m. 42.* where an Office was granted by the King, with a Fee, for the measuring of Linnen-Cloth, that the Subject should pay him a certain Sum of Money for every Piece measured; whereupon at the Parliament, the Commons complain, that this was an unjust Imposition, and they desire that they might not be charged with this kind of *Tallage*, which, as was apparent, was unjust, and so they had present Relief against it.

The next Act of Parliament is *14 Edw. III.* the second Parliament of that Year, three Parliaments being held that Year. The Commons grant the King a certain Sum of Money, for the great Business he had as well on this side the Sea, as beyond; but after a Cessation of the Troubles, then the King is to be at the charge of the future Defence; thereupon the King granteth this shall not be had in *exemplum*, and that they shall not afterwards be taxed without Parliament: and this is the strongest thing that I have heard objected.

It requireth a good Answer; the Words are plain, no Charge no Question; but this is a Charge. I looked into the Petition of Right, and it is not there mentioned, nor amongst those Acts of Parliament that are in the Margin; but the Reason why it was omitted, I know not.

I observe in this Act of Parliament a subsequent Clause, that will go far to the answering of this Objection; for neither in the Acts of Parliament, nor in the Petition of Right, is there any mention made of the Defence of the Kingdom; if the King had been bound to defend the Kingdom, could the Parliament have accepted this as a Kindness at his hands? *14 Edw. III.* This Act was made, yet the Aids continued, none of these Writs found till *24 Ed. III. Rot. Franc. 24 Ed. III. m. 9. & 26.* there went out Commissions to array Men, to the Counties of *Suffolk, Dorset* and *Somerfet*, for the Defence of the Maritime Parts; within eleven Years after the making of the Statute, *Rot. Franc. 26 Ed. III. m. 5.* the like Writs to the Earl of *Huntington*, *Considerantes quod omnes incolæ tenentur de jure ad defendend' in periculo*; and that they shall array the Men in this County, and to bring them *ad custodiend' mare*; and by this it is recommended for the erecting of Beacons, which is the first Direction of that nature: So here is a new Charge, and within eleven Years after the making of the Statute. The same Year likewise there went Writs to the Sheriffs of *Nottingham, Derby, Salop, Berks, Middlesex, Bucks, Northampton, &c.* So tho' these Writs go almost into every County, and divers other Writs of the like nature, as *Rot. Franc. 28 Edw. III. m. 34.* yet as I said, in no Act of Parliament extant, nor in any Writ that ever went forth that I can find, there is any thing appears to charge the King with the Defence of the Kingdom, and in all of them, no Distinction made between the Port-Towns, Maritime-Towns, Counties, and Inland-Counties; but that all of them are generally chargeable. And for the rest of the Acts of Parliament

liament, they are all mentioned in the Petition of Right, and therefore I pass them over. There is in those Acts, Provision against Loans and Grievances; but this Clause, for the Defence of the Kingdom, I find it mentioned in no Act of Parliament but this of 14 Ed. III. before mentioned.

I will now come to the Petitions in Parliament. *Rot. Parl.* 13 Ed. III. m. 9, 11. It was there declared to the Commons, that the *French* had invaded the Island of *Guernsey*, and all this was for Default of a Navy upon the Sea; and therefore it was needful to consider how this might be regained. It was answered by the Commons, That concerning the Right and Guard of the Sea, they desired to give no Advice, saying, they have no cognizance of Things concerning the Sea; but if there be Occasion, the Cinque-Ports are to be charged: and said further, that in the Marches of *Scotland*, they were to defend the Kingdom against the *Scots*: But that this kind of Defence should lie upon them, was never heard of.

I will give you an Answer to your Acts of Parliament, and Petitions of Parliament, by putting of a Case. I will admit you have an Act of Parliament as strong as you can make it, that the whole Charge of the Defence of the Kingdom should lie upon the King, and not upon the Subject, in case of any sudden Invasion. Admit there was a greater Power at Sea, than the King was able to make Defence against; then, I pray, whether should this not give way to the present Necessity, or the Kingdom, should be lost? Is it not better to endure a Mischief, than an Inconvenience?

If you say, the Acts of Parliament should give way to Necessity, then you have answered all you have objected.

This is not the only Case of Necessity. I shall put you another Case, when Acts of Parliament must give way to Necessity: That if a Man be attainted of Treason, he is disabled to inherit by Act of Parliament; but if the Kingdom should descend to such a Man, then the Act of Parliament should give way to it. And shall not the Acts of Parliament give way to Necessity for Defence of the Kingdom? What tho' there have been Petitions in Parliament to have it decreed, that this kind of Charge should not be laid upon the Subject? Admit it had been so decreed in Parliament, yet by the Law of Equity they ought to be charged; and in all Reason they ought to be charged towards the Defence of the Kingdom, and that for three Respects.

1. For the Reason given in the Writ, *Quod omnes tangit per omnes debet supportari*; which is but Equity.

2. The King is trusted with the Defence of the Kingdom, and therefore 'tis fit he should have Means wherewith to do it.

But you say he may call a Parliament, and they will give him Means wherewith to do it.

'Tis true, this Thing in question, if it had been done by Parliament, it had been done by the happiest Means; but because he might have it by Parliament, must he therefore have it no other ways? The Question now is, whether what is done, may be done without a Parliament or no? What is done, is done by the great Seal, which is the next Authority to a Parliament. What if an Enemy had come before the Parliament had met, or before they had granted any Aid, should the Safety of the Kingdom depend upon such Contin-

gencies? God forbid. Will you have Forces on both Sides, and restrain the King to his Power by Parliament, which may be so dilatory, that the Kingdom may be lost in the mean time?

3. Many Inconveniences might happen both to the King and Subject, if this should be suffered: If the King should be restrained of his Royal Power, it would turn to his Contempt, both at home and abroad: And all this while the Matter is not so great, it is but parting with a little Money *secundum statum & facultates*.

It is true, as Mr. *Holborne* hath said, that in former Times they have been careful not to leave too much Power to the King; but you would leave so little as would bring him in Contempt both at home and abroad. The worst that comes to the Subject, is but to yield their Help to the King, in such Times of Danger, with a small part of their Estate; and then it would make foreign Nations that know of it afraid of us, which now by this Occasion have Encouragement to attempt that which otherwise they would not.

It hath been objected, That if the King may raise Moneys in this manner, many Inconveniences would follow, and it would be a Means to keep back Parliaments.

To this Objection I answer, It is no Means to keep back a Parliament; for there are many other Causes of calling a Parliament, besides for the Defence of the Kingdom: as, For making good Laws, redressing of Grievances, &c. The King may be engaged in a Foreign War, and the Subject must help him. But to call a Parliament always is not necessary; for when the Kingdom was in the greatest Danger that ever it was, as in 88, and the Rebellion in the *North*, yet no Parliament was called in either of these Dangers.

Next they object, That if this Course be admitted, the King may pretend a Danger when there is none; or a great Danger, when it is but small: and so may raise a great Sum of Money, and the Subject shall have but little Benefit thereby.

I shall give three Answers to this Objection.

1. If this Power be in the King, and that Power be just and equal, then it is not to be taken from him, because he may misemploy his Power. If he misuse his Power, the Fault is his.

2. This Objection cannot be made, unless you suppose Injustice in the King: Make what Laws you will, if the King be unruly, he will break thro' them.

3. If it so falls out, that the Writ going out upon this Pretence, and that great Sums of Money are levied, and the Moneys employed to another Use, it were a great Inconvenience; but in this Case there is no such Fear, for the Writ is expressly to make a Ship; and if they would have taken any Advantage upon that, the Counsel ought to have pleaded it, and the Judgment ought to appear there upon Record. There appears no Money in this Case to be coming to his Majesty's Hands; but it is said in the Writ, *volumus autem, &c.* we will that no part of the Money be converted to another Use than to the building of a Ship.

Then they object, That by the same Reason the King commandeth his Subjects to provide one Ship now, he may command two Ships the next Year.

To this I answer, If the Danger be greater, the Defence must be greater, and then the Supply must be greater; and no Man can suppose that the

the King will impose that on his Subjects when there is no need.

I shall now come to the two last Exceptions. *First*, That the Power cannot be given to the Sheriff by the Writ 4 *Aug.* to tax every Man *secundum statum & Facultes*; that this is too great a Power to be committed to the Sheriff.

To that I answer, That I conceive the Sheriff to be the fittest Man, and most indifferent for that Purpose; for if there were Commissioners, or many Men appointed for doing thereof, they might perchance be partial to their Friends: And the Sheriff having all the Freeholders Names, and the Bailiffs for his Ministers, that know the Estates of most Men; therefore out of all doubt he is the fittest Person.

For the Exception to the *Scir' Fac'* it hath been objected, That the King cannot by that Course levy Moneys, because the King having no Interest in the Money, he cannot levy it by *Scir' Fac'*; neither doth it appear in the Writ, to whom this Money is to be paid.

I confess this Point, tho' not spoken to by the Defendant, is of most Difficulty.

Tho' no Person certain is named, to whom this Money is to be paid, and the Sheriff is only to levy it according to the Writ, and the King providing a Ship, I suppose that *Scir' Fac'* may issue for it; for if a common Person claim any thing, or be wronged, or debarred from his Right, he hath, by the Law, a Writ for his Remedy: and shall not the King have the like Remedy for this Ship, being for the Defence of the Realm in general, for which he is intrusted, to prevent a Wrong to be done to this Common-wealth?

But in this Case, the *Scir' Fac'* is not for Mr. *Hampden* to shew Cause, why he doth not pay the Money to the Sheriff; but, why he doth not pay the Money he was assessed towards the making of the Ship; which, for ought I know, when it hath done the Service, is the Subject's again, at whose Cost it was provided, for they might either have hired a Ship or bought a Ship. In *Fitz-Her. Na. Br.* it is held, the King may, for the Good of his People, send forth Writs for removing Common Grievances, and for repairing of Bridges, and the like: And why may not the King send forth Writs for so necessary a Service as to defend the Kingdom? *Claus. 1 Ricb. II. m. 7.* A Writ went out to the Mayor and Bailiff of *Oxford* to repair the Walls and Ditches about the Town; and why not as well to repair the wooden Walls of the whole Kingdom, as the Walls and Ditches of a Town? The King hath Charge and Power over all, to see all done.

But it hath been said, When this Money is gathered, we know not what becomes of it.

I answer them, with the common Roll in *Scacc'* 24 & 25 *Ed. III.* where a Commission went forth to levy Money for Maritime Defence, but what was done thereupon is not expressed. But at that Time there was a Cause adjudged in the Exchequer, it is a *Norfolk* Cause, where divers being commanded to go to the Wars against the *Scots*, and had thereupon Armour and Wages allowed them; afterwards comes a Counter-command to some of them not to go, and two Men that had Wages went not. Whereupon a Writ went out against them, and the Jury found the one Guilty, and he was ordered to pay back the Money; but the other going to the Wars, afterwards, by a

second Direction, was quit: And the first gave Security for the Repayment of his Wages, being 30 s. and also for the Armour.

It hath, *Lastly*, been objected, That this Taxation ought to be *secundum legem & consuetudinem Angliæ*; and that ought not to be by Writ, but by Parliament.

To this I answer, That from King *John's* to *Henry* the Fourth's Time, there hath been an Usage and Custom to send forth Writs of this Nature, and since that Time till now not the like Command.

About *Henry* the Fourth's Time, began your Tonnage and Poundage; so long as he had that, the Defence was at his own Charge. There is no Act for taking this Charge by Writ away; it is become a general Custom, and the general Custom makes the Law of *England*; and we are to examine and try new Causes by the old Law, and now compare this with what hath been done in former Times.

I shall make an end: For my own part, I am persuaded in my Conscience that there is imminent Danger: I am satisfied in it, both by the King's Writ, and that which is apparent to every one; and there is a Necessity this Danger should be prevented. I do conceive this Writ to be grounded upon this Danger of Necessity; and that the Danger appears sufficiently in the Writ.

Therefore I conceive that the Proceedings are legal, and that there is good and sufficient Cause to charge Mr. *Hampden*, and that he ought to pay the 20 s. assessed upon him.

The Argument of Sir Edward Crawley, Knt. one of the Justices of Common-Pleas, in the Exchequer-Chamber, in the great Cause of Ship-Money.

THE Record hath been opened, therefore I shall spare that Labour. I conceive the Case in Question to be this,

Whether the King, by his Right of Sovereignty, may charge the Subject, in Case of Necessity, to contribute with him to the necessary Defence of the Kingdom, without the Subjects Consent in Parliament.

Mr. *St. John*, whom I take to be the Mouth of the Defendant's Counsel, confesseth, That this Question is not so much *de re*, of Necessity, but *de modo*, if done without Parliament.

This is one of the greatest Cases that ever came in Judgment before the Judges of the Law. The King's Right and Sovereignty, in a high Point, is concerned, and the Honour and Safety of the Kingdom, on the one Side; and the Liberty of the Subject, in the Property of his Goods, on the other Side.

This is the first Cause, that ever came to Judgment, of this kind, that I know of. Kings have not suffered their Rights of Sovereignty to be debated at the Bar, as now it is; for these are *Arcana Regni*, not fit for publick Debate. The Use of Law was to have Causes debated; as faith one, No Man knows what Metal the Bell is of, untill he hears it ring. This Bell hath been rung very roundly and laboriously on both Sides.

The Subjects have objected, That they may bring Actions against Officers of the King for Assessments by virtue of this Writ. But for that I find

find no Precedents, save only one, which is 25 Ed. I. the Abbot of *Robertsbridge's* Case; and he was taxed double for this Matter of Defence of Sea and Land, in two several Places: and therefore he brought his Action to be discharged in one Place. But in Cases of this Nature, they petitioned in Parliament to the King for Redress, as appears by many Precedents.

In *Bracton*, who wrote after *Hen. III.'s* Time, and inclined to those Times, when the Liberty of the Subject was strongly maintained, he saith, *Tantum Regnum petatur, &c.* They used to petition the King; but now you have Actions brought against the King's Officers in the *King's-Bench*, *Common-Pleas*, and here in this Court; and it pleaseth the King to bring this *Scir' Fac'* to the End that the Right of this Cause may be tried by the Judges of the Law.

In 11 *Rep.* and *Coke's Comment. on Littleton*, fol. 10. it's said, That the Laws and Customs of the Parliament are obscure: *Lex est consuetudo Parliamenti, querenda est ab omnibus, ignota a multis, & cognita a paucis.* As *Tully* said of one that would define *Anima*, and said it was *Musica Harmonia*, that was, a Musician: *Homo non multum recessit ab arte sua.* I, for my own part, will keep myself to my own Art of the Books of the Law and Statutes. And if I use the Help of others, I hope you will pardon me for that.

I will briefly propound my Order and Method, thro'out the Case. 1. I will remove some few impertinent Discourses, which are not in the Record, as being out of the Ring of this Bell.

2. I shall propound, that the sole Care of Defence, at Sea and Land, *Jure Regio*, appertaineth to the King, and none other; and that he is the sole Judge of this.

3. That the sole Charge of Defence, in ordinary Cases, regularly and legally appertaineth to the King.

4. That the extraordinary Charges of Defence ought to be supplied by the Parliament, and upon this Rule, *Quod omnes tangit ab omnibus debet supportari.*

5. If the Defence be of Necessity, and the Danger great, and so great as the King's Revenue is not sufficient to supply the Occasion, then the Rule comes to be in Use, *Qui sentit commodum sentire debet & onus*; and if it be general, *Quod omnes tangit, ab omnibus debet supportari.*

6. That in the Defence, where all ought to join the Sea and Land ought to assist and contribute the one to the other.

7. I say, there are some particular Cases, in which this Charge of Defence cannot be imposed by Parliament.

8. That the King solely is intrusted, by the Law, to impote this Charge upon the Subject.

And, 9. These being my Generals, I shall come to my Minor, and conclude that this Charge is justly imposed by the King, without Parliament.

As to the first Impertinency, you speak of Tonnage and Poundage: Is there any such Grant on Record? Shall we take notice of a Thing that is not in *rerum Natura*? I say, I wish it had been granted, for *Qui adimit medium demit finem*: He that taketh away the ordinary Means of Preservation, is the Author of Ruin and Destruction. You see it is taken, but you cannot tell by what Right. If this were material, you wronged your Client, you pleaded it not: and if it is not mate-

rial, you wronged us, and your Auditors, and yourselves, to talk of it.

You say, This Ship-Money hath been charged for these three Years together; Is this Discourse within the Record? If not, you speak without Book.

You say, The King hath imposed great Sums of Money upon Merchandizes: But what is this to the Business now in question?

Then you talk of a Property the Subject loseth thereby; but this rather to abuse the People, without either Colour or Shadow. It was *ad faciendum*, or rather *inficiendum Populum*. If you at the Bar had not spoke it *Argumenti Gratia*, it could not but have proceeded out of the Depth of Malice, or Ignorance, or both. If one be found guilty of Murder, and the Judge knoweth the contrary, what shall be done? He ought to acquaint the King therewith; for it is the King's Right of Sovereignty to pardon, but the Judge hath no such Power. I say, the whole Care appertaineth to the King only, and he is the sole Judge both of the Defence at Sea and Land. *Fitz Na. Br. fol. 113. Le Roy de droit saver & defender son Realme al bien vers la Mere come vers les enemies.* *Regist. fol. 127. Rex, &c. pro eo quod nos Dignitatis nostrae Regni ad providendam salutationem Regni nostri circumquaq; sumus astricti.* *Fortescue cap. 37. Omnes potestas Regis deferre, &c. in defensione & tuitione Regni.* I think no Man can well oppose this.

But we will come to the *Third*. The sole Charge of the Defence regularly and legally appertaineth to the King. *Bract. fol. 1. In Rege, qui recte regit, haec duo sunt necessaria, Arma & Leges, &c.* with which Words accords *Justinian*, in his *Proemium*, from whence that is taken in *Plowden, fol. 315.* in the Case of Mines. One Reason why he saith Royal Mines belong to the King, is, because he is the Head, and the People his Members. And he is to preserve the Subject two ways: by Arms, to defend them against all Hostility; and by Law, to preserve them from Injuries. 3 *Rep. fol. 11.* The Body, Lands, and Goods of the King's Debtor were liable to Execution; *quia thesaurus Regis est Pacis vinculum & Bellorum nervi, Rep. 11.* The King's Treasure is the Ligament of Peace, the Preserver of the Honour and Safety of the Realm, and the Sinews of Wars; and is of high Estimation in Law, in respect of the Necessity thereof; that the imbezzling of Treasure Trove, tho' not in the King's Chest, is Treason. And Treasure, and other valuable Things, are so incident to the Crown, that they cannot go from the Crown. He hath on the Land, Wardships, Escheats, Amerciaments, &c. for the Maintenance of his Honour and Dignities Royal. For the Sea he hath Wales, &c. these do little towards an Army to defend the Sea. The Reason why the King hath the Customs, is for the Protection of Merchants upon the Sea, against Pirates and Enemies of the Realm. So I shall conclude this Point, That the ordinary Defence, both for Care and Charge, of Sea and Land, doth appertain to the King.

The next is this, which is my *Fourth* Head; That the extraordinary Charge of Defence regularly ought to be supplied by Parliament, and cannot be done without it. Albeit Subsidies be of Gift and Grant, yet this is of Right and Reason; the King is *Pater Patriae*. If the Son give to the Father when he wants, it is his Duty. 19 *Hen. VI.*
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the Rector of *Cheddington's* Case, whether the King may grant a Discharge of a Fifteenth? If the King may grant a Discharge to one, so he may do to all. It is against Law the King should not have Subsidies of his People, in case of Necessity and Danger; the same Law that willet the King should defend the People, tells us we should grant to the King Aids for the Defence. This is to be done in Parliament, regularly; and that this extraordinary Charge cannot be imposed but in Parliament, these are their Objections.

I come now to the Statute *de Tallagio non concedendo*, which without question is a Statute, being in our printed Books; and in the Petition of Right 3 Car. it is recited as a Statute, and established: the Words of that are, *Nullum Tallagium sine assensu Parliamenti*. And 14 Ed. III. cap. 1. there the King expresses himself, he will not impose any Charge or Aid on the Subjects, but in Parliament. *Fortescue* reciteth this to be the Law, No Charge without Parliament. And *Bodinus*, lib. 1. fol. 97. saith, "That the Statutes of England are as a Buckler to defend the Subject against the King, for laying any Charge upon them but by Parliament." And in his sixth Book he magnifieth this Kingdom for the due observing this Law. Other Kingdoms, in this Point, have no more Power than the King of England for that it is not in the Power of any Prince in the World, and his Pleasure, to raise Taxes on the People, no more than to take another Man's Goods from him. And yet, nevertheless, if the Necessity and Danger of the Commonwealth be such, as it cannot stay for the calling of a Parliament, the King in his Wisdom and Foresight may lay a Charge without their Consent; and this is by the Law of *Jus Gentium*, the Rule of Law and Reason holdeth *quod omnes tangit ab omnibus debet supportari*.

And so I come to my Fifth Head, If the Defence be of Necessity, and the King's Treasure doth not suffice to defray the Charge, then, instead of the Rule *quod omnes tangit*, &c. this Rule succeeds, *qui sentit commodum, sentire debet & onus*. If the Treasure of the King will not defray the Charge, I do not conceive he is bound to sell or pawn his Crown, or his Lands, tho' some Princes have been so courteous to do it, and paid it again.

You say at the Bar, He must spend all, and more if he had it. I will put this Case in the 10th Rep. One is bound at the Common Law by Prescription to repair a Wall against the Sea, yet in Case of Necessity, in Avoidance of publick Mischief, the Prescription ceaseth; yet in this Case, if Reparation must be done, then cometh this Rule, *quando Impotentia excusat, tunc qui sentit commodum, sentire debet & onus*. And if he be not able to do it, the Charge being so extraordinary, shall he not have Contribution? The Law compelleth not Impossibilities. So the King is bound to defend the Kingdom by Land and by Sea: but if the Defence be so great, and the Danger tends to the Subversion of the Kingdom, and the King not able to make Defence, the King and his Subjects ought to contribute to this Charge, in due Proportion. *Ubi est eadem ratio, ibi est eadem lex*. If the Law shall make this Provision for a small Level of Ground, à fortiori for the Commonwealth, in the Time of extraordinary Danger and Necessity.

Sixthly, In this joint Charge of Defence, the Land ought to assist the Sea: nay, it is not possible that any Island should be defended without the wooden Walls of the Navy at Sea. *Canutus* the Dane enter'd the *Thames* Mouth with an Army, and afterwards went and landed in *Dorsetshire*; and again shipped his Men, and enter'd the *Severn*; then he went into *Worcestershire*, then he sailed back again to other Parts of the Kingdom: so he that is Master of the Sea, may make great Spoil upon the Land at Pleasure. The *Netherlanders* having a great Navy, the *Spaniards* fortified strongly; as soon as the Wind served they set sail, and were Fourscore Miles off before the *Spaniards* could march with their Forces to make Resistance; the *Netherlanders* presently got a strong Place, and afterwards sailed to another Place, and took that also. These are no new Examples, for Islands to be Masters of the Sea. Our Grand Army in 88, at *Tilbury*, what Good had they done, if the *Spaniards* had been Masters at Sea? It is not possible for an Island to be safe, without a Navy at Sea, as appeareth in *Sir Walter Raleigh's History of the World*; and if the Sea must defend the Land, why should not the Land be contributory for the Defence of the Sea and Land? There are several Precedents where Writs have gone to Inland Counties, to charge them to go to the Custody of the Sea. *Claus. 48 Hen. III. 24 Ed. I. 26 Ed. III. &c.* Writs have gone into *Berks, Oxon, &c.* Inland Counties, to command them to contribute towards the Defence of the Sea.

To the Seventh, That in case of instant Danger, the Imposition cannot be by Parliament. I will here consider the Nature of the Danger, as Mr. Solicitor readily pursues it; if it concerns the Essence, Subversion, Destruction and Ruin of the Kingdom, or the Dishonour of the Kingdom, *Quando Hannibal ad Portas*, for the Senators then to sit down in their Robes, is rather a Charge to the Commonwealth, than ought else. It is no Time then to call a Parliament, no well-advised Man will think it fit; here are *Pericula vesa*, the Danger is certain, none will say it is fit to call a Parliament.

This Kingdom of England hath been four Times conquer'd, and therefore we have Reason to foresee the Danger; first, by the *Romans*, then by the *Saxons*, then by the *Danes*, and last by the *Normans*.

The Moralists do make three Parts of Providence. 1. *Memoria præteritorum*. 2. *Perpicientia præsentium*. And, 3. *Providentia futurorum*. It much concerns the King, the Head of the Commonwealth, to be circumspect in the Prevention of publick Danger; Conjectures and Probabilities are to be regarded. Now put the Case upon a probable and violent Presumption; a potent Enemy is prepared and ready to come. Is it not fit there should be a Defence prepared instantly? Besides, there may be just Reason of State, why an Enemy is not fit to be revealed in Parliament; for if great Preparations be, and very probably against us, then to discover them to be an Enemy, is to give them Occasion to become a Challenger. No Man can know the certain Event of Things. One may be a Friend, in shew, to the Kingdom, or a Neuter, not yet openly discover'd; yet we may be mistaken in our Opinion of them. I leave this to your Consideration, whether it be fit, or no, to discover our Thoughts, in Parliament, of an Enemy?

The Eighth Thing is, That in these Cases of Necessity and Danger, the King, *Jure Gentium* may charge the Subject, without his Consent in Parliament, by his Regal Prerogative; for in the King there are two Kinds of Prerogatives, *Regale & Legale*, which concern his Person, Lands and Goods.

Now for the Prerogatives Royal of a Monarch, they may be resembled to a Sphere; the *Primus Motor* is the King. It is observed, that every Planet but one hath a little Orb by it self, that moveth in its petty Compass: So the Center is the Commonwealth, the King is the first Mover. I will repeat some of these Prerogatives, for they are by all Laws, and by our Laws.

The first Regal Prerogative is this, that containeth all the rest, That the King may give Laws to his Subjects: and this doth not detract from him, when he doth it in Parliament. 2. To make Peace and War, 19 *Ed. IV.* 6. 3. To create supreme Magistrates. 4. That the last Appeal be to the King. 5. To pardon Offences. 6. To coin Money. 7. To have Allegiance, Fealty and Homage. And, 8. To impose Taxes, without common Consent in Parliament. These are the principal, and there are many more of them, and allowed by Law. *Comines, fol. 179.* saith, "That if the Cloud be seen but afar off, the King, without the Consent of the Subjects, cannot tax them; but if the Cloud be over-head, the King may call certain wise Persons to him, and tax his Subjects."

You say, That if the King doth move a War Offensive, there's Time enough to call a Parliament; if Defensive, the Cloud is seen long before.

But, oh, good Sir! is this always true? Is not the Cloud sometimes even over the Head, before descried? If you read *Comines*, he will tell you, That in times of Peace we ought to fortify. "But in these Cases, where the Danger is imminent, saith *Bodinus, lib. 1. cap. 47.* the King ought not to expect a Parliament, but is to raise Moneys suddenly, and such Impositions laid upon the Subjects are just and necessary." This is the Opinion of those Writers, who wrote not according to the Law of any one Kingdom, but according to the Law of Reason. I could vouch these two Authors, concerning the Right of Sovereignty which they gave to Kings, to impose Charges on the Subjects, without Consent of Parliament, in time of Necessity.

But what if the King will levy Money, upon Pretence of Defence, in time of Danger, and dispose of it otherwise, and the Danger not so apparent?

I say, so pious and just a King will never pretend a Danger, if it were not *Re vera*. And if any Man will think the King will charge himself and his Subjects to no Purpose, far be it from my Thoughts to think so. This Money, thus taxed, is employed accordingly, for the Defence of the Kingdom, together with the King's own Money; which he would not do upon Pretence.

Again, The King is *Pater Patrie*, therefore, by the Law of Nature he is intrusted with the Defence of the Kingdom: and this Power to tax his People, is but a Consequence of that.

To say, in time of extraordinary Danger and Necessity, *Boni viri sunt sibi leges*, I say, for every Man to be his own Judge, is for every Man to

do what he listeth. Mr. *Holborne* tells you, That if it rests in the King's Power thus to tax the Subjects, whereas Mr. *Hampden* is now taxed 20*s.* he may the next Year be taxed at 20*l.* for, saith he, "If the King may tax when he will, then he may what he will." It's an ill Consequence you make of it; you magnify Parliaments, great Reason we have for it; let us do so of Kings: let none think dishonourably of Kings; no question they will regard the Laws of God; and to make such Objections, is not handsomely handled.

Now we come to Precedents, and Acts of Parliament. For Precedents, my Brother *Weston* hath taken Pains to repeat them, therefore I shall not.

Two Precedents the Defendant's Counsel have much relied on, *Rot. Parl. 2 Rich. II. pars 1.* I have here the Record; and in truth, it were a great Ease to the Judges, and to the Cause, to avouch them truly. This of *Richard II.* was in his Minority; and no Order being taken for the Defence of the Kingdom against the next Summer, nothing was found in the King's *Exchequer*: a Council was called, and for Conclusion, they say, They cannot remedy this Mischief without a Parliament: whereupon a Parliament was called; and in the mean time the King having Moneys lent him, he gave Security to repay it.

Consider this, the King was at this Time but an Infant; it was in a very troublesome Time, many of those that were Parliament-Men made Default to attend, excusing themselves, that they had other Business. This then that was done was but a Resolution in troublesome Times; this is no such binding Business, that it should be made so much of.

And *Rot. Parl. 2 Hen. IV. M. 22.* a Commission went forth for the providing of Barges; and the Commons petitioned to avoid this Charge, and pray'd that the Commission might be repealed. And the King, upon this, calls in the Commission. Shall this be a Disclaimer of the King's Right? He saith, he will speak with his Lords. This is only a satisfactory Answer. Besides, the King was but an Usurper. Now to say this Answer of the King's is a Resolution in the Case, is a great Mistake.

He that will go thro' this Load of Precedents that have been vouched on both Sides, he had need to have more Time than Mr. *Holborne*, who spent four Days.

You have alledged Precedents both before the Conquest and since: that of the *Danegelt*, tho' it was a heavy Yoke, yet it was necessary to be borne: whether it was granted by Parliament or no, *non constat*. I say, it is a good Precedent, and I hold it good without Parliament.

Some distressed Kings, as King *John*, *Henry II.* and *Richard II.* they did indeed do that by borrowing, which they might have took of Right.

Now, to give an Answer to the Statutes of 25 *Ed. I.* and 14 *Ed. III.* and the Petition of Right 3 *Car.* Admit, I say, there were an express Act, That the King, were the Realm in never so much Danger, should not have Aid from his Subjects, but in Parliament, it is a void Act; will any Man say such an Act shall bind? This Power is as inseparable from the Crown, as the pronouncing of War and Peace is: such an Act is manifestly unreasonable, and not to be suffered; saith *Doctor and Student*, To follow the Words of the Law, were,

were, in some Cases, Injustice, and against the Good of the Commonwealth; wherefore, in some Cases, it is necessary to leave the Words of the Law, and to follow that which Reason and Justice requireth: and to that Intent Equity is ordained, which is no other but an Exception of the Law of God, or Law of Reason, from the general Rules of the Law of Man: Which Exception is tacitly understood, in every general Law. This Imposition without Parliament appertains to the King originally, and to the Successor *ipso facto*, if he be a Sovereign in Right of his Sovereignty from the Crown. You cannot have a King without these Royal Rights, no, not by Act of Parliament.

Again, These Acts bind not, for that a favourable Construction, in Case of the King, is to be had in all Cases, *Doctor and Student, fol. 27.* 'Tis not possible to make any general Rule in Law, but it shall fail in some particular Case: If a Law were made in a City, That no Man, under pain of Death, should open the Gates of the City before Sun-rising, yet if the Citizens, before that Hour, flying before their Enemies, came to the Gates of the City, and one, for saving the Citizens, open the Gates before the Hour appointed, yet he offendeth not the Law, for that Case of Necessity is excepted from the said general Law by Equity. So for the Statute in *Edward the Third's* Time, not to give any Relief to a sturdy Beggar, upon Pain of Imprisonment; yet if one relieves him with Clothes, in the Extremity of cold Winter, to save his Life, he shall be excused by the same Statute. By such an Exception of the Law of Reason and Equity, as aforesaid, is this Power reserved to the King.

Impossibilities are to be excepted out of all Laws: *Nemo tenetur ad impossibilia.* Poverty and Impossibilities, as one answered, were more mighty Goddesses than either Force or Love.

But now you will say, Where is this Danger? How doth this Necessity appear? If you would find it, you need not to enquire for it either by Sea or Land; but in this very Record, the Writ sheweth, and the most favourable Construction is to be had for the King; as in *Plowden's Comment. 336.* the Case of Mines of Gold and Copper.

Now all this while I have been in the General, and in a manner in Propositions; I come now to Application. Before I descend to it, I shall shew upon what Part of the Record I shall ground my self. Tho' in the *Mittimus* it be *Salus Regni periclitabatur*, which is said to be metaphorical, for that it asketh no great Answer; it is good enough, as in the Writ of *Oyer and Terminer, omnes qui habent damnum vel salvationem*, are bound to contribute. Will you bind the King to the Language of *J. S.*? May he not express himself in what legal Manner he pleaseth?

You say, That this Phrase of *Salus Regni* is too general: If it be alledged, and you demur upon it, you confess this for the most Advantage for the King; as in the Case of Mines. It is not alledged in the *Scir' Fac'*; this might have been made a good Question.

But without all these, I conceive the Writ 4 *Aug.* containeth the Causes for this great Preparation, and expresseth them in particular. What if it were no more but this, Left we should lose the Dominion of the Seas? What is it to be called *Dominus Maris*, and not to maintain it, but to suffer this Princely Honour to perish, and others to become Masters of it? What Havock and

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Confusion would follow? And this the true Intention of the issuing forth of this Writ.

Next, *Consideratis etiam periculis, &c.* that is, The Danger is so evident, and so great, in these warlike Times, that of Necessity Defence must be made, both by Sea and Land.

Next is great Oppression used at this Time, *Datum est nobis intelligi quod Prædones, &c.* that the Pirates do take and spoil our Merchants, carry our Men into Captivity: What will you say to this: Let them take our Men, and let us have a Parliament, and we will bring them home again: The Land was never without Thieves, nor the Seas without Robbers.

Next, *paratum periculum & præparans, &c.* now these Ships go for the Defence of the Sea against this Danger, *& vestrum & vestrorum.* The Writ saith the whole Kingdom is in Danger, both by Sea and Land; and you have confessed this by your Demurrer.

But you complain before you are hurt, because you have seven Months Liberty, a Parliament might be called in that Time: Now in this Time of imminent Danger, it is no Time to call a Parliament.

You say it hath continued for three Years. Put the Case the Danger continueth for three Years, and then ceaseth, and then the King ceaseth to lay a Charge, and the Danger begins again the next Year; what! Shall not the King require Aid as the Danger increaseth?

And now to conclude, without Repetition: It doth appear by this Record, that the whole Kingdom is in Danger, both by Sea and Land, of Ruin and Destruction, Dishonour and Oppression; and that the Danger is present, imminent and instant, and greater than the King can, without the Aid of his Subjects, well resist: Whether must the King resort to Parliaments? No. We see the Danger is instant, and admits of no Delay. Shall we go home, and sit together in careless Security? Not so. But let us resort to our pious and just King, whose Prerogative and Right of Sovereignty is to defend the Realm, and to maintain his Subjects Liberties. And so I give Judgment for the King.

The Argument of Sir Robert Berkley, Knt. One of the Justices of the Court of King's-Bench, Feb. 10. 13 Car. 1637. in the Exchequer-Chamber.

The Case.

IN *Aug. 11.* of the King's Reign, there issued out of the Court of *Chancery* his Majesty's Writ, directed to the Sheriff of the County of *Bucks.* and the head Officers of Villages and Boroughs in that County, *& probis hominibus*, that is, to all the King's good Subjects, *in omnibus Villis, Burgis, & aliis locis in Com' Bucks.*

I may call this Writ, a special Writ, or a Commission upon the Case. It is not a *fic volo*; it begetteth with divers weighty Reasons or Causes, *pro ratione* of the issuing of it; as,

1. His Majesty had Intelligence that certain Pirates, *& maris grassatores*, as well *Mahometans* as others, were congregati upon the Sea, *quod ab olim per gentem Anglicanam defendi consuevit*; and did daily rob and spoil the Ships and the Goods of the Subjects of the King, and of his Confederates, and

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did

did captivate the Persons of those whom they took.

2. His Majesty did *conspicere*, that those Men did *navigia indies præparare, ad mercatores ulterius molestandos, & ad Regnum gravand' nisi citius remedium ponatur.*

3. His Majesty did consider the Perils, *quæ undique illis guerrinis temporibus imminabant, ita quod regi & subditis suis defensionis maris & regni, omni festinatione, quâ poterit, conveniebat accelerare.*

4. His Majesty's Royal Resolution was, *Defensionis regni, tuitioni maris, securitati subditorum, & salvæ conductioni navium & merchandizarum providere.*

Maxime pro eo quod the King and his Progenitors Domini maris predicti semper hætenus extiterunt, & plurimum tæderet Regem, si honor iste regius suis temporibus dispereat, aut in aliquo minuat.

5. Lastly, his Majesty called to mind a *Regula juris & rationis*; *Onus istud defensionis quod omnes tangit, per omnes debet supportari, prout per legem & consuetudinem Regni Angliæ fieri consuevit.*

Upon these solid Reasons, as upon a firm Foundation, the *Mandamus* of the Writ is grounded, and followeth in the next place.

The *Mandamus* is,

1. That all they to whom the Writ is directed, should among them, *providere unam navem de guerra*, of such a Burden, and with so many Men, and other Particulars, as are mentioned at large in the Writ.

2. That this Ship, so furnish'd, be ready at *Portsmouth* by the first of *March* then following, and from that Time, for 26 Weeks, to go with his Majesty's and other Subjects Ships, and to attend the Direction of those to whom his Majesty should then commit the Custody of the Seas, for Tuition of the Sea, and Defence of the Realm.

3. That all this be performed, *ad custagia* of themselves *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis.*

After the *Mandamus*, an *Assignavimus*, or Commission to the Sheriff and the head Officers cometh, and then Directions to them.

The Commission to the Sheriff is *inter alia*.

That he shall make an Assessment *secundum facultates cujusque*, for Contribution to the Expence of the Provisions aforesaid, shall appoint Collectors, shall levy the Money to be assessed (if it be denied) *per distractiones aliosve modos debitos*, and shall *carceri mancipare* those who shall be *contrarii & rebelles*.

The Directions to the Sheriff begin with a Clause of *Nolumus*.

The King forbids that the Sheriff shall levy more than is necessary for the Expences: That any Money levied shall be appropriate to any other Use, *quovis quæsito colore*: And then, lastly, in case that more be collected than shall be useful, the King commands that Restitution be made of it.

After this Bill, 9 *Martii* 12 of the King (which is above a Year after the Ship should have been ready at *Portsmouth*) a Writ of *Certiorari* issued out of the *Chancery*, directed to the several Sheriffs *pro tempore* of *Buckinghamshire*.

That *Certiorari* recites the Writ of *August* 11.

And for that the King was informed, that some had not paid the Sums assessed upon them, but refused to do the same; the King commands the said Sheriffs respectively to certify into the *Chan-*

cery the Names of such Refusers, and the Sums assessed upon them.

The Sheriffs accordingly make Returns in a Schedule annexed to the *Certiorari*. In one of the Schedules there is, *inter alia*, *Stoke Mandevile, Mr. John Hampden* 11.

After this, by Writ of *Mittimus* out of the *Chancery*, tested in *May* last, the Tenure of the Writ of *Aug.* 11. with these Words, *quod quidem brev' pro eo quod regn' nostr' Angliæ & popul' nostr' ejusdem periclitabatur emanari curavimus inter alia brev' ad hujusmodi provisionem, & assessament' faciend' per singulas comitatus Angliæ, &c.* And also this Record of the Writ of *Certiorari*, with the Return of it, and Schedule annex'd, are sent into the Court of *Exchequer*.

By that *Mittimus* the King commands the Lord Treasurer and Barons, *quod inspectis* those Records, they should *facere ulterius inde pro levatione, collectione & receptione* of the Sums unpaid, *prout de jure, & secundum legem & consuetudinem regni Angliæ fuerit faciend' & non aliter.*

By which (*prout*) but especially by the (*non aliter*) the King's Honour and Care of Justice are singularly eminent; for the levying the Money anew is not commanded, nay, it is forbidden, unless *Jus, Lex, & Consuetudo Angliæ* do warrant it.

After this, and in the same Month of *May* last, the Barons awarded a Writ of *Scir' Fac'* into *Buckinghamshire*, against those whose Names are in the Schedule aforesaid, thereby commanding the Sheriff to warn them to appear in the *Exchequer* by a Day, to shew Cause, if they can, why they should not be charged with the Payment of the Sums of Money assessed upon them and unpaid.

The *Scir' Fac'* is always a judicial Writ; and certainly the Barons have proceeded very judicially and gravely, in awarding of it. In weighty Cases, especially, if they be not of common Impression, proceeding *lento pede* is truly judicial.

Upon that *Scir' Fac'* Mr. *Hampden* is returned garnish'd.

He appearing, and having heard the several Writs and Records beforementioned, without taking the common or any other Protestation, hath demurred generally.

The Words of his Demurrer are,

That *materia contenta* in the same Records, *minus sufficiens in lege existit ad ipsum onerandum.*

He doth not say, that *materia* is *minus vera*; but, acknowledging the Matter contained in the Writ to be true, he putteth the Cause *de bono & malo*, upon Sufficiency or Insufficiency, in Point of the Law, for charging him.

Mr. Attorney for the King hath joined in Demurrer.

Upon this Demurrer, one main or grand Question, and some other inferior Questions have been started.

Because I have Time little enough for the grand Question, I will not trouble you with arguing, or so much as singling out the other inferior Questions. My Brother *Weston* hath spoken to some of them, I concur with him.

The grand Question is shortly this,

Whether, as this Case is, or in this special Case, (as it is upon the Pleading) the Charges imposed by the King upon his Subjects, for Provision of Shipping, without common Consent in Parliament, be good in Law, yea or no?

This is a Question of extraordinary Weight, of infinite Consequence, the greatest that every came before Judges of ordinary Courts of Justice.

Qui ad pauca respicit, facile pronunciat; but he that will determine in this Question, must *respicere ad multa, eaque magna & ardua*.

Upon the Debate of this Question at the Bar; elaborate, learned and strong Arguments have been made on either side.

And truly, for my part, I have laid the Question to my Heart.

All the Arguments which have been made in it, I have been present at, and specially heeded.

All the Records which have been brought to the Judges, on either side, I have read over as seriously as I could.

I have likewise considered of the Reasons and Authorities in Law, pertinent to this Case.

And upon my Pains, Deliberation and Study, I have concluded with myself, and in mine own Understanding am satisfied, and think I shall satisfy others, that as this Case standeth, upon the Records in the Pleading, or in this special Case; the Charge imposed is good in Law, and consequently that Judgment ought to be given against Mr. Hampden, *Quod oneretur*.

For my clear Delivery and Expression of my self, I divide all that I shall say into these four Heads.

I. I will state the Case, and will settle the proper Question of it, as the Pleadings are.

(The true stating and settling of a Case conduceth much to the right Answer of it.)

II. I will consider the Policy and fundamental Rules of the common Law, applicable unto that which upon stating of the Case shall appear to be the proper Question.

III. I will consider the Acts of Parliament, the Answer to Petitions in Parliament, and the several Magna Charta's of the Liberties of England, which concern the King's Proceeding in this Case.

IV. I will answer the material Objections, which have been made on the other side.

Upon my First General Head.

I Hope that none doth imagine, that it either is, or can be drawn by Consequence, to be any Part of the Question in this Case, Whether the King may at all times, and upon all Occasions, impose Charges upon his Subjects in general, without common Consent in Parliament? If that were made the Question, it is, questionless, That he may not.

The People of the Kingdom are Subjects, not Slaves, Freemen, not Villains, to be taxed *de alto & basso*.

Tho' the King of England hath a Monarchical Power, and hath *jura summæ majestatis*, and hath an absolute Trust settled in his Crown and Person, for Government of his Subjects; yet his Government is to be *secundum leges regni*.

It is one of the Questions in the *Juramentum Regis*, at his Coronation, (see the old *Magna Charta*, fol. 164.) *Concedis justa leges & consuetudines regni esse tuendas?* And the King is to answer, *Concedo*.

By those Laws the Subjects are not Tenants at the King's Will, of what they have.

They have in their Lands *Feodum simplex*, which by Littleton's Description, is, *hereditas legitima, vel pura*.

They have in their Goods a Property, a peculiar Interest, a *meum & tuum*.

They have a Birthright in the Laws of the Kingdom.

No new Laws can be put upon them; none of their Laws can be altered or abrogated without common Consent in Parliament.

Thus much I speak to avoid Misapprehensions and Misreports upon that which I shall say in this Case; not as if there were Cause of saying so much upon any thing challenged on the King's side.

We have in Print his Majesty's own most gracious Declaration, that it is his Maxim, That the Peoples Liberties strengthen the King's Prerogative, and that the King's Prerogative is to defend the Peoples Liberties.

Secondly, Tho' Mr. Hampden's Counsel have spent all their Powder in citing a Multitude of Records, beginning with one in King John's Time, and so downwards, to prove,

That the King's Ministers have paid, that the Barons have been by Writs commanded sometimes to pay, sometimes to Make Allowances,

Out of the King's Moneys or Dues.

In Cases of { Foreign Auxiliary Voluntary } Wars.

In Cases of Particular or ordinary Defence of the Realm, as upon Rebellion of Subjects, or Inroads by Enemies, into Parts Marches, or Maritime; such Enemies I mean, as are not greatly formidable, as are apt to run away when they hear of any Force coming against them:

In Cases of setting forth Ships, for scouring the Seas from petty Pirates, so that Merchants may have safe Passage.

In Cases where Victuals, or other Provisions, were taken from particular Persons, by way of Purveyance, for Soldiers, or for the King's Army:

In Cases of borrowing of Money by the King's Officers, for War, or ordinary or extraordinary Defence:

In Cases of taking Money or Goods against the Owners Consent, by Warrant, for the King's Use, for War, or other Manner of Defence:

In Cases where particular Men's Ships, Horses, or Armour, were lost in the Wars:

In Cases where private Men's Houses were used in the King's Service:

Lastly, in Cases of general and extraordinary Defence, where the King had sufficient Aids for that Purpose granted to him in Parliament.

Altho' I confess it be true, that the King in all these cited Cases, must pay of his own, without imposing upon the Subject; yet I say that those Cases come not close to our Case: For every of those Cases hath a manifest, particular, and just Reason; but none of these Reasons are applicable to the Case now in question, as is easy to demonstrate, if a Man would enter into every of these Particulars; which I forbear, for saving of time.

And these Records being taken away, the Multitude of the Vouchers on Mr. Hampden's side will be greatly abated.

Thirdly, The Case of the antient Tribute called *Danegelt*, of which Mr. Hampden's Counsel hath spoken, tho' it come nearer than any of the former mentined Cases, yet it much differs from the Charge imposed in our Case.

It hath been said on Mr. Hampden's side,

1. That *Danegelt* was not imposed, but by common Assent of Parliament.

2. That after it was so imposed, it was released by *Edward the Confessor*.

3. That it hath been now so long uncollected, that it is scarce known what it was.

To the *First* I answer, That the Proof urged that it was created by Parliament, is at the best but a Conjecture. It hath been said, that the Words of *Leges Edw. Confessoris*, c. 12. are in one Place, *Statutum est Danegeldum annuatim reddi, &c.* And in another Place, *Danegeldi reductio primitus instituta est, &c.* And *Statutum* is a proper Word for an Act of Parliament, a Statute.

But in my Understanding it is apparent, that it had not Creation by common Assent in Parliament, but only by Regal Authority; or at the most by the King, with his great Lords Assents, which in those, and after Times, was frequent. My Reasons are,

1st, In *Tilburienfis*, or the black Book of the Exchequer, l. 1. c. 28. the Words are express, *A regibus Anglicis statutum est, &c.* no mention of any others who joined in that *Statutum*.

2^{dly}, It appears by the said *Leges Edw. Confess.* c. 12. that at the beginning of *Danegelt*, *omnis Ecclesia libera erat*; the Reason given, *quia magis confidebant Ecclesie orationibus, quam armorum defensionibus*: and yet in the Addition to the said *Leges*, it appears, that *William Rufus* imposed that Tribute upon the Church also, and that without common Assent. For the Words are, *Danegeldum concessum est ei a Baronibus, non lege statutum neque firmatum*, and certainly those Barons by whom it was *concessum*, were not all the Baronage, for it is plain, that the Bishops and mitred Abbots did not consent.

3^{dly}, In that Clause where *statutum est* is used, in *Leges Edw. Confess.* the *Danegelt* is said to be 12 d. *ex unaquaque hida*; and afterwards it doth appear that it was made 4 s. by *William Rufus*, *ex unaquaque hida, Ecclesia non excepta*; which Increase was most unjust, if no more but 12 d. was limited by common Assent at first.

To the *Second*, I answer, with Sir Henry Spelman's Distinction, There were two kinds of *Danegelt*; one, *ad pacandos Danos*; another, *ad arcendos Danos*, and other Pirates. It may be, that the Confessor released that *ad pacandos*, for the *Danes* troubled not this Kingdom in his Time, they had enough to do then at home, and so there was no Cause of Collection of any Taxes *ad pacandos Danos*: And tho' it was *de facto* exacted by the *Danish* Kings before *Edward the Confessor*, viz. *Canute, Harold, Harefoot, and Hardicanute*, it was unjustly taken by them, the Cause of Grant of it ceasing in their Time of Sovereignty here; and that might be the Cause of the Confessor's Dream, That he saw the Devil dancing upon the Money collected in his Time for *Danegelt*; which Supposition of a Vision occasioned him to release it, as it is written. But certainly the *Danegelt ad arcendos, &c.* was not released by *Edward the Confessor*: for it appears in *Tilburienfis*, before cited, that *Danegeldum sub indigenis regibus solvebatur usque ad tempus Willielmi primi*, if *sub indigenis Regibus*, then under the Confessor.

Again, it appears in *Leges H. I. c. 16.* that *Danegelt* was in that King's Time a Duty to the King: For the Words are, *Danegeldum si ad terminum non reddatur recta emendetur*; ergo, not released by his Predecessor *Edward the Confessor*.

I further find in *Ranulphus Cestrensis*, that *Stephanus Rex, Regnum iniens, Danegeldum*, i. e. 2 s. *ad hidam, quos antecessores sui singulis annis accipiebant, in eternum condonavit*: which (*condonavit*) shews that he, as a King *de facto*, had a Right to it, ergo, not formerly released. But for the Validity of such a Release by K. *Stephen*, a manifest Usurper, tending to the Diminution of the Crown especially if it were of a Tribute granted to the Crown by Act of Parliament, see 9 E. IV. f. 2.

To the *Third* I answer, That it is true, it is obscure what the *Danegelt* was; you have heard by what has been cited, mention of 1 s. 2 s. and 4 s. to be the Sum of it; and truly, I think, it was more or less, according to the Occasion of Money for Defence: the Tribute *ad pacandos Danos*, I believe at first was but 12 d. out of every Hide, yet afterwards increas'd by the three successive Kings, *Danes* themselves, for I find it was at first but about 10000 l. per Ann. it after was raised to 30000 l. then to 40000 l. and, lastly, to near 50000 l. which huge Sum was in these times a Burden insupportable to the People. But however, the Uncertainty of the Sum (especially if you understand that which was collected *ad arcendos Danos*) is a clear Proof, that it was not created by Act of Parliament, for then the Sum thereby certain could not be mounted.

All Historians do agree, that the original Time of *Danegelt* was in K. *Ethelred's* Reign. I observe, that K. *Ethelred* shewed himself weak and improvident, in that he looked not to raise Means for Defence of his Realm against the *Danes* in time; but when the *Danes* were Masters, then he began to provide against them. And for that cause divers of our Historians write, that he was called by a Nick-name, *Ethelred the unready*. But, on the other Side, we the Subjects of *England*, who enjoy ourselves and what we have in Peace, thro' his Majesty's Royal Care and Providence, have Cause to yield to our Sovereign K. *Charles*, the honourable Name of *Charles the ready*, or, *Charles the provident*.

But, to return, The Differences between the ancient *Danegelt* and the Charge in our Case, are apparent and many; for the *Danegelt* was,

1. Annual: ours is due only in case of Necessity.

2. It was collected out of Hides of Land, and thence called *Hidage*: Ours is collected out of personal as well as real Estates.

3. It was a Tribute of Money: Ours a Provision of Shipping and Armour in kind.

4. It was against Pirates: Ours is for common Defence of Sea and Land.

5. It was not general; Clergy and Clergymen were originally exempt: Ours is general, upon all without Exception.

Lege the Words of the Authorities under written, from whence many Observations, and good Conclusions may be drawn touching *Danegelt*.

Leges Edw. Confess. c. 12. *Danegeldi redditio, propter Piratas primitus instituta est, patriam enim infestantes vastationi ejus pro posse suo insistebant; ad quorum insolentiam reprimendam statutum est Danegeldum annuatim reddi sc. 12 denarios ex unaquaque hida totius patrie, ad conducendum eos qui piratarum irruptioni resistendo obviarent. De hoc quoque Danegeldo libera erat omnis Ecclesia, quia magis confidebant Ecclesie orationibus, quam armorum defensionibus.*

Hanc Libertatem tenuit Anglorum Ecclesia, usque ad tempus Willielmi junioris.

Danegeldum concessum est ei a Baronibus, non lege statutum, neque firmatum; sed habuit necessitatis causa ex unaquaque bida 4 solidos, Ecclesia non excepta.

The black Book of the Exchequer, written in King Henry II's Time, in that Part which is *Tilburienfis's* Work, or the *Magister ad Discipulus*, it is lib. c. 28. not c. 11. as it is misprinted in learned Sir Henry Spelman's Glossary.

Ad Danos arcendos, a Regibus Anglicis statutum est, ut de singulis bidis jure quodam perpetuo duo solidi argentei solverentur in usus virorum fortium, qui per-lustrantes maritima impetum hostium reprimerent.

Quia igitur principaliter pro Danis institutus est hic redditus, Danegeldum dicitur, hic sub indigenis regibus solvebatur usque ad tempora Regis Willielmi primi. Ipso namq; regnante, tam Dan' quam cæter' terre marisq; prædon' hostiles cobibetur incursus. Cum ergo diu solvisset terra, sub ejusdem Regis imperio, noluit hoc ut annuatim solveretur, quod fuerat urgente necessitate bellicæ tempestatis exactum, nec tamen omnino propter inopinatos casus dimitti.

Raro igitur temporibus ejus vel successorum ipsius solutum est, hoc est cum ab exteris gentibus bella vel opiniones bellorum insurgabant.

Verum quocumq; tempore solvatur ab ipso, liberi sunt qui assident ad Scaccarium, ut dicitur, & vice-comites, &c.

Leges H. I. c. 16. *Danegeldum, i. e. 12 d. ex unaquaq; bida per annum, si ad terminum non red-datur, vitia emendetur.*

Fourthly, I affirm, with some clearness, under favour, That the Charge now demanded, is not within the antient Acceptation or Signification of the Words, Aids, Mises, Prizes, Taxes, or Talli-ages, which it is to be agreed cannot be exacted by the King, without Consent in Parliament. Nei-ther is it within the Compass of the Word Subsidy, which may not be levied, but upon Grant of it in Parliament.

Aids, if you take the Word in a general Sense, they were of two kinds. 1. Such as were Aids and Services too, as *pur faire fitz Chevalier, pur file marier*. That kind of Aid, common Persons, who had Seigniories, had right unto, as well as the King. No colour of comprehending this kind of Aids, within the Word (Aids) pertinent to this Question.

To the 2d kind of Aids, were Sums of Money from the Subject to the King, by way of Help, *ad agendo Regis*; as for making of Castles, building of Bridges, Helps for voluntary or auxiliary Wars, or for the King to do his Pleasure with, and the like.

See Parl. Roll 11 H. IV. n. 45. 20000 Marks granted to the King, by the Name of an Aid, *ent a fair son pleasure*. And Rot. Parl. 25 Ed. III. n. 12. where the Application of the Word Aid to such a Purpose, is distinguish'd from other Pay-ment to the King.

Mises were Presentations in Kind of a Benevo-lence, upon a King's first coming to his Crown; such are yeilded at this Day in *Wales*, to a Prince of *Wales*.

Prises are taking of part of the Subjects Goods from them to the King's Use, without Pay, hence Priſage of Wines at this Day.

Taxes & Tallages, in Quinzim. B. 9: 34 H. VIII. Nota par exposition de ceux del Escheq; que tax et Tallage n'est auter, mes dismes, quinzim, ou auter Subsidie, grant per Parliament. Et le Quinzim est des Layes, Et le Disme est de Clergie et est d'estre levy de

leur terr', Et le disme et le Quinzim de Lais est del biens, sc. decimam partem bonorum in Civitatibus et Burgis, et 15 partem bonorum des laies in priam que fuit levy in aucuns temps sur leur biens, viz. del aids sur leur terres què fuit vaud troublous, mes ors cest levy, secundum ratum terrarum suarum per verges de terr' et auter quantites, issuit que ore, tout science leur certenty in chun vill et pais par tout le realme mes il est encore levy in escuns lieux sur lors biens, mes in-plussors lieux, sur lors ters.

Subsidies quid chun conust, sc. certaine some sur le pound del rat' de terr' ou biens, come app' in les Acts de Parliament de grant del subsidie.

Fifthly, It cannot be said, that the present Case is to be stated so, as unless the Charge command-ed be obeyed, an assured infallible Ruin and Sub-vention of this Kingdom will happen, and that in-stantly. In such a Case, *Quid non* is lawful; and happy he who by doing any Exploit, can save the Ship from sinking, the Body from falling.

Sixthly, It is to be observ'd, That the principal Command in the Shipping-Writ, is not to levy Money, it is to provide a Ship; which Ship be-ing to be provided at the Charge of a Multitude, in Regard the thing cannot be done any manner of way, but by the Means of that which is *mensura rerum*, namely, Money, therefore the Instructions in the Shipping-Writ, are not only apt, but neces-sary; that an Assesment be made, whereby pro-portionable Sums of Money may be collected, for the Provision of the Thing commanded: And thereupon it may be said, that the Sum assessed upon every one, and in our Case upon Mr. Hamp-den, is not a Debt *vi termini*, but is rather a Duty to be performed, as a Means conducing to the principal End: The Refusal of Performance of which Duty, is a Refusal to obey the principal thing commanded, *Qui negat Medium, d'fruit finem*.

And the principal thing commanded, being of a Kind concerning the Commonwealth; the King, who is the Head, the Sovereign of the Common-wealth, and who hath, as incident to his Regal Office, Power of Coercion, is by Law to exercise such his Power of Coercion, to inforce such as re-fuse to join with others in Performance of that which is commanded for the Commonwealth.

And this being the true State and Way of the Proceedings, in the present Case; it is apparent, that tho' the *Scir' Fac'* against Mr. Hampden be in the King's Name, yet it is not to have Execution as for the King's Money, or as for a Debt due to the King from Mr. Hampden: But as is manifest, if the whole Contexture of the Writ of *Scir' Fac'* be observed, it is nothing else, but to bring on a Declaratory Payment, That Mr. Hampden ought *onerari* to the Payment of the 20 s. assessed upon him. So that, with his 20 s. together with the other Money of *Buckinghamshire-Men*, assessed al-so upon every of them particularly, the Ship com-manded from the County of *Buckingham* may be provided.

Seventhly, and lastly, Having declared of what Nature our Case is not, I come now to tell you what the State of it is.

The true State of our Question must be made out of the whole Record, or Pleading of the Case, the Matter of Fact wherein the Defendant hath confessed, (as I noted in the Beginning.)

In the Writ of *Aug. 11 Car.* and in the Writ of *Mittimus*, there are Causes expressed, of the issuing of the Writ of *Aug. 11.* or the Shipping-Writ; those Causes are several, but not to be severed, all of them are to be laid together into the Balance.

1. *Piratae congregati*, upon the *English Seas*.
2. *Piratae navigium indies preparantes, ad mercatores ulterius molestandos, & ad regnum gravandum.*
3. *Pericula* are *Undique regno Angliæ, in his guerrinis temporibus.*

Those *pericula* do *imminerè regno, nisi citius remedium ponatur*; where the Word *citius* is a comparative Word, relative to slow Ways of Remedy, amongst which Parliaments is one.

5. *Regi & subditis convenit, omni qua poterint festinatione accelerare, ad regni defensionem, maris tuitionem, & securitatem subditorum.*

Out of all those Positions it appears,

That there is in the Case real and manifest Peril; not *panicus terror*, Fear without Cause; *Tempora* are *de facto guerrina*, there is *de facto, navium congregatio*.

Again, we must observe, That in this Case,

1. The Command is, *ad proficiscendum cum navibus regis*: So the King himself is to join with the Subject in the common Defence: Here is not a *Quod tibi fieri non vis*: Here is rather a *Contributio*, than a *Tributio*.

2. The Ships and Arms to be provided are to continue the Subjects own in Property: The King doth not assume the Property of them to himself; he only commands them to be made and used for the common Defence. This appears by the Words (*ad proficiscendum cum navibus nostris.*) So the Writ sets a Distinction between *naves nostræ*, (that is, the King's) and the Ships to be provided. See the like of this *M. 28 & 29 Ed. I. Communia*, with the King's Remembrancer, for Gallies commanded upon the like Occasion; and *P. 5 E. II. and P. 13 E. II.* with the King's Remembrancer, *inter brevia directa Baronibus*.

3. The Subjects are commanded, in this Case, to be at the Expences, *tam in victualibus, quam hominum salariis ad guerram necessariis*. This I shall prove clearly anon, to be consonant to Law, and warranted by many Precedents, in the like Cases.

4. All the Counties of the Kingdom, that is, all the Kingdom in general, is charged, not any spared; the Clergy, the King himself, are to join in the Provisions.

5. The final End and Scope of all this Preparation is, *Defensio Regni, tuitio maris, retentio dominii maris, securitas subditorum, salus Reipublicæ.*

But Mr. Holborne hath objected, That *Salus Reipublicæ periclitabatur* is not to be taken as part of this Case, because it is not in the Writ of *Aug. 11 Car.* but is inserted into the *Mittimus*, above two Years after; and he saith, That Mr. Hampden could not know *11 Car.* that at that time *salus Reipublicæ periclitabatur*; and therefore he is not to be blamed for refusing to pay his Assessment, which was before the *Mittimus*, and grounded only upon the Writ of *Aug. 11 Car.*

He further observed, That in the subsequent Shipping-Writ, that Clause is expressly now put out. To this I answer,

1. It is true, that *Salus Regni* is not in express Terms, or in those identical Words, in the Writ of *Aug. 11.* but it is express'd in that Writ in Words equipollent.

2. If it were not contained in that Writ in Words equipollent, yet it enforces the Words in that Writ in Matter purtiant, or not new, or different from it; and so is out of the Rules of Departure, wherein if it were, it were a good Exception in strictness of Pleading.

3. That Clause in the *Mittimus* by way of Declaration or Signification to the Barons, what the Reason was, that moved the King to issue the first Writ; and the Barons are to take notice of it, as well as of the Clause in the *Mittimus*, whereby the King signifieth to them, that he had sent the like Writs as that of *Aug. 11.* to all the Counties of *England*: And this is a Declaration of that Meaning which the King had in the Beginning.

By *Dowman's Case*, *Co. 9.* after Assessment executed, or a Fine levied, a Declaration may be made, to what Use that Fine or Assessment was.

In a word, the State of our Case is thus:

Dominium maris, & salus reipublicæ periclitabatur, convenit Regi & subditis, omni qua poterint festinatione accelerare ad defensionem regni, tuitionem maris, & securitatem subditorum.

Now whether to set the Commonwealth free and in Safety from this Peril of Ruin and Destruction, the King may not, of his own Royal Authority, and without common Assent in Parliament, impose a Charge upon his Subjects in general, to provide such Shipping, as is necessary, in his Royal Judgment, to join with his Majesty's own Ships, and to attend them for such time as his Majesty in his Royal Wisdom shall think fit, and also to injoin them to be themselves at the Expences, *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis*?

I would be loth to irritate any, differing in Opinion from me, with provoking or odious Terms; but I cannot more fully express my self, (and so I desire it may be taken as an Expression, and not as a Comparison) than in saying, That it is a dangerous Tenet, a kind of judaizing Opinion, to hold, That the Weal publick must be exposed to Peril of utter Ruin and Subversion, rather than such a Charge as this, which may secure the Commonwealth, may be imposed by the King upon the Subject, without common Consent in Parliament. So that the Security of the Commonwealth, for the very Subsistence of it, must stay and expect until a Parliament provide for it; in which Interim of Time, it is possible, nay, apparently probable, yea, in a Manner to be presumed, that all may be, yea, will be brought to final Period of Destruction and Desolation.

All know, that the Jews were so strict, that they would not use Means for Defence of themselves and their Country, upon their Sabbath. Their Enemies took the Advantage, and ruined their State.

The Second General Head.

I Now come to my *Second General Head*, wherein I proposed to consider of the fundamental Policy, and Maxims, and Rules of Law, for the Government of this Realm, and of the Reasons of Law pertinent to our Case, which are very many. I will briefly and severally point at those which make Impression in me.

1. It is plain, that as originally, even before the *Romans* Time, the Frame of this Kingdom was a Monarchical State, so for divers Hundreds of Years past, upon the *Romans* Desertion of it, and after the Heptarchy ended, it was, and continued, and still continueth Monarchical. And our gracious Sovereign is a Monarch, and the Rights of free Monarchy appertain unto him; and yet still with this, that he must *Leges & consuetudines regni*

regni servare, & præcipue leges & consuetudines & libertates a glorioso Rege Edwardo, that is, Edward the Confessor) clero populoque concessas; as appears in the old Magn. Chart. fol 164. tit. Juramentum Regis quando coronatur.

2. Where Mr. Holborne supposed a fundamental Policy in the Creation of the Frame of this Kingdom, that in case the Monarch of England should be inclined to exact from his Subjects at his pleasure, he should be restrained, for that he could have nothing from them, but upon a common Consent in Parliament.

He is utterly mistaken herein.

I agree the Parliament to be a most antient and supreme Court, where the King and Peers, as Judges, are in Person, and the whole Body of the Commons representatively. There Peers and Commons may, in a fitting Way, *parler leur ment*, and shew the Estate of every Part of the Kingdom; and, amongst other things, make known their Grievances (if there be any) to their Sovereign, and humbly petition him for Redress.

But the former fancied Policy I utterly deny.

The Law knows no such King-yokeing Policy.

The Law is of itself an old and trusty Servant of the King's; it is his Instrument or Means which he useth to govern his People by.

I never read nor heard, that *Lex* was *Rex*; but it is common and most true, that *Rex* is *Lex*, for he is *lex loquens*, a living, a speaking, an acting Law: and because the King is *lex loquens*, therefore it is said, that *Rex censetur habere omnia jura in serinio pectoris sui*.

There are two Maxims of the Law of England, which plainly disprove Mr. Holborne's supposed Policy.

The first is, *That the King is a Person trusted with the State of the Commonwealth.*

The second of these Maxims is, *That the King cannot do Wrong.* Upon these two Maxims, the *Jura summe majestatis* are grounded, with which none but the King himself (not his High Court of Parliament without leave) hath to meddle, as namely, War and Peace, Value of Coin, Parliament at Pleasure, Power to dispense with Penal Laws, and divers others; amongst which I range these also, of Regal Power to command Provision (in case of Necessity) of Means from the Subjects, to be adjoined to the King's own Means for the Defence of the Commonwealth, for the Preservation of the *Salus Reip.* Otherwise I do not understand how the King's Majesty may be said to have the majestical Right, and Power of a free Monarch.

It is agreed, that the King is, by his Regal Office, bound to defend his People against foreign Enemies; our Books are so, *F. Na. fol. 118. Est a intendre que le roy doit de droii; s'aver et defendre son realme com' vers le meere, com' vers enemies.*

Juramentum Regis, cited before, *servabis Ecclesie Dei, Clero, & populo, pacem ex integro secundum vires tuas*; if (*ex integro*) then against all Disturbers of the general Peace amongst them, most chiefly, in my Judgment, against dangerous Foreigners.

Bracton and *Glanvill*, in the Front of their Books, published, That the King must have Arms as well as Laws; Arms and Strength against foreign Enemies, Laws for doing Justice at home. Certainly if he must have these two Necessaries,

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he must be enabled with Means for them, and that of himself, not dependent *ex aliorum arbitrio*; for it is *Regula juris, Lex est, quando quis aliquid alicui concedit, concedit, & id sine quo res ipsa esse non potest.*

3. Tho' I have gone already very high, I shall go yet to a higher Contemplation of the fundamental Policy of our Laws: which is this,

That the King of mere Right ought to have, and the People of mere Duty are bound to yield unto the King, supply for the Defence of the Kingdom.

And when the Parliament itself doth grant Supply in that Case, it is not merely a Benevolence of the People, but therein they do an Act of Justice and Duty to the King.

I know the most solemn Form of Parliament, and of the humble Expression of the Commons, of their hearty Affection, and good Will to their King, in tendering to him their Bill of Subsidies or Fifteenths.

Rot. Parl. 9 Hen. IV. n. 7. There is a notable Record of the very Right of the Commons, in the Form of Grant by Parliament of Supply to the King: Archbishop *Arundel*, then Lord Chancellor, in his Speech to the Houses, took for his Theme (*Regem honorificate*) it being then a time of instant Necessity.

The Commons, in their Grievances, complained of the Default of Safeguard of the Sea, towards which they had granted a Subsidy before; *Et pour tant (Note this for the Reason, it was not spoken simply, as Mr. St. John urges) but pur tant que ils ne sont obliges a cel guerre susteyner, mes sont discharge de re exant*; and they petitioned, That accordingly it would please the King to discharge the Commons, but the King did not discharge them, *Quod nota.*

After this (the Record goeth) that there was a Conference between the King and Lords, of the State of the Realm, and of the Defence of it. And in that Conference, the King asking the Lords Advice, they answered, That a Tenth and half a Tenth was necessary from the Boroughs, and a Fifteenth and half from the rest of the People. This Conference and Advice being reported to the House of Commons, the Record is, *Ilz fuer grandement distorbe en dist' ceo destre en grand derogation de leur liberties.* The Disturbance was so great, that the King himself took pains to pacify them.

Upon this Record it appears, and I confess, that the Commons offering up of the Bill of Fifteenths, and so of Subsidies, to the King in Parliament, is a most material Form, and serves to make good and happy Expressions of Love and Unity, between the Head and Members, the King and his Subjects. But still I say, that it is the King's Right to have Supply; that Supply is a Duty, not merely a Benevolence from the People, in case of necessary Defence of the Kingdom.

And this is not my single Opinion.

19 *H. VI. 64 B. Hody Ch. Baron, Le roye est inherite*, that is, hath Right of Inheritance to have Fifteenths in his Court of Parliament: for the same Law which wills that the King defend his People, wills also, that the People grant to him of their Goods, in Aid of their Defence.

Besides, I prove mine Opinion (if any Man deny it) unanswerably, out of the very Writ of Summons of Parliament: in it, *Ardua & urgentia negotia, Regem statum, & defensionem regni Angliae & ecclesie concernentia*, are mentioned to be the Cause of Parliament.

4 L

Now

Now I pray you observe.

In the Writ of Summons to the Peers of the Kingdom, the Words are, *Super dictis negotiis tractaturi verumq; Concil' impensuri*; but in the Writ for choice of Knights and Burgeses to serve for the Commons, the Words are, *Ita quod milites pro se & Communitate Comitatus predicti, ac dicti Cives & Burgeses pro se & Communitate Civitatum & Burgorum plenam potestatem habeant* (what to do?) *ad faciendum & consentiendum his quæ tunc ibidem de Communi Concilio regni nostri contigerint ordinari super negotiis antedictis*.

So the Words are, *facere & consentire*, to Matters agreed on concerning the Defence of the Kingdom; there are no other Matters mentioned in the Writ for Summons of their representative Body: no such Words as are in the Peers Writs are in theirs; yet I cannot say, and so I desire to be conceived, but that according to the Record of 9 Hen. IV. the Commons may also humbly offer their Advice to the King; they may shew their Grievances, and the State of the Commons: but it is plain, that the principal Duty belonging to the Commons is, *facere & consentire*, otherwise there would have been in their Writ, as well as in the Peers, *super dictis negotiis tractaturi, verumque Consilium impensuri*.

Upon this I put the Case, and argue thus: the Kingdom wants present Provision, necessary for present Defence, to be in readiness; this Provision (the Case so falling out) must be so speedily made, as that it would be dangerous, in regard of what may happen, to stay for an Assent in Parliament. Well, in this Case there is a Duty from the Subject, and a Necessity that the Thing must be done, but the necessary Form for the Subjects Assent in Parliament cannot be pursued; I demand what must be done, or what may be done in this Case, without Breach of Law?

Is the Duty lost for want of Time to observe the Form?

For my part, I understand not any Reason that the Duty, in such Case, should be lost; but I should agree, that were not this a Duty, *vi termini*, which is to come from the Subject, in such a Case, but only a mere Benevolence, then that such Benevolence could not by Law be exacted without the essential Part of it, *viz.* the Subjects Assent in Parliament.

4. I confess, that by the fundamental Law of England, the Parliament is *Commune Concilium Regis & Regni*, that it is the greatest, the most honourable and supreme Court in the Kingdom; that no Man ought to think any dishonourable thing of it: yet give me leave to say, That it is but a *Concilium*; to say so is no Dishonour to it: The King may call it, prorogue it, dissolve it, at his Pleasure; and whatsoever the King doth therein, is always to be taken for just and necessary.

We must consider, that it is a great Body, moves slowly; sudden Dispatches cannot be expected in it.

Besides, tho' the Parliament cannot err, Parliament-Men may *de facto*: every particular Member of the House hath his free Voice, some of them may chance to make Scruples, where there is no Cause; it is possible that some of them may have sinister Ends; these things breed Delays, so they may Disturbances. (I would to God, the late woful Experience of this Kingdom, had not verified these Speculations.)

Yea, there have been, in former Times, Censures of Parliaments themselves: the good Parliament, *Temp. Ed. III. Parliamentum indoctorum*, *Temp. Hen. IV.* and in the same King's Time, if we believe my Lord Coke, 11. f. 113. *Brangwit, id est*, the White-Crow Act. These Matters are considerable in such Cases as ours is.

Wherein apparently *Mora trahit periculum*, and to follow the Rule, *Festina lente*, is most dangerous.

5. The Point of *retentio Domini maris* (which is in the Case) is not of an ordinary Consideration; for, besides the antient Inheritance and Right which the Crown of England hath in it, it is obvious to every Judgment, that in the Continuance or not Continuance of it to the Crown, not only the *bene esse*, but even the *esse* itself of the Commonwealth doth consist; and therefore it becometh the Subjects *accelerare* to the Tuition of it: slowness is an Argument of Stupidity, or want of that Sensibleness of the Diminution of that Right which every Subject ought of Right, and hath a concerning Reason, to propose to himself.

Notable are the Words in the *Scotch Rolls*, 10 Ed. III. numb. 3. In a Writ by the King to a great Part of all the Kingdom; *Considerato, quod progenitores nostri Reges Angliæ domini maris & transmarini passagii, totis præteritis temporibus extiterunt, & plurimum nos lederet, si honor noster regius nostris temporibus in aliquo lederetur. Quodque omnes homines de regno pro d. finis ejusdem, contra bestium invasiones, tenentur exponere se & sua*.

The Writ wherein these Words are, was a Command or Charge laid upon the Subject, without any Warrant of Parliament for it.

It was a Writ directed to all Earls, Barons, Knights, and others, *ab ore aque Thamefis versus partes occidentales*, which included divers Inland Counties.

It issued upon Occasion of *David de Brus* having a great Navy afloat, and therewith having enter'd *Jersey* and *Guernsey*.

The Writ is a Command to those to whom it is directed, *Tantis & tam gravibus periculis imminetibus debite ponderatis*, to treat with the Archbishop of Canterbury, and other Great Men assigned by the King, *super defensione regni & populi*.

The Writ concludes thus, *Scire vos volumus, quod si rebelles aut difficiles fueritis in præmissis, in tanto & tam grandi necessitatis articulo*, the King will repute those *Rebelles, aut difficiles, tanquam suos & regni inimicos*.

6. Not to speak of Necessity in general, which is of itself a Relaxation of Laws, and serves for a Dispensation, even by the Equity of the Law itself: in our Case there is a Necessity in point of Government.

I shall put you a Case, where an express Clause in an Act of Parliament hath been doomed void, because it was against a Matter of Necessity in point of Government.

2 H. VI. 6. *The Earl of Northumberland's Case*. *Nota*, 28 Ed. III. & 42 Ed. III. Penal Acts were made, That none should exercise the Office of Sheriff above a Year, altho' that he have a *non obstante*; that Clause of (*altho'*) is void, and a *non obstante* may be of that *non obstante*: no Reason can be for this, but because it takes a necessary part of Government out of the King's Hands.

7. *Salus Reipublicæ*, by all Laws, is *suprema lex, & summè necessaria*. It is, where it interposeth,

poseth, *Lex legis*. It takes away particular Interests, before itself give place for that Cause.

8 *Ed. IV.* 36 *Hen. VIII.* *Dyer*. A Bulwark for Defence may be built upon another Man's Ground, *invito domino*.

No Dower or Thirding to a Woman, of a Castle of Defence; it may indanger *Salus Reipublicæ*, by dividing such a Piece.

An Alien Merchant takes a Lease for Years, of a House for his Trade: this is a good Lease, so long as he tradeth, and there is no Enmity between his King and ours; but when he ceaseth trading, or if War happen, the King shall have the Interest of the Lease. The Reason, It is possible, that *Salus Reipublicæ* may be concerned, if the Alien's Interest in it should continue.

8. If there were not *Salus Reipublicæ* in our Case, yet there is in it at least *Bonum publicum* intended.

I will put a Case, where Subjects are bound without their Assent, for the *Bonum publicum* sake. 44 *Ed. III.* 19. Chamberlain of London's Case, *Coke* 5. f. 63. Inhabitants of a Town, without any Custom, may make Ordinances or By-Laws of any thing, *pro bono publico*; and in such Case, those who are absent, and so unconsenting, are bound, the *Bonum publicum* is the Cause.

9. Prevention of further general Mischief, which may ensue, trencheth, even by Construction of Law itself, upon other Mens Rights. For that Cause, pulling down a House which is on fire, to save other Mens Houses, is lawful. *Higbly's Case*, *Co.* 10. 139. One is bound by Prescription, to make or repair Walls, Damms, or such like against Waters: This Man is not able to do it, a small Breach happens, which either must speedily be made up, or a general Mischief will happen. In this Case by Exposition of the Statute of Sewers, and by an Equity out of the Letter of the Laws, grounded upon *Salus pop.* all those who are within the Level are to be taxed, and to contribute for present; the Ability of him, whose the Right of the Burden is, *non expectata*.

10. I find a Writ in the Register *de reparatione facienda*, which is cited in *Bowles's Case*, *Coke* 11. f. 82. b. whereby, if two Joint-tenants be of a House, the one shall have a Writ of *de reparatione facienda*, against the other; and the Words of the Writ are, *Ad reparationem & sustentationem ejusdem domus tenetur*; where the Word (*tenetur*) is observable. Every Man hath an Interest in the Commonwealth, but the King's Interest is incomparably beyond other Mens; therefore the King may, by a like Reason of Law, call upon his Subjects to join in Contribution with him, towards the Reparation and Sustentation of the Fabrick of the Commonwealth.

11. In the great and common Vouchee's Case, 13 *H. IV.* 14. in the Debate of this Cause of the new-erected Office of the measuring of Cloths in London, which was brought to Parliament; it is a memorable Saying of *Gascoigne* the Chief Justice, "The King may charge the People of his Realm without special Assent of the Commons, to a Thing which may be Profit to the common People."

This Saying is cited and allowed in the Case of Monopolies, *Coke* 11 f. 86. b. and so it is very commonly, upon Arguments concerning such Questions.

12. I observe, that tho' the Precedents of Writs and Execution of them, for assessing the Subject

by the King's Command, without Warrant of Parliament, are very many in several Kings Reigns; yet there is not any Precedent of any civil Action brought for any thing done in former Ages, upon such Commands of the King as is in our Case, but only that one of the Abbot of *Robertsbridge's* Case, which hath been often cited; and in the pleading thereof it is acknowledged, that the agisting of Mens Lands and Tenements to contribute, *ad custodiam maris* by the King's Commands, without Tax by Consent in Parliament, was good in Law.

And I note, that that Case happened and was in Agitation, and gave fair Cause of Demurrer, in an opportune Time in demurring, if the Law had been otherwise; for it happened at that very time, when the Statute *de Tallagio non concedendo* was made, or in hammering.

If only one Action brought heretofore, *una hirundo*, it were not to be regarded, tho' it had been against the King's Power; but when that one is assertive of the regal Power, it is to be respected more than as a single, I mean, as a *singularis probatio* of it.

Lastly, I observe, that upon Grievances, or Complaints in Parliaments which have been almost infinite, and upon all Occasions in former Times, no one Record hath been, or I think can be cited, that in case when Charges have been imposed without common Assent, for the necessary Defence of the Kingdom in an instant Article of Necessity, any King hath ever answered, or assented, That such Charge hath been against the Laws or Liberties of the Subject.

Neither the Reclamation of the Subject alone on his side, nor the single commanding Rescripts of the Sovereign alone on his side, are of Authority to preserve the Law; but if there be a Concurrence of King and Subject, that is it whereby a Judge may ground his Resolution.

As for that one of 2 *R. II.* which cometh nearest in that Kind, but hath not the King's Acknowledgment; I note, that it was upon a Deliberation, before the Charge imposed: And truly I think that if the Charge in that Case had been first imposed and collected, upon Complaint against it afterwards, it would never have been adjudged for unjust.

Many things are questioned, and sometimes denied to be lawful, before they are done, which *facta valent*, which being done, are good and valid in Law. If a Question be made of that which of itself is lawful, the very making the Question, makes it questionable, and may draw on an Opinion that it is not lawful.

Rot. Parl. 4 *H. IV.* num. 28. & *Rot. Parl.* 6. *H. IV.* num. 9. you shall find, that the Commons having considered of the Wars of *Scotland*, the Rebellion of *Wales*, the Safeguard of the Sea, & *especialment* the Defence of the Realm, they granted a Subsidy, but with Protestation that it should not be an Example to charge the Commons hereafter with any manner of Subsidies, for the Wars of *Scotland*, or *Wales*, or the Safeguard of the Sea, or the Marines of *Calais* or *Ireland*, without Consent in Parliament. I observe, that there is not a Word in this Protestation, that the Subjects should not be charged without Consent in Parliament for the Defence of the Realm, tho' there were a little before an express mention of it, and that with an *especialment*. On the other side, there is a Cloud of Precedents of imbarking of private

Mens Ships, in case of Necessity of Defence of the Realm, and Safeguard of the Seas, Command of making Gallies and Ballingers *sumptibus propriis*.

Arraying and Apparelling of Soldiers, and victualling and conducting them in this Case of necessary Defence, *propriis sumptibus*, of several Towns and Counties, as well Inland as Maritime; the express Words of the King's Commands in such Cases, by his Writs directed to the respective Sheriffs and Head Officers, are, That they should *levare facere expensas de comitatibus*, sometimes *comitatum*, sometimes *villarum*, as the Case was: wherein note the Words, *levare facere*; and in what manner the Sheriffs Levies are, *viz.* Assessment by himself, and Collection by himself and Ministers, I think few are ignorant.

Amongst which kinds of Writs, some of 48 H. 3. are remarkable for these Words in them, *Cumque adhuc necesse sit propter casus fortuitos ad securitatem & defensionem regni, defensionem habere promptam, contra Alienigenarum adventum, &c. Inter alia sic Rot. Claus. 48. H. III. mem. 2.* A Writ to the Town of Bedford. So still the Preflure is according to the Occasion, instant Provision raised, whereby a Promptitude may be not staying a Provision by Parliament, which Cunctation might be opposite to Promptitude.

Also the French Roll, 21 E. III. Pars 2. mem. 9. Co. 11. shews, that whereas a Subsidy out of the Wools had been granted to endure for a certain time only, yet the King, *necessitate compulsus, de consilio Prelatorum, Magnatum, & aliorum de concilio suo*, (not *per commune concilium*) did ordain *quod subsidium predictum levetur usque a further Time*.

Close Roll, 1 R. 2. m. 18. many Writs were directed to the Bailiffs of the several Towns of Cambridge, Huntingdon, Nottingham, Derby, Lincoln, Gloucester, Worcester, St. Edmonds-bury, and Thetford, reciting a former Command of the King to these several Towns, to provide several Ballingers, *ad custas validiorum et magis divitum hominum*, of those Towns. Now by those Writs the King declared to them, that *videbatur* to the King and his Council, that they who had 10 l. and upwards in Goods, should contribute, and not others; and commands those Bailiffs to compel Men of that Ability to contribute, *per distinctionem si necesse foret, & aliis viis & modis, quibus melius viderint expedire*.

I spare Iterations, I conclude my Second General Head with my Subscription again proved by my Judgment, by what I have said before:

That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, the King may, by Writ under the Great Seal, command all the Subjects of the Kingdom at their Charges to provide and furnish Ships for the Defence and Safeguard of the Kingdom, and may by Law compel the doing thereof.

And that in such Case the King is the sole Judge of the Danger, and when and how the same is to be prevented.

And how many more have subscribed to this Tenet it is not unknown; the Records of the General Courts of Justice of the Kingdom, manifest to such as will look into them.

The Third General Head.

I Have done with my Second General Head, and come now to my Third; which is, To consider the Acts of Parliament, Answers to Petitions in

Parliament, *Magna Charta* Laws, which concern the King's Proceedings in this Case.

1. St. Edward's Laws have *Danegelt* mentioned in them; see *cap. 12.* but not another Syllable pertinent to this Case, saving that the Church and People are free, have Liberties and Customs belonging to them of Right, which is not by any denied.

2. I find that there was a *Magna Charta Libertatum Regni* made by K. Henry the First, the *Beau-Clerke*, in which is this Clause, That *Milites possiderent terras dominicarum suarum quietas ob annibus Geldis* (*Guel* signifieth a Sum of Money.) And yet amongst the Laws of his Time, as appeareth by *Leges Hen. I. c. 16.* this is one which I cited before, *Danegeldum i. e. 12d. de unaquaque bida per annum, si ad terminum non reddatur wita emendetur* (which signifieth an Amerciament.)

3. The *Magna Charta* of K. John, made at Running-mead, hath been cited by Mr. Hampden's Counsel, and urged to be an Act of Parliament; the Words inferred out of it are, *Nullum scutagium vel auxilium capiatur in regno nostro, nisi ad corpus nostrum redimendum, & primogenitum filium militem faciendum, & ad primogenitam filiam nostram semel maritandum; & ad hoc non fiat nisi rationabile auxilium, &c.*

The Words pitched upon are (*Nullum auxilium*) a general Negative; I have touched before the Signification of the Words (*Aid, auxilium*) I will answer the Words farther anon, together with other Statutes, which have as general and further negative Words.

Observe, But there is no question but *Running-mead Mag. Ch.* was no Statute, nor ever was taken for one, saving in those Parts wherein it and *Mag. Ch.* of 9 Hen. III. do concur: to give but one Reason, tell me when, after K. John's Time, were 25 Barons appointed, according to that which is contained in *Running-mead Magna Charta*. If there were any great matter in *Nullum auxilium*, it is observable that those Words are not in *Magna Charta* of 9 H. III. and that is the *Magna Charta* which hath the frequent Confirmations.

In *Confirmatio Chartarum 25 Ed. I.* there is mention of that *Magna Charta* of K. Henry III. by Name, and none of that K. John's *Magna Charta*.

Certainly there were some *Iniqua* in the *Magna Charta* of King John; the Barons did in that King's Time *iniquum petere ut equum ferrent*, otherwise that *Magna Charta* would have been also confirmed, as well as his Successor Henry the Third's.

And I pray you note, That after the *Nullum auxilium* there follows on, *Nisi ad corpus nostrum redimendum*: If for that, then certainly much more for the redeeming of the whole Body of the Commonwealth, which is our Case.

4. The *Magna Charta* of 9 H. III. which is the often confirmed *Magna Charta*, tho' it allow all the Liberties of the Subjects then claimed, hath no special Words pertinent to our Question, which is a Matter observable; for Charges for the Defence of the Kingdom commanded by the King out of Parliament, were frequent both at and before that time.

In it there are only general Words of *Habeant libertates suas*; out of which Word (*suas*) I do observe, First, A Right of the Subject in his Liberties, they are (*sue*). Secondly, Those Liberties which the Subjects must *habere*, must be (*sue*), that is, such Liberties as are fit for a Subject, as are compatible with the Relation between a King and

and a Subject. The Words are not *omnes libertates*, all manner of Liberties, but (*suas*,) that is, Liberties proper for them, or such Liberties as they are, in good construction, capable of.

And indeed *Quicquid recipitur, ad modum recipientis recipitur*.

14 H. VII. f. 11. The Abbot of St. Bartholomew's had a Charter from King Henry II. that he should be as free in his Lands, as the King was in his Crown; yet these general Words pass for no more than a Subject is capable of; he must notwithstanding those swelling Words, pay Fines for Alienation without Licence, admit the King's Vassal to a Corody, and such like.

But in that *Magna Charta* of 9 Hen. III. cap. 20. there is this Clause, (*Et si nos adduxerimus vel miserimus eum in exercitum, &c.*) which proves the King's Right, even by that Statute, to dispose of the Bodies of his Subjects for his Army.

Also Cap. 30. there is a Clause, that *omnes Mercatores* shall have safe Conduct, and Liberty *ad emendum vel vendendum, sine omnibus malis tolnetis, per antiquas & rectas consuetudines, præterquam tempore belli*; which shews, that in *Tempore guerræ* mala tolneta might be set up, they were not then mala tolneta. *Dominus opus habet*, made them tolerabilia & toleranda; in our Case, we have *tempora guerrina*.

5. *Confirmatio Chartarum*, which was 25 Ed. I. is the next Statute whereof there is any Colour for Mr. Hampden, the Words thereof are,

Que pur nul besoigne tielx maners de aydes, mises, ne prises, ne prenderomer forsque de com' assent de tout le realme, s'aves les anc' aydes & prises dues & accoustumes. But this Statute hath not been stood upon, because of the *Saves les anc' aydes, &c.* That which is saved or excepted is clearly out of the Body of the Law.

6. But then comes the Statute *de Tallagio non concedendo*; which of what Time it was, *non constat*. It was between 25 & 34 Ed. I. I do agree that to be a Statute or an Act of Parliament: The Recital in the Petition of Right, 3 Car. binds up my Judgment to affirm otherwise.

The Words of that Statute are general, without any saving or Exception, *Nullum Tallagium vel auxilium, per nos vel heredes nostros in regno nostro ponatur seu levetur sine voluntate & assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium & aliorum liberorum communitate de regno nostro*.

These Words indeed are general; but for a true and just Exposition of them, the Occasion of the hard pressing to have that general Statute is to be considered.

K. Ed. I. had Right to Dukedoms and Earldoms in France, and great Wars he had with the French King about them.

Great Troubles also he had out of Wales and Scotland.

He was in Flanders about auxiliary Wars against the French King, both at the making of *Confirmatio Chartarum*, and of *Tallagio non concedendo*.

He had a little before, in the 22d of his Reign, caused Scrutinies to be made throughout the Kingdom, to raise Moneys for Supply of his great and pressing Occasions for these Wars, which in truth did not immediately concern the Defence of his Kingdom; for if he would have let those Wars alone, he might have had Quiet enough for his Kingdom of England.

Upon the said Scrutiny search was made, where and in whose Treasuries or Hands Moneys were, whereby the King might be furnished; and indeed, the King's Ministers took the Moneys they found upon the Scrutiny as borrowed for the King, tho' it were against the Owners Wills to lend them: And amongst others, for the most part, they lighted upon the Treasurers of Religious Houses, many of which had Coffers well stored. The Religious Men being thereupon oppressed themselves, incensed the Great Men against the King; and by that means, and the Palpableness of the Injury, the great Lords, especially the then Constable and Marshal of England, Bobun and Bigott, stood out against the King with a great deal of stiffness; and at last the King being in a Streight, and to pacify one Extremity with yielding to another, passed the Act *De Tallagio non concedendo*, without the exception or the saving of the antient Aids which was in *Confirmatio Chartarum*.

But it is plain, that these general Words were never meant, either on the King's, or on the Great Lords and other Subjects sides, to be absolutely general for all Cases: for notwithstanding those Words, the Aids *pur faire fitz Chevalier & pur file marier*, continued, and so did the King's Power to array and send Soldiers, *sumptibus villarum & comitatum*, into remote Parts of the Kingdom, out of their proper Counties, for the Defence of the Realm, as appeareth in the continual Practice in that King's and his Successors Times; as, if I had time, I could make good by a long Succession of Precedents, appearing upon Records.

See a notable Apology or Remonstrance publickly made by King Edw. I. m. 25. enrolled, concerning his Proceedings at that time in this Business, whereby that is made good, which I have before alledged.

But besides this Answer, I shall give a further Answer to this and the other Statutes, when I shall have perused all of them.

7. The next Statute urged is 14 Ed. III. in the second Parliament of that Year; in which Statute there is a Recital of a Grant in the same Parliament, of the ninth Part of the Goods of the Commons for two Years: the King willing to provide for the Indemnity of the Commons, willeth and granteth to the same Prelates, &c. (wherein note the word, the same) that the said Grant which is so chargeable, shall not be another time had in Example, nor that they (which must be construed the same Prelates, &c.) be from henceforth charged, nor grieved, to make up any Aid, or to sustain any Charge, if it be not by common Assent, and that in Parliament: And that all the Profits rising of the said Aid, and of all Wards, Marriages, Customs and other Profits rising out of the Realm of England, shall be spent upon the Maintenance of the Realm, and of the Wars in Scotland and France, and in no Place elsewhere, during the said Wars.

Note, that the general Clause which is urged to be in this Statute, cometh in the middle part of the Statute, and is coupled with other Matter, which was but temporary; and therefore in my Judgment that general Clause was meant to be but temporary, viz. during the Continuance of the Wars which were then on foot; and was never meant to be a perpetual Discharge for ever of all manner of Charges and Aids, as appeareth, for that, notwithstanding that Clause, K. Ed. III. did shortly

shortly afterwards, and during all his Reign, as frequently charge the Subjects for Defence of the Kingdom, as ever he had done before: He had also his Aids *pur fair fitz Chevalier & pur file marier*, after that; which if the Words were to be expounded generally and perpetually, neither he nor his Successors could have had.

And it is worth the Observation, that this Statute is never mentioned in the Petition of Right, as *Tallagio non concedendo*, and 25 Ed. III. by Names are; and yet if this had been a perpetual Statute, there was as great Reason to have mentioned it as any other Statute.

8. The next Statute urged is the Petition of Right, 3d of the King's Reign.

This Petition reciteth the Statute *de Tallagio non concedendo*, and the Statute of 25 Ed. III. against Loans and other things: Then cometh the Petition itself, which is an humble Prayer to his Majesty, by his Subjects, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament: And his Majesty's gracious Answer in Parliament is, *Soit droit fait comme est desire*.

After this, his Majesty, that knows his own Heart and sincere Meaning best, in his second Speeches to both Houses, amongst other things, saith, and that most justly and truly, "That it must needs be conceived that he had granted no new, but only confirmed the antient Liberties."

I observe, there is no express Clause in any of those Statutes which I have before cited, that no Charge shall be imposed without common Consent, no not for necessary Defence of the Kingdom: And if such a Clause had been offered to have been express, besides that I doubt of what Validity it had been, I certainly believe, that neither King Ed. I. nor King Ed. III. nor our Sovereign, would ever have yielded to so dishonourable and unjust an Expression.

But all these several Statutes being general, and having no particular Expressions, I conceive that according to all Rules of Law for Exposition of Statutes, those three Statutes, *de Tallagio non concedendo*, 25 Ed. III. and the Petition of Right, must have a reasonable Intendment, and that by a common and just Equity, for Exposition of those three Statutes, Aids and Charges, for so necessary a Purpose as the Defence of the Kingdom; and *Salus Reipublicæ* will be clean out of the Law, as fully as if they had been precisely excepted: and if other Exposition be made according to the Letter only, it might truly be said of such a literal Exposition, That *Litera occidit*, that Laws made for the Good of the Commonwealth, will prove the Bane and Ruin of it.

I will give you a Taste of some Expositions of Statutes, with Restrictions of the Generality of the Words of them, tho' they be general Negatives. The Cases I could put are very many, but I will cite only a few, and those such as are applicable to the Reason of our Case.

Dyer 361. The Statute of Gloucester saith, That Tenants for Lives or Years, *nullum facient vastum*; yet a Waste, whereby the Land leased *melioratur*, is no Waste within that Statute.

The Statute of Westminster the second saith, That Tenant in Tail shall not *per factum, vel feoffamentum*, do any Act to the Prejudice of his Issue: Yet 43 Ed. III. *Octavian Lambert's* Case is, Tenant

in Tail of Lands whereto a Stranger hath Title of Entry; to gain a Release of this Title, and for Defence of his Estate, by his Deed granteth a Rent Charge out of the Lands intailed; this Grant bindeth his Issue, so that he shall hold the Land charged, notwithstanding the general Words of the Statute.

There was a Statute made 14 Ed. III. That for every Sack of Wool carried out of the Realm, the Merchant shall find Surety to bring into the Kingdom Bullion, that is, Silver, to the Value of 2 Marks, and to take for it 2 Marks in Coin. 36 Ed. III. an Act was made, That whereas the Commons had granted a great Subsidy out of their Wools to the King for three Years; the King granted, that after those three Years, nothing shall be taken of the Commons, but the antient Custom of 1 Mark, for a Sack of Wool. And 45 Ed. III. another Act was made, That no Imposition or Charge shall be put upon Wools, others than the Subsidy and Custom granted to the King, *sans Parliament*.

Upon long Debate adjudged, That notwithstanding these two latter general Statutes, yet the finding of Sureties for bringing in of Bullion, enjoined by 14 Ed. III. was not taken away by either of those two latter Statutes. And in that Case, besides the former Rule of Equity put by me for Exposition of general Statutes, another Reason is given, applicable also to our Case, namely, That every Statute shall be taken the most beneficially for the King.

Pasch. 13 Jac. In the Star-Chamber, whereas the Statute of 1 Rich. III. c. 2. saith, That the Subjects shall not be charged, by any Charge, Executions or Impositions, called a Benevolence, nor by such like Charge; yet one Mr. *Oliver St. John*, a *Wiltshire* Gentleman, being brought to the Bar, *protenus* for writing a Letter to the Mayor of *Marlborough*, against a Course then holden, for trying what Money rich and able Men would give unto King James, of their voluntary free Will, it was resolved by the whole Court of Star-Chamber, with the then Chief-Justice's Advice, that a Commission to treat what Men would give voluntarily to the King, was not within the Statute of 1 R. III. tho' the Words were general; and Mr. *St. John* was grievously censured for his inveighing by his Letter against the awarding of the Commission.

I conclude this Matter, with an Answer by Mr. Solicitor, aptly given to Mr. *St. John*, who urged this Clause out of the Laws of King W. I. c. 55. *Volumus ut omnes liberi homines regni nostri habeant terras suas, bene & in pace, liberi ab omni exactione injusta & ab omni tallagio, ita quod nihil ab eis capiatur vel exigatur nisi servitium suum liberum, quod de jure nobis facere debent, & prout statutum est & a nobis eis datum & concessum jure hereditario per communi concilium totius regni.*

You see here are general Words referring to a general Act of Parliament; yet afterwards, c. 59. are these Words, *Statuimus ut omnes liberi homines totius regni sint fratres conjurati ad monarchiam nostram & ad regnum nostrum, pro viribus suis & facultatibus, contra inimicos pro posse suo defendendum & viriliter servandum.* This latter Clause shews the Intention of the Act of Parliament formerly set down, that notwithstanding the general Words of the Act, it extendeth not to Cases of common Defence of the Kingdom, or where *Salus Monarchiæ Regis* or *Reipublicæ periclitatur*.

I have now done with the general negative Statutes, strongly urged; and I think I have exempted the Question of our Case from the Purview or Intention of those Statutes.

But besides those Statutes, Mr. *Hampden's* Counsel hath urged some Statutes that no Soldiers, or Men at Arms, should be enforced to go out of their proper Counties, without Wages from the King.

I will not let those, because urged, tho' pertinent in the Generality only of the Peoples Liberties, pass unexamined.

The Statute of *Winchester* 13 *Edw. I. c. 6.* was cited for that Purpose. The Words are, 'Every Man shall have in his House Harnes to keep the Peace, after the antient Assize.' And sheweth what the antient Assize was. And then there is a Clause for fresh Suits after Felons, from Country to Country; and indeed, in case of fresh Suit after a Felon, none is bound to go out of his County. But as to the point of going without Wages out of the Counties for Defence of the Kingdom, not a word in my Book in that Statute.

Then cometh 1 *Ed. III. c. 5.* the second Parliament; the Words are, 'The King wills that no Man be charged to arm himself, otherwise than he was wont, in the Time of former Kings of England; and that no Man be compelled to go out of his County, but where Necessity requireth, and sudden coming of strong Enemies into the Realm; and then it shall be done as hath been used in Times past, for the Defence of the Realm.'

Nota. That before this Statute, the use was for Men to go in such Cases, *propriis sumptibus*, as appeareth by many Precedents.

In the same Year, 1 *Ed. III. c. 7.* the Commons complained of Commissions to prepare Men at Arms, and to convey them to the King into Scotland, Gascoigne, or elsewhere, at the Charge of the Shires; and that the King hath not before this time given any Wages to the Preparers and Conveyers, nor Soldiers, whereby the Commons have been at great Charge. To this the King's Answer is, The King wills that shall be so done no more.

Nota. But note by the very Complaint, that neither the Complaint nor Answer are applicable to Case of Necessity, for Safeguard of the Kingdom.

Then 18 *Ed. III. c. 7.* That Men of Arms chosen to go in the King's Service out of England, shall be at the King's Wages, from that Day that they depart out of the Counties where they were chosen, till they return.

This Statute extendeth not to Case of necessary Defence. Besides, the Provision is against going out of England, which is not in our Case.

Then 25 *Ed. III. 8.* No Man shall be constrained to find Men of Arms, other than those that hold by such Services if it be not by common Assent and Grant in Parliament.

This extendeth not to Defence of the Kingdom. Besides, it is a Provision for particular Men, specially required. Likewise it is only against finding the Bodies of Men of Arms. But pressing of Soldiers or Men of Arms, to serve in all manner of Wars, hath been always so frequent, both in old, late and modern Times, that it were a needless Labour to prove that which every Man knoweth.

All these Statutes of 1, 18, and 25 *Ed. III.* are confirmed by Parliament, 4 *H. IV. c. 13.* and yet

Rot. Parl. 5 H. IV. numb. 24. (which is observable for the Time, being presently after 4 *Hen. IV.*) it appeareth, that there had been Commissions directed to Gentlemen of the Country, for arraying, arming, and conducting of Soldiers to the Coasts of the Sea, and elsewhere, in divers Counties; and that there were many Forfeitures and Clauses comprised in those Commissions: The Observation of which was perilous to the Commissioners.

The Commissions were brought into the Commons House, and by them entertained as Grievances. The Commons upon Deliberation, did obliterate certain Clauses in those Commissions, and prayed the King, that from thenceforth no Commissions of Arrayage should issue, otherwise than was contained in an amended Copy, which they humbly offered ready drawn.

And that Copy was agreed to by the King in Parliament, after Conference with the Judges, and Advice with the Lords thereupon; and the Tenor of the said Copy was enrolled.

And in the Precedent thereof, appearing in the Parliament-Roll, and being as for the County of Bucks, fifteen Gentlemen of the Country are made Commissioners, amongst them I find the Name of *Hampden*, I believe an Ancestor of Mr. *Hampden*, the Party in our great Cause.

But to return: In that Commission there is a Recital of Invasion and Burnings, which had been by Enemies: And that to resist them if they should again invade, *ac pro salvatione & defensione regni & ligeorum*, the King assigneth Commissioners *ad armandum & triandum omnes homines ad arma, & ad armari faciendum omnes illos qui de corpore sunt potentes, qui de suo proprio non habent, unde seipos armare possint, viz. quilibet eorum juxta statum & facultates suas, & ad distringendum omnes illos qui in terris & bonis sunt potentes, & pro debilitate corporis impotentes, ad inveniendum armatos pro illis qui non sunt habiles*, (where, by the way I note, that in case of common Defence, the People, not the King are to be at the Costs.) And the Commission directs further, That the Commissioners shall train and divide the Soldiers, and shall *conducere eos tam ad costeram maris, quam alia loca, ubi & quoties necesse fuerit*, (here is sending out of the County of Bucks, I am sure) and shall muster them; and that the armed Men shall be armed with their own proper Arms, and not with the Arms of others, upon Pain of Forfeiture of them, (note the Clause of Forfeiture) *& ad arrestandum & capiendum omnes qui fuerint rebelles seu contrarii, & prisonæ committendum, ibidem moraturi quousq; pro eorum punitione aliter duxerimus ordinandum*, (here is Power of Imprisonment.) That Commission commands likewise the Commissioners to array themselves, *& insuper* to make Beacons, whereby *gentes patriæ de adventu inimicorum poterint congruis temporibus præmuniri*; and a further Clause, that the Commissioners shall *ducere* the Soldiers *cum periculum advenerit, ad costeram maris & alia loca, in defensionem regni & patriæ; ita quod pro defectu armationis & ductionis damna patriæ non adveniat ullo modo*.

The Commission I have taken, and now repeat at large, because offered by the Commons themselves in Parliament, instantly after the Confirmation of *Edw. the Third's* Laws, 1, 18, and 25 of his Reign beforementioned, and all by the Judges Advice.

All Powers of Command imply the Duty of Obedience. I say no more, but as Arms and Travelling by Land are necessary for the Defence of Land, so Ships and Sailing, Ordnance and Tackling, and the Necessaries mentioned in the Shipping-Writ, are most requisite for Defence at Sea.

And thus I have passed all the Acts of Parliament cited or pertinent to our Case; I confess they are *leges ligantes*, and I think that in my Answers to them, I have not broken the Bonds of them, with the which I acknowledge both my Conscience as a Judge, and my Estate as a Subject, obliged.

The Fourth General Head.

I Come now, in the *Last* place, to my *Fourth* General Head, which is, To answer the Objections made by the Counsel on Mr. *Hampden's* Side.

The Objections were of three sorts: some grounded upon Reasons of Law; some upon Authorities and Inferences upon Records; some upon Mischiefs and Inconveniencies pretended.

Object. 1. 2 R. III. f. 10 & 11, was objected; where, upon the Distinctions of *poteestas in Curia*, & *poteestas in Camera*, concerning the assessing of Fines, it is said, that *Justiciarii Regis per eorum discretionem assideb' finem, & non dominus Rex per se in Camera sua, nec aliter coram se, nisi per Justiciarios suos; & hec est voluntas Regis, viz. per Justiciarios suos & Legem suam unum est dicere.* And it was said, that in the present Case, the King hath not proceeded *per Justiciarios*, but *per se* or in *Camera*.

Ans. I answer, That in our Case there is not any thing done in *Camera*, the Shipping-Writ issueth out of the Court of *Chancery*; besides, we are not now in the Case of assessing a Fine.

It is true, that if a Presentment, Indictment, or Information, be depending in the King's Court, and so far proceeded in, as that Judgment of a Fine is to be given, this is not to be assessed by the King in *Camera*, but by the King's Justices in *Curia*.

Howsoever, if we go to Distinctions, there is *potentia absoluta*, and *poteesta ordinaria*: I hope none will deny, but that the King hath *potestatem absolutam*, in many Cases.

Stat. Westm. 1. It appears a Man may be committed *per speciale preceptum domini Regis*, and is not in that Caseailable.

20 Hen. VII. The King is *Capitalis Justiciarius Anglie*.

I put you the Case of *Hil. 2. E. III. p. 6.* One having Money of the King's wherewith to pay Soldiers, misused it, and committed many Outrages in *Lancashire*; a Writ issued to the Sheriff of *Lancaster* to attach him; being by virtue thereof attached, and brought to the *King's-Bench*, he was there discharged; the Reason given by *Scroope* the Chief-Justice was, Because the Attachment being grounded upon a Suggestion, was against the Law: no such Writ ought to have issued, unless there had been some Indictment, Presentment, or Information depending. But I doubt not, if the King had by his absolute Power made a special Precept in his Chamber for Commitment of this Man, he could not have been discharged.

The Truth is, The Objection upon the Distinction of *Curia & Camera*, is not rightly applied to this Case: it might as well have been urged against

a Commission of Sewers issued at common Law, out of the *Chancery*. The Matter is, what the Law is concerning the King's Power, for Provision towards necessary Defence.

Object. 2. It hath been said, that divers Payments and Promises of Payments have been made by the King in all Ages, upon Occasions of his Wars and Provisions for the Defence of the Realm and Sea: and many Records have been vouched to that Purpose.

Ans. I answer, *First*, It is true; but more Payments have been made by the Subjects also in the same Cases; as will appear, if we go to vie by Records: Multitudes have, to that purpose, been cited on the King's Side.

Secondly, In some Cases, as of Borrowing, Purveyance, or the like, Payment by the King was of Right; but in the Cases merely for necessary Defence, his Payment, or Promise of Payment, was of Courtesy and Grace, and is not binding in Precedent, no more than in the Case of Mines Royal. It appears by many Precedents, cited in the Case of Mines common, That many Subjects, Owners of Land, wherein were Mines of Silver, shared with the King; some had a twentieth, some a greater, some a lesser Part: and this was objected against the King's sole Interest, which notwithstanding was adjudged, and the Answer made to those Records was, That it was of the King's Courtesy and Grace, not of Right: one may do with his own what he pleaseth.

But I will put you at large one of the Records which hath been cited, and let it be considered for whom it maketh.

23 Ed. I. Rot. 77. *Ex parte rememorator' Regis.* There Writs issued to divers Mayors and Bailiffs to make Gallies, ordained by the King, and *Concilium suum*: It doth not say, *commune concilium*, to be made *pro defensione regni & securitate maris*; and in the Record there is a Clause, *Custum quod ad hoc posueritis, cum illud siverimus, vobis in exitibus ballivæ vestre allocari faciemus.* But note, that here is a Command they shall first lay out the Money: and note, that there is this further Clause in the same Writs, *Volumus autem quod bordas & meremium, quæ ad hoc competunt, ubicunque ea inveniri contigerint, & cujuscunque fuerint in villa prædicta vel extra pro galeis illis faciendis capiatis.* I pray you note that Clause, for the express Words of *Magna Charta* are, *Nos non capiemus boscum alicujus ad castra, vel ad alia agenda nostra, sine voluntate ejus cujus boscus fuerit*: and yet it is commanded, that they should take *boscum alienum* in this Case, and I think warrantably; for the Words in *Magna Charta* are, *ad agenda nostra*, but the making the Galleys commanded, was not *agendum regis* within, but *agendum regni*, without the Meaning of *Magna Charta*.

Obj. 3. Disusage, or no Precedent for many Years of this Course now attempted, hath been objected.

Ans. I answer, as it is said 11 H. IV. 7, & 38. upon that Objection against the Force of the Statute of 14 Ed. III. about the King's Presentations to lapsed Churches, that an Act of Parliament disused may be put in use, and so that Law disused may be put in use, especially in the King's Case, for *Nullum tempus*, &c.

Also, the Thing hath been done, tho' not this particular Way, Supplies have been made otherways; sometimes by Collection of Moneys, and Means without Warrant of Parliament; sometimes by liberal Provisions and Grants in Parliament, in late Kings Reigns by Benevolences, before

fore *Richard III's* Time, in the Manner commanded, and after treated.

Object. 4. The several Means and Incomes, which the Crown hath, have been distributed; as that it hath Tenures and Escuage for Wars, Customs and Tenures for Defence at Sea, Fines in the Hanaper for the Charge of his Justice: and thereupon it hath been said, there is no Cause, if these Incomes were well employed, to raise Moneys thro' new Ways.

Ans. Utinam those great Means and Incomes could serve the turn.

My Brother *Weston* made a Computation what the five Ports Service cometh to, and thereby it falleth short to be to any Purpose.

As for Escuage, it is Attendance out of the Realm, but for forty Days, and that in case of mean Tentures, if the Tenants proper Lords attend the King, for therein every one is to defend his own Seigneur for that Time. Alas! What is that for a Kingdom? Besides, are we sure the Occasion of Defence will press but for forty Days? Again, what if the mean Lords themselves go not in Person?

But since I have Occasion of Speech of Escuage, I must put you in mind of two sorts of Escuage, by the Law.

The first is that before touched, and is commonly called *forinsecum servitium*: And it is only for *Wales, Scotland*, and other the King's foreign Territories.

The second is of another kind, and is applicable to this Case, in regard of charging the Subjects, without their Parliament-consent. It hath not been called for these many Ages; but in the black Book of *Tilburienfis*, l. 1. c. 26. you shall find concerning it in these Words: *Fit interdum, ut in imminente vel insurgente in regnum hostium machinatione, decernat Rex de singulis feodis militum summam aliquam solvi, marcham scilicet vel libram unam, unde militibus stipendia, vel donativa succedant: mavult enim princeps stipendiarios quam domesticos, bellicis apponere casibus. Hæc itaque summa, quæ nomine scutorum solvitur scutagium nuncupatur; ab hac autem quieti sunt ad scaccarium residentes.*

Object. 5. This is a general Charge; it appears by the *Mittimus*, that every County in the Realm hath the like Writs, amongst which many, as this of *Bucks*, are merely Inland Counties, they have no Places to make Ships in, no Means to convey their Ships (if they could make any) to the Sea: they have no Mariners, nor Tacklings, &c. and so an Impossibility, or, at least, an improper Charge is put upon them; the Cinque-Ports, the Maritime Towns and Counties are furnish'd, and are aptest to be put to this Service.

Ans. I answer several ways.

The Inland Counties may provide all those Things which they have not of their own, with their Money; *Pecuniæ omnia obediunt, nummus is mensura rerum.*

Also there is great Reason they should join, by the Rule of *Qui sentit commodum, &c.* I am sure if Defence be not made, they may *sentire incommodum.* So by the Rule, *Quod omnes tangit, &c.*

11 H. 7. *Sir Will. Herbert's Case.*

The Reason in Law of charging Heirs in Gavel-kind, and of Contribution to Charges upon Land, equally liable, cometh to this Case.

Also the whole Realm is but one Body; the Division of it into Counties, was by King *Alfred.*

VOL. I.

The King may make a County *de novo*; by taking out of another; may make two Counties of one, or one of two, if he please.

Then take the whole as one Body, the several Members center in it; if one Member suffer, every Member of the same Body suffereth with it.

But methinks there is more Reason to excuse, than to charge the Ports and Maritime Parts; in this Case they stand between the Enemy and the Inland Parts, they are the next Door to Danger; and it is fit they should not be let Blood, but should keep it all, to serve themselves and the Inlands, and not have Means taken from them, whereby they may be disabled.

Besides, I refer myself to the several Precedents, single and at large, cited by my Brother *Weston*; by which it appears, that the Inland Places have heretofore been charged with Provisions of Gallies, Ballingers, &c. for the Seas.

By the Commission of Sewers, it appears, that this Course agrees with Proceedings in like Case, by the Common Law.

F. Nat. Register. All who are within the Level of an Inundation, rich or poor, without respect of Persons, are to be proportionably assess'd, upon that Commission.

P. 15 E. II. Rot. 70. in bk. w. The Case of *Rippon* in *Yorkshire*, is notable upon this Reason; by it, it appears, that the Law was, that all that had Salvation by the Plaintiffs being Hostages to the *Scots*, were by Law compellable to bear their ratable Shares, to raise Moneys for the Plaintiffs Ransom.

23 Ed. I. cl. Rot. 1. memb. 4. dorf. In a Writ to the Archbishop of *Canterbury*, the Words and Matter are notable also to this Point: *Sicut lex justissima, providâ circumspessione sacrorum principum stabilita, hortatur, & statuit ut quod omnes tangit ab omnibus approbetur; sic & innuit evidenter, ut in communibus periculis per remedia provisa communiter obviatur.* As to the Objection out of the Records, (*per remedia provisa communiter*) that should be by Parliament; I think the contrary is apparent out of the Writ: for the Writ requires the Archbishop, with the Clergy of his Diocese (not Province) by their Proctors, inasmuch as the King of *France*, *Classe maxima & bellatorum copiosâ multitudinem congregatis, proponens linguam Anglicanam omnino de terra Anglicana delere*, to come, by a short Day ensuing, to *Westminster*, *tunc ibidem ad tractanda, ordinanda & facienda nobiscum, & cum cæteris prælatis & aliis incolis regni qualiter sit periculis hujusmodi obviandum.* Note, here is no mention of *Proceres*; and besides, Clergymen have no Capacity of Knights or Burgeesses Places in Parliament, therefore this was not a Treaty appointed or intended in Parliament; which is further enforced upon the Words (*ad tractand', &c. nobiscum & cæteris prælatis & aliis incolis regni.*) If a Treaty in Parliament should have been, it had been readier to have expressed in Parliament, or in *Communi Concilio*, and not to have used the other improper Expression.

Besides, I do not find that any Parliament was holden at that Time, nor at any Time between 21 E. I. and 24 E. I. whatsoever was said by Mr. *St. John* to the contrary.

But if this Treaty had been, or were intended to have been in Parliament, it is not concluding; for it could not be but in Parliament, as hath been urged.

4 M

Object.

Object. 6. This Way draweth a many ill Consequences; for it stirs Murmuring and Grudging of the People, by reason of the Burdens upon them.

Ans. The Consequence would be worse, if the Kingdom should be lost, (which I cannot mention without a *quod absit*) and *de malis minimum*.

Besides, popular Grudgings are many, if not most times causeless; they are not to hinder doing of Right.

Object. 7. This is to become an annual Charge upon the People; there is Cause of thinking so, because since 11 Car. we have had every Year new Shipping-Writs.

Ans. If the Necessity continues, the Charge must continue. The same Reason serves for the Continuance as was for the Beginning of it. Yet I deny that of itself it may be annual.

Cessante Causa, cessare debet effectus; but *continuante causa, continuandus effectus*.

This must be left to his Majesty's Justice, which God forbid that any should think he will abuse.

Object. 8. It hath been agreed, that if there were *flagrans bellum*, if we had (*quod absit*) a *Hannibal ad portas*, then this Course without Provision in Parliament, were not against the Law. But it hath been said, that we have neither *flagrans bellum*, nor a *Hannibal*, in our Case.

Ans. Let us consider what the Reason is, why it is not against the Law in case of *flagrans bellum*, or *Hannibal ad portas*. It can be no other but to avoid a further Mischiefe. The same Reason holdeth in our Case, wherein there is apparently an *initium malorum*; and in such Times as we now live in, or *rebus sic stantibus*, no Man of Understanding, but must acknowledge that Security is dangerous.

Object. 9. Tonnage and Poundage, which was used in former Kings Times to be granted by Parliament, for a Provision of a Stock, for those Purposes for which the Shipping-Writ now issueth, is taken *de facto* by the King's Majesty, tho' it be not yet granted him.

Ans. Read the Words of the Statute 1 Jac. 3 ult. at large. In them observe, 1st. a Confession by the Commons, That Tonnage and Poundage hath been paid to the Kings of England Time out of Mind: I say, it is so confessed; I do not say, that in Truth it was so.

2dly. Observe the Word (*Towards*.)

3dly. A Confession that the Tonnage and Poundage are not sufficient for those Purposes, for which it was commonly granted. The Occasions are now for vaster Expences than were requisite at that Time; and what Tonnage and Poundage will not now suffice to perform, must be raised some other Way.

Also it is to be known, for an Answer to the Objection against the taking of it, as if it were not taken *de jure*, that Tonnage and Poundage hath been always taken, with a *continuando* upon the Change of a King, before such time as a Grant came of it by Parliament; upon the Demise of the King, the payment or taking it never ceased, or was discontinued, until it came to be due by Grant of Parliament.

Object. 10. It appears that a Parliament might have been holden; there are about six Months between the *Teste* of the Shipping-Writ, and the 1st of March ensuing.

Ans. This receiveth an Answer in itself; for if the King had been pleased to have called a Parliament, to have had Provisions granted, and by or before the 1st of March 11 Car. Provision had been granted, yet the thing commanded by the Shipping-Writ in August, to be ready in March, could have but begun in March to have been then prepared, and so a whole Year apparently lost; in which time, God knows what might have become of this State.

Object. 11. But what if the King surmise only, that there is such Danger as must be prevented, when in truth there is no such Matter?

Ans. Hath not the King a Conscience?

The Law believeth his Affirmation, and for that Cause they are not traversable, as appeared by my Lord Dyer upon the *Ne exeas regno*.

Rex est recordum superexcellens. Teste meipso, is his Language; it is against the Duty of a Subject to contest with him.

Again, it is a Rule of Law, *Cuiuslibet in arte sua credendum est*; it is the King's proper Art, to have Intelligence of foreign Intentions, to foresee publick Dangers, to conclude and put in Execution what is necessary for the Preservation of his Estate and People.

Tu regere imperio populos, Rex summe, memento: Hæ tibi erunt artes, &c.

Also Mr. Hampden, by his Demurrer in this Case, hath confessed all the Matters in Fact, which moved the King to issue this Writ, and are mentioned in the Writ.

Object. 12. 26 E. 1. Pat. Roll. mem. 21. hath been urged: there it appeareth that the King, desirous to amend *gravamina populo nomine suo facta*, sent Commissioners to hear and determine what Takings had been from the Subjects made in the King's Name, but without his Warrant; and to punish it presently, and to do right to the Parties: but as for that which should be found to have been taken by the King's Warrant; *Le Roi voit que soit certifié, et il eut ferra tant que ils se tiendr' apaisés per reason*.

Ans. Note the Distinction in this Case between the Repayment and Satisfaction by the Parties for that which was taken without Warrant, and the Repayment, if it were taken by Warrant of the King. For in case that which was taken by colour of the King's Warrant was against the Law, it was as tortious to the Subject, as that which was taken without the King's Warrant; and in all Justice, the Subject ought to have been restored to his Right, with as much Expedition in one Case as the other.

Also, as hath been already answered, the Words are not (*they shall be paid*) but *le Roi ferra tant que ils se tiendrent apaisés per reason*; that is, as I conceive it, The King will give them a reasonable Answer.

Object. 13. Upon the Words *Requirimus & Rogamus*, in Writs to the Bailiffs of diverse Towns, when they were sent unto to array and send Men at the Expences of the Towns, it hath been urged, *Ergo* the Thing required is a Matter of good-will, and not of Right; in which Case it would rather have been a *Mandamus*, or a *Præcipimus*, than a *Rogamus*.

Ans. Note the *Requirimus* precedes.

Also the Word *Rogamus* signifies as properly a Commandment, as a Prayer. *Linwood*.

Also

Also the Words are, *effectuose requirimus & rogamus.*

Also *Cum princeps orat, precibus præcepta colorat.*

But since those Writs are urged, let them be read; and it will appear, that in the Matter of them, pertinent to this Question, they make directly for the King. *Vid.* for that Purpose, *Rot. Sco. 12 E. II. m. 7. dorso*, but chiefly *Rot. Sco.* of the same Year, *m. 13. dorso*. In the Writ to London there, the King reciting that the *Scots fines regni Angliæ cum ingenti armorum multitudine ingressi*, had taken the Castles of the King, and of his Subjects, and did still hold them; and had besieged more Castles; and that the King, by the Counsel of the Prelates, Earls, Barons, and the Peers of the Realm, had ordained (not a Word of the Commons) to be at York such a Day, with an Army; and they had promised to be there with him *sumptibus suis cum toto posse suo: nos confidentes quod pro tanta necessitate, fideles & subditos nostros, ut in præmissis manus apponant adiutrices decet requirere & rogare, ac de vobis specialiter confidentes, vos effectuose requirimus & rogamus quatenus ad præmissa considerationem debitam habentes*, they should instantly array 500 Footmen, and send them to the King, *sumptibus suis*.

Nota, All this done without Warrant of Parliament; and more Court-like Words, certainly, were of Purpose used in such a Time as that was, of instant Necessity, *ad faciendum populum*, than either needed, or might have been used, if it had been so thought convenient.

Object. 14. Out of *Paf. 26 Ed. I. Rot. 35. Commun' ex parte Rememoratoris Regis*. Reginald Gray being commanded by the King to levy and conduct to the King 1000 Men out of Bromfield and Yale; he, by his Letter to the King, answered, That he durst not chuse 1000 Men there, without Warrant; and that he would not *mewer* (that is, move) in those Parts without Pay.

Ans. His writing that he durst not, is not to the Right, but in his Judgment it was not safe, or might be dangerous.

Also, he durst not without Warrant, it may be, he thought the King's Letter, without his Great or Privy-Seals, no sufficient Warrant.

Also, it appears in the Record, that the King had sent him Word before, that the Treasurer should ordain Payment; but it seems Pay came not; and then it is likely Soldiers would not stir without Money: They commonly cry *Guelts*, and if they have it not, are apt to disband.

Object. 15. Repayments commanded by the King (*ut conscientia Regis exoneretur*) *Ergo*, the King could not take of Right in these Cases.

Ans. The Record is *29 E. I. Commun' ex parte Rememorator' Regis*; there is a Command for Repayment, *Quia pro urgentissimis negotiis & pro utilitate & defensione totius Regni*; the King had received of the Abbess and Convent of Canonliege 612 *l.* and had promised Repayment; note those Words: And also, for that the Abbess had petitioned the King in Parliament for Repayment. So here was a Promise originally for Repayment also in this Case; a very great Sum of Money it was which was taken from one single Corporation, more than was proportionable for them; and therefore just and conscionable, that Repayment should be: this great Sum was taken upon a Scrutiny, *22 Ed. I.* in Places where it was thought that Money might be had. And upon that the foresaid Sum was borrowed (unwillingly, God

knows, as to the Lender) of this Abbess, and of divers other Religious.

The like Scrutiny was made, *temp. E. II.* and the like Course for Repayment, as appears, *Rot. Parl. 8 E. II.*

And indeed, it had been before those Times, and so continued, a usual thing, for our Kings to look into the Treasure of the Religious, when they had Occasion of Money; and sometimes to take their Silver Plate, and rich Offerings, for Supply of instant Wants. And the Religious would not fail to press upon the King's Conscience, until they had Restitution.

Object. 16. *12 E. III. Ro. Alman. m. 22. dorso*. A Letter to the Archbishop to move all the People to pray and give Alms for the King.

Ans. I say no more, but will read what the Record is, itself *loquitur*.

Pater, &c. Cum populis regni, variis oneribus, tallagiis & impositionibus hæcenus gravetur, quod dolentes referimus, sed (note this but) inevitabili necessitate compulsi, de eisdem oneribus ipsum relevare non valeamus; (so no Wrong confes'd; Necessity excused it, and Continuance of a Wrong cannot be justified.) The King desires the Archbishop to move the People, *ut tantam necessitatem humiliter, benigne, patienter & charitative sustineant*: note those Adverbs, especially *humiliter*. And they would have a good Opinion of the King, and would pray and give Indulgences, to the end he might prosper in his Wars for Recovery of his Right in France. (Note, *To the end, &c.*) *Oneribus prædictis (quæ non ex malitia vel præsumptione voluntaria, ipsos gravant) non obstantibus.*

Object. 17. Out of the *Parl. Roll 13 E. III. m. 9. & 11.* The Remembrances of the Parliament.

One of the Points to be considered and proposed by the King, was for Course to be taken for a Navy at Sea, and for Recovery of *Jersey*, which the French then had conquered.

Ans. In this Proposition the Words of the King are, *Et per tant serr' les Comons discharges del guard del mere*; by which Words it is evident, the King conceived, that the Commons were by Law charged with the Guard of the Sea.

It is true, the Commons answer, They pray *in drt. del guard del mere*, that they be not charged to give Counsel, it being a thing whereof they have no Cognizance; but they give their Advice, that they think the Barons of the Ports should do it, and therein they confess, that the guarding of the Land belongs to the Commons, *sans gages de maunder ou prender*. They could not deny but that the Sea must be guarded. They put not the Charge of that Guard upon the King, but would place it upon the Ports. Of what Strength or Power the Ports were in those Times, I know not; but in our present Age, it is apparent, they are not by many Degrees, near able to defend the Seas, which must notwithstanding be defended, and that Defence can fall upon none but the whole Realm.

Object. 18. Upon the *Parl. 15 Paf. 2 R. II. pars 1.* where the Speech of *Scroope*, then Chancellor, is set down; he therein declared the Cause of the Summons of that Parliament, whereby it appeareth, that a little before there had been a Parliament at *Glocester*, and no Provision for common Defence was there agreed on; that after the Departure of that Parliament the King had assigned some Prelates and Lords to be of his continual Council, for the Year following; the said Council treating and having before their Eyes, the great

Mischiefs and Perils, with which the Realm was on all Parts invironed, and the Summer approaching, and no Ordinance made in Parliament for Salvation of the Realm, and Resistance of the Enemies. And the said Council durst not take upon themselves alone the Ordinances of so perilous and high an Act; but it was advised by them, after Christmas to assemble a great Council, of all the great Lords of the Realm, Prelates and others: and upon a second Warning there came well near all the Prelates, as well Abbots as others, the

Sages here
are sad
Men, not
Judges, as
was objected.

Earls, Barons, Bannerets, and other Sages of the Realm; and then there the great Perils and Mischiefs to the Realm being disclosed, by reason of the great apparent Wars by Land and Sea, whereof no Ordinance was provided; and moreover, it being declared before them, by the Officers of the King, and Treasurers of the War, as to the State of the King, and of the Realm, that nothing remained in the Treasury for the War; it was said, in the same Council, *Pur conclusion final, que ils ne poient cet mischiese remedier, sans charger le Common del realme, que charge ne puit estre fait ne grant sans parliament; Et per tant per assent de eux le parliament ore este somon' Et in le meane temps que suffic' army ser' ordeine al mere in defence, Et salvation del realme et del navie, et del Coasts del mere a quel costages tous les Seignors apprompterant volontairement al roy, divers grand sommes del money. Et issint font bon gens de London, et d'autres vills, as quod le roy per assent fuit in dit grand Counsell, aurit envoy pur ce cause. Et ad done a eux son royall grt. pur repayment.* It hath been said, that the present Question is fully answered.

Ans. I confess that this Record hath a great Shew of Proof, that tho' there be an apparent and instant Time of Danger to the very *Salus Reipublice*, yet no Charge upon the Commons may be made, or granted, without Parliament. And indeed, this is the strongest Proof upon any Record, that hath been urged on Mr. Hampden's Side. But I think it will receive an Answer with indifferent Affections, if these Things be observed.

1. That this Consultation and drawing in Question of the using of Means, was before any Charge actually imposed: Which now I insist not upon, because I have formerly touch'd upon it.

2. The King was then in Minority, the Law was not then clear and settled concerning an Infant King's Power. You see it was debated, and not resolved, until the Time of K. Ed. VI. vide the Case of the Duchy of Lancaster, *Plow. Com.*

3. The Example of Latimer was then fresh; and the Lords, it may be, were over-wary, upon his Precedent, tho' it could not parallel with theirs, if they had undertaken, upon so urgent Occasions, to have charged the Commons, without their Consent in Parliament.

4. Note the Words of the Record, That the Lords, appointed Counsellors, could not advise or find any Means; and it is certain, that no Counsellors, none but the King himself, could command so high a Matter. The King then was not there; he was at that Time scarce out of his Nurse's Care.

5. The People at that Time were wavering, and full of Discontents; they had withdrawn themselves from Parliament. Alice Peers had a little before plaid her Pranks, and the young King was not fortunate in his then governing Servants.

Lastly, The Thing necessary, viz. Security of the Kingdom, was done by another Way, viz. by lending of Money, as in the Record: But put the Case it had not been done one way or other, then of Necessity the People must have been charged, tho' without, yea, tho' against their Consent; for the Kingdom must not be lost, an *ultimum refugium* must be found out, rather than so fatal and final a Mischief and Misery must be endured.

Object. 19. *Rot. Parl.* 2 H. IV. n. 22. Concerning Barges and Ballingers, commanded to be made without Assent of Parliament. The Commons Petition saith, That this had not been done *avant ceux beurs*, and pray'd that the Commissions might be repealed. The King's Answer was, That the Commissions should be repealed.

Ans. It is plain that those Commissions, before that Time, ceased of themselves; for they were made in Richard the Second's Time, and died with him. All Commissions from the King are but Authorities which end with that King from whom they issue.

Also note, that the said K. Henry the Fourth's Answer in Parliament goeth further, viz. But for the great Necessity which the King hath of such Vessels for Defence of the Realm, in case the Wars should hold, the King would commune with the Lords of this Matter, and after shew to the Commons for their Advice. Which Words are notable to this Question. It cannot be denied, but this Answer to the Commons said Petition in Parliament is, in effect, a *Roy soi avisera*.

I note that *Rot. Parl.* 1. R. II. m. 52. there is a Gratification by the King, in confirming of Franchises to those Cities and Towns, *que sont ore* (that is, now in this Time of Parliament) charged with the making of Ballingers in Defence of the Realm. Here in this Parliament just Occasions were given to the Commons to have complained of this Charge, with the making of Ballingers, charged upon them before the Parliament, if it had been a Wrong: but they complained not of it, for ought appears; and the King's Gratification is no Proof that it was as by way of Recompence for a Wrong; but it is plainly an Argument of the King's Grace to them, by way of Encouragement of them in their Services for the Commonwealth. The like appears, *M. 3. 2. Cheqr. K. Rem. inter brevia directa Baronibus*.

Also it is to be known, that in all King's Times, some Matters have been preferred in Parliament, from the Commons to the King, as Grievances, which in themselves have not been Wrongs, or against the Law: We find in our Books, there may be *damnum absque injuria*.

Object. 20. *Parl.* 7 Ed. IV. n. 7. In the beginning of the Parliament, the King himself spake to the Commons, and, amongst other things, promised the Commons, He would live of his own.

Ans. The King's Speech stayeth not there, but goeth further, the Words are these: 'I purpose to live of mine own, and not to charge my Subjects but in great and urgent Causes, concerning more the Weal of themselves, and the Defence of them and the Realm, than mine own Pleasures; as heretofore by the Commons of this Land hath been done, and borne, to my Progenitors, in time of need.' Which Words are remarkable: not a Syllable in them of doing this only by common Assent in Parliament, but relatively, as heretofore, &c. which how it hath been

de facto, you have heard; namely, sometimes in Parliament, and sometimes out of Parliament.

The last material Objection to be answered by my Memory, is the Authority of *Fortescue* in his *de laudibus legum Angliæ*, where he saith, *Cap. 13.* 'That the King of England is *Rex politice regens*; and *regulariter*, to do what he please.' This needs no Answer, it is agreed. But he farther saith, *Cap. 9.* That the King may not *populi substantias proprias subtrahere, reclamantibus eis vel invitis*; that he may not *Tallagia & cætera onera eis imponere ipsis inconsultis*; That he may not *subiectum populum renitentem onerare impositionibus peregrinis*.

I answer, That 'tis most true *regulariter*, & *regula non facit jus, & nulla regula quin fallit*.

Cases of Necessity, Cases of *Bonum publicum*, Cases of *Salus Reipublicæ*, are not to be comprised within ordinary Rules. I have spoken so much hereof already, that now I will say no more, but conclude, That in Cases of Necessity, *pro salute Reip.* every Subject must (even by Rules of Law) bestir himself; must contribute his best Abilities; must set to both his helping Hands.

Rich Men must expose their Treasures.

Able Men of Body must put on Arms.

Great Counsellors must give their best Advice.

Women must not be idle.

Old Men and Clergymen (if they have no other Powers) must attend their Prayers.

And Judges must press and enforce the Laws upon the Subjects to compel them to contribute.

And so I have done at this time: And what I have said, I have spoken to the Best of my Understanding, and in Discharge of my Conscience in a Case of *Salus Reipublicæ*.

And it being high time now for me to give over, I conclude upon all my Reasons and Authorities cited, That as this Case is upon the Pleading of it, the Charge of 20 s. imposed on Mr. *Hampden*, towards the Provision of a Ship, commanded by the Writ of *Aug. 11. Car. Regis*, is consonant to Law, and consequently, That Judgment ought to be given against him, *Quod oneretur*.

The Opinion of Sir George Vernon Kt. one of the Justices of his Majesty's Court of Common-Pleas at Westminster, deliver'd in the Exchequer Chamber, in the great Case of Ship-Money.

THIS is a Cause of great Consequence, and is one of the greatest that ever came in question in this Kingdom, and the Records are infinite that have been cited on both sides; but by reason of want of Health, and Disability of Body, I have not been able to peruse the Records as I intended, and to have prepared myself, in which I am to argue; and therefore I would desire Time until this Day Sevensnight, to peruse the Records and compare my Notes, wherein, as you may see, I have taken great pains, [*Producing his Notes to the Court*] that I may be the better prepar'd to deliver my Opinion in this weighty Matter: And then, God willing, I will not fail.

But it was answered by the Court, That in regard certain Days have been peremptorily appointed at first for their Arguments, it could not be altered now, nor could they give him any further Time.

Whereupon he said, 'Seeing I may not have any further Time, I must therefore deliver my

' Opinion in brief, according as I have conceived ' it in my Conscience to be, which is as followeth, ' viz.

' That the King, *pro bono publico*, may charge ' his Subjects, for the Safety and Defence of the ' Kingdom, notwithstanding any Act of Parlia- ' ment; and that it is warrantable by *Gascoigne*, ' 13 Ed. IV. 14. and moreover, that a Statute de- ' rogatory from the Prerogative doth not bind the ' King; and the King may dispense with any Law ' in Cases of Necessity, 2 Hen. VII. 11.' And so concluded for the King.

A few Notes of the Argument of Sir Tho. Trevor, Kt. one of the Barons of his Majesty's Court of Exchequer, in the great Case of Ship-Money.

AFTER he had opened the Record he said, The Question upon it was, Whether Mr. *Hampden* should be charged with the 20 s. imposed upon him, as this Case is?

This Case, by reason of the Weightiness of it, is adjourned from the Exchequer hither to be argued, and the Advice of all the Judges is required herein; many Days have been spent in the arguing of this Case, as it well deserves; six Days by the Defendant, and six Days on the King's side.

It is some Labour, in a Case of this Extent, to contract myself, according to my Conscience and best Knowledge: I shall seriously ponder the Weight of this Case, and digest it, as by the Law is warrantable, and so grounding my Judgment accordingly. And the Judgment which I shall give, in fine, is, That Mr. *Hampden* ought to be charged with this 20 s. and is to give Satisfaction for the same. My Lord *Coke* saith of a short Case in his 11 Report, That tho' it be as short a Case as ever was argued, yet the weightiest in any Court for Consequence: So it may be affirmed of this Question, for the Sum is but 20 s. but the Weight thereof is of far greater Extent: it concerneth the whole Kingdom.

Mr. *Hampden* hath demurred, and thereby hath granted all Matters of Fact to be true. The Defendant's Council have taken much Pains for their Client; and, without Flattery, so have the King's Council.

I acknowledge, the laying of a Charge upon the People by Parliament is a safe way, if Time and Occasion will permit. Anno 1588, when the *Invincible Armada*, so termed, came into England, the Provident Care for the Prevention thereof was out of Parliament. Alas! It is not Parliaments can keep us safe. Was not that detestable Gunpowder-Treason, 3 Jac. devised to have been executed in the Parliament-time? The Wisdom of the Parliament did not discover this utter Ruin and Destruction, that had like to have happened to the King and Kingdom, and to the Overthrow of Religion; but it was the great Mercy of God that did it.

This Kingdom hath been always Monarchical: A Democratical Government was never in this Kingdom. In the time of the Britons, 500 Years before the Birth of our Saviour, when Brute came from Troy into Britain (as one writes) it had a politick and regal Government: This is confirmed by the Letter from the Pope to King *Lucius*. And our King hath as much Power and Prerogative belonging to him, as any Prince in Christendom hath

hath. It is the King's Prerogative to appoint the Beginning and Ending of Parliaments. So great a Body can move but slowly. A great part of the seven Months would be spent, or the Parliament ended; and then we were but to begin to rig and trim our Ships, to provide Powder, Shot, Cables, &c. many of these, perhaps, to be had in foreign Parts; Masters and Gunners, &c. to be got: Ready Money must be had for the providing of all these; this will require convenient time before this can be done. What Hazard may the Kingdom run all this while? What Policy is there to make State-Affairs known to the People? They may thank themselves, they would not make a Ship for the Service, and then they might have had it for their own Use afterwards. When the Kingdom is in Danger, the King may command a Supply for Prevention thereof; and who can tell better than the King how to prevent the Danger? *Necessitas non habet Legem.* The King then must not forbear. The common Law doth regard the common Good above particular; as in Pontage, Murage and Paveage.

The Provision of Shipping hath prevented us from Danger hitherto, and I hope it will still. It hath Increased the Honour of the Kingdom. It's known not only to ourselves, but to other Princes, that our Ships are of far greater Burthen, Strength, and better furnished, than ever was before. All which redoundeth to the King and Kingdom's Honour. The Ship, called *The Sovereign of the Sea*, may be termed, *The Sovereign of all Ships*.

To conclude: The Sum assised for this Business, I wish it may be paid by all cheerfully, for it is for a general Good, for the Safety of the whole Kingdom: The Subjects are not prejudiced by it, either in their Dignities, or Properties in their Goods: The King's Prerogatives protect the Peoples Liberties, and the Subjects Liberty the King's Prerogative: 'Tis proper for Kings to command, and Subjects to obey. We that are the Judges of the Kingdom have paid it, and therefore it is fit our Opinions concur with our Actions in this Case. And so my Advice is, That Judgment ought to be given that Mr. *Hampden* ought to be charged with the 20 s. assised on him.

The Argument of Sir George Crooke Kt.
One of the Justices of his Majesty's Court of King's-Bench at Westminster, in the Exchequer-Chamber, in the great Case of Ship-Money.

THIS Case of Mr. *Hampden's* stands upon Record, and what Judgment may be upon this Record is the Question. I find no Party in this Case but Mr. *Hampden*. A *Scir' Fac'* is brought against him, to shew Cause why he should not be charged with the 20 s. assised upon him, towards the finding of a Ship.

The Occasion of that was the Writ of 4 Aug. which is the Foundation of all; and that is directed to the Sheriff of *Bucks*, as to other Sheriffs, to prepare a Ship of such a Burden, for the Reasons mentioned in the Writ, *Quia Prædones, &c.* because the Kingdom is infested with Pirates, &c. *Quod datum est nobis intelligi, &c.* for that they do seek to draw Men into Captivity; and also lest we should lose the Dominion of the Sea; and for these Reasons these Writs are sent forth. For the Time that they were to continue abroad, it

is twenty-six Weeks, so long the Payment of the Men to be at their Charge: & *quos Rebelles, &c.* and if any do rebel, that they should be imprisoned. And so the Record setteth forth further, that upon this Writ a *Certiorari* went forth, and Mr. *Hampden* was certified not to have paid it.

Now upon all, Mr. *Hampden* hath demanded Oyer of all the Writs, and hath demurred.

I must confess, this Cause is a very great Cause, and the greatest Cause that ever came in question before any Judges. And for my own Part I am sorry it should come in question in this Place; more requisite it was to have it debated in a publick Assembly of the whole State: for on the one side, it concerns the King in his Prerogative and Power Royal; and on the other side, the Subject, in his Lands, Goods, and Liberty, in all that he hath, besides his Life.

For my own part, I am sorry that I am enforced to dissent from my Brothers that have argued before me; a fitter Course it were for me to have argued with them privately, who have argued so learnedly and well. I have studied all that I could to have concurred with them; but speaking, according to my own Heart, (for we are to give Judgment upon our Oaths) in Respect of my Reason and Conscience, I cannot concur with them; it makes me at a stand with myself, because of the Arguments of so many learned Men before me, and to suspect my Judgment, whether it be erroneous or no. Yet I must set down my own Reasons, and upon them leave them to my Lords that come after me to judge on.

Judgment is of the Lord, the Hearts of Men, and also their Judgments, are in the Hands of God; and when Judgment is once past, we have done. For my own part, I know in this Case we cannot do so well as we should, but to satisfy our selves in our Consciences and our Understandings; and in this Case we are to give Counsel to the King according to our Oaths, whether this Charge be legal or not. If legal, the Subject ought not to complain: If not legal, then not in the King's Power thus to charge the Subject.

The King's Counsel have maintain'd this Writ to be good; and the Judges that have argued, in their Judgments have maintained it. Then the King is advised by his Judges, Whether this be legal or no? If legal, it is well; if not, then the Burden lies upon us. For the King doth nothing but what he is advised.

The Case hath been excellently, learnedly, and well argued on both sides; for that which was pressed by Counsel on either side, did not much move, for they argue as Counsel; and we are to give Judgment upon our Oaths, on what they have said.

But the Judges Opinions already deliver'd do much trouble me. When I have been of Counsel, I have argued one way, and have thought myself very clear; when I have come as a Judge, and argued, I have thought clear otherwise of the Case. I desire to give Judgment in this Case according to God's Direction, and my own Conscience, and that is the best. And so I do not doubt but all my Brothers have gone according to their Conscience, which makes me suspect myself. But every Man standeth or falleth to his own Master. I desire God to guide me to a true Judgment; and tho', for the Reasons aforesaid, I doubt myself, yet I am not of the same Opinion with my Brothers; but according to my Conscience, I think that

that Judgment ought to be given for the Defendant ; For which my Argument shall stand upon these Points.

1. I hold that this Writ is not allowable by the Common Law, but is a Writ absolutely against the Common Law.

2. Admit it was good at Common Law, yet it is against divers Statutes.

3. I hold, that no Necessity, nor no Pretence of Danger, can give this Cause for the Writ : For if the Writ be against the Common Law, no Pretence of Danger can Warrant it.

4. There is no Warranty by Prerogative of the Crown, nor Power Royal, for this Writ.

5. That this Writ is the first Writ that ever was devised in this Kind, and first put in Practice, either in Inland Counties or Maritime Parts.

6. That there is not any one Precedent, nor any one Record judicial, or Judgment in Point of Law for the Writ ; if not, then I hold it not fit to be maintained.

I come now to the Writ itself. 1. I hold the Motives of this Writ to be insufficient to warrant the same.

2. The Commands of the Writ are merely against the Law ; because the Commands of the Writ are, to charge the Subject to find a Ship, with Men, Munition, &c. against the Words of the Common and Statute-Law.

3. If they were, yet the Assessments of the Writ are not warrantable by the Law, and so no Assessment : And if no good Writ, then the *Scir' Fac'* will not lie.

4. I come to the *Certiorari* : And, whether it be well-grounded, or no, is the Question. And I hold, it doth not well issue, as this Case is.

1. For the Point of Law. We that are Judges are bound, according to the Law, not according to our own Imaginations, both to judge according to the Law, and the Law of this Land, either of the Common Law or of the Statute-Law : and I see no Book, nor know of any Authority that doth maintain this Writ ; but contrariwise, there are Books and Authorities in Law, that say, This Writ ought not to be maintained. It is a Rule in *Littleton*, that *That which was never done before, cannot now be done.*

I say, there cannot be produced an Example of the like Writ, I mean the Writ 4 Aug. 11 Car. that ever went unto the whole Kingdom, to make Ships, &c. nor unto all the Maritime Counties, at one time ; but it is the first Precedent, either for Inland Counties, or Maritime Parts ; and if no Precedent before, then not by the Law to be maintained.

2. It is against the Common Law of the Land, which gives a Man a Freedom and Property in his Goods and Estate, that it cannot be taken from him, but by his Consent in Specie, as in Parliament, or by his particular Assent : for the Law puts a difference between a Freeman and Bondman. A Bondman's Goods may be taken without his Consent ; but not so of a Freeman.

Then thus stands the Case, and the Question ariseth, Whether this Writ to command the Subjects in any Inland County, to prepare a Ship, and provide Men, Munition, &c. went out by their Consent ? And whether allowable or no, if without their Consent, for this is a Charge upon the Subject. And I say, no common Charge upon the Subject ought to be but by a common Consent, or in a Parliamentary Course. Mr. *Lambert* saith,

that in the Conqueror's Time the King could charge the Subject with no unjust Taxation, nor Taillage, *sed per commune concilium*. And that was a Law not given by the Conqueror, but allowed by him, as to be the Law of the Kingdom.

In the *Charta* in King *John's* Time, it is plain, the Liberty of the Subject is there confirmed, *Nul-lum scutagium, nullum auxilium nisi per commune concilium*. It appeareth plainly by the Books, that this cannot be done but by Consent in Parliament. *Fortescue* Chief Justice setteth down what the Law of *England* is in that kind, as Instructions for the young Prince. Saith he, 'The King governeth his People by Power, not only Royal but also Politick.' If this Power over them were Royal only, then he might change the Laws of his Realm, and charge his Subjects with Taillage, and other Burdens, without their Consent. Thus the King can change no Laws, nor yet charge them with strange Impositions against their Wills. He setteth down, as the Head is the chief of the Body, so the King is the Head of his People : He cannot take any thing from them, without their ordinary Consent ; the common Consent it is in Parliament. Cap. 3. an express Clause there, *hoc individuo*. Shew me any Book of Law against this, That the King shall take no Man's Goods, but he shall pay for it, tho' it be for his own Provision ; or lay any Burden upon his Subjects, but he must do it by their Consent in Parliament. If this be the Privilege of the Subject, then it is express, the Subjects ought not to have this Charge imposed upon them, but by their common Consent. Tho' it be said, A Statute is the Act of the King, the Lords and the Commons only give their Consents ; I say, it is the Act and Grant of the Commons, as well as of the Lords ; for what Consent is given there, is given by every Man of the Kingdom, by the Power of the Voice which they gave in chusing the Knights of the Shires and Burgeffes. There is a Book Case, 13 Hen. IV. fol. 14. expressly, That no Man shall be charged without his Consent in Parliament. *Gascoigne*, Chief Justice, gave it as a Rule. *Coke's* Reports, *Clark's* Case, No Man to be charged in *St. Albans*, but with their Consent.

In the Chamberlain of *London's* Case, to put a small Sum upon a Merchandize, &c. when it is for the Good and Benefit of the People, is a thing to be allowed thro' a common Ordinance to be Good, so they have no Loss by it ; as in case of Murage, Pontage, Paveage, and Tolls of Markets : Taxes upon the People for these are allowed, because they are Matters for Use of the People, and are not as a Matter of Charge imposed upon the People.

Fitz-Herb. Na. Br. The King hath the Government of the whole Kingdom, both in time of War and Peace. None will deny but that he may command, that no Man can doubt of ; and therefore in that kind, in Point of Inundation, the King, by his Writ, commandeth, That that shall be stopped, and be done by those that have Benefit or Loss by the Inundation ; and those only are to be charged, as come unto *Kent* : If an Inundation be in *Kent* Marshes, shall the County of *Middlesex* be charged therewith ? no ; but those that have Profit by it, or have Loss by it. *Vid. the 10th Report.*

Then here standeth the Case ; if that be so, the Question is not now, Whether a common Charge may be levied upon the Subject, without Consent : No question but a common Charge may, if occasion, and every Man ought to obey it.

But the Question is, Whether, upon the Allegations in this Writ, there shall be a Charge to impose Money upon them in the mean time, without their Assent? I say not, but by a Parliamentary Course: in that kind the common Law doth not allow it. A notable Case in 14 E. II. *Banc. R. Rot. 60. Heb. and Lever's Case in Durham*; an Action of Trespass was brought against *Lever* for taking away the Chest of *Heb's*, with Goods and Money in it he pleaded not Guilty; the Jury gave a Special Verdict, That the Defendant took the Money; but it was upon this Occasion: The *Scots* had invaded *Durham*, and burnt divers Houses about *Durham*; upon which the Inhabitants of *Durham* assembled together to consult about their Defence; and took an Oath to obey the Ordinance to be made by Consent amongst them; whereof the Plaintiff was one that swore, and gave his Consent; Whereupon they made an Order to give the *Scots* a Sum of Money to depart, but they would not be gone without ready Money; whereupon they made a second Ordinance, That every Man's House should be searched, and where they found Money, to take it: Thereupon the Defendant took the Money out of the Plaintiff's House. The Judges asked the Jury, If this last Order was done with the Plaintiff's Consent. They said it was done by Reason of the Occasion. Thereupon ment was given for the Plaintiff: That because it was not with his Consent, that therefore they ought not to be charged. It came into the King's Bench, and they seeing of this Special Verdict, the Judges of the King's Bench reversed the Judgment; for why? what was done, was done by his own Consent and proper Act, because of his Consent upon his Oath; and therefore (said the Judges) he had means to help himself against the Commonality of *Durham*, and they to pay him again to his proportionable Part. This proveth, That no Man ought to part with his Goods, but with his Consent.

That of *Rich. II.* which is not a Statute, yet doth shew, that the Law was at that time, as it is the same at this Day. Advice was taken in a great Assembly how to charge the Commons: And it was answered, That they could not be charged, but by common Consent in Parliament, And it was the Declaration of *Scroope* in the Parliament-House, That without Consent in Parliament, the Commons ought not to be charged; because the Commons have a Consent in Parting with their Goods. It is said in *Doctor and Student*, That the Subject hath such a Property in his Goods, that no Man shall meddle with them, but by his Consent; which is the Reason they recover Damages when they meddle with their Goods, not by their Consent.

Another Reason why the common Law looketh into it is, because of the Inconveniencies that might insue, if this should be allowed; To charge one Ship, by the same Reason there might be ten Ships charged. We have a pious King, and tho' he will now do it, yet the Law looketh into this Inconvenience. That of *Danegelt* began in the Year 991. The first Composition was 10000 *l.* The second 16000 *l.* The next 24000 *l.* The next 36000 *l.* And in 10 or 11 Years, by five several Rises, it came to 48000 *l.* And so, for ought that I do know, this may come to forty hundred thousand Pounds. Therefore the Law looketh to make certain the Charges. The first double Subsidy that ever was, was 31 *Eliz.* and the Chancel-

lor of the Exchequer said, It did make his Heart to quake to move for a double Subsidy, one Subsidy being granted so lately. The Reason of it was, because the *Spanish* Invasion was foreseen.

After the *Spanish* Invasion was past, then came the Second Grant of a double Subsidy; and he said, he hoped not to live to see a Subsidy granted again. 33 and 39 *Eliz.* It came to three Subsidies, and four Subsidies, but if there had been ten Subsidies, what was done, was done by Parliament; and the Law alloweth it because of the greater Inconvenience. Then it is in the Judgment of the Parliament for the appointing of those Subsidies, as the Occasion requires.

The Statutes of Tonnage and Poundage, as appears by all the Statutes made in *Rich. II.* and continued till *Hen. IV. V. VI. VII.* and so downwards to King *James's* Time, are to the end the King might have Money in his Coffers for the Defence of the Realm, and for the Safe-guard of the Sea, that he might not, upon a sudden Occasion, be unprovided; because it is Reason and fitting that Kings should ever have Money ready against any Occasion. But now it is not granted, yet it is taken, the same Profit is made still: And I do not doubt but the King doth employ it for the Defence of the Kingdom, and Safeguard of the Sea. The difference between a Charge and Defence is much; for the first there is no Law to compel the Subject unto it, but by Parliament: For the Second, which is the Defence, every Man's Person is bound in Defence, *Exponere se & vitam ipsam*, upon Peril thereof; but he is not bound to any Charge without his Consent. So in this kind I hold, as the Law standeth, that no Charge ought to be imposed, but by their common Consent; for you will make it all one to take away the Property of the Goods, which you do *quodam modo*, tho' not *in specie*. Power is given to distrain the Goods, and to sell them; and every Man is liable to the Discretion of the Sheriff.

But admit this Charge might be imposed by the common Law, yet I do conceive it is prohibited by the Statute; for I hold, as now my Brothers the Judges, have held, that the Statute *de Tallagio non concedendo*, is a Statute, notwithstanding what hath been argued at the Bar to the contrary. It is apparent in our printed Books; and in one of our Books, the express Time is mentioned when it should be made, *viz. 25 Ed. I.* then it is said to begin. *Taillage* is an antient Aid, and so is *Pur file marier*, and *pur faire fitz chevalier*; but no *Taillage* without a common Consent in Parliament; so I agree with my Brothers, that it is a Statute.

Next this Statute of 25 *Ed. I.* which is said to be no Statute, the Kingdom of *England* hath ever held it for a Buckler for them, That no Charge (without common Consent) should be laid upon them. And the Reason wherefore this Statute was made, was in respect of the great Taxes imposed on the Subject without Consent, in time of War.

The next Statute is 14 *Ed. III. cap. 1.* A great Subsidy was then granted. What was then done? The King doth grant for him and his Heirs not to put them to any Charge hereafter, unless it be by common Consent in Parliament.

Oh! but this is but for that King himself alone!

I answer, it is perpetual. If the King doth grant for him and his Heirs, it doth go to all his Posterity,

Posterity, and is a good Act of Parliament; so that is the second Act of Parliament in the Negative, That no Charge shall be laid on the Subject, but by common Consent in Parliament.

That which is stood upon by my Brothers, is 21 Ed. III. That Statute was made to grant a Subsidy upon every Sack of Wool; and also Taxes upon Merchants Goods Transported, 6 d. in the Pound. This Statute thus made, the King afterwards, because few of the Sacks of Wool were carried over before *Michaelmas*, sent forth a Proclamation, that 6 d. in the Pound should continue till *Easter*, and no longer: but half a Year after this was complained of to the King, and the King (by Proclamation out of Parliament) did take away the 6 d. in the Pound. 22 Ed. III. in the *February* then next following, an express Act of Parliament (this Subsidy so granted) to continue till *Michaelmas* and by Proclamation to continue till *Easter*. They confirm all till *Easter*, and no further continuance of it to be.

By this appeareth, that for so small a thing as 6 d. in the Pound for such a Time, as from *Michaelmas* to *Easter*, that it was a Charge not to be borne but by Consent in Parliament.

4 Hen. IV. m. 28. A Subsidy granted, That this should not be drawn into Example to charge the People, but by common Consent, and that in Parliament.

13 Hen. IV. m. 10. There it is said, Where a Subsidy is granted, it shall not be granted henceforward for Defence of the Kingdom, or Safe-guard of the Sea, but in Parliament.

Then came a Parliament. What did they complain of? The Patent of the Office of Alnerage, tho' it was but a small Charge, yet they set down that this was contrary to the Law, That no Taxes, nor no Aid should be imposed on the People, without Consent in Parliament: The Commons were then very zealous in small Matters.

2 Hen. IV. m. 22. *Hoc individuo*. At that Time a Commission went forth to divers Towns in the Kingdom, to provide, &c. When there came a Parliament, 2 Hen. IV. they complain of those Commissions that inforced them to do that which by the Law they ought not to do; and pray'd those Commissions might be repealed: The Answer is absolute, *Let it be done. Soit fait*.

The next is 1 Rich. III. True, the King was an Ufurper. Benevolences were granted; but that was no Charge, as ours is, and therein the Commons claimed their Liberties.

Lastly, The concluding Law is that of 3 Car. the Petition of Right, That no Person shall be taxed without Consent of Parliament: And when the King was informed of the former Statutes how they were; Thereupon this Statute 3 Car. was made, which reciteth the Statute *de Tallagio*, and divers other Statutes; and it was referred to my Lords the Judges (most whereof are here) whether this Law doth give more than formerly from the King. And we were all of Opinion, that this Law did give no more than what was formerly, and was only but a reviving of the antient Privileges of the Subject; it added no more, but only revived what was formerly granted.

I do conclude, that no Charge can be imposed upon the Commons, without their Consent in Parliament. We that are Judges, must go according to the Intention and Meaning of those Laws. The Meaning of the Laws in this kind was, that no

manner of Charge, Aid, or Tax should be laid upon the Subject, but by Consent in Parliament. The Judges are to expound them according to their Intention.

But they say, the Practice hath been otherwise.

We say not now what *de facto*, but what *de jure* was done; and we, as Judges, must not allow *de facto*, *sed quid de jure factum fuerit*.

To answer the great Objection, It is for the Defence of the Kingdom: Here is such a Necessity and Danger, as will not admit the Delay of a Parliament.

I hold, for my part, that no Necessity nor Danger can allow a Charge, which is a Breach of the Laws. I hold it absolutely, that for a general Charge of Money upon the People, it cannot be upon any Pretence of Danger or Necessity. Mens Persons may be used in the case of Necessity or Danger; for every Man is bound to defend the Kingdom, but no Necessity can procure this Charge without a Parliament. The Law provideth a Remedy, in Case of Necessity and Danger; for then the King may command his Subjects, without Parliament, to defend the Kingdom. How? By all Men of Arms whatsoever, for the Land; and by all Ships whatsoever, for the Sea, which he may take from all Parts of the Kingdom and join them with his own Navy; which hath been the Practice of all former Kings: In their Necessity they have taken Ships from all Parts of the Kingdom. 10 Ed. III. M. 2. Scot. 10 Ed. III. M. 16. when there was a great Navy of Scots and French appeared, and intended to come and invade the Kingdom, the King appointed two Admirals, one towards the *North*, the other towards the *West*, and to meet together at what Place he pleased; and, m. 16. sent into *North-Wales* and *South-Wales* to maintain one Ship, either of them upon their own Coasts of the Sea, for the Defence of the Kingdom. And in *Rot. Alm.* 12 Ed. III. Writs went for the arresting of Ships in all Parts of the Kingdom. *Rot. Viag.* 1 H. IV. m. 12. Writs issued to all Archbishops and Bishops, shewing imminent Danger, that they should be ready in Arms, to come and assist *ad custodiendum mare*, whithersoever he should appoint them. But in that Time, when the Danger, was such, yet no Ships appointed to be prepared thro'out the Land. And 5 Hen. IV. that all the Men of all Parts should come together in such a Place: This was only an arraying of Men to be in readiness. 3 H. V. to the same purpose. And 1 Hen. VII. which was much stood upon, of a Rumour of Wars between the King of the Romans and the French King, which might, perhaps, in the End, tend to an Invasion of this Kingdom, there was an arraying of Men, from 16 to 60, and gathering of Ships, and taking Order for Watch and Ward upon the Sea-Coasts, but no Command to make Ships. 4 Hen. VIII. pars 2. there the King by Proclamation saith, That *the Enemy is ready to enter, Ships are furnished with Men of War to invade the Kingdom*. What then? What was done then? It is no more, but that every County in England have Men in readiness to assist, from 16 to 60, to defend the Kingdom, and to have good Watches and Wards upon the Sea-Coasts.

But, I pray you, in all these Times of Hen. VIII. Hen. VII. Hen. V. Hen. IV. were there ever any Writs went forth for Ships into any County? it doth not appear that any County was to prepare or make any Ships; but only Men in

Arms: So the Law makes Provision, in Time of Danger, by help of their Persons, and with Ships, not with a pecuniary Charge; for that cannot hold for any, nor can be done without Parliament. And if new Ships must be made, it must be made by Parliament. If so be the Writs be to make Ships, then let the Sheriffs make them, and shew for their Discharge upon Record, that they are made and prepared. But to appoint by Writs Ships to be made, and by their Directions appoint the Sheriffs to levy Money to pay off some of the Ships, was never yet done, this being a Precedent of the first Impression. The Law did always account the Parliament able to provide and to give sufficient Aid, and most fit to consult *de arduis Regni*; and there is a Consent of and Grant of the Commons to what is done, they are Actors in it.

By the old Law of *Alfred*, Parliaments were to be held twice a Year; and by express Statute made 4 *Edw.* III. 14. an express Law was made, That every Year a Parliament should be held, especially if Need required. And by another Statute, for avoiding of Grievances that daily happened, a Parliament should be held once a Year. Then it is to be conceived, a Parliament may be called, and Things may be charged that way.

And for the Objection, That a Parliament is not the speediest way to prevent the Danger; the Imagination of Man cannot invent a Danger, but Course may be taken for Defence, till a Parliament be had. So, for my part, I hold this Point of Necessity, or Danger, cannot be held a sufficient Ground for this Writ.

The next Thing is this; Yea, but this is maintained by Prerogative and Royal Power. I say for that, by my Oath I am bound to maintain all the true Prerogatives of the King; and we that are Servants to the King must maintain his Prerogatives, and, to the best of our Skill, not suffer them to be diminished. But I hold there is no such Prerogative in this Kind.

The Prerogative is, that which the Law presumeth, *That the King can do no Wrong*: And so it is in *Brañton*, *Rex potest facere quod de jure potest facere*. 11 *Rep. Magdalen-College Case*, 246. *Plowden's Comment*, The King can do no Wrong, nor any Act to wrong the Subject. *Brañton*, *hoc non potest agere quod non potest agere jure*. Therefore if this Charge be against the Law, so much to the Prejudice of the Subjects, as I conceive it to be, the King will never do it; for it is done by Misinformation that it hath been usually done, and may be justly done. 21 *Edw.* III. a Patent is made, which is a Wrong to the Subject, the King, *de jure Regis*, ought to revoke the Patent; for the Law hath that honourable Conceit of the King, *That he can do no Wrong*. A King, therefore, to have a Royal Power or Prerogative, to do that by his Writs, to command any thing to be done that is against the express Laws of the Kingdom, to the intringing of the Liberties of his Subjects, is not admitted by the Law: The Royal Power is to be taken away; for as it is before said by *Fortescue*, he can change no Law, nor charge his People, but by common Consent in Parliament. So, for my part, I hold that this same Charge upon the Subjects, by his Royal Authority, it is not allowable.

The King, we know, is a most just and pious King, that he will do nothing against his Laws; if he did know it to be against Law, he would

never desire it. When a Judge of the Land was called in question, in *Queen Elizabeth's* Time, about denying some Loan, delivering his Opinion against the same, he said, It was against his Oath, and against the Law, to advise her Majesty to it. With which she rested satisfied. If the Judges say, by Law the King may do this; he may do it: If they say no, but by Act of Parliament, he will never do it.

But it is said, The King taketh the Course, *More majorum*. There is not any Precedent especially maintained, by any judicial Record, that warranteth this Course: and if there were any Precedents, we are to judge according to the Law, and not according to Precedents; not to judge what hath been done, but what of Right hath been done. 11 *Rep. Magdalen-College Case*, tho' there be many Precedents, that maintaineth not a Right; the Question is still, Whether a Right or not?

But admit that Precedents could make it to be lawful, yet I hold there is not any one Precedent to maintain this Case.

For, *First*, I say there is no one Precedent goeth to Inland Counties all over *England*, before now. I say, to Maritime Counties to prepare, as my Brother *Berkley* confessed, that he knew none for any Inland Counties, but 1 *Rich.* II. 11, 52, there Writs went out to divers Inland Towns, but not to Counties, to make Ships; and besides, these were not any to Inland Counties.

To this I say, Those Writs that went out at that Time were done by Conveyance in Parliament: for an Order was made in Parliament, That all that had any Charters, the ancient Cities, Boroughs and Towns, that had any Charters of Liberties, should there be examined; and appoints how, and by whom; and have their Liberties confirmed without Fine, if they would produce Ships for the Defence of the Kingdom. But yet in this Record not one Inland County or Maritime County is charged, nor no Inland Town, but those that would have their Liberties confirmed.

Now to look upon the Precedents of *K. John's* Time, 6 *Johan.* 9 *Johan.* 14 *Johan.* &c. here be the fix Precedents in Court; and I have looked into every Precedent on the King's side, to satisfy myself; and all those Precedents are only for arresting of Ships, that they should not go forth of the Realm; and 15 *Johan.* all Ships to be ready as the King shall have Occasion.

Then we come to *Hen.* III's Time: 13 *Hen.* III. m. 5, 13, &c. there are six of these Records, I have read them all; they are no more, but only to Port-Towns, to arrest Ships, and the rest to have Men at Arms, in readiness upon the Sea-Coasts, and that but for forty Days.

Then for the Precedents of *Edw.* I's Time, all of them being examined, not any one of them go to the Counties. 13 *Ed.* I. 77. divers Ships are appointed to be made, but it is *ad sumptum Regis*, and only unto Sea-Towns; the Record shews, that by the Barons of the Exchequer they have an Allowance for it. 23 *Ed.* I. m. 5. same Roll, a Writ to the Sheriff of *Norfolk*, to compel them to maintain their Sea-Coasts. 14 *Ed.* I. a Writ *ad Congregandas centum naves paratas*, and armed Men to be put in them. So to command in that kind the King may, and we must obey; he commands Ships ready made, not to make them. Afterwards, 14 *Ed.* I. *Rot.* 17. several Writs to the Archbishops and Bishops, to attend

attend with their Arms in readinefs, to maintain the Coasts. 14 *Ed. I. Rot. 78.* a Writ to the County of *Berks*, a Thing much stood on; it is only for Matter of Array, if it be well looked into, and no Matter of making or finding of Ships; and divers other Writs in this King's Reign, for maintaining of Armies in their proper Counties: and no Man can deny but that every Man in his proper County is to go to defend the Kingdom. And also for having of all Ships of above 40 Tons in readinefs: But to make new ones, in any Inland County, is not warranted by any Precedent, that I can see; tho' I have looked over all the Records that have been brought unto me; no, not in Maritime Counties, to make Ships.

For the Precedents of *Ed. II. Time*, 9 *Ed. II. &c.* to put them all together, they are only to congregate Ships to be in Readinefs, but not to make new Ships.

To come to *Ed. III. Time*, 7 *Ed. III. m. 9.* Command is to assist the Admiral with their Ships, as Occasion shall require. 10 *Ed. III. 11.* a Precept to Port-Towns only, to bring their Ships to *Portsmouth*, for 13 Weeks, furnished with Victuals, &c. 2 *Ed. III. 16.* not to depart without Licence. 10 *Ed. III. 12 Ed. III. Rot. Alm.* Writs only to Port Towns, *ad custodiend' Mare.* 12 *Ed. III. m. 12.* a Command to *Henry Hufsey, &c. ad congregand homines*, and to attend on the Sea-Coasts. But these were the Causes of making the Law, 14 *Ed. III.* that there should be no further Charge laid on the Subject: so that all before that Statute do not prove our Case. 15 *Ed. III.* A Custody of the Ports commanded, and Warrants to arrest Ships. 16 *Ed. III.* Command to the Earl of *Dover, &c.* to prepare Ships against an Enemy that intends to come to subvert the Kingdom, and to set up Beacons; which is the first Original of Beacons that I observe. All these Precedents in *Ed. III. Time*, were but to keep Men and Ships in readinefs, and to bring them to the Sea-Coasts. 46 *Ed. III. m. 3.* that the *French* made great Preparation, whereupon they are commanded all to array, both Clergy and Laity, to guard the Sea-Coasts. And in those Times, when there was more likelihood of Danger than now, no Writs came out then, but only to array Men, and keep them in readinefs. 50 *Ed. III.* to array Men in *Norfolk* to defend the Coasts. 29 *Ed. III.* Command to the Bishop of *Durham*, and into *Cumberland* and *Northumberland*, to have their Men in readinefs. A Number of these Precedents in that King's Reign.

For *Rich. II. Time*, it doth not appear by any one Record there is any thing for Ships, but only for the Custody of the Sea.

And for *Hen. IV. Hen. V. Hen. VI. Time* until 2 *Eliz.* they are all concerning Matters of Arms, not to make Ships. And when the Rebellion in the *North* was in the Queen's Time, then by Writs Men were commanded to be in readinefs, for Defence of the Kingdom.

The next Thing we come to is the Writ it self. For my part, I hold it to be illegal; mark the Recital of the Writ, it is no more but *Quod datum est nobis intelligi, &c.* not a plain Affirmation, as Apparency of it. Then the Motives are, Because the Pirates do infest the Seas: Such Motives as never were in any Writ before. All former Writs were not to provide great Navies in respect of Pirates; there is no such great Danger of them. 15 *Ed. I.* it is there set down, when Pirates infested the Seas, they took Order that there

should be only 10 Ships to scour the Coasts. 16 *Ed. III. &c.* Command that Men should be arrayed, lest the Enemy should invade the Kingdom; but no mention made of Pirates, for they will be removed with a few Ships. Mark the Times when great Pirates were upon the Sea, they would be glad to sculk away when the King's Navy came towards them. Now that this should bring the King's Navy to Sea, is against the Law of the Land, and are not Motives sufficient to induce a Charge of this Kind.

Secondly, The very Commands of the Writ it self are unlawful, in respect of the Inconveniences to an Inland County; whereas there was never any Inland County charged in that kind before, as Coast-Towns that have been heretofore charged with Soldiers, and had none, were discharged. When *Bodmin* in *Cornwall* was charged with finding of a Ship, they shewed they never had Ship nor Mariners there, and that divers of them were imprisoned for not finding such a Ship; whereupon Commission issued to the Admiral to examine the Truth thereof: And because it was found they had no Mariners, they were discharged.

But Mr. Solicitor answered, This was done by the Admiral, beyond his Commission; but 13 *Ed. III.* the same Year, there was a Writ awarded to *Chichester* in the County of *Suffex*, to find a Ship, and they complained they had not any Ships used to arrive there, nor Mariners therein inhabiting; and thereupon they were discharged, upon a Writ out of the Chancery: So I say, Inland Counties that are not wont to have Ships, the Law doth not appoint them to do that which they cannot do, nor will not expect from them that which is impossible.

The Pursuance of this Writ is against Law; it appoints them to provide a Ship, hire Men, and provide Victuals and Wages for them, 26 Weeks, &c. I say, this is against Law plainly, and against divers Statutes, and no Law doth warrant it; for Soldiers, which are the King's Servants, ought to have their Pay from the King, at the general Rendezvous. 15 *Johan. m. 3.* Ships commanded to be at the Ports upon the King's Pay. Tenants by Knight's Service, after forty Days, were to be at the King's Charge. 17 *Ed. I. 16 Ed. III.* it appeareth there, the King, upon the Invasion of the *Scots*, many Men being lost, appointed Soldiers, and their Wages paid, and what to *Durham*, and what to *Newcastle, &c.* 31 *Ed. I.* in the Exchequer, Writs went out to levy Men to refit the *Scots*, and they would not stir without their Wages. 16 *Edw. III.* to pay Soldiers Wages. 2 *Edw. III. Rot. 16.* there it is set down in Parliament what Soldiers have received for their Wages. 26 *Stat. 18 Ed. III. cap. 7.* Soldiers are not to go out of their Counties without Pay. 10 *Ed. III.* the Men of *Bucks* stood upon it, and would not go out of their County to the Coasts of *Southampton* without Wages. *Rot. Alm. 12 Ed. III. m. 12.* A Writ to compel all Men to make Munition for Ships, for the Town; and thereupon *H. and B.* they were commanded to maintain the Men of the same Town. *Claus. 13 Ed. III. m. 14.* Men of Arms for the Defence of the Sea-Coasts complained their Wages were not paid them: Ordered, The Town from whence they came should pay them. The Statute of 11 *Hen. VII. cap. 1.* provides, that Soldiers that go out of their own Counties to attend the King in his War, shall have their Wages from the Time they go from their Houses, to be paid by the King's own Officers.

I hold that this Assessment is not lawful and allowable: then if the Assessment thus made falls to the ground, the Power to the Sheriff to assess doth; and he may do it as he lists, put more upon one than another, therefore an Assessment in that kind is not legal.

Then the Clause, *Si rebelles fuerint, &c.* to imprison them, then to give Power of Imprisonment to the Sheriff: Clauses have been in former Writs, in Cases of Arrays, to distrain, if they refuse to pay; never in Case of levying Money, to imprison for it; it is clearly against *Magna Charta* to be imprisoned, unless he be indicted, or by due Process of Law.

The next Thing is the last Clause of the Writ, 'If more be gathered than shall be needful, to be returned amongst those that have paid it.' That sheweth the Ship must be done; we are now upon the Record, and by this Record it doth not appear that a Ship is made. It appears Mr. Hampden was assessed 20*s.* towards the making of a Ship. It is said, If the Money be paid, others can provide Ships. This is not according to Law, to command a Ship of War of 450 Tons, and to turn it into Money; for if a Ship were made by a County, the County should have it again, but in this Case it is otherwise; this *Scir' Fac'* is brought to have the Money.

For the *Certiorari*, it is directed to a Sheriff out of Office (*que del residue de ceo*) and ought not so to be, for all Writs are directed to the present Sheriff; so for the old Sheriffs to shew Cause what they have done, and the new Sheriffs to make their Return, he is the immediate Officer of the Court.

Admit the *Scir' Fac'* should go forth, it would do something, *onerare, &c.* to whom, or how, nothing here; but *Scir' Fac' quare onerari non debet*; but to whom *onerari*, it doth not appear.

Besides, if the Sheriff levy Money in that kind, and bestow it on a Ship, it is well. If not so bestowed, then those that received the Money are accountable to those of whom they had it. In *Ed. III.* Time, Soldiers received Money to go to Service in War, yet staid at home, but were compelled to repay it to the County where they received their Wages. Also two High Constables having received Money for Soldiers, were indicted for not employing it accordingly, and adjudged to restore it to the County where they received it, and to find Sureties. So it doth not appear that this Ship was builded, there is no Preparation for a Ship; the Sum assessed is not legal; then the Writ is not legal, because it varieth from all the Precedents formerly; it varieth in the Time of 26 Weeks, before that but for 13 Weeks; in the Manner for Soldiers Wages to Inland Counties, which was never before. I say, it varieth from all the Precedents, in that Kind. And so I hold this particular Writ is not sufficient, nor warranted by the Law, and that Judgment in this Case ought to be given for Mr. Hampden.

The Argument of Sir George Crooke Knight, one of the Justices of his Majesty's Court of King's-Bench at Westminster, in the great Case of Ship-Money, as it was presented to the King's Majesty.

The Case is this upon the Record.

THE King by Writ under the Great Seal, dated 4 *Aug. Anno 11.* of his Reign, di-

rected to the Sheriff of the County of *Bucks*, and to all the Men in that County, commandeth them in these Words.

1. *Quia datum est nobis intelligi, quod Prædones quidam Pirati ac Maris Grassatores tam nominis Christiani hostes Mahumitani quam alii congregati Naves & bona & Mercimonia non solum Subditorum nostrorum, verum etiam subditorum amicorum nostrorum in mari quod per gentem Anglicanam ab olim defendi consuevit nefarie diripientes & spoliantes & ad libitum suum deporta vere hominesque in eisdem in Captivitat' miserrimam mancipantes.*

Motives of this Writ which are five.

2. *Cumque ipsos conspicimus Navigium in dies preperantes ad Mercatores nostros ulterius molestari & ad Regnum gravandi nisi citius remedium apponatur eorumque conatui viriliter obvietur.*

3. *Consideratis etiam periculis quæ undique his guerrinis temporibus imminet, ita quod nobis & subditis nostris defensionem Regni omni Festinatione qua poterimus accelerare convenit.*

4. *Nos volentes defensione Regni, tuitione maris, securitate Subditorum nostrorum Salva Conductione Navium & Merchandizarum ad Regn' nostrum Angliæ venient' Et de eodem Regno ad partes externas transire (Auxiliante Deo) maxime providere; cum nos & Progenitores nostri Reges Angliæ Domini Maris prædicti semper hæcenus extiterunt, & plurimum nos tæderet si honor iste Regius nostris temporibus depereat aut in aliquo minuat.*

5. *Cumque onus istud defensionis quod omnes tangit per omnes debet supportari prout per legem & consuetudinem Regni Angliæ fieri consuevit.*

Vovis Præfat' Vicecom' Balliv' Burgenfibus Majoribusque probis hominib' & omnib' aliis, quibuscunque supra mentionat' in Burgis, Villis, villatis, hamlettis & locis supradictis eorumque Membris.

Charges of this Writ, which are 3.

1. *In fide & legiantia vestra quibus nobis tenemini.* 2. *Et sicut nos & honorem nostrum diligitis.* 3. *Nec non sub forisfactur' omnium quæ nobis forisfacere poteritis firmiter injungend' Mandamus.*

1. *Quod unam navem de Guerra, Portagii 450 doliorum.* 2. *Cum hominib' tam Magistris peritis quam Marinariis valentioribus & expertis, centum & octoginta ad minus.* 3. *Ac tormentis tam majoribus quam minoribus pulvere tormentario ac bastis & telis aliisque armaturis pro bello sufficientibus.* 4. *Et cum duplici Eskippamento, nec non victualibus usque ad primum diem Martii jam proxim' sequen' ad tot homines competen'* 5. *Et abinde in viginti & sex Septimanas ad Custagia vestra, tam in victualibus quam hominum Salaris & aliis ad Guerram necessariis per tempus illud super defensionem maris in obsequio nostro, in Comitatu Custodis maris, cui custodiam maris ante prædict' primum diem Martii committimus & prout ipse ex parte nostra dictaverit moratur' parari, & ad Portum de Portsmouth circa decimum primum diem Martii duci facias. Ita quod sint ib' in eod' die ad ultimum ad proficiscend' ex*

Commands of the Writ, which are 5.

inde cum navibus nostris & navibus aliorum subditorum nostrorum. 1. *Pro tuitione maris.* 2. *Et defensione vestrum & vestror'.* 3. *Repulsioneque & debellatione quorumcunque mercatores nostros & alios subditos & fideles prædict' in Dominia nostra ex causa mercaturæ se divertentes vel ab inde ad proprium declinantes super mare gravare seu molestare satagentium.*

End for which the Ship is to be.

Clauses of the
Assess.

1. *Assignavimus autem te præfat' vicecom' Bucks ad assidend' omn' hom' in villis de Agmondesham, Wendover & Marlow Magna & in omnibus aliis villis villat' Burgis Hamlettis & aliis locis in Com' Bucks præd' & terre tentes in iisd' navem vel partem navis præd' non habentes vel in ead' non deservientes ad contribuend' expensis circa provisionem præmissorum necessar'.* 2. *Et saper' præd' vill' Burg' Hamlett' & locor' membris eorumq' sic ut præfertur ad assidend' & ponend' viz. quolib' eorum juxta statum suum & facultates suas.* 3. *Et portiones super ipsos assessat' per distinctiones aliove modos debitos levand'.* 4. *Et collectores in hac parte nominand' & constituend'.* 5. *Ac omnes eos quos rebelles & contrarios inveneris in præmissis in carcere mancipand' in eod' moratur' quousque pro eor' deliberatione ulterius duxerimus ordinand'.*

Precluse of the
Writ for the
Ease of the
Subject.

Et ulterius mandamus quod circa præmissa diligenter intendatis & faciatis & exequimini cum effectu sub periculo incumbente. Volumus autem quod non colore præd' mandati nostri. 1. *Plus de iisd' hominibus levari fac': quam ad præmiss' sufficien' ad expensas necessar'.* 2. *Aut quod quisq' qui pecuniam de contribuentibus ad præd' custag' faciend' levaverit ead' vel partem inde penes se detineat.* 3. *Vel ad alios usus quovis questio colore appropriare præsumat.* 4. *Volentes quod si plusquam sufficiat collectum fuerit hoc inter solventes pro ratu portionis ipsis contingen' exsolvatur.*

By virtue of this Writ, Mr. Hampden is assessed to 20 s. for his Lands in *Stoake Mandevile* in that County, which, not being paid, is certified amongst others into the *Chancery*, upon a Writ of *Certiorari*, dated 9 Mar. 12 Car. by a Schedule thereunto annexed. And by a Writ of *Mittimus*, teste 5 Mar. 13 Car. this Writ of 4 Aug. 11 Car. and the Writ of *Certiorari*, and the Schedule annexed, is sent into the *Exchequer*, with a Command there to do, for the levying of Sums so assessed and unpaid, *prout de jure & secundum legem regni nostri Angliæ fuerit faciend'*; whereupon a *Sci' Fa'* issued out of the *Exchequer*, reciting the said Writ, to warn Mr. Hampden amongst others, to shew Cause why he should not be charged with this Money. Upon this he being summoned, appeared, and demandeth the hearing of those Writs and Schedule, which being read unto him, thereupon he demurreth in Law. And whether Judgment upon this whole Record be to be given against *John Hampden*, that he is to be charged or no, that is the Question; for he is the only Party in this Case. And there is no Cause why any Man should say that the Question is, Whether Judgment should be given for the King, or the Defendant; for as this Case is, the King is no Party to the Record, but only it is a judicial Process out of the *Exchequer*, grounded upon the former Record, for the Defendant to shew Cause why he should not be charged: which hath been very elaborately argued by the Defendant's Counsel, who demurred, that he should not be charged; and by the King's Council, very learnedly and elaborately argued, that he should be charged.

This Case is a Case of great Weight, and the greatest Case of Weight that ever we read, argued by Judges in this Place; and therefore, adjourned into this Place for Advice of all the Judges: For of their side it is alledged, That it concerneth the King in his Prerogative and Power Royal; and on the other side, That it concerneth

all the King's Subjects in their Liberties, their Persons, and their Estates; for which it hath made some of us to wish and move among ourselves, that it might have been by his Majesty's Favour, heard and determined in another Place by his Majesty, and his great Council of his Realm, where all Convenience and Inconvenience might have been considered of, provided for, and prevented for present and future Times, and not to be argued only by us, who are accounted his Majesty's Counsel at Law; wherein if any thing be done amiss, the Fault must light upon us, as misadvising the King therein. But seeing it hath pleased his Majesty, that the same should be argued and determined in this Place, whose Pleasure we must obey, I must give my best Advice upon my Oath to the best of my Skill; wherein I hope not to trench upon his Majesty's Prerogatives, which we are all bound by our Oaths, to the best of our Skills, to maintain, and not to suffer them to be diminished; nor upon his Royal Power; but truly to deliver what I conceive the Law to be, concerning the Case in question.

Wherein I must confess I have been much distracted, having heard so learned Arguments on both sides at the Bar, and so many Records and Precedents cited on either side; but they did not so much move me, for the Council have on either side proposed such Reasons, as they thought convenient for the maintaining of their Opinions, and perhaps with a prejudicate Opinion; as I myself by my own Experience when I was at the Bar, have argued confidently, and as I then thought the Laws to be on that side for whom I argued. But after being on the Bench, and indifferently weighing all Reasons and Authorities, have been of a contrary Opinion; and so the Law hath been adjudged contrary to that Opinion which I first confidently conceived.

But that which hath moved me most, and maketh me distrust my own Judgment in this Case is, that my Brothers that have argued before me, who have argued upon their Oaths, and I presume have seen the Records and Precedents cited on either side, have all argued one way; with whose Opinions I should willingly have concurred, if I could have satisfied my own Judgment with their Reasons; but not being satisfied, I have learned that I must not come with a Multitude against mine own Conscience, for I must stand or fall with my own Master. And therefore I shall shew Reasons, and leave myself to the Judgment of my Lords and others my Brethren. And whatsoever shall be adjudged, I must submit unto, and so do with all others, and do now declare my Opinion to be, that as this Case is, Judgment ought to be given for the Defendant. My Reasons and Grounds that I shall insist upon are these:

1. That the Command by this Writ of 4 Aug. 11 Car. for to make Ships at the Charge of the Inhabitants of the County, being the Ground of this Suit, and Cause of this Charge, is illegal and contrary to the Common Laws, not being by Authority of Parliament.

2. That if at the Common Laws it had been lawful, yet now this Writ is illegal, being expressly contrary to divers Statutes prohibiting a general Charge to be laid upon the Commons in general, without Consent in Parliament.

3. That it is not to be maintained by any Prerogative or Power Royal, nor Allegation of Necessity or Danger.

4. Ad-

4. Admitting it were legal to lay such a Charge upon Maritime Ports, yet to charge any Inland County, as the County of *Bucks* is, with making Ships, and furnishing them with Masters, Mariners and Soldiers at their Charge, which are far remote from the Seas, is illegal, and not warranted by any former Precedent.

5. I shall examine the Precedents and Records cited to warrant this Writ, which have been all the principal Grounds of the Arguments to maintain the same. And I conceive there is the chief ground-work being in my Notes, but I forgot it.

But before I proceed to the Argument, I desire to remove two Difficulties: *First*, That by the Demurrer the Danger of the Kingdom is confessed, and so it is to be allowed for a Case of Necessity.

To this I answer, That the Demurrer confesseth not Matters in Fact, but where the Matter is legally set down; but if it be not a legal Proceeding, then the Demurrer is no confessing of the Matter of Fact. This appeareth in the Book-Cafe, 5 *Hen. VII. fol. 1.* and *Coke lib. 5. fol. 96.* in *Burton's Case*, That a Demurrer is no confessing of Matters of Fact, but where the Matter precedent is sufficiently pleaded or laid down; and so it is held in all our Books.

The *Second* Difficulty is, That this Case is so resolved by all our Opinions under our Hands, that this Writ was legal; which was much pressed by Mr. Solicitor.

To this I answer, That it is true that I have set down my Opinion under my Hand unto Two Cases, to the first voluntarily in *Dec. 1635*, which was thus:

'I am of Opinion that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, of which his Majesty is the only Judge, there the Charge of Defence ought to be borne by all in general.'

This I hold to be agreeable to Law and Reason; this Opinion I do still and shall always maintain; for where the Kingdom is in Danger, the King may command every Person of his Kingdom with all his Force to come and defend it at all Times and in all Places of his Kingdom where he pleaseth; and the King is the sole Judge of the Danger, and of War and Peace; and if any do not perform his Commands therein, he is fineable and punishable in a deep manner.

The second was in *Feb. 1636*. which is thus, 'That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majesty may by Writ under the Great Seal of *England* command all his Subjects of this Kingdom at their Charges to provide and furnish such Number of Ships with Men, Victuals and Ammunition, and for such Time as his Majesty shall think fit, for the Defence and Safeguard of the Kingdom from such Danger. And that his Majesty may compel the doing thereof, in case of refusal and refractoriness. And that in this Case his Majesty is sole Judge of the Danger, and when and how the same is to be prevented and avoided.'

To this Opinion, I confess, I then with the rest of the Judges subscribed my Hand; but I then dissented to that Opinion, and then signified my Opinion to be, that such a Charge could not be laid by any such Writ, but by Parliament: and so absolutely in that Point one other did agree

with me, and dissented from that Opinion; and four others, in some other Particulars, from that which was subscribed. But the greater part seeming absolutely to be resolved upon that Opinion, some of them affirming that they had seen divers Records and Precedents of such Writs, satisfying them to be of that Judgment; I was pressed to subscribe with them, for that the major part must involve the rest, as it was said to be usual in Cases of Difference, and for that the lesser Number must submit to the major, altho' they varied in Opinion; as it is in our Court, if three Judges agree in Opinion against one, or two where there are five Judges, Judgment is to be entered *per Curiam*, if the major part agree, and the other are to submit to it: and in Cases of Conference, and Certificate of their Opinions, if the greater part did agree and subscribe, the rest were to submit their Opinions. And this by more ancient Judges than myself was affirmed to be the continual Practice: And that it was not fit, especially in a Case of this Nature so much concerning the Service of the King, for some to subscribe, and some to forbear their Subscriptions: And that altho' we did subscribe, it did not bind us, but that in point of Judgment, if the Case came in question judicially before us, we should give our Judgments as we should see Cause after the Arguments on both Sides, and we were not bound by this sudden Resolution.

Hereupon I consented to subscribe; but I then said, that in the mean time the King might be misinformed, by our Certificate under our Hands, conceiving us all to agree together, and to give him this Advice under our Hands, and not know there was any dissented or was doubtful: but it was then said, the King should be truly informed thereof; and thereupon we that dissented, did subscribe our Hands with such Protections as aforesaid, only for Conformity, altho' contrary to the Opinion I then conceived.

But this being before Arguments heard on either Side, or any Precedents seen, I hold that none is bound by that Opinion. And if I had been of that Opinion absolutely, now having heard all the Arguments on both Sides, and the Reasons of the King's Counsel to maintain this Writ, and why the Defendant is to be charged; and the Arguments of the Defendant's Counsel against the Writ, and their Reasons why the Defendant should not be charged to pay the Money assessed him; and having duly considered of Records and Precedents cited and shewed unto me, especially those of the King's Side, I am now of an absolute Opinion that this Writ is illegal, and declare my Opinion to be contrary to that which is subscribed by us all. And if I had been of the same Opinion that was subscribed, yet upon better Advise being absolutely settled in my Judgment and Conscience in a contrary Opinion, I think it no shame to declare that I do retract that Opinion, for *humanum est errare*, rather than to argue against my own Conscience. And therefore none having, as I conceive, removed those Difficulties, I shall proceed to my Argument, and shew the Reasons of my Opinion, and leave the same to my Lords and Brothers. Not one Precedent nor Record in any precedent Time, that hath been produced or shewed unto me, that doth maintain any Writ, to lay such a Charge upon any County Inland or Maritime.

I have examined this particular Writ, and the several Parts thereof; and do conceive it is illegal, and not sufficient to ground this Charge upon the Defendant.

1. The Motives of this Writ are not sufficient to cause such a Writ to be sent forth.

2. The Command of the Writ to prepare a Ship at the Charge of the Inhabitants, which mentions Victuals and Men, is against the Common Laws and Statutes of this Kingdom.

3. That to lay a Charge of finding Victuals, and Wages of Soldiers and Mariners, is illegal, and contrary to the Common Laws and divers Statutes.

4. The Power of Assessment given to the Sheriff alone, and to distrain for this, is illegal, and not warranted by any Precedent.

5. The Power of Imprisoning is illegal, and contrary to divers Statutes, and not warranted by the Precedents.

6. That the Preclose of the Writ, and the Practice of it, is contrary to itself, and *oppositum in obiecto*.

7. If this Writ were legal, yet the manner of the Assessment by the Sheriff as it is certified, is not warranted by this Writ; consequently this Sum cannot be demanded of the Defendant by virtue of this Writ.

8. That the *Certiorari* and *Sci' Fac'* issued not legally, and consequently no Judgment can be given against the Defendant thereupon.

For the first Point, that this Writ, 4 Aug. 11 Car. is against the Common Law, my Reasons are these:

1. Because this is the first Writ since the Conquest that went out to any Inland County to prepare a Ship with Men and Ammunition, for ought appeareth by any Record that hath been shewn. And where there was never any Precedent, by the Rules of Mr. Littleton, fol. 23. the Law is conceived not to allow any such Writ. And Sir Edward Coke in his Comment upon Littleton, fol. 81. saith, That where there is no Example, it is a great Intendment the Laws will not bear it.

So I conceive here, there never having been a Precedent before of any such Writ to the Sheriffs and Inhabitants of a County, to prepare a Ship with Men and Ammunition upon any Occasion whatsoever, that it is against the Common Law to award such a Writ.

2. For that the Common Law of England setteth a Freedom in the Subjects in respect of their Persons, and giveth them a true Property in their Goods and Estates; so that without their Consent, or implicitly by an Ordinance which they consented unto by a common Assent in Parliament, it cannot be taken from them, nor their Estates charged: and for this purpose the Law distinguisheth between Bond-men, whose Estates are at their Lords Will and Disposition, and Free-men, whose Property none may invade, charge, or unjustly take away but by their own free Consent, and therefore not warranted by Law; which is proved by these Authorities.

Coke in his Reports, lib. 8. fol. 92. in Francis Case, sets down this Rule, *Quod nostrum est, sine facto seu defectu nostro amitti, seu in alien' transferri non potest.*

Mr. Lambert, fol. 24. setteth down the Laws of England which were confirmed by William the Conqueror, hath these Words: *Inter alia volumus:*

& concedimus, quod omnes Monarchæ Regn' sui præd' habeant & teneant terras suas & possessiones suas bene & in pace, liberas ab omni exactione injusta & ab omni tallagio (not mentioning there *injusta*) *ita quod nihil ab eis exigatur præter servitium suum justè debitum.* Hereby it appears there is an absolute Freedom from all Tallage.

17 of King John, in Mat. Paris, fol. 246. the King doth grant and confirm unto his Barons and Commons, *inter al'* these Liberties following: *Nullum scutagium vel auxilium ponamus in Regno nostro nisi per commune Concilium Regni nostri, nisi ad redimend' corpus nostrum, filium nostrum primogenitum Militem faciend' vel ad Primogenitam filiam maritand'.* By this it appears what was then conceived to be amongst others their Liberties, and then confirmed; which was, that no Aid should be laid upon them but by Parliament, for the Parliament was then called *Commune Concilium*.

That the Law is so, appeareth by the Treatise written by Fortescue, who had been Chief Justice of England in King Henry IV's Time, and after Chancellor of England, when he wrote the Book, intituled, *De laudibus legum Angliæ*, fol. 25. cap. 9. he saith thus; That the King of England cannot alter nor change the Laws of England at his Pleasure, for *Principatu regali sed & politico ipse populo suo dominatur.* If his Power were Royal only, then he might change the Laws, *Tallagio quoq; & cætera onera eis imponere ipsis inconsultis;* but adds, that the King of England *sine subditor' assensu leges mutare non potest, nec subiectum populum renitentem onerari impositionibus peregrinis.* And cap. 13. fol. 31. he compares the King and Subjects of England to the Head and Body Natural: *Ut non potest corpus physicum nervos suos commutare neq; membris suis proprias vires & propria sanguinis alimenta denegare sua, nec Rex qui caput corporis politici mutare potest leges corporis illius, nec ejusd' populi substantias propriè subtrahere, reclamantibus eis aut invitis.* Thus he in this Place; but in fol. 84. cap. 36. he seemeth to say, *In hoc individuo, Rex Angliæ neq; per se nec ministros suos, Tallagia, Subsidia, aut quævis onera alia imponit, leges suas, aut leges eor' mutat, aut nova condidit sine concessione vel assensu totius Regni sui in Parlamento suo expresso.* Which Words seem so general, that in no Case he can do it.

So it appeareth by the Book-Case, 13 Hen. IV. fol. 14. That the Grant of the King, which tendeth to the Charge and Prejudice of his People in general, is not good, unless it be by Parliament. But it is agreed there, That Grants of Tolls, of Fairs, of Pontage, Pickage, Murage, Ferrying, or such like, which are for the Profit, Good, and Ease of the People, and Profit of them that will take Benefit thereof, and not compulsory to any to pay, but to them that will take the Benefit; and being very small and reasonable Sums, the Law doth give Allowance to them: but if they were great Sums, that tend to the Charge of the People, the Law will judge them void.

This appeareth in Sir Ed. Coke's Reports, lib. 5. fol. 63. in the Case of the Chamberlain of London, That an Ordinance made by the Common-Council of London, where they have a Custom by their Common-Council to make reasonable Ordinances to bind all within the City, concerning Clothes to be brought to Blackwell-hall, there to be viewed, measured and searched, before they were sold, and a Penny upon a Broad-Cloth appointed for the Officer that did that Service; that such a Charge was reasonable; for that it was for the publick Be-

Benefit of the City, and the Commonwealth; and a pecuniary Penalty laid for not performance of that Ordinance was allow'd.

Ibid. fol. 64. in *Clark's Case* it is resolved, That an Ordinance made by the Assent of the Plaintiff himself, and other Burgesies of the Town of *St. Albans*, for a small Tax upon the Inhabitants of the Town, towards the Erection of the Courts, and other Necessaries, for the Term to be kept there, was allow'd to be good, and did bind the Plaintiff, being by the Plaintiff's own Consent, and for the publick Good of the Town.

Also *Coke*, lib. 11. fol. 86. in *Darcie's Case* citeth this out of *Fitz-Her. Na. B.* fol. 122. That every Grant of the King hath this Consideration in it, tacit or exprefs, *Quod Patria per Donationes illius, magis solito non oneretur.* And as by Grant the King cannot charge his People, so neither can he by Writ lay any Charge upon his People, but by their Consent, or where they have apparent Benefit thereby; And that is the Reason of the Writ in the *Reg.* 127, and *Fitz-Her. Na. B.* 113. Where by Breach of the Sea-Walls any Inundation is of the Country, the King, who is *Pater Patrie*, and taketh care for the Good and Safety of his People, sendeth out his Commission to inquire by whose Default any such Breach happened, and to cause all that had Lands or Commons to be contributory to the making up of the Sea-Walls; and this is done by a Jury: but this Charge cannot be laid upon a County or Town in general, but upon particular Men that have Loss or Benefit, or may have Loss or Benefit thereby: And this is done by Inquiry of a Jury, before the Sheriffs, or Commissioners appointed. So it is at this Day, upon Commissions of Sewers, as appeareth by *Coke*, lib. 10. fol. 142. in the Case of the Isle of *Ely*. The Taxation by the Commissioners of Sewers, must be upon every particular Man that hath or may have Loss or Benefit by such Inundations, and making up of the Walls; and cannot be laid upon any remote Parts, which are out of the Level of such Loss or Benefit; and it must be certain and particular upon Persons: certain, by reason of Loss or Profit, and cannot be laid in general upon a Town; but in those Cases there is a particular Loss or Benefit, and in particular Places, and but in petty Charge. And then where the Law alloweth that which in Reason is to be done, that may be done without a special Statute: for, *De minimis non curat lex.* But in this Case there is a general Charge thro' the whole Kingdom, which the Law doth not permit, without common Consent in Parliament.

But it hath been alledged, That this Charge hath been imposed for the publick Safety, and Defence of the Kingdom: and may not this be done when every one hath Advantage by it?

To this I say, When imminent Danger and Cause of Defence is, there must be Defence made by every Man (when the King shall command) with his Person: In such a Case every Man, as it is said in the Precedents, is bound *per se & sua* to defend the Kingdom. And I think no Man will be unwise, but that he will *exponere se & sua* for the Defence of the Kingdom, when there is Danger; for otherwise, he is in danger to look to *se & sua*: but to lay a Charge in general upon the Kingdom, either for making or preparing of Ships, or Money in lieu thereof, is not to be done but by Parliament, where the Charge is to be borne in general by all the Subjects.

To prove further, That no Man may have his Goods taken from him but by his Consent, appeareth by a Record, *Mich. 14 Ed. II. Rot. 60.* in the King's-Bench, in a Writ of Error brought upon a Judgment given at *Durham*; where in an Action of Trespasts, by *William Heyborne*, against *William Keylowe*, for entering his House, and breaking his Chest, and taking away 70 *l.* in Money, the Defendant pleaded not Guilty; the Jury found a special Verdict, That the *Scots* having entered the Bishoprick of *Durham* with an Army, and making great Burning and Spoils, the Commonalty of *Durham* met together at *Durham*, whereof the Plaintiff was one, and agreed to fend some to compound with the *Scots* for Money to depart, and were all sworn to perform what Composition should be made, and to perform what Ordinance they should make in that behalf: and thereupon they compounded with the *Scots* for 1600 Marks; but because that was to be paid immediately, they all consented that *William Keylowe* the Defendant, and others, should go into every Man's House, to search what ready Moneys were there, and to take it for the making up of that Sum; and that it should be repaid by the Commonalty of *Durham*; and thereupon the Defendant did enter into the Plaintiff's House, and did break open the Chest, and took the 70 *l.* which was paid accordingly towards the Fine. The Jury was demanded, Whether the Plaintiff was present, and did consent to the taking of the Money? they said No: whereupon the Plaintiff had Judgment to recover the said 70 *l.* and Damages, for that otherwise he had no Remedy for his Money; and the Defendant was committed in Execution for that Sum. And thereupon the Defendant, *Keylowe*, brought a Writ of Error in the King's-Bench, and assigned his Error in point of Judgment; and there the Judgment was reversed, and the Reasons set down in the Record were, *First*, Because the Plaintiff, *Heyborne*, had his sufficient Remedy against the Commonalty of *Durham* for his Money: *Secondly*, Because he himself had agreed to this Ordinance, and was sworn to perform it; and that the Defendant did nothing but what the Plaintiff had assented to by his Oath, and therefore is accounted to do nothing but by his Consent, and as Servant unto him, therefore he was therein no Trespasser: and therefore the Judgment given in *Durham* was reversed, because he had assented to that Ordinance, tho' afterwards he was unwilling; yet having once consented, his Goods were lawfully taken. By which it appeareth, that if he had not particularly consented, such an Ordinance would not have been good to bind him; altho' this was in a Case of great Danger, and for Defence.

2 *Ric. II. pars 1.* The Parliament-Roll proveth this directly; altho' it be no Act of Parliament, yet the Record is much to be regarded, for it sheweth what the Law was then conceived to be: for *Scroope*, the Lord Chancellor, then shewed to all the Lords and Commons assenbled in Parliament, That all the Lords and Sages had met together since the last Parliament, and having conferred of the great Danger the Kingdom was in, and how Money might be raised in case of imminent Danger, which could not stay the Delay of a Parliament, and the King's Coffers had not sufficient therein; the Record is, they all agreed, Moneys sufficient could not be had without laying a Charge upon the Commonalty, which say they, cannot be done without a Parliament; and the Lords themselves,

selves, for the time, did supply the said Necessity with Money they lent: which Record proveth directly, That this Charge without an Act of Parliament is illegal.

So upon these Reasons I conclude, That this Writ, compulsorily to charge the Subjects against their Wills, is not warranted by any Book, and therefore illegal.

If this Writ should be allow'd, great Inconveniences would ensue, which the Law will always avoid, and not permit any Inconveniences.

1. If any such Charge may be laid upon the Counties by Writ, without Assent in Parliament, then no Man knoweth what his Charge may be; for they may be charged as often as the King pleaseth, and with making of as many Ships, and of what Burdens, and with what Charge of Ammunition, Men and Victuals, as shall be set down. Wherein I doubt not, but if the Law were so, the King being a very pious and a just King, would use his Power very moderately; but Judges in their Judgments are not to look to present Times only, but also to all future Times, what may follow upon their Judgments.

That this Inconveniency may be, appeareth by the *Danegelt*, first appointed in Times of Necessity, to redeem them from the Cruelty of the Danes, which often changed, and still increased: for *A. D.* 991, when it began, it was but 10000*l.* In 994, it was increased to 16000*l.* And in 1002, it was increased to 24000*l.* And in 1007, it was increased to 36000*l.* And in 1012, to 48000*l.* So if this Writ be well awarded, it may be at pleasure what Bounds it shall have. Also there was never but one single Subsidy and two Fifteenths used to be granted in Parliament, until 31 *Eliz.* and then a double Subsidy, and four Fifteenths were granted: Sir *Walter Mildmay*, then Chancellor of the *Exchequer*, moving for it, and saying, *his Heart did quake to move it, not knowing the Inconvenience that should grow upon it*; he shewed great Reasons for his moving it, it being about the Time of the *Spanish* Invasion, and so it was granted. Afterwards, 35 *Eliz.* treble Subsidies and Fifteenths were granted. And 43 *Eliz.* four Subsidies and eight Fifteenths were granted; and yet these were not accounted grievous, neither would it have been, if it had been ten Subsidies because in Parliament, and convenient Times and Means appointed for the levying of them. Tonnage and Poundage were granted to this End in 13 *Rich. II.* and have continued ever since by several Grants until this King's Time, wherein it was unhappily question'd in Parliament: but the End thereof was, that the Kings might have Money in their Purfes against Times of Need, for extraordinary Occasions, especially for the Defence of the Realm, and guarding of the Sea, as it is especially declared by the Statute 1 *Jac.* and former Statutes, and for other necessary Uses, as the King pleased.

Object. But it is said, That Tonnage and Poundage is not now granted to the King, and therefore the King is enforced to these extraordinary Courses.

Tho' it be not granted, yet I think it is taken; and I doubt not but to the same Intent, and for the same Purposes employ'd for which it was first granted; which was, for the Defence of the Kingdom, and Guard of the Sea. Therefore in case of Danger and Necessity, every Subject, for the Defence of the Kingdom, is bound for *Legiancie debito*, as some Records say, and *Legiancie sue vin-*

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culo affrici, as others speak; *se & sua totis viribus & potestate exponere, &c.* And in such a Case, the King may demand the Persons of his Subjects, and arrest their Ships, to wait on his to defend the Seas; yet with this also, When they go out of their Counties, to be at the King's Charges: But to command the Subject by Writ, to build new Ships, or to prepare Ships at their Charges, or to lay a common Charge on the Subjects in general, for matter of Defence, or avoidance of Danger; is not warrantable by the Common Law.

2. Another Inconvenience is, That it is left in the Power of the Sheriff to charge any Man's Estate at his Pleasure, taxing some, and sparing others, as his Affections lead him; and sometimes, by colour thereof, levying more than he need, and enriching himself; which Power the Law never alloweth him, altho' it were in lesser Matters; as to make an Assessment for Breach of Sea Walls; but to do it by a Jury, and not by himself alone. So for these Reasons, I conclude, This Writ is against the Common Law, and so illegal.

I conceive, if the Common Law were doubtful in this, whether such a Charge might be imposed by Writ; yet now it is made clear by divers express Statutes, That the King is not to lay any Charge upon his Subjects, but by their Consent in Parliament; and that is, by many Acts of Parliament in force, and not repealed: and there is no doubt but that the King by Parliament may bind them and their Successors, every King by Oath being bound to perform the Statutes of his Realm.

The Statute of 25 *Ed. I. cap. 5.* which is in these Words, 'Forasmuch as divers People of our Realms are in fear, that the Aids and Taxes which they have given us before-time towards our Wars, and other Busineses, of their own Grant and Good-will, however they were made, might turn to a Bondage of them and their Heirs; because they might be at other time found on the Roll; and likewise for the Prizes taken throughout our Realm by our Ministers; We have granted for us and our Heirs, That we shall not draw any such Aids, Taxes or Prizes into a Custom, for any thing that hath been done heretofore, by any Roll, or any other Precedent that may be found.'

Ibid. cap. 6. 'Moreover, we have granted for us and our Heirs, as well to Archbishops, Bishops, Priors, and other Folk of the holy Church; as also to Earls, Barons, and all the Commonalty of the Land; that for no Business from henceforth we shall take any Aids, Taxes, nor Prizes, but by the common Assent of the Realm, and for the common Profit thereof, (saving the antient Aids and Prizes due and accustomed)' which are the express Words of that Statute. Now, what those antient Aids were, is well known, that they were *ad redimendum corpus, ad filium primogenitum militem faciend' & ad filiam primogenitam maritand'*: Which Aid concerns not the Subject in general, but particular Men were liable thereunto by their Tenures. So this Saving need not to have been; for the Body of the Act extended not to them, but to the general Aid of the Kingdom.

However, if this *Salvo*, as it hath been objected, would preserve this Aid now in question, yet the Statute made afterwards, *de Tallagio non concedendo*, being without any *Salvo*, takes it away:

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Which

Which Statute, *Rastal* in his Abridgment, fol. 441. in his Title of *Taxes*, abridgeth in this manner: 'Anno 25 Ed. I. it is ordained, that the Taxes taken, shall not be taken in Custom, nor but by the Assent of this Realm, except the antient Aids and Taxes: and there the Tax of 40s. upon the Sack of Wool is released.

Ibid. 'That no Taillage, by us or our Heirs in our Realm, be put or levied, without the Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other free Commons of our Realm; that nothing be taken from henceforth, in the name, or by reason of 'Male tout' of a Sack of Wool. Statute de Tallagio non concedendo.'

Object. Mr. Solicitor laboured much to prove, that there was no such Statute, *de Tallagio non concedendo*: 1. For that it was not to be found on the Rolls of Parliament. 2. For that it was not set down when it was made. 3. That it was but an Abstract out of *Confirmatio Chartarum Libertatum*. Mr. Attorney said, he would not deny it to be a Statute, neither would he affirm it; but that yet it did not extend to take away the Aid demanded, by Prerogative or Power Royal for the Defence of the Kingdom.

Respons. To this I answer, This was never doubted to be a Statute until this Argument; and that it is a Statute, appeareth, 1. For that it is printed in the *Book of Statutes*, for a Statute. 2. It is recited in the *Petition of Right*, to be a Statute. To that it is not found on the Rolls, I answer, That many Statutes that are known Statutes, are not found on the Rolls, as *Mag' Char'* is not.

And as touching the Time, I conceive it to be made 24 Ed. I. cap. 1. for so it is set down in the great *Book of Statutes*, printed 1618, to be the first Statute therein made, viz. in these Words: 'No Taillage nor Aid shall be taken or levied by us or our Heirs, in our Realm, without the Good-will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other Freemen of the Land.'

And that it is a Statute, all my Brothers have agreed.

The only Doubt then is, whether this Statute extendeth to Aid for the Defence of the Kingdom; which I think it doth: for it is the precise Words of it, That no Taillage or Aid shall be imposed but by Grant in Parliament, which extends to all manner of Aids: and by this Law the Subjects of England have defended themselves ever since, as with a Buckler, as saith *Bodinus*, fol. 97. whereby it appeareth, that notice was taken of this Law in foreign Parts, and so held still to be a Statute in force.

The next Statute is 14 Ed. III. cap. 1. which recites the Grant of the great Subsidy of the ninth Fleece, the ninth Lamb, &c. formerly granted; whereupon these Words follow: 'We willing to provide for the Indempnity of the said Prelates, Earls, Barons, and others the Commonalty of the Realm, and also of the Citizens, Burgeses, and Merchants aforesaid, will and grant for us and our Heirs, to the same Prelates, Earls, Barons, and Commons, Citizens, Burgeses, and Merchants, that the same Grant shall not be had forth in Example, nor fall to their Prejudice in time to come, nor that they be from henceforth charged or granted to make any Aid, or sustain any Charge, if it be not by the

'common Assent of the said Prelates, Earls, Barons, and other great Men and Commons of the said Realm of England, and that in the Parliament: and that all the Profit arising of the said Aid, and of Wards, Marriages, Customs, and Escheats, and other Profits, arising of our said Realm of England, shall be set and dispend- ed upon the Maintenance of the Safe-guard of this Realm of England, and of our War in Scotland, France, and Gascoigne, and in no Place else- where during our War.'

By this Statute it appeareth that it is expressly provided, that the Subjects should not be from thenceforth charged nor grieved to make any Aid, nor sustain any Charge but by common Assent, and that in Parliament; which is as express as may be, and exclusive to any Charge otherwise; which I conceive was made against the Appointment of making, or preparing and sending out of Ships at the Charge of the Towns wherein they were, or sending Men out of their own Counties at the Charge of the County.

Object. Now whereas it is alledged by my Brother *Wolton*, and my Brother *Berkley*, That this was but a temporary Statute, and ended when the War ended, which appeareth by the last Clause for Employment of those Profits towards those Wars; I conceive it appeareth to be an absolute and perpetual Statute, for it is granted for him and his Heirs in Perpetuity. And also it appeareth by *Plowden* in his *Comment.* fol. 457. in Sir *Thomas Worth's* Case, where a Grant is by the Name of the King, which is in his Politick Capacity; this extendeth against him, his Heirs, and Successors, altho' they be not named. Also the Intendment of this Law appeareth to be for the Security of the Subjects, from thenceforth for all future Ages. And then the Office of Judges, as appears by Sir *Edward Coke* his *Reports* lib. 5. fol. 7. and *Plowden's* *Comment.* in *Aston* and *Stud's* Case, is to construe Statutes according to the true Intent of the Makers thereof, which was in this Statute, that it should be a perpetual Security for the Subjects. And to little purpose it had been, to make a Statute to continue but during the Time of the War, or during the King's Life.

Object. Also where it is alledged that the Statute of 14 Ed. III. is not mentioned in the *Petition of Right*, which is some Argument that it was not conceived to be a continuing Statute.

Respons. To that I answer, That in the *Petition of Right* it is said, That by the Statute there recited, and other the good Statutes of this Realm, the Subjects shall not be compelled to pay any Taxes, Taillage, Aid, nor other like Charge not set by Parliament; in which this Statute is as well intended as other Statutes, and as far as if it had been expressly recited. Also it appeareth by all the Books of Statutes, that this Statute is granted as a Statute continuing, whereas others expired, are set down as expired.

21 Ed. III. pars 2. m. 11. A Subsidy being granted by Parliament, viz. 40s. on every Sack of Wool transported before *Michaelmas* following, and 6d. on every 20s. of Merchandize, for the Safe-guarding of the Merchants and Defence of the Coast, &c. After *Michaelmas*, viz. 31 Octob. 21 Ed. III. by Writ the Collectors were commanded to continue the Collection of those Subsidies until *Easter*. But, 26 Nov. 21 Ed. III. the King by Writ commanded

manded the stay of the 6^d. in the 20^s. and to continue the Collection of the Subsidies upon the Sacks of Wool until *Easter*.

22 *Ed. III. Rot. Parl. m. 16*. The Parliament being holden in *Lent*, the Commons complain of the Continuance of this Collection of the Subsidies upon the Sacks of Wool longer than the Parliament had granted it, and provided that it should not be continued longer than *Easter*, at the Procurement of any Person. By this it appeareth, that the Parliament being careful that the Time for levying of a Subsidy granted, should not be enlarged by any Power, much less would they admit of a Writ to lay a Charge without Grant by Parliament.

25 *Ed. III. m. 8*. It was enacted that no Man should be compell'd to find Men at Arms, other than such as hold by such Service, except it be by common Assent in Parliament. By this it appeareth, that if Men be not compellable to find a Man at Arms, unless it be by common Assent in Parliament, much less is any bound to be contributory to the preparing of a Ship with 180 Men at Arms, and Victuals, and Wages of Soldiery for 26 Weeks, unless it be by common Assent in Parliament.

Rot. Parl. 21 Hen. IV. Num. 22. An Act of Parliament, as I count it, in the very Point, is in these Words: 'For that of late, divers Commissions were made to divers Cities and Burroughs within the Realm, to make Barges and Barringers, without Assent of Parliament, and otherwise than hath been done before these; how ever the Commons do pray the King that these Commissions may be repealed, and that they may not be of any Force or Effect.' To which it is answer'd, 'That the King willeth that the said Commissions be repealed;' which is an absolute and perfect Statute.

But then there are added these Words: 'But for the great Necessity he hath of such Vessels for the Defence of the Realm in case that the War shall happen, he will treat with his Lords of this Matter, and afterwards will shew it to the Commons to have their Counsel and Advice in this Point.' So by the Record it appeareth that the Commons did conceive, that no Cities, Burroughs, nor Towns, without Consent in Parliament, were to be charged with the making of such Vessels; to which the King agreeth. And from that Day to this, until the making of these Writs, in no Age, altho' the Kingdom hath been many times in danger of Invasion, and hath been invaded, there do not appear any Records that ever I have seen of Writs directed to any Towns or Cities at their Charges, to make or prepare any Ships or Vessels whatsoever.

Object. And whereas it hath been objected, and especially insisted upon by my Brother *Berkley*, that this latter Part, that the King will treat with his Lords concerning them, and after confer with the Commons, is a gentle Denial of that Act; as the Experience is at this Day. *Le Roy se aviserà* is a Denial of an Act.

Respons. Hereupon I answer, It is an absolute Act, for it is an absolute Assent to the Petition. And that which came after was but a plausible Excuse, for that such Commissions had gone out; and this farther Consultation never appeared to be made, nor ever any such Writ or Commission for such Vessels to be made went out since until this Writ.

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13 *Hen. IV. m. 10*. A Grant is of a Subsidy of Wools, Woolfels, Hides, and other things there mentioned, and of Tonnage and Poundage for one Year, for the Defence of the Marches of *Calais*, &c. and for the Defence of the Realm, and the Safeguard of the Sea. And therein is this express *Proviso*, 'Provided that this Grant of a Subsidy of Wools, &c. and Tonnage and Poundage, in time to come, shall not be taken in Example to charge the Lords and Commons of this Realm with any manner of Subsidy for the Safeguard of *Calais*, &c. nor for the Defence of the Realm, nor the Safeguard of the Seas; unless it be by the Will of the Lords and Commons of the Realm, and that by a new Grant to be made, and that in full Parliament to come.' By this appeareth that it was then provided, that no Charge should be laid on the Lords or Commons, no not for the Defence of the Realm, but by Grant in full Parliament.

13 *Hen. IV. m. 43*. A Petition was in Parliament reciting, That there was an Office granted of Alnager within *London* and the Suburbs of the same, with Fees to that appertaining, where any such Office never was, nor any such Fees appertaining thereunto; and that by colour thereof, they levy one Half-penny of the Buyer and a Half-penny of the Seller, and upon Sale of every hundred Ells of *Canvass* a Penny of the Seller and a Penny of the Buyer, wrongfully against the Statutes in the Times of your Highness's Progenitors made to the contrary, by which it is ordained that no Taillage nor Aid shall be granted nor levied without Assent and Consent of the Lords and Commons of your Realm, as by the said Statutes is fully declared; wherefore they prayed that such Letters Patents made thereof shall be void and holden for none. And this was granted; whereby it appeareth that it is declared then in Parliament, that those Statutes were and did continue; that no Taillage or Aid shall be levied without Grant in Parliament.

1 *Ric. II. c. 1*. It is enacted in these Words: 'Our Sovereign Lord the King remembering how the Commons of this Realm, by new and unlawful Inventions, and inordinate Covetize, have, against the Laws of this Realm, been put to great Servitude and importunate Charges and Exactions, and especially by a new Impost, called a Benevolence, whereby divers Subjects of this Land, against their Wills and Liberties, have paid great Sums of Money, &c. It is enacted and ordained, that the Subjects and Commons of this Realm from henceforth shall in no wise be charged by such Charges or Impositions called a Benevolence, or such like Charge: And that such Exactions called a Benevolence, before that time taken, shall be taken for no Example to make any such, or any like Charge, from any of his Subjects of this Realm hereafter, but shall be damned and nulled for ever.' By this it appeareth that it is expressly provided that the Subjects shall not be charged by way of Benevolence, which is in nature of a Free Gift, nor such like Charge; that is, no Charge of Money shall be laid upon the Subjects upon any Pretence whatsoever, be it for Defence in time of Danger, or Guarding of the Sea.

The last and concluding Statute is the *Petition of Right*, made in the third Year of his Majesty's Reign, reciting, That it was enacted by a Statute made in the Time of *Edward I.* commonly called

Statutum de Tallagio non concedendo, that no Taillage or Aid shall be laid or levied by the King or his Heirs in this Realm, without the Good-will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, and others the Free-men of the Commonalty of this Realm. And by a Statute of 25 Ed. III. That none shall be compelled to make any Loans to the King, because such Loans were against Reason, and Franchise of the Land. And by another Statute, That none shall be charged by any Impositions called a Benevolence. By which Statutes, and other the good Statutes of this Realm, your Subjects have inherited the Freedom that they shall not be compelled to contribute to any Taxes, Taillage, Aid, or other like Charge not set by Parliament.

And then they pray, that none hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament. And after five other Things there mentioned, the Conclusion is: 'All which they pray as their Rights and Liberties.' Unto which the King answers, 'Let Right be done as is desired.' Which is a full and perfect Statute, shewing in this Point the Liberty of the Kingdom prayed, and allowed; which was not done without the Advice of the Judges, whereof I was one, whose Opinions were then demanded, and resolved that the same did not give any new Liberty, but declared what the Liberty of the Subject was in this amongst others, that they should not be compelled to be contributory to any Tax, Taillage or Aid, nor any like Charge not set by Parliament. All which Statutes, those of 25 Edw. I. 34 Edw. I. and 14 Edw. III. being in the negative and in force, I conclude that these Writs to lay such a Charge is against the Law, and so the Assessment by colour thereof unlawful.

Object. Now whereas the precedent Arguments have been that the Kingdom being in Danger, therefore these Writs went forth for the making of Ships, because there could not be so suddenly any Parliament called, and the Parliament is a slow Body, and the Kingdom may be lost whilst there is a Consultation, and the Danger is conceived to be very great, because that the Writ 4 Aug. so mentions, that the Pirates provided a great Navy to infest the Kingdom, and it is fit with Speed to provide a Remedy: And that the Writ of *Mittimus* mentioneth, That *Salus Reipublicæ periclitabatur*: And we must believe these Suggestions to be true, for the King's Certificate by this Writ is *Recordum Superlativum*, as Mr. Solicitor and my Brother Berkley termed it, and must leave it upon the King's Conscience if it be not true, to lay such a Charge upon an untrue Suggestion. And the Defendant also by his Demurrer hath confessed all the Suggestions in the Writ to be true; therefore it must be concluded the Kingdom was in great Danger, and present Remedy must be had by making of these Ships, and must be commanded by these Writs, and not to stay for a Parliament: and my Brother *Crawley* said, It may be if a Parliament were called, they will not yield to the going forth of such Writs, altho' the Kingdom was never so much in Danger. And this Charge in respect of the making of the Defence is not within the Intention of these Statutes; and if it had been expressly mention'd within a Statute, that such a Charge should not be imposed, it had been a void Statute, and contrary to the Laws, that the Kingdom should not be defended.

Respons. 1. To all these I answer, That the Matter now in question is upon the Writ 4 Aug. Whether that be legal or not; and the Suggestions therein be sufficient or not for the Writ of *Mittimus*, mentioning that *Salus Reipublicæ periclitabatur* at the Day of the issuing of the Writ 4 Aug. which is a Year and an half after the first Writ, doth not help it; and this not notified to the Sheriff and Inhabitants of the County to make them the more careful, and in a greater Contempt if a Ship were not provided, but it is only a Notification to the Barons of the *Exchequer*, that the same was the Reason that the same issued forth.

Respons. 2. The Suggestions are not absolute, that any such Danger was, or such Navy was prepared by Pirates; but only mentioneth, *Quia datum nobis intelligi* that the Pirates had done such Mischief.

Respons. 3. If such Suggestions had been absolutely set down, yet we are not always bound absolutely to believe them; because many times untrue Suggestions are put into Writs and Patents; and yet it doth not lie upon the King's Conscience, neither doth the Law impute any Fact to the King, that any such be: for the Law doth always conceive honourably of the King, That he cannot, nor will not, signify any Untruth under the Great Seal; but he is abused therein, and the Law imputeth it to them that so misinformed the King, and thrust in such Suggestions into the Writ or Patent. And therefore all Patents grounded upon untrue Suggestions, are accounted void.

Respons. 4. That the Demurrer confesseth nothing but that which is legally and well set down; but if it be illegal the Demurrer confesseth it not, but is well offer'd for that Cause.

Respons. 5. If the Kingdom were in Danger, yet a Charge must not be laid in general upon the Subjects, without their Consent in Parliament: for either the Danger is near, and then the present Provision must be made by Mens Persons, and the present Ships of the Kingdom, which the King may command from all Parts of the Kingdom, as Need shall require; but cannot command Money out of Mens Purfes, by distraining of their Goods, or imprisoning of their Persons. But if the Danger be further off, by reason of any foreign Combinations, (as it is conceived it may be here) that Provision must be made of Ships by all the Kingdom for Defence; then, as *Philip Commynes*, fol. 179. saith, That Cloud is seen afar off, before that the Tempest falls, especially by a foreign War; and such Invasions cannot happen so soon, but that the King may call his Sages together, and by Consent make Provision for such Defence.

So I say here, If there be Time to make Ships, or prepare Ships at the Charge of the Counties; then is there Time enough for his Majesty, if he pleases to call his Parliament, to charge his Commons, by Consent in Parliament, and to have a Subsidiary Aid, as always hath been done in such Cases. And they are not so long coming or meeting, but they will make Provision for Defence, it being for all their Safeties: For it appeareth by *Coke*, lib. 9. fol. 1. in his Epistle, that King *Alfred* made a Law, That a Parliament should be held twice every Year, and oftner, if need requir'd, in Times of Peace: So that it was then conceived, that it was necessary to have Parliaments to redress Inconveniences.

Also by a Statute made 4 *Ed. III. cap. 14.* it is enacted, A Parliament shall be held once every Year, and oftner, if need be. And also by a Statute made 36 *Ed. III. cap. 10.* it is enacted, for the Redress of Mischiefes and Grievances that daily happen, a Parliament shall be holden every Year, as another Time was ordained by a Statute, which, I think, referreth to 4 *Ed. III.* Also it appeareth by the Speed that was in the Parliament held in the third Year of his Majesty's Reign, when five Subsidies were granted, two of them to be paid within few Days after the Session of Parliament ended; and therefore might, as this Case is, been order'd and provided for by Parliament within 7 Months, as the Time was between the Teste of the Writ, and the Time prefix'd for Ships to be prepar'd and sent.

Object. And whereas it is objected, That perhaps the Parliament would not have consented, and so the Kingdom might have been lost.

Respons. It is answer'd, That it is not to be presum'd, that the Parliament would deny to do that which is fit for the Safety and Defence of the Kingdom, their own Estates and Lives being in Danger, if the Kingdom were not sufficiently defended: For it is a Rule, *Nil iniquum est presumendum in lege.* So of the High Court of Parliament, That they would not deny that which is fitting. But I confess, I think that if it had been moved in Parliament, they would never have consented to these Writs, such never having been awarded before since the Conquest. And if they had consented, they would have taken a Course how the same should have been made with the most Conveniency, and not to leave it to Sheriff to tax them how he would.

Object. To that which hath been said, That this Charge is not within the Statute, and that a Statute to inhibit such a Charge, for Defence were void.

Respons. I answer, that it is true, That if a Statute were, that the King should not defend the Kingdom, it were void, being against Law and Reason. But a Statute that Money shall not be charg'd or levy'd, nor that Men shall be charg'd to make or prepare Ships at their own Charges, without common Consent in Parliament, I conceive were a good Law, and agreeable to Law and Reason. And the King may by Parliament, restrain himself from laying such a Charge, but by Consent in Parliament. And then the King being a just and pious King, as ever govern'd the Kingdom, which we that serve in his Courts of Justice have daily Experience of, would not assent unto, or suffer any such Charge, if he were truly inform'd the imposing of this Charge were against any one Law of his Kingdom, as this is against so many; but would say, as it is said of the Statute made 35 *Ed. I.* That the Pope should not be permitted to present to Benefices; That he was bound by his Oath to see that, and other Laws in force, and not repealed, to be performed: That he would not suffer such Charges to be laid, contrary to the Laws and Statutes of his Realm: And would do as the late famous Queen *Elizabeth* did, when having required a Charge upon divers of her Subjects, by particular Letters from the Lords of her Council, of several Sums of Money for present Help towards her Wards in *Ireland*, hearing that one of her Judges, being convented before her Lords for the Payment of it, thereby discouraging others to pay it, answered it was against the Laws, that

the same should be imposed, there being an express Statute against it, which he being a Judge, was bound by his Oath to signify; he being, as much as in him was, to be a Conservator of the Queen's Oath in that behalf. The Queen, I say, was very angry that such an Imposition had been laid against Law, and commanded it should be stop'd from farther gathering; and to some that had paid their Moneys, the same was restor'd. And therefore the Principal and only Fault in the charging of his Subjects by these Writs, if they be unlawful, as I conceive they are, is in those that devised them, and informed him that they were lawful, and such as his Progenitors had from time to time used to send forth; and in his Judges who have affirmed it to be lawful: Therefore upon this Point I conclude, That this Charge, by this Writ, is illegal; and is no sufficient Cause to charge the Defendant.

Object. Whereas it hath been much urged and argued by Mr. Solicitor, and Mr. Attorney, That this Writ is warranted by the King's Prerogative and Power-Royal, to send forth such Writs for Defence and Safety of the Kingdom in Time of Danger.

To this I answer, That I do not conceive there is any such Prerogative; for if it were a Prerogative, I should not offer to speak against it: for it is part of our Oaths, that are Judges, to maintain the King's Prerogative to the best of our Skill, and not to suffer the same to be diminish'd. But if it be as I have argued, That is against the Common Law, and against so many Statutes, that the Subjects should be enforced to sustain, or to contribute to any Charge, without the special Consent, or common Assent in Parliament, then there is no such Prerogative; for whatsoever is done to the Hurt or Wrong of the Subjects, and against the Laws of the Land, the Law imputeth that Honour and Justice to the King (whose Throne is establish'd by Justice) that it is accounted not done by the King, but by some untrue and unjust Informations. This appeareth by the Authorities of our Books; for *Brañton, lib. 3. fol. 107.* who is an ancient Writer in our Law, said, *Nil aliud potest Rex in terris, cum sit Dei Minister & vicarius, quam de jure potest;* and there a little after, *Itaq; potestas Juris sua est, & non injuriæ, cum sit author Juris, non debet inde Injurie nasci occasio, unde Jura nascuntur.* Sir *Edw. Coke*, in the 11th Book of his Reports, in the Case of *Magdalen College*, where the Question was, Whether Queen *Elizabeth* having taken a long Lease of a College, being conceived to be against the Statute 13 *Eliz.* it was sought to be maintain'd by her Prerogative, but resolv'd it could not, it being against a Statute, by which she was bound, tho' not nam'd, and there *fol. 72.* it is said, *Hoc solum Rex non potest facere, quod non potest injuste agere.* *Plowden's Comment.* fol. 246, 247. in the Lord *Berkley's* Case it is said, That the Prerogative of the King cannot do Wrong, and his Prerogative cannot be any Warrant to do any Wrong to any. *Plowden's Comment.* fol. 487. in *Mitchell's Case*, it is said by Justice *Harper*, Altho' the Common Law doth allow many Prerogatives to the King, yet it doth not allow any, that he shall hurt or wrong any by his Prerogative. 21 *Ed. III. fol. 47.* the Earl of *Kent's Case*, it is said, That if the King, under his Great Seal, do make any Grant to the Hurt of any other, he shall repeal and avoid it, *Jure Regis;* for the King is accounted to be abus'd by untrue Sug-

Suggestions, when he is drawn to do any Wrong to the Hurt of any other; much more I say, when he is drawn to do any thing to the Hurt of his Subjects in general. Sir *Ed. Coke*, lib. 11. fol. 86. in *Darcie's Case*, it is said, That every Grant of the King hath this Condition annexed unto it, *Tacite aut expresse, ita quod Patria per Donationem illam magis solito non oneretur, seu gravetur.* The Book called *Doctor and Student*, fol. 8. setting down, That the Law doth vest the absolute Property of every Man's Goods in him, and that they cannot be taken from him but by his Consent, faith, That is the Reason that if they be taken from him, the Party shall answer the full Value thereof in Damages. And sure I conceive, that the Party that doth this Wrong to another, shall, besides the Damages to the Party, be imprison'd, and pay a Fine to the King; which in the *King's-Bench*, is the tenth Part of as much as he payeth to the Party. So then, if the King will punish the Wrong of taking of Goods, without Consent, between Party and Party; much more will he not by any Prerogative take away any Man's Goods, without his Consent, particular or general.

So I conclude, that I conceive, there is not any such Prerogative to award such Writs to command Men to sustain such Charge, as to be contributory to it; and to be distrain'd and imprison'd for not Payment thereof.

Also I conceive, That this is not an Act of Royal Power; for if it be illegal to impose such a Charge, then it is not accounted as a Matter of Royal Power, but as a Matter done upon an untrue Suggestion, and a Matter of Wrong done: and Wrong is not imputed to the King, for he can do no Wrong; but it is imputed to them that advised him to this Course.

Royal Power, I account, is to be used in Cases of Necessity, and imminent Danger, when ordinary Courses will not avail; for it is a Rule, *Non occurrendum est ad extraordinaria, quando fieri potest per ordinaria*; as in Cases of Rebellion, sudden Invasion, and some other Cases, where Martial Law may be used, and may not stay for legal Proceedings. But in a Time of Peace, and no extreme Necessity, legal Courses must be used, and not Royal Power.

Therefore, whereas in the Statute of 31 *Hen. VIII. cap. 8.* which was made upon the Suppression of Abbeys, when Rebellions were begun to be stir'd, it is recited, That sudden Occasions happening, which do require speedy Remedies, and for lack of a Statute, the King was enforced to use Royal Power; it was enacted for the Reasons therein mention'd, That the King, by the Advice of his Council therein nam'd, two Bishops, two Chief Justices, and divers others, or the major Part of them, by his Proclamation, may make Ordinance for Punishing of Offences, and lay Penalties, which should have the Force of a Law, (with a Promise that thereby no Man's Life, Lands or Goods, should be touch'd or impeach'd) so that therein Royal Power was fortify'd by a Statute: yet that Statute took care that no Man's Life, Lands or Goods, should be taken or prejudic'd; and that Statute was thought inconvenient, and therefore the same by a Statute of 1 *Ed. VI.* was repealed.

So *Braſton*, lib. 2. cap. 24. fol. 55. And the same is cited in *Coke*, lib. 7. fol. 11. in *Calvin's*

Case, *Regis Corona est facere Justitiam & Judicium, & tenere Pacem, sine quibus Corona consistere non potest, nec tenere.*

Coke, lib. 7. fol. 5. in *Calvin's Case*, cited out of *Fortescue*, *Rex ad tutelam corporum & bonorum erectus est*; which being so, he cannot take away Mens Goods, or charge them without their Consent, by any Prerogative or Royal Power.

Also there can be no such Necessity, or Danger conceiv'd, that may cause these Writs to be awarded to all Counties of *England*, to prepare Ships at such a Charge, and with such Men and Ammunition, without Consent in Parliament; for the Laws have provided Means for Defence in Times of Danger, without taking this Course: for that the King hath Power to command all, or any Persons of his Kingdom, to attend with Arms at the Sea-Coasts, to defend the Coasts, or any other Parts of the Kingdom; and also by his Officers, to make stay or arrest, all or any the Ships of Merchants, and others having Ships; or as many as he pleaseth to go with his Navy, to any Parts of his Kingdom, for Defence thereof; and to attend those to whom he appointed the Guard of the Seas, or the Sea-Coasts, at such Times and Places as they should appoint. And this hath been always taken and conceived to be sufficient for Defence, against any Prince whatsoever; and yet the same was in Times, when the Navy of *England* was not so strong, as now by the Blessing of God and the good Providence of his Majesty it is.

That this Course was then so taken, appeareth by divers Records, viz. 23 *Ed. I. m. 4.* the Record reciteth, That the *French King* had prepared a great Navy upon the Sea, and purposed to invade the Kingdom, & *linguam Anglicanam de terra delere*; and thereupon the King commanded all the Ships, and Men with Arms, to be in readiness to defend the Kingdom.

Rot. Scot. 10 Ed. III. m. 16. reciteth, That certain Galleys in Parts beyond the Seas, were prepared with Provisions of Men, and Arms, and other Necessaries of War, and ready to invade the Land: Command was, that divers Ships should be in readiness to defend the same; and the Ships of the Ports of *Ireland* to be sent into *England* to help to defend the Kingdom.

Scot. 10 Ed. III. m. 22. A Writ was to the Bailiff of *South Wales*, (reciting, That the *Scots* and divers others confederating together, prepare themselves to Arms and Ships in a great Number, and intend to invade the Kingdom) to command them to have one Ship ready upon the Sea to defend their Coasts. The like Writ was then to *North-Wales*.

Alm' 12 Ed. III. m. 10. A Writ to the Mayor of *London*: *Quia hostes nostri in Galleis cum multitudine non modica congregati in diversis partibus regni hostiliter ingressi sunt, & civitatem predictam celeriter se possunt invadere proponunt.* The King commandeth them to shut up the City towards the Water, and to put all their Men in Arms ready to defend, &c.

Alm' 13 Ed. III. m. 13. A Writ to the Bailiff of *Great Yarmouth*: *Quia pro certe didicimus quod hostes nostri Franc' & adherentes eisd' Galleas & naves guerrinas in copiosa multitudine in partibus exteris congregarunt, & iis homines ad arma parari faciunt, & proponunt se movere versus regnum nostrum & navig' regni nostri & Portus prope mare situat'*

situat' pro viribus destruere, & id' regnum invadere &c. command the same Town to prepare four Ships with 140 Men, &c.

At the same time Writs went forth to twenty other Towns upon the Sea-Coasts. *Franc. 26 Ed. III. m. 5.* Writ to the Earl of *Huntingdon* and others, *Quia adversarii nostri Francie nos & regnum nostrum invadere machinantes, magnum navigium preparari fecer' & armari, ne dum ad regnum nostrum Angliæ subito attrahend' sed ad nos & dominium nostrum & totam nationem Anglicanam pro viribus subvertend' &c.* commanding them to guard all the Sea-Coasts of *Kent*, and to array all Men to be ready with Arms to defend the Sea-Coasts.

5 *Hen. IV. m. 28.* A Commission is to *Thomas Morley* and others: *Quodcum inimici nostri Francie Britan' Scot' & al' sibi adherentes inter se obligati magna potentia armat' super mare in aestat. prox' futur' ordinaverunt regnum nostr' Angliæ invadere, &c.* commanding them to array Men with Arms to defend, &c.

4 *Hen. VIII. Par. 2.* The King by Proclamation to the County of *Kent*, sheweth, that it is come to his Knowledge of certain, that his ancient Enemy, the *French King*, hath prepared and put in readines a great and strong Navy, furnish'd with Men of War, to invade the Kingdom of *England*; the King appoints the Lord of *Abergavenny* and others, to put Men in Array, and to be ready to defend that County.

Anno 1588, when the great Invasion was by the Navy, termed *the invincible Navy*, which was foreseen long before, this Course of preparing Ships by every County of the Kingdom was not appointed; yet in all these Times, when there appeared so great Danger or Invasion, there never went any such Writ into any of the Counties of *England*, to provide Ships: But the Navy of *England*, and Army of *England* was always accounted sufficient for the Defence of the Kingdom.

So I conclude this Point, that I conceive this Course cannot be taken by any Prerogative or Royal Power, nor any Allegation of Necessity or Danger.

For the fourth Point, I conceive, that if it were legal to lay such Charge upon maritime Parts; yet to charge any Inland County with making of Ships, and furnishing them with more Mariners and Soldiers at their Charges, which are far remote from the Sea, is not legal, nor warranted by any former Precedent; for it commandeth an unreasonable and impossible thing by them to be done: and then a Writ, commanding such a thing as is unreasonable and impossible for the Parties of themselves to perform, without Help of other Counties, is always illegal; for it is a Rule, That *Lex non cogit ad impossibilia*: If one by Covenant bind himself to do a Thing impossible, the Covenant is void.

This appeareth by the Book-Cafe 40 *Ed. III. fol. 6.* where the Case is expressly, that if a Man do Covenant to do a Thing impossible, the Covenant is void, and the Deed is void in that respect: also the Book, *m. 2 Ed. IV. fol. 2.* If a Feoffment be made upon Condition to be void, if the Feoffee did not a Thing which is impossible, the Feoffment is good, and the Condition void: for it was the Fault of the Feoffer to annex such a Condition. And this appeareth by the Case of on Arbitriment. If the Arbitrator award, that one shall enter into Bond, with such a one as his Surety, to pay a Sum of Money, or to do any

other Act, it is void, as to the finding of a Surety at the least; for it is not in his Power to compel him to be his Surety: therefore the Law accounteth it unreasonable, and so void. And this appeareth by the Book-Cafe 17 *Ed. IV. fol. 5.* where it is so resolved.

So this Writ commanding the Sheriff and Inhabitants of an Inland County to find a Ship with Masters and Mariners; whereas there are not any Ship-Wrights that have Skill to make Ships, nor any Masters or Mariners ever there to guide a Ship, for they are still conversant about Matters of the Plough, and feeding Cattel, and Husbandry, and are trained up by Musters to Skill of Arms to defend the Country, but not with Sea-Affairs; for most of the County never saw a Ship, nor know what belongs to Musters or Mariners; and the County is not bound to seek out of the County for such Men; and perhaps if they should, they cannot tell where to have them: Therefore, when such Writs to Inland Towns have been awarded to find Ships with Masters and Mariners, it being conceived by Information that they were Maritime Towns, and had Ships, and Mariners dwelling with them; the Truth thereof being made appear to the contrary, they have been discharged, as appears by a Record, 13 *Ed. III. part 2. m. 14.* where a Writ went to the Admiral of the Fleet: Upon Complaint to the King by the Men of *Bodmin* in the County of *Cornwall*, that they were unjustly charged to find a Ship with Masters and Mariners, whereas that Town was no Port-Town, nor adjoining to the Sea, but far within the Land, nor ever had Ships lying there, nor Mariners nor Seamen, nor ever used to find any such for Sea-service, and that their Major and Officers were imprison'd for not finding a Ship; thereupon the King appointed to have it inquired whether their Allegations were true, and if it were true, signified that he would not have them be unjustly charged, but that they should be discharged thereof. Which sheweth, that it was then accounted unjust to lay such a Charge upon a Town that was an Inland Town, and had no Mariner inhabiting in it; much more when such a Charge is laid upon an Inland County, which is much farther remote from the Sea, and cannot perform by themselves that which the Writ commanded.

Object. But this Record being objected by the Defendant's Counsel, Mr. Solicitor gave Answer, that the same was, because the Admiral of his own Authority had charged them, which was not according to his Commission; for he was only to charge the Port-Towns and Sea-Towns: but that the same may not be done by the King's Writ, the Record doth not prove.

Respons. But to this I answer, that I conceive it is all one when such a Charge is laid upon a Town by Writ, which is an Inland Town, for so it appeareth by another Record of the same Year, viz. 13 *Ed. III. part 1. m. 14.* where a Writ was directed to the Admiral of the Fleet, *Ab ore Thamefis versus partes occidentales*; reciting, that where the King by his Writ to the Town of *Chichester*, commanded the Mayor and Commonalty there, that they should make *unam Navem & duos Escularios de Guerra parari*, with Mariners and Men at Arms, to be at *Portsmouth* such a Day, to go with the King's Ships; and that they had complained that they had not, nor ever had any Ships arriving in that Town, nor had any Seamen or Mariners dwelling

dwelling there; and that it appeared to the King, by Inquisition of a Jury returned into his *Chancery*, this their Allegation to be true: therefore, because the King would not have them *indebitè gravari*, (for so be the Words of the Record) the King commandeth the Admiral that they shall not be troubled nor distrained for not Performance of such Service. Whereby it appeareth, that if they being within a few Miles of the Sea, should not be charged to find such a Ship, much less more Inland Counties that are farther remote from the Seas, are justly to be charged with finding Ships and Mariners. Therefore I conclude this Point, that I conceive, this Writ in that respect is not legal, nor warranted by any former Precedent.

The fifth and great Point hath been, and indeed the chief Argument hath been, a multitude of Records and Prededents, which have been cited, that should warrant these Writs; and that the King hath done nothing but what his former Progenitors have done, and have lawfully done; and that he doth now but *More Majorum*, and that which always in ancient Times hath been done and allowed, and therefore ought to be done.

I confess this Allegation much troubled me, when I heard, these Records cited, and so learnedly and earnestly pressed by Mr. Solicitor, and after by Mr. Attorney, to be so clear, that they might not be gainsaid: but that they proved a clear Prerogative, or at least a Royal Power, that the King might do so, especially when my Brother *Weston*, and my Brother *Berkley* (who have seen the Records) pressed some of them, and relied upon them for the Reasons of their Judgments: I say, I was much doubtful thereupon, until I had perused all these Records sent me by the King's Counsel, and satisfied my Judgment therein.

But now I answer, That if there were any such Precedent (as I shall shew there was not one shewed to me) to prove this Writ to be usual, yet it were not material; for now we are not to argue what hath been done *de facto*, for many Things have been done, which were never allowed; but our Question is, what hath been done, and may be *de jure*. And then, as it is said in *Coke, lib. 4. fol. 13.* in *Witton's Case*, it is said, *Multitudo errantium non parit errori patrocinium*: and *lib. 4. fol. 94.* in *Slade's Case*; Multitude of Precedents, unless they be confirmed by judicial Proceedings, in Courts of Record, are not to be regarded; and none of these were ever confirmed by judicial Record, but complained of.

But to give a more clear Answer unto them, I say, that in my Opinion, upon View and serious reading of all the Records that have been sent me on the King's Part; for I have read them all over *Verbatim*, and I presume they sent all they conceived to be material, and I have taken Notes of every one of them, and diligently considered of them, I conceive that there is not any Precedent or Record of any such Writ sent to any Sheriff of any Inland County to command the making of Ships at the Charge of the County; but this is the first Precedent that ever was since the Conquest that is produced in this kind.

But it is true, that before 25 *Ed. I.* there have been some Writs to maritime Towns and Ports, and other Towns, as *London, &c.* where they have had Ships and Mariners, to provide and prepare Ships, and to send them to such Places as the King pleased to appoint, upon any just Cause

of Fear of any Danger, for the Defence of the Sea and Kingdom; and great Reason, that they having Ships and Masters of Ships and Mariners, should be at the King's Command, to bring all or as many as he pleaseth for the Defence of the Sea and Kingdom, being those that had the most Benefit of the Seas, and likely to have the greatest Loss if the Sea and Coast were not daily guarded; and those were appointed most commonly to be at the King's Charge, but sometimes upon Necessity they were appointed to be at the Charges of the Towns and Ports adjoining: which I think was the true Cause of the Complaint in Parliament in 25 *Ed. I.* and of the making that Statute for the staying of that Course; for there is no Record of any such Writs afterwards in *Edward the First's* time, after that Statute to maritime Towns, to prepare or send Ships at the Charge of the Towns.

But in the time of *Ed. III.* then the War being between him and the *French King* in *Annis 10, 11, 12, & 13* of that King, where the most Writs awarded to maritime Towns, to send Ships at their Charges sufficiently furnished; and those I think were the Principal Cause of the making of the Statute of 14 *Ed. III. cap. 1.* And after that Statute no such Writs, nor any Commissions for that Purpose were awarded to any maritime Towns, or Inland Towns, for the making of Ships, but one; which Record was much pressed by Mr. Attorney, and afterwards by my Brother *Weston*, and my Brother *Berkley*, to prove, that this Course was, and might be practised after the Statute of 14 *Ed. III.* for sending forth such Writs, and allowed: But that Record is fully satisfied, for it was grounded upon an Ordinance of Parliament in 1 *Rich. II. m. 52.* that all antient Cities, Burroughs, and Towns, that would then, should have their Charters confirm'd without any Charge of Fine, save only to make a Ship of War for Defence of the Realm: so this was not compulsory to any, but voluntary to those that would have their Liberties confirm'd. And afterwards, in 1 *Hen. IV.* Commissions were awarded for making such Vessels of War; but those issuing forth without any Ordinance of Parliament, were complained of in Parliament 2 *Hen. IV.* and so such Writs issued forth in any Age, to any maritime Towns, to make Ships, or prepare Ships at their own Charge for the King's Service, until these late Writs.

This general Answer I give to all the Records; and now I shall take a short View of all the Records that have been cited and sent to me, and leave them to the Judgment of my Lords and others, if any of them prove these Writs usual and legal.

The Records of King JOHN's Time.

6 *Joh. m. 1.* 3 *Joh. m. 3.* 14 *Joh. m. 2.* 17 *Joh. m. 7.* Three of these are to arrest and make stay of Ships, that they should not go out of the Kingdom, but to be ready for the King's Service; and the other was to bring Ships of particular Towns to the Mouth of the *Thames*, for the King's Service.

19 *Joh. m. 4.* A Commission to guard the Seas to *Joh. de Marshal*, and to the Sheriff of the County of *Lincoln*, and to all others to attend his Commands.

15 *Job.* Writ to the Barons of the Cinque-Ports, and divers other Towns, to have their Ships ready for the King's Service.

In the Time of Henry III.

14 *Hen. III. m. 14.* 14 *Hen. III. m. 5.* A Writ to the Bailiff of *Portsmouth*, to prepare one Galley. A Commission to the Sheriff of *Rocheſter*, and another to the Sheriff of *Kent*, to cauſe all Men to be in Arms in that County, and to aſſeſs them what Arms they ſhould find.

48 *Hen. III. m. 4.* A Writ to the Sheriff of *Norfolk*, commanding him to cauſe them appointed to attend all the Coaſts in that County, who having ſerved 40 Days intended to depart, that they ſhould ſtay eight Days longer by reaſon of the Danger, and longer, if Need required. The like were ſent to the Sheriffs of *Suffolk* and *Effex*.

48 *Hen. III. m. 2.* A Writ to the Mayor of *Bedford*, commanding him to provide for the Expences of them that were ſent from thence for the guarding of the Seas; yet it is but for eight Days more after the Date of the Writ.

48 *Hen. III. m. 3.* A Writ to the Men of *Effex*, *Norfolk*, and *Suffolk*, appointed to attend for the guarding of the Sea-Coaſts, reciting, that the King had appointed *T. de M. Cuſtod' maris & part' maritim'* within their Counties, commanding them to aſſiſt him, and to perform therein what he required.

48 *Hen. III. m. 7.* A Writ to the Sheriff of *Cambridge* and *Huntingdon*, to command all Men of thoſe Counties, able to bear Arms, to come to the King to *London*.

In the Time of Edward I.

25 *Ed. I. m. 5.* A Writ to thoſe of *Effex*, *Norfolk*, and *Suffolk*, reciting, That ſuch Perſons were appointed *ad cuſtod' maritim'* in thoſe Parts, commanding them to attend them. Another to the Sheriffs of *Norfolk* and *Suffolk*, reciting, That certain Conſtables were appointed to aſſeſs Men at Arms, ſufficient for the guarding of the Sea-Coaſts, commanding them to diſtrain and compel them aſſeſſed to go.

24 *Ed. I. m. 17.* Writs to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, reciting, That he had commanded *A. de B. ad congregand' & capiend' centum naves*, between *Leigh* and *Berwick*, & *ad homines potentes in eiſd' ponend'*, commanding them to aſſiſt him therein.

24 *Ed. I. Rot. 62.* A Writ out of the *Exchequer* to *Adam de Guerdo & aliis Gardianis* of the Sea-Coaſts in the County of *Southampton*, to diſtrain the Abbot of *Reading*, to find Horſes, which he was aſſeſſed at for that Service.

24 *Ed. I. m. 16.* Writs to all Archbiſhops, Biſhops, Earls, &c. in the Counties of *Somerſet*, *Devon*, and *Cornwall*, to attend with their Horſemen and Footmen, for Defence of the Sea-Coaſts in thoſe Parts, when they ſhall be required by the Guardian of thoſe Coaſts.

24 *Ed. I. m. 71.* A Writ out of the *Exchequer*, directed to all Archbiſhops, Biſhops, Earls, &c. in the County of *Norfolk*, reciting, That *Peter de Ruſlin* was appointed *ad cuſtodiend' partium maritimar' illarum*, commanding them to aſſiſt him.

24 *Ed. I. Rot. 78.* A Writ out of the *Exchequer* to the Sheriff of *Berks*, reciting, That the King

was informed by *Adam de Griden* Guardian of the Sea-Coaſts in the County of *Southampton*, that thoſe Men in the County of *Berks*, who were aſſigned to come to the defending of the Sea-Coaſts in thoſe Parts, came not as they were warned, commanding to diſtrain them, and compel them to come and to do the Service.

The like Writs were then awarded to the Sheriffs of *Wiltſ* and *Southampton*, &c.

24 *Ed. I. Rot. 81.* A Writ to the Bailiffs of *Great Yarmouth*, reciting, That the King was informed, that certain in *Flanders* and *France*, in a great Multitude, appareld like Fiſhermen, intended to invade their Town, warning them to gather their Ships together, and all their Arms, to defend themſelves againſt ſuch an Attempt.

24 *Ed. I. inter Com'.* A Writ to all Sheriffs and Bailiffs, &c. reciting, That he had appointed ſome therein named, *ad congregand' numerum navium & galliarum majorum*, &c. commanding the Sheriffs in their ſeveral Counties to be aſſiſting to them therein.

24 *Ed. I. m. 9.* A Writ of *Superſedeas* to the Guardian of the Seas in the County of *Southampton*, to diſcharge *Hugh de Pleſſis* to find Arms for his Lands in that County, for guarding of the Seas, becauſe he was in ſervice with the King.

Nota, All theſe Records are for Arrays, and congregating Ships, but none to make or prepare Ships at the Charges of the Counties.

24 *Ed. I. m. 26.* A Writ to the Sheriff of *Effex* to diſcharge for the Winter time thoſe that ſtay at the Sea-Coaſt, with their Arms to defend the Coaſt; but commanding them to be in a readineſs when they ſhould be again commanded. The like Writs were then awarded to divers Sheriffs of maritime Counties to the ſame purpoſe.

25 *Ed. I. m. 12.* A Writ to the Sheriff of *Lancaster*, reciting, That whereas the King had formerly commanded him to go to all the Ports and Towns where Ships were, commanding the Bailiffs of the Ports to have all the Ships of Burden of 40 Tons at *Wincheſea*, by ſuch a Day; now commandeth the Sheriff to ſee them made ready, and ſent thither accordingly.

Ibid. m. 13. The like Writs directed to the Sheriffs of *Lincoln*, *York*, *Northumberland*, and *Cumberland*.

Ibid. m. 14. The like Writs directed to nineteen other Ports and Towns in other Counties.

21 *Ed. I. m. 20.* A Commission to ſend away Men at Arms in the County of *Westmoreland*.

21 *Ed. I. Rot. 77.* In the *Exchequer*, ſhewed by the Defendant's Counſel, Writs went to ſeveral Maritime Towns upon the Sea-Coaſts, and other Towns where Ships were uſually made, to make Ships and Gallies; and that the King will allow and pay for them, when he knoweth the Charge thereof.

In the Time of King Edward II.

Pat. 9 Ed. II. Part 2. A Writ to all Men in the Towns upon the Sea-Coaſts, and Ports of the Sea, between *Southampton* and *Falmouth*, reciting, That the King had appointed *John de Norſon* to make Proviſion for a Navy in thoſe Towns and Ports, at their Charges, he commandeth them to perform what he in that behalf ſhall require.

Claus. 20 Ed. II. m. 8. A Writ to the Bailiff of *Yarmouth*, reciting, That whereas the King had commanded all the Ships of the Burden of fifty Tons, from the *Thames* Mouth towards the *West*

Parts, to be at *Portsmouth* such a Day, &c. and they had sent two Ships: That the Masters and Mariners complained, that they could not serve without Wages, and therefore appointed them to send them Wages.

20 *Ed. II. m. 10.* A Writ to the Bailiffs of *Yarmouth*, commanding them to send all their Ships of the Burden of thirty Tons and above, to *Orewell* in *Suffolk*, with double Tackling, Victuals, and other things necessary for one Month.

The like Writs at the same time to other Towns, to the Number of four and thirty.

20 *Ed. II. m. 10.* A Writ to the Mayor of *London*, to provide three Ships with Men and Ammunition to go with nine Ships of *Kent* to guard the Sea-Coasts.

15 *Ed. II. m. 15.* A Writ to the Sheriff of *Norfolk*, commanding him to warn all Barons, Bannerets, Knights, and others of that County, to attend the King at *Coventry*, at such a Day to go with the King.

15 *Ed. II. m. 15.* Writs to the Sheriffs of *Norfolk* and *Suffolk*, commanding them to arrest all Barons, Bannerets, Knights and Esquires, who were commanded to attend the King at *Coventry*, such a Day therein named, and came not, to be before the King and his Council to answer it.

The Record saith, like Writs were then awarded to divers Sheriffs of other Counties.

16 *Ed. II. m. 13.* A Commission to array all Persons between the Ages of Sixteen and Sixty, with Arms convenient, to come to the King, when they shall be required.

19 *Ed. II. m. 6.* A Writ to the Archbishop of *Canterbury*, commanding him to array all his Servants and Families, to be ready to defend the Kingdom, if any Invasion should be.

The like Writs at that time to all the Bishops.

In the Time of King Edward III.

2 *Ed. III. m. 92.* A Writ to the Mayor and Bailiff of *Southampton*, commanding them to cause all their Ships of the Burden of forty Tons, and above, to be furnished with Men of Arms, and Victuals, ready to defend the Land, if any Invasion shall happen.

Scot. 7 Ed. III. m. 19. A Commission to *Hugh Courtney*, to guard the Seas in the Counties of *Devon* and *Cornwal*, and commanding all others to assist him.

10 *Ed. III. m. 25.* The like Commission to *Hugh Courtney*, for guarding the Seas in the same Counties.

Ibid. A Writ to *Bartholomew de Insula*, for Custody of the Sea-Coast in the County of *Southampton*; and therein is a Command to *John Tichborne*, and others for the County of *Southampton*, and to *Will. de Parsheire*, and others for the County of *Berks*; and to *Job. Mareditt*, and others for the County of *Wilts*, to array Men with Arms, and to have them in readiness to defend the Coasts of *Southampton*.

Scot. 10 Ed. III. m. 2. A Writ to *Will. Clinton*, Guardian of the Cinque-Ports and others, to survey all the Ships of the Cinque-Ports, and other Ports from the Mouth of the *Thames* to *Portsmouth*, and to cause them to be furnished with Arms and Victuals for 13 Weeks, from the time they shall go from *Portsmouth*.

Scot. 10 Ed. III. m. 2. A Writ to the Mayor of *Winchelsea*, to cause the Ships appointed for that

Town to be furnished with Men and Arms, and Victuals, and other Necessaries for thirteen Weeks.

Scot. 10 Ed. III. m. 16. A Writ to the Admiral of the Fleet from the Mouth of the *Thames* to the West Parts, to keep upon the Seas the Ships of the Cinque-Ports, and other Ships arrested to defend the Kingdom against attempt of any Invasion.

The like Writ was then to the Admiral of the Fleet, from the Mouth of the *Thames* to the North Parts, with the like Command to hold the Ships together upon the Sea.

Scot. 10 Edw. III. 16. A Writ commanding the Ships of the Ports of *Ireland* to be sent hither, to guard the Seas here.

10 *Ed. III. m. 12.* A Writ to the Bailiff of *Yarmouth*, to cause the Men of that Town to contribute to the Charges of the Ships and Men, and Victuals, sent from thence for the Defence of the Kingdom.

Scot. 10 Edw. III. m. 22. A Writ to all the Bailiffs of Liberties, and Men of *South-Wales*, to have one Ship riding upon the Seas for Defence of those Parts.

The like to the Men of *North-Wales*.

Scot. 10 Edw. III. m. 21. A Writ to the Arrayers of Men for the County of *Berks*, to compel them of that County, assigned and assessed for the keeping of the Sea-Coast in the County of *Southampton*, to go to *Portsmouth* by a Day therein appointed.

Alm' 12 Ed. III. m. 12. A Commission reciting, that the King had appointed all the Ships from the Mouth of the *Thames* Northwards, to be arrested, and to cause them to be furnish'd with Ammunition, Men and Victuals, and to be brought to *Yarmouth*; and that the Men of *Lynn* refused to contribute to the Expence of the Charge of the Men sent in the Ship from that Town, and the furnishing of that Ship; and therefore commands the Commissioners therein named, to assess them that refuse to contribute and distrain them.

Alm' 12 Edw. III. m. 13. The like to compel the Men of *Bardefey* to contribute for the Expences of the Men of that Town.

Claus. 12 Edw. III. m. 17. The like to compel the Men of the Counties of *Surrey* and *Sussex*, to contribute to the Expences of the Men of those Counties, that did attend for the guarding of the Sea-Coasts in those Parts.

Vasc. 12 Edw. III. m. 8. A Writ to all Archbishops, Bishops, &c. and to the Sheriff of *Kent*, and the Barons of the Cinque-Ports, and all others in that County, commanding them to be assisting to *J. de Cobham*, to whom the Custody of the Sea in those Parts is committed; and to defend those Coasts against any foreign Invasion that shall happen.

Alm' 12 Edw. III. m. 10. A Writ to the Mayor of *London*, reciting the Danger of Invasion, and commanding to shut up the Gates at the Waterside, if the Enemies approach.

Alm' 13 Edw. III. m. 12. A Writ to the Bailiff of *Yarmouth*, reciting, that he had by his Writ commanded four Ships of War of that Town to be made ready with Men, Ammunition, and Victuals for three Months, at the Charges of the Town, to be brought to *Orewell*, and that they failed to come at the Day, to the great Peril of the Land; therefore commandeth the Bailiff to compel them at another Day therein prefixed, to be at the same Place.

There

There it is set down, that the like Writs were awarded to the Bailiffs of seventeen other Towns, for sending their Ships, being charged some of them for one Ship, and some for two Ships.

Claus. 13 Edw. III. m. 38. A *Superfedeas* for the Abbot of *Ramsay*, for being charged with Arms for guarding the Coasts in *Norfolk*, for his Lands in *Norfolk*, because he was by Command attending with all his Forces in the County of *Huntingdon*, for the Safety of these Parts.

Claus. 13 Edw. III. m. 14. A Writ of *Superfedeas* to the Arrayers of Arms in the County of *Oxon*, to discharge *John Mauditt* to serve there, because he served in *Wills*.

Claus. 13 Ed. III. m. 14. A Writ to the Arrayers of Arms in the County of *Wills*, which is only concerning the Payment of Soldiers Wages, who then attended to guard the Sea-Coasts.

These being all the Records shewed me, it appeareth that there were no Writs issuing out in those Times to any Sheriffs of Inland Counties, or Maritime Counties, to make or prepare Ships upon any Occasion whatsoever, but only to Maritime Towns, to send their Ships, or prepare their Ships, at their own Charges.

The Records shewed me since 14 *Ed. III.* do not shew any Writs to be awarded to any Maritime Town, to prepare Ships at the Charge of the Towns, except the Records of 1 *Rich. II.* and 1 *Hen. IV.* which I have before answered; and they since that Time shewed unto me, except such as I have mentioned in my Argument, are these:

Scot. 10 Edw. III. m. 14. A Commission to *Nicholas de Carllope*, to array Men to resist the *Scots*.

Ibid. A Writ to the Mayor of *York*, to array all their Men to be ready when they shall be required.

20 *Edw. III. m. 15.* A Commission concerning the Arrays of Men in the Counties of *Derby* and *Nottingham*, and to punish them that come not when they are warned.

Rot' Franc' 21 Ed. III. m. 31. A Writ to the Arrayers of Men in the County of *Southampton*, to discharge the Abbot of *Battel*, for finding Arms for Defence of the Sea-Coasts there.

Franc' 25 Ed. III. m. 20. A Commission to *John Bodingham*, for the Custody of the Port and Maritime Parts in *Cornwal*, and to array all Men to be in readiness. There is set down, that the like Commission is to others in several other Counties.

Franc' 26 Edw. III. m. 5. A Commission to the Earl of *Huntingdon* and others, to have the Custody of the Ports in *Kent*, and to array Men, and to set up Beacons; which is the first I observe of this Kind.

Franc' 46 Ed. III. m. 34. The like Commission then to several other Persons, to array Men in several Counties, as *Warwick*, *Oxon*, *Berks*, and *Bucks*.

A Writ to the Archbishop of *Canterbury*, reciting the Danger of Invasion by the *French*, to hurt the Church and Kingdom, commanding him to array all his Clergy in his Dioceses, and to be ready to go with the King's Forces, &c.

The like Writs to all other Bishops in the Kingdom.

Franc' 50 Edw. III. m. 47. A Writ to the Arrayers of Men in the County of *Norfolk*, and to the Sheriff of *Norfolk*, commanding them to command all great Men and others that have Mansions upon

or near the Sea-Coasts, to resort to them with all their Families, for the Defence of the Coasts.

The like to the Arrayers and Sheriffs of ten other Maritime Counties.

Scot. 29 Ed. III. m. 13. A Commission to the Bishop of *Durham* and others, to array Men in *Durham*, *Cumberland*, and *Northumberland*, to resist the *Scots*.

Franc' 40 Edw. III. m. 31. A Writ to *William Zouch* and others, to remove with all their Families to their Houses upon the Sea-Coasts.

Nota, That all the Records are for arraying Men, and none for preparing Ships.

In the Time of King Richard II.

1 *Rich. II. m. 7.* A Writ to the Bailiffs of *Scarborough*, because their Town was upon the Coasts of the Sea, and in danger of Invasion, carefully to look to the Custody thereof.

Eod' Rot' m. 12. A Writ to the Mayor and Bailiffs of *Oxford*, to repair the Walls of the Town, and to compel those that had Lands there, to contribute to the Expences thereof.

This Record hath been much urged by Mr. Solicitor and Mr. Attorney, that if the King have such a Power to command the Walls of a Town to be repaired, much more to command Ships to be made, which are the Walls of the Sea, and consequently the Walls of the Kingdom.

But this is clearly answered; for that it is but a private Town, and that which hath been formerly so walled, and for Defence and Safety of the Town; and none were to be charged but those that had Benefit thereby; and so it proveth nothing to the Case in Question.

Eod' Rot. m. 42. One Writ to the Sheriff of *Kent*, and another to the Sheriff of *Essex*, commanding them to perform an Ordinance made by the King and his Council, for setting up of Beacons, and keeping Watch about them.

Scot. 7. Ric. II. m. 8. A Writ to the Archbishop of *Canterbury*, to command all his Clergy between sixteen and sixty, to be array'd and put in Arms, both Horse and Foot, according to their Qualities, to defend the Kingdom.

Franc. 11 Ric. II. m. 13. A Writ to Serjeants at Arms, to arrest all Ships of War in the Ports of *Plymouth*, or *Dartmouth*, and other Ports, in the County of *Cornwal*; and to bring them to *Hunksboske*, to go with the King's Majesty's Ships.

In the same Roll, divers other Writs to divers other Sheriffs at Arms, to arrest the Ships in divers other Ports.

Scot. 21 Ric. II. m. 3. A Commission to the Duke of *Albermarle*, to array Men in the *West-Marches*, towards *Scotland*, to resist the *Scots*.

In the Time of King Henry IV.

Rot. Viagii, 1 Hen. IV. m. 11. A Writ to the Sheriffs of *Derby* and *Nottingham*, reciting, That the King certainly understood that the *Scots* intended with a great Power to invade the Kingdom; commanding them to proclaim in all Parts in their Counties, That all Men between sixteen and sixty, should put themselves into Arms, competent according to their Degrees and Qualities, to be ready upon two Days warning at any time, to defend the Kingdom.

The like Writs were then directed to the Sheriffs of *Lincoln, York and Lancaster*.

Claus. 1 Hen. IV. m. 12. A Writ to the Archbishop of *Canterbury*: *Satis informati estis qualiter inimici mei Franciæ & alii sibi adherentes, cum magna classe Navium, cum magna multitudine armator super mare congregator' diversas villas per Costerum Regn' mei invadere, & nos & Regnum meum destruere, & Ecclesiam Anglicanam subvertere intendunt & proponunt*; thereupon commands, That the Clergy in that Diocess be array'd and arm'd, and to be ready to go against the Enemy.

The like Writs to all other Bishops in *England*.
Nota, *Altho' this great Danger be mention'd, yet no Command to prepare Ships.*

Pat. 5. Hen. IV. Part 2. m. 28. A Commission to *Thomas de Morley*, and others, and to the Sheriffs of *Norfolk and Suffolk*, and to the Bailiffs of great *Yarmouth*, reciting, *Quod cum inimici Franciæ, Scotiæ, & alii sibi adherentes se obligat' magna Potentia armat' super Mare in astat' proxim' futur' ordinaver' & intendunt Reg' invadere, &c.* Command to survey the Town of *Yarmouth*, and fortify it.

Nota, *Here also, tho' such great Danger and Distance of Time, yet no Writs issued to any Counties to prepare Ships.*

In the Time of King Henry V.

Pat. 3. Hen. V. Part 2. m. 37. A Commission to array all Men at Arms in the West Riding in *Yorkshire*, to be ready to defend those Parts.

The like Commissions to others, in nineteen other several Counties.

In the Time of King Henry VI.

Pat. 13 Hen. VI. m. 10. Pat. 39 Hen. VI. m. 11. Pat. 39 Hen. VI. m. 12. Pat. 39 Hen. VI. m. 1. Commissions for arraying of Men for the Defence of the Kingdom, if Invasion shall be; and for repressing of Rebels.

In the Time of King Edward IV.

Pat. 10 Edw. IV. m. 12. Commissions to *George D. of Clarence*, & al' to array Men for Defence.

Pat. 10 Ed. IV. m. 13. A Commission to *John Lord Howard*, to be Captain of all the Forces.

Pat. 43 Hen. VI. m. 22. A Commission to *Marques Mountague*, to array and put in Arms all Men beyond *Trent*.

In the Time of King Henry VII.

Pat. 1. Hen. VII. Part 1. A Commission to *Richard Fitz-Hugh*, and others, and to the Sheriff of *Yorkshire*, to array and cause to be armed, all able Persons, Abbots and others, to be ready to defend the Kingdom.

1 Hen. VII. Part 1. A Writ to the Sheriffs of *Norfolk and Suffolk*, to proclaim in all Parts in those Counties, for that there was likely to be open War between *Charles King of France* and the King of the *Romans*, and great Navies are prepared on either side; commands, That Watch and Ward be kept, and Beacons kept to give warning; and that every Man be ready, if need be, to come and defend the Kingdom.

In the Time of King Henry VIII.

4 Hen. VIII. Part 2. A Writ to the Sheriff of *Kent*, commanding him to proclaim in that County, That the King being certainly informed, that the *French King* had prepared a great and strong Navy, furnished with Men of War, to invade the Kingdom; therefore commandeth all Men between the Age of sixteen and sixty, to put themselves in Arms, to be ready to defend the Kingdom at an hour's warning.

In the Time of Queen Elizabeth.

11 Eliz. Commissioners went to take a View of all the Horses in *England* fit for Service, and to survey all the Arms, to have them all put in readiness, as Necessity should require.

Now it appeareth upon View and Examination of all these Records, most of them being cited by Mr. Solicitor and Mr. Attorney, in their several Arguments, there are none of them to prove the sending of any such Writs to Inland or Maritime Counties to prepare Ships; altho' there have been many times great Danger; nor yet any Writs to Maritime Towns, after the Statute of *14 Ed. III.* to charge them to find any Ships at their Charges.

So then I conclude this Point, That I conceive this Writ is not warranted by any former Precedent.

Now I come to examine the Point of this Writ, Whether the same be legal and warranted by any former Precedent: And I conceive it is not.

1. The Motives mentioned in the Writ are, *Quia datum est nobis intelligi*, which is no certain Information: *Quod quidam prædones & maris grassatores*, did take the King's Subjects, Merchants, and others, and carry'd them into miserable Captivity. *Cumque ipsos conspiciamus navig' indies præparantes ad mercatores nostros molestand' & Reg' nost' gravandum.*

All these, and those following, I conceive are not sufficient Motives, and were never in any Precedent before to have a Royal Navy prepared. For the former Precedents are, that great Princes in open Time of Hostility had provided great Navies with Ammunition and Soldiery, with intent to invade the Kingdom, as appeareth by the former Precedents: and against such Provisions it was necessary to provide the Royal Navy, the King's Ships, and all the Ships of the Kingdom, to be gathered together to withstand them. But to make such Preparations against Pirates, it was never put in any Writ before; for when Pirates infested the Seas, they came as it were by stealth, to rob and to do mischief; and they never dared appear but when they may do mischief, and escape away by their swiftness. But against them, the usual Course hath been, that the Admiral or his Deputy with some few Ships have secured the Coast, and not to employ the whole Navy. And this appeareth by a Record, *25 Ed. I. m. 9. William Leighbourn* the Admiral was appointed upon such an Occasion with ten Ships to lie upon the Seas, for the Safeguard of the Merchants: and the usual Practice hath been, when they hover upon the Sea, by sending a few Ships of War to scatter them, and make them fly away. And there is no fear of the Loss of the Dominion of the Sea, by any Act Pirates can do; neither is it convenient that every County of the Kingdom should provide Ships against them.

2. The Command of this Writ is to provide a Ship of 450 Tons at the Charges of the County, furnished with Masters and Mariners; which is impossible for them to do for the Reasons before alledged, and therefore is illegal, and not warrantable by any former Precedent.

3. The Command of this Writ to find Wages for Soldiery for 26 Weeks after they came to *Portsmouth*, when they are out of their County, and in the King's Service, is illegal; being against the Course of Precedents in divers Times, and against divers expresse Statutes, and this appeareth by divers Records.

15 *Johan*. In the Writs of Summons of the Tenants by Knights Service, it is expressly mentioned, that after forty Days Service (for so many Days they were to do Service by their Tenure) they should be satisfied *ad denarios Regis*.

Pasch. 26 *Edw*. I. Amongst the Writs of the Exchequer it is there set down, that the Footmen of *Cheshire* being 1000, who were appointed to go for the Defence of the Borders of *Scotland*, would not stir out of their Counties without Wages; and there 'tis set down, that one therein named was sent down with Money to pay the said Footmen.

Mich. 26 *Ed*. I. *inter Bria' irrot'* in the Exchequer, by reason of the Invasion of the *Scots*, many thousands of Soldiers were taken from divers Parts of the Kingdom *ad vadia Regis*. And there 'tis mentioned, that Clerks were sent down with Money to pay the Soldiers of several Counties their Wages.

30 *Edw*. I. In the Exchequer, in Account, the Wages for Land Soldiers for several Counties, and the Wages for Mariners are set down, what the Wages that were paid came to by the Day, and by the Week, both by Sea and by Land.

Trin' 31 *Ed*. I. *inter Brevia* in the Exchequer, the Wardens of the Marches of *Scotland* signified to the Barons, that the Men of *Cumberland* and *Westmoreland*, appointed for the Defence of the Marches, would not stir out of their Counties without Wages; whereupon Order was given for Wages for them.

19 *Edw*. II. Commissions went out to pay Soldiers, who served out of the several Counties, for Defence against *Scotland*.

Hil' 2 *Edw*. III. *Rot*. 16. In the Exchequer; it was ordered in Parliament, That whereas some Soldiers had received of some of the King's Officers, Money for their Wages, they were fain to give Bonds for Re-payment, and that those Bonds should be all re-delivered.

1 *Edw*. III. *cap*. 5. That no Man shall be compelled to go out of his County, but where Necessity required by sudden coming of strange Enemies into the County; and then shall be done, as hath been done in times past: which, I conceive, is to be at the King's Wages, when any are out of their Counties.

But to clear all Doubts, the expresse Statute of 18 *Edw*. III. *cap*. 7. is, That no Men of Arms, Hobbellers and Archers, chosen to go in the King's Service out of *England*, shall be in the King's Wages from the time they go out of the Counties where they were chosen, until they come again.

19 *Hen*. VII. *cap*. 1. Those that had any Grants of Lands from the King; and 11 *Hen*. VII. *cap*. 1. Those that had any Offices of the Grant of the King, are to serve the King in his Wars: But in both it is appointed, they shall have Wages from

the time they shall come from their Houses, until they return.

2 & 3 *Edw*. VI. *cap*. 2. It is narrated, That no Captain receiving Soldiers, serving by Sea or Land, shall receive any Wages for more Soldiers, or more Time than they shall serve; and shall enter the days of their entering into Wages, upon Pain, &c.

All which Records and Statutes do prove, that the Soldiers should be at the King's Wages; therefore the Command for Soldiers Wages for twenty-six Weeks, when they go from *Portsmouth*, is illegal, and expressly against these Statutes: and so the Assessment being entire, as well for the Wages, as the other Charges, I hold it to be clearly illegal, and not to be demanded.

4. That the Command of this Writ to the Sheriff, to assess Men at his own Discretion, is not legal, nor warranted by the Precedents: for Precedents are commonly, that Assessments for Contribution, for making or setting out of Ships, have been by Commissioners, which by Presumption had Knowledge of such Matters, as commonly Sheriffs have not. Also, this leaveth to the Sheriff too great a Power to value Mens Estates, as to inhaunce whom he will, and to favour whom he will.

5. That the Power to the Sheriff and Mayors of Towns, &c. to imprison, especially as it is used, is illegal, and expressly against divers Statutes: for it is provided by *Mag' Char' cap*. 29. *Quod nullus capiatur vel imprisonetur, nec super eum mittimus, nisi per judicium parium suorum, vel per legem terræ*.

Also, 5 *Edw*. III. *cap*. 9. That no Man shall be attached, or his Goods seized, contrary to the Form of *Mag' Chart'*.

Also, by the Statute made 37 *Edw*. III. *cap*. 18. it is recited, That by that great Charter, none should be taken or imprisoned, but by due Process of Law; yet by colour of this Writ, the Sheriff may imprison any Person, yea, any Peer of the Realm: for altho' Peers are not to be arrested upon ordinary Process between Party and Party, as it is resolved in the Countess of *Rutland's* Case, in *Coke lib*. 6. *fol*. 32. yet upon Contempt, and upon Process of Contempt, which is always for the King, any Peer may be imprisoned, as it is resolved by all the Lords, and all the Judges, in the *Star-Chamber*, in the Earl of *Lincoln's* Case: and so the Sheriff, by colour of this Writ, may arrest any Peer, as for a Contempt in not paying. But by the Book-Case, 2 *Edw*. III. *fol*. 2. it is resolved, That a Writ to imprison one upon Suggestion, before he be indicted, or without due Process of Law, was illegal. So for this Clause, I hold this Writ to be illegal.

6. The last Clause of this Writ is, That by colour of this Writ, no more should be gathered than will be sufficient for the necessary Expence of the Premises, and that none who shall levy any Money towards these Contributions, shall detain the same with them, or employ the same to other Uses; and if more than did suffice were collected, it should be repaid amongst those that paid, after a rateable Proportion. But as the Course is taken, it is not to be perform'd: for no Ship, nor Tackling, nor Ammunition, nor Men, nor Wages, nor Victuals being provided, it is not to be known, whether more be gathered, or less than would suffice: And there being Money gathered, it is of necessity either detained with the Collector, or the Sheriff, or employed to other Uses than are appointed

pointed by the Writ; so the Writ is not performed: And the Money assessed and collected, is not duly paid nor collected; and the Money assessed and unpaid, cannot be duly demanded.

7. Admitting the Writs were legal, and the Commands therein legal, yet the Assessment, as is certified, is not sufficient to charge the Defendant; for it is not certified, that any Ships with Ammunition, and Men were prepared: and this is a Year after the Time it should have been prepared, and sent to *Portsmouth*. And if it were not prepared, there is no cause to charge the Defendant; and that not appearing to be done, it shall be conceived not to be done.

For if one be charged, in consideration of a thing to be done, before a certain time to pay a Sum of Money, if the thing be not performed according to the time, none can be charged for not payment of the Money after the time is past: for it is in nature of a Condition precedent, to have a Duty or Sum of Money to be paid after the Condition performed; and there, he that will have the Duty, must shew that the Condition is performed.

This appeareth in the Case of 15 *Hen. VII.* and *Coke, lib. 7. fol. 9. Ughired's Case*. And therefore, if the Ships be not prepared according to the Writ, nor Money employed for preparing a Ship for and in the Name of the County; then every one that paid any Money, either voluntarily as in obedience to the Writ, or compulsorily upon Distress, may demand their Money again of the Sheriff, or of them that received it: For as they paid their Money, so it must be disposed of, and cannot be disposed of otherwise by any Command whatsoever, altho' it be under the Great-Seal: For the Command being under the Great-Seal, to prepare and furnish a Ship to such a purpose as in the Writ is mentioned, and they paying it to that Purpose, it cannot be otherwise disposed, altho' it be more for their Advantage; for private Men having Interest therein, that cannot be taken from them, nor dispensed withal. Therefore, in *Coke, lib. 7. fol. 37. in the Case of Penal Laws*, it is resolved, That if the Penalty appointed to be forfeited upon a penal Statute, be given to the Poor of the Parish where the Offence is committed, the King cannot dispense with the Penalty for that Offence, because the Poor have an Interest therein: but if the Penalty be given Part to the King, and Part to the Poor, the King may dispense with his own Part, but not with the Part of the Poor.

Object. And where it hath been said, That it is by way of Accommodation, because the Country cannot well know how to provide to content, and perhaps with more Charge.

Respons. To this 'tis answered, They must do it at their Peril, if the Writ be legal; and then if it be done, they shall have the Benefit thereof. For as my Brothers *Weston* and *Berkley* have both agreed, if the Ship were made when the Service was done, the County for which it was made shall have the Benefit of the Ship, Ammunition, and Victuals, and of the Service of the Men, being made more expert against another Time; and the Ship may with some easy Charge serve again, and nothing lost, but the Expence of the Victuals; and the Kingdom shall be so much the more strengthened by having so many Ships made or prepared; and they may have Account of their Money how it was bestowed; and if any Surplusage be gathered, to have it restored. And

that the Law is so, that if the Money be received of the County, and not employed accordingly, the Party so receiving it, and detaining it, or misemploying it, is to pay a Fine to the King for the same, and is accountable for the Money, appears by two Records.

The one in *Hill. 16 Edw. III. Rot. 23. B. R.* where two Soldiers were indicted, for that they taking 3 *l.* a-piece towards their Arms, and the bringing of them to the Place where they were appointed to serve the King in *England* in his Wars, they went not, but tarry'd still in their Houses, and retained the Armour and the Money which they had received for that Purpose. They thereupon being convented, pleaded Not guilty; and the one was found to go in the Service according to the Appointment, so he was discharged: and the other was found, that he received the Money, and went not to do the Service, nor restored the Arms nor Money; thereupon he was committed to the Prison, and paid to the King a Fine, and found Sureties to pay the Money to the Hundred from whom he had received it.

The other was *Hill. 20 Edw. III. Rot. 37. B. R.* There two High-Constables were indicted, for that they, 5 *Edw. III.* had received six Marks of the Towns in their Hundreds, to set forth Soldiers, and had not set them forth, but detained the Money; which they denying, it was found that they had received the Money for that Purpose, and had disbursed 10 *s.* and 6 *d.* thereof towards the setting forth of Soldiers, but had retained 38 *s.* and 6 *d.* and not disbursed it: thereupon they were fined and imprisoned, and afterwards enlarged upon Sureties to pay the Money they had retained undispursed, at the next time the King commanded Soldiers from those Parts. By both which Records, being for Offences done so long before, it appeareth, that those that have received Money of the Country to prepare Ships, and not employed it accordingly, are answerable to the King and his Successors, to pay a Fine for Mis-employment of it, and are chargeable to those of the County of whom they received it for Payment thereof.

8. For the last Point, I conceive, that this *Certiorari* directed to the two that were late Sheriffs at the Time of the Assessment, and not to the Sheriff that was at the Time of the *Certiorari* awarded, who is the only immediate Officer to return the Writs, is not legal; for it is the first that hath been seen of that kind: for all Writs are directed to some immediate Sheriff, requiring him to demand of the former Sheriffs, what they did upon the former Writ; and they are to return to him what hath been done, and he to return the same to the Court, whereunto he is an immediate Officer; and the former are not any Officers. So the *Sci' Fa'* thereupon grounded, I conceive, is not good: Also the *Sci' Fa'* to warn Mr. *Hampden ad ostendendum si quid pro se habeat, & quare de prædict' viginti solid' onerari non debet*, not shewing to whom, is uncertain, and is insufficient. Thereupon I conclude upon the whole Matter, that no Judgment can be given to charge the Defendant.

The Argument of Sir William Jones, Knight, one of the Justices of his Majesty's Court of King's-Bench at Westminster, in the Exchequer-Chamber, in the great Case of Ship-Money.

IN Easter Term there issued forth a *Sci' Fac'* and this doth rehearse divers sums of Money assessed upon divers Persons in the County of Bucks, for providing a Ship of 450 Tons, with Men, Ammunition, &c. to attend the King's Navy for defence of the Kingdom.

And afterwards upon a *Certiorari* out of Chancery, directed to the Sheriff, to certify those Assessments, and the Names of those that made default of payment, Mr. Hampden was returned to be assessed at 20 s. and hath made default.

Upon this Return the King by *Mittimus* out of the Chancery sent the Writ, the *Certiorari*, and the Return, to the Barons of the Exchequer, to do as the Court shall think fit.

Thereupon a *Sci' Fa'* went forth to the Sheriff to summon Mr. Hampden to shew Cause why he should not pay the 20 s. assessed upon him: He was returned warned, and appears and demands Oyer of the several Writs and their Returns, and of the *Sci' Fa'*: and upon all this he demurreth in Law, and Mr. Attorney hath joined in Demurrer with him. And my Lord Chief-Baron and the rest of the Barons have adjourned this hither, to desire the Advice of all their Brothers of the Law; and indeed it requires Advice, for it is as great a Case as ever came to be advised on before Judges.

I say it is a great Case; it concerns the King in his Royal Prerogative, and the Subject in his Interest, in his Land and Goods, and Liberty of his Person. They that have spoken already, and they that shall speak after me, shall hardly escape the Censure of the People, of some that have some Understanding, of some peradventure that have less, and of some that have none at all, but speak according to their Opinions, Affections, or Wills. *Felices essent Artifices, si per solos Artifices judicaretur*: we should be happy to be judged by them that are learned; but when it is by them that understand not, then it is turned into Calumny and Reproach.

Some have taxed them that have gone, or will go with the King, as tho' they were fearful, and went about to captivate the Liberty of the People and take away their Goods. Some are taxed on the other side, if on the contrary, that they are given to Popularity: so as I may say as the Psalmist, *Domine, ne posuisti in lubrico loco*; for it is impossible to escape their Tongues, and between those two Decks of Censure I am like to fall. And however I may fall with my Sentence, with God's Grace I shall make no Shipwreck of my Conscience.

I am trusted by the King to display his Justice equally to all, and sworn to dispense his just Prerogative, as well as the Subject's Liberty; and if we do otherwise than as Judges, we do as false Men. If any Man offend contrary to his Oath, he doth forfeit his Lands, Goods and Tenements. I shall not therefore for any respect do against my own Conscience; but descend to give Judgment, not regarding the watry Mouths of others.

The King's Counsel, and the Counsel at the Bar, have spoken so largely to this Business, and it is spoken to by my Brothers so fully, that I can hardly say any thing but what hath been said before; so I will select some few things, to satisfy my own Conscience, tho' I cannot satisfy any Man's else; which I will do as plainly as I can, and as I ought to do. And if there had not been a variety of Contestation, I should have spoken very little; but now Necessity requireth that I must enlarge myself a little more.

1. I will state the Question, and in it put many things objected out of doors. The Question is, whether the King of England, when he perceiveth Danger to be imminent to the Kingdom, and a necessity of Defence, may not by his Writ send to all Counties as well Inland as Maritime, to require them, at the charge of the County, for a convenient time to provide Shipping, with Men and Ammunition, &c. but no Money to come to his Purse, but the Ships to go to defend the Kingdom.

The Question stands not, whether the King may draw it to be a perpetual Charge upon the Subject, which under favour he cannot; for this goeth upon a Fear of Danger, which continueth but for a Time, and therefore this cannot be perpetual; for when the Occasion ceaseth, the Taxes must likewise cease. There is a Case to this purpose, 39 Hen. VI. fol. 39. *Protection. Brooke*. A Protection granted to one for three Years, and the Question was, whether a good Protection: The Rule is, the King may grant a Protection for one Year, and at the Year's end, renew it for another Year if the Occasion require it, and so for a third Year; yet he cannot at the beginning give a Protection for three Years together. So in this case, tho' the King may, upon an emergent Occasion, command Ships, yet by reason of that Occasion he cannot make it perpetual, for the Occasion may cease.

2. In this Case, I will not exempt the King's Majesty himself, to bear a part of the Burden; the Head and Body must go together, he must join with his Subjects in the Defence of the Kingdom.

3. The Question is not, whether for a foreign War he may command this Charge; it must be only in defence of the Kingdom in case of imminent Danger.

4. It is not whether the King may lay this to draw a Sum of Money into his own Purse, for the King sends to have no Money; but to provide a Ship; and if the Sheriff accordingly provides a Ship, there is an end of the Business; all this is out of the Case.

As *Catlyn* Chief-Justice compared a Fine to *Janus Bifrons* having two Faces, the one looking backwards, the other forwards; so may I of my Argument: I shall first look backwards, and tell you *Quid fecimus*, what we have done; and then forwards and tell you *Quid faciemus*, what we shall do.

The *Quid fecimus* rests in the Advice we have given to his Majesty in the Case, and the Opinion of the Judges subscribed with their Hands delivered over to his Majesty (*which was read at large by him*.) The Advice we gave consists of four Assertions.

1. That when the Kingdom is in danger, all the Kingdom is to join in the Charge of Defence.

2. What shall be adjudged a Danger, and what not, his Majesty is the sole Judge thereof

of, and of the Means how to prevent and avoid it.

3. That in Case of Danger he hath Power to send to Inland Counties, as well as to Maritime, to assist to defend against Invasion.

4. That the King hath a Power of Compulsion, to punish those who refuse to contribute to this Charge.

This Opinion being jointly and severally delivered by us, declared by my Lord Keeper in the *Star-Chamber*, in the Presence of us the Judges, before the Lords of the Council, with an Intimation as if it were the full Consent of all the Lords of the Council before-hand, and there commanded to be inrolled in all the Courts at *Westminster*; yet we so delivered our Opinions, that if better Reason was shown to alter them, we might recede from them; for we had better *recurrere*, than *male currere*.

Now to the second Point, *quid faciemus*, whether to stand to this Opinion or not, and then whether this Book or Record will warrant it, and how far it differeth from what we have done, I shall speak my Conscience.

I am an old Man and ready for my Grave, my Tongue and my Heart shall go together. I am of the same Opinion I was then; and conceive what we then delivered was according to Law; with all Modesty submitting to those that have been or shall be of a contrary Opinion, for the Grounds of Law and Nature support it.

1. *Salus Populi est Suprema Lex. Qui sentit commodum, sentire debet & onus. Quod omnes tangit, ab omnibus debet supportari.* What do these Rules intimate else, but that when a Danger is imminent the Charge must lie upon the whole Kingdom, and the Burden must be borne by all? And that is not denied by them that were of Counsel on the other Side. It must not be every kind of Fear and Rumour that must draw this kind of Burden upon the Subjects; but such a Danger as the King in his Understanding perceiveth doth require a speedy Defence.

2. That the King is sole Judge of this Danger, and how to prevent and avoid it, is not to be literally understood, for we are his Judges deputed, but our Judgment flows from him. Judgment is settled in the King, he is the Fountain of Justice, from whence all other proceeds. *Brañton* saith, *Rex Vicarius Dei est in terra sua.* We are Judges cumulative not primitive; so he is the supreme Judge. In the Parliament the King is the sole Judge, the rest are but Advisers. 22 *Ed. III. fol. 3.* Here it is that the old Fashion of penning of Statutes was *Rex Statuit.* 7 *Hen. VII.* Afterwards it came to be with the Advice of the Lords and Commons. *Trin. 6 Hen. VI. Rot. 41. Banc. Reg.* There was a Prior brought a Writ of Annuity against one in *Ireland*, there was Judgment in the *Common-Pleas*; then at length a Writ of Error in Parliament; the Judgment affirmed; afterwards a Writ of Error in the *King's-Bench* here, and both Judgments reversed. And in the Entry of the Judgment the Record saith, *Nos cum assensu & ad requisitionem Communitatis* do reverse the Judgment. Where note, the King is the Man that is the sole Judge thereof. (By the way observe, out of this Record, the Power of the *King's-Bench* in *England*; for upon this Record it appears a Writ of Error was brought in the *King's-Bench* in *England* to reverse a Writ of Error in Parliament in *Ireland*.) This sheweth the King in Parliament is the sole Judge, the rest but Ad-

vifers. So, as I said before, he is the only supreme Judge of the Danger himself, and of the way of Prevention, whether by his Council or by his Parliament.

The third Assertion is, That the King without Parliament, in case of imminent Danger, hath Power to send to Inland and Maritime Counties to provide Ships. And I think he may do so by the Fundamental Laws, Common Laws, and Statute Laws, and by the Precedents.

First of all, for the Common Laws, (here I leave the Divines to talk of the King's Power, who under favour take more Liberty than is fitting to say in a Pulpit; for he that will have the Statute *de Tallagio non concedendo*, if it be a Statute, to bind the King, such a Man is not *Cesar's* Friend, but speaks without his Book) *Brañton* saith, That by the general Law of Monarchy, the Subjects Goods are at the King's Pleasure: But a King ruling by politic Advice, is to rule according to his fundamental Laws, which yet in *England* take not away, but preserve those *Jura Supreme Majestatis*, as to pardon all Offences, to stamp Money, and infinite others more declared in Parliament, 1 *Jac.* which Court is that *tres haunt Court*, of which none ought to think dishonourably. I leave Divines to talk their Pleasure: We are to judge according to the fundamental Laws and Customs of the Realm. There is a Book which Mr. Attorney remembered well, that the King of *England* hath more Power than any other King. If the King must by the Law defend the Kingdom, he must lay a Charge to provide for the same. The Common Law owns the King as Sovereign and Head of the Kingdom, that should defend and protect it. 1 *Sam. viii. 19, 20.* They would have a King to be adjudged by, as other Nations had, and to go in and out before them; that was the Fashion of Kings before, to judge their People by Laws, and to defend them with Arms. It is an incident Quality inherent in the King. It standeth with Nature and Reason, that the King should have the Charge of the Defence. If this inherent Quality should be taken away, how can he defend his People? If he be no more than a common Person, he cannot be a King, unless he take the Defence and Protection of his People upon him. Mr. Attorney shewed learnedly, the King is a Monarch and Sovereign, the People his Subjects: He is the Head of the Body, and therefore may command it. *Fitz-Herb. Na. Br.* and *Stamford* Prerogative, that the King protects the Bodies and Lands of his Subjects: He is *Vicarius Dei*, appointed to protect the Kingdom; so there is a Tie of Allegiance that binds every Man. *Stamford, cap. 2. of Prerogative*, the King by Law is the Protector of the Body, Lands, and Goods of his Subjects; so he hath a Liberty and Prerogative for this End, (not for his own Profit) in the Bodies, Lands, and Goods of his Subjects, in Time of Danger. 11 *Hen. VII.* Every Man in his own Person is bound to serve the King for the Defence of the Realm; and gives a Reason, and that is the Reason of Protections, because they are bound to it; therefore they should have no Harm done unto them. The King himself cannot free any Man from his Allegiance, without Act of Parliament; neither can the Subject free himself, as in *Dr. Storie's Case*. So you see the King's Majesty hath Interest *pro bono publico*, in the Person.

He hath also an Interest in our Estates, if it be *pro bono publico*; as in the Case of *L.* it was adjudged he has Power to come over Mens Lands. Now what Prerogative hath the King concerning that? and yet, according to *Popham*, the two Chief Justices and Chief Baron agreed, that where a Man hath an Inheritance in Lands and Woods, the King cannot cut his Woods for his private Use, unless it be *pro bono publico*; nor dig Gravel in another Man's Lands: but yet in Case where it is *pro bono publico*, he may do it, and make Bulwarks on their Grounds for Defence of the Kingdom.

So for Pontage and Murage, the King cannot compel the Subject to make the Walls of his own House, or a Bridge for his own private Use; but where it is commanded to be done, where the Subject hath a Benefit, there it is good: so here is the Difference of the Case, where the King commands for his private Use, or *pro bono publico*.

My Brother *Crooke* saith, the King may press Ships for his Service, in the Defence of the Kingdom, but not command Inland Counties to furnish Ships: yet there is a Precedent in *Oxford* to the contrary.

By the fundamental Laws of the Kingdom, he is the Defender of his Subjects, of their Bodies, Lands and Goods; and where it is *pro bono publico*, they are to pay towards it. If there had not been Objections that dazzled me, I should have done before this.

The Case of the Abbot of *Robertbridge* is an Allowance of this Charge, a double Charge of Lands there in two several Places. I remember in a Parliament, where I learned a great deal of Good, *1 Jac.* the King, without Consent in Parliament, laid an Imposition on Merchandize, but was in case of Necessity, *pro bono publico*.

Now to answer Objections, and those were many, my Brother *Crooke* did double and redouble them. Brother, we sit one next another, antient Judges, tho' different in Opinion. I speak out of my Conscience, as you have spoke out of yours; so, tho' there be Variety of Opinions, yet Conscience is the same.

First, saith he, the fundamental Laws of the Kingdom have settled a Property in the Goods in the Subject, that, without their Consents, this cannot be taken from them.

This doth not trench upon the Property of the Subject, if you take the Case right: If this be a lawful Prerogative in the King to lay this Charge, then how can it be said, that the Subject's Property is invaded? For if the Property *ab initio* be in the King, then the Law annexed this to the Lands and Goods of the Subject in the Beginning, and made them liable to it by a secret tacit Condition. If a Man do enter for a Condition broken, this is no divesting of the Property out of the Subject. If Goods be given to one till such a thing happen, or upon such a Condition, there is a Property in the Donee, yet it is clogged with a Limitation and Condition; and when the one or the other happens, the Property may be reduc'd or transferr'd; as in all Assessments and Rates, Goods are liable to the Payment thereof: so for the Payment of those things necessary for the Defence of the Kingdom without their Consent; for if legal, what needs this Condition? I would wish no Man to clamour, that this is to divest the Subject of the Property in his Goods; for it is nothing but what is for the Defence of the Kingdom.

VOL. I.

The next Authorities objected by my Brother *Crooke*, are the Laws of *William the Conqueror*, and Charter of King *John*, then the Statutes, then *Fortescue*; and therefrom he saith very much, that the King of *England* cannot lay Taxes upon his Subjects, without their Consent in Parliament.

And where he speaks of Taxes and Charges that cannot be imposed without Consent, some other Places of the Author do shew, that it is where the King imposeth it for his own private Use, and not in Case of publick Defence.

The next is *13 Hen. IV.* the Charges of *1 d.* upon a Cloth for measuring, adjudged void. I conceive it was not adjudged void upon that Point. True, in Parliament it was complained of as a Grievance to the Subject; but every Petition in Parliament doth not argue a Right: it may be it was *ad damnum*, yet *absque injuria*; that Case differs much from this, for there was a Charge to a private Benefit, and no Regard to the publick, which perhaps the Law will not allow, but where there is a *quid pro quo*; nor of the Case of Dice, Cards, Monopolies, those Cases nothing like this: so a Commission of Sewers may lay a Charge for the Repair of a Bank; when the Lands are overflown, and the Owners be not able, the Neighbourhood must be taxed; so in case of a Bridge.

Then the Statute of *2 Rich. II.* was objected; nothing must come to the King's Purse, nor to the King's Coffer, but it must be for the Defence of the Kingdom.

This was no lawful Charge, because the Intention was to fill the King's Coffers, which were empty, and that could not be done but by Parliament; so it is not in our Case, no Money is to come to the King's private Use.

That of *Hen. IV.* for repealing of Commissions that were awarded to provide Barringers, the Record saith only that the King's Answer to the Complaint was, *Le Roy se aviserá avec ses Signores*.

Then he cometh to the Statute of Tonnage and Poundage only for ordinary Defence of the Kingdom.

Why there should be any Difference between an Inland County and a Maritime I know not, since to the Common Defence all are equally engaged as one intire Body; and the Inland Counties have the Benefit by sending their Wools by Sea, and yet they must not help to the Defence of the Sea. As in the natural Body one Member helps another, so when the Maritime Counties are not sufficient to make Defence (as in case of extraordinary Defence they cannot be) the Inland County must contribute. Besides, the King may unite an Inland County to a Maritime, and make them but one County; is not he Lord of the Land as well as of the Sea? What was the Law before the Division of Counties? Surely it was equal in charging the whole Kingdom; for I see no Reason but an Inland County should be chargeable by Law, as well as a Maritime. In antient Times, things done upon the Sea, were tried upon the Land in the *King's Bench*, as by many Records appeareth. One is of a *Norman Robber* upon the Sea.

Object. But if this be so, the Law suffereth a greater Inconveniency, *viz.* that the King may by his Writ charge what and when he pleaseth.

Respons. This the Law trusteth the King's Goodness with, that he will not require it of his Subjects but when there is occasion; and he may do it,

so long as he continues it no longer than there is occasion.

Object. But were not Dr. Cowel and Dr. Manwaring sentenced in Parliament for such Tenets?

Respons. They were sentenced, and deservedly, but different from our Case: I was a Member in the Parliament, and was in the lower House when Cowel was sentenced. I will tell you what Dr. Cowel did: he wrote a Book, and under the Words *Prerogative, Subsidies, and Kings*, he inferred as if the King might make Laws without Consent in Parliament; and wrote against the Common Law, which the King is sworn to maintain: thereupon he was sentenced, and his Sentence was just, and I gave my Voice for it. The other was Dr. Manwaring, he preached two Sermons that the King was not bound to observe his Laws, that the Right and Liberty of the Subject are at the King's Will and Pleasure without Parliament, and that this doth bind the Conscience of the Subjects, and that they are bound to pay Loan-Money upon pain of eternal Damnation; and that they that did refuse to pay the Loan-Money, did offend against the Laws of God, and were guilty of Disloyalty and Disobedience; and that the Authority of Parliaments, was not necessary to the granting of any Subsidy. For this he was sentenced, and made his Submission. That was for raising of Money for his own Use, but this is to require his Subjects to provide Ships for the Defence of the Kingdom.

Object. The next Objection was *Coinage*, that by that Tenure great Profits arise to the King for Defence.

Respons. Shall the Defence of the Kingdom be laid only upon those who have their Maintenance out of the publick Revenue? What will the King have left to maintain himself, his Queen, his Children, Intelligences abroad? Will you strip him of all? It is true, I hold that the King, with the Subjects, must join together in the Defence of the Kingdom. If the King be rich, you should have pleaded that the King had sufficient in his Purse.

Object. Then it is objected, that there is no apparent Danger, and that this Charge is not allowable neither by the Common Law, Statute Law, or Custom.

I say, it is due by the Common Law; but will you have Danger so apparent, as *Hannibal ad portas*? Will you suffer an Enemy to come in before you prepare to resist? If once he gets in, you will hardly get him out. Is not that as much to be commended, that doth prevent a Danger before it cometh, as when it comes? Is not the Care to prevent Fire from a House before the Fire takes hold of it, as great as when it is on Fire to quench it? Therefore the King, like a good Physician, seeing a Disease growing, before it gets too much Strength prevents it.

Object. In six Weeks Time, a Parliament may be called.

Respons. Tho' it may be, yet after they meet, a long Time they spend in Consultation before they can do any thing; which would be too mischievous in a sudden Invasion: and therefore King Ed. III. in his 10th, 11th, and 12th Years, whilst the Parliament was sitting, sent forth his Writs for Aid.

Object. It was alledged by Mr. Holborne, that the Law of Nature teacheth every Man to defend himself,

Respons. What, I pray you, will you then have done, on a sudden Invasion, when Forces must be raised in *Cornwall*, some in other Parts of the Kingdom as remote, and all must meet together? If the King must expect such an actual Invasion, before such time as he sends forth his Writs to have them all in readiness, how poorly would the Kingdom be defended at that time? Our Forces would be scattered, and cannot be brought together, which thus divided cannot withstand a foreign Power.

Object. The last Objection was, that the King, at his Pleasure, may draw when he pleaseth this Charge upon the Subjects, if he say he is of Opinion that there is Danger.

Why may not the Law allow this, and trust the King's Judgment here as well as in the Case of a *Ne exeat Regno*, in which if the King commands his Subjects to stay at home, for such and such a Cause, the Cause is not traversable? *Fitz-Her. Na. B. 165. 85. 7 Hen. VII.* saith, if the King doth rectify an Act of Parliament, you cannot speak against the King's Certificate under the Great Seal; *Null tiel Record* is no Plea.

Again, God Almighty blest the King; it is against Presumption of Law, that the King, whose Heart is in the Hand of the Lord, should tell a Lye. God gives Wisdom to govern aright. Lying Lips do not become a Prince, Truth to God Almighty he owes. The Law says, the King may *nescire verum*, but not *dicere falsum*. The King may not know a Truth, but cannot speak falsely. Next *furamento strictus*, he is bound to administer Justice, and not to grieve his Subjects. Is he so unwise to charge them and himself without Cause, with providing of Ships? What Benefit comes to him by it? Surely to tell a Lye will be no Advantage to him; he were a King of Wickedness to lay a Charge on the Subject to no Purpose; thus he shall charge himself and his Subjects about nothing. Does any Man think he will put a Burden upon his Subjects without Cause? We have a good King, and our Imaginations ought to be good of him.

The fourth Assertion is, that the King hath Power to compel them to the contributing to this Charge. This Power of the King is a special Prerogative, and if good at Common Law, it taketh away the Statute, when it is *pro bono publico*, to defend the Kingdom.

The general Words of a Statute shall never be construed to extend to it; the Charter of King John shall never take away the King's Prerogative, neither the Statute *de Tallagio non concedendo*, which I agree to be a Statute, and so my Lord Coke allows it to be. Now this Power of the King, of which I argue, is a special Prerogative in point of Government; it is a *proprium* to a Scepter *quarto modo*, therefore the general Words of a Statute shall never be construed to extend unto it: as if the King hath a special Interest in Land by the Prerogative, it doth not pass away without precise Words, as the Books are infinite in it. If the King grants away Land by his Letters Patents, parcel of a Forest, without special Words, this shall remain subject to the Forest-Laws still: so many Cases may be put, when general Words

of

of a Statute extend not to a particular Prerogative. If general Words of the Statute should take away these Aids, why do they not take away the Aids of *pur faire Fitz chevalier, & pur file marier*, since that general Words may include them as well as this? But you all grant that these Aids are not taken away, and by the same reason I conceive this remains.

My Brother *Crawley* held that special Words in an Act of Parliament could not take away his Prerogative, because it would have been an Act against Reason. I will tell you what I have heard adjudged in this Case. In the Parliament held 1 *Jac.* there were two Things expressly moved: One, That there might be no Wardship or Tenure of the King: The other, That the King might not allow Surveyors. To these Questions, after long Disputes, it was answered by the whole Parliament, that such an Act of Parliament to top the Prerogative of Tenures would be void, because it is inherent in the Crown, for every Man holds immediately or mediately of the King. And 2 *Hen. VII.* an Act of Parliament to restrain the King's *non obstante* to dispense with penal Laws, as not to pardon Murder, is void; his Person and Royal Prerogative cannot be restrained by Parliament. Thus I have done with the former and larger Part of my Argument.

Now I come to see if the Record will maintain that which we have here, and I think it will bear it both for Matter and Form. First, let us see whether there be Substance enough, to shew that there is Danger sufficient for this Prerogative to require Aid and Assistance; and I think there is sufficient, the *French King*, the *Spaniard*, the *Low Countries*, all up in Arms; who knows what Danger this Kingdom may be in? and if the King say it is in Danger, it is not traversable; if the King had said no more but this, *pro defensione Regni*, without any more saying, it had been sufficient. It also recites that there were *Prædones*, *Pirates*, that took away both Men and Ships; and that foreign Provision was making to take away the Dominion of the Sea; and that all this was *ad gravandum regnum nostrum*: and therefore commands a Ship to be provided *ad defensionem regni*. Here the Danger is general, and therefore the Defence must be general.

An indifferent and equal Assessment is first to be made, and then the Overplus of the Provision to be restored according to the Writ; for until the Money be had, how can the Provision be made? Tho it has been said, let the Ships be first built, and then make the Assessment; that cannot be, for with what shall the Provision be made? The Money must do it.

For matter of Precedents, as *Danegelt, &c.* I do not much stand upon, because I had not Time to peruse them, but conclude on my former Reasons. (My Lord Chief Justice asked him what his Advice was; he answered,)

My Advice is upon the whole Matter, that the Barons finding the other Process of Court and *Sci' Fa'* to be according to the *Exchequer*, (for that I leave to them) Judgment shall be given that Mr. *Hampden* shall be charged with the 20s. with this Limitation and Condition, that none of it comes to the King's Purse, for if it do, my Opinion is against it.

The Argument of Sir Richard Hutton, Knt. one of the Justices of his Majesty's Court of Common-Pleas at Westminster, in the Exchequer-Chamber, in the great Case of Ship-Money.

THE King by his Writ 4 *Aug.* informs, that there were gathered *Pirate ac Maris Grassatores*, and that they were gathered together in hostile manner to hinder our Merchants from bringing their Goods into our Ports; and reciteth, that there are Wars abroad, and that considering these Perils and Dangers, and that the Defence of the Kingdom consists in the Defence of the Sea, which at all times belonged to this Kingdom, and that the Charge of Defence is to be borne by all; and the King is loth that in his Time such an Honour as the Dominion of the Sea should fall away or be diminished, and not be defended, hath therefore sent a Writ to the Sheriff of *Bucks* (as to other Counties) to provide a Ship of such a Burden against the 1st of *March*, and to come to *Portsmouth*, and there to remain for 26 Weeks, and to do as shall be directed them for the Defence of this Kingdom. And the Writ directed, that all that are Inhabitants shall be assessed for the providing of this Ship with Men and Ammunition.

By force of this Writ, Mr. *Hampden* being assessed at 20s. there went forth a *Certiorari* a Year and a half after, directed to the Sheriff of the County of *Bucks*, to certify what Sums they had assessed by virtue of the said Writ 4 *Aug.* and there are two several Certificates returned into *Chancery*; one, That Mr. *Hampden* was assessed at 20s. the other, That he hath not paid it. 5 *Maili* 13 *Car.* the King, by *Mittimus* out of *Chancery*, recites, that when he awarded the Writ 4 *Aug.* *Salus regni periclitabatur*, and that it was for the Defence of the Kingdom and Security of his Subjects; and doth send this Writ 4 *Aug.* the *Certiorari*, and *Mittimus*, to the Barons of the *Exchequer*, and commands the Barons to do that which appertains to Justice to be done. Whereupon a *Sci' Fa'* is awarded; whereunto Mr. *Hampden* hath appeared, and demanded Oyer of the *Sci' Fa' Mittimus, Certiorari*, and the Writ 4 *Aug.* and hath demurred generally; and Mr. *Attorney* hath joined in Demurrer: and how this *Sci' Fa'* lieth, is the Question.

And I am of Opinion that this *Sci' Fa'* doth not lie, and that Judgment in this Case ought to be given against the King. For the better understanding of the Court, I shall observe in the Method of my Proceedings,

1. Whether a Charge of this nature may, by the King, be imposed, by original Writ only under the Great Seal, without a Parliament. Wherein I hold it cannot be proved by any Authority or Reason, unless in time of actual War and Invasion.

2. I will answer those Objections only made formerly by them that have argued, that these Statutes do not extend to this kind of Prerogative, and that this Prerogative is not taken away by any of these Statutes.

3. I will answer the Precedents, both by Precedents of equal Nature, and by some Reasons, where-

whereupon I will conclude, that this Prerogative and Power, which is Monarchical, is included and taken from the King, and that must be done by Parliament.

4. I will answer some Objections that now have been raised, and were before made by Mr. Solicitor.

5. I will just open the Writ, that it neither containeth Matter sufficient in the Writ itself, nor is there Matter to warrant any such Levy as is pretended; neither is the same lawful, nor can it be mended by *Mittimus*, nor can be commanded by those Sheriffs that are no Sheriffs in this Case upon the Matter.

Now, as my Brother Jones hath taken a great deal of Pains and Time, I will not be drawn from my own Order by what he hath said; but answer him in his Argument.

1. I say, that this Power of assessing of Money, being a great Charge, cannot by the Law at this Day, unless in time of actual War, be imposed upon the People by Act of Parliament.

The Acts of Parliament that have been mentioned, the first was *Mag' Char'*, which is an antient and great Statute; it cometh unto us with an *Inspecimus* from *Ed. I.* confirmed thirty times; the Words are, *Dedimus & concedimus has libertates subscriptas in perpetuum. Nullus liber homo capiatur vel imprisonetur aut dissesietur de libero Tenemento suo vel libertatibus, &c. aut aliquo modo distringatur, aut in carcerem mittatur, nisi per legale iudicium parium suorum, vel per legem terræ.* King William the Conqueror made these Laws, and swore Men to those Laws. And then King Edward, in the last Chapter, commands them to be kept, and he will keep them so long as concerned him and all his People for ever. And for this they granted him a fifteenth Part of all their Goods, and it is a Statute here to this Day, *Stamford fol. 172.* to be tried *per Pares*, as the Barons at this Day have for their Trial the Privilege of this Statute.

The next Statute is *25 Ed. III. chap. 5.* reciting, 'And forasmuch as divers Persons, &c. we have granted for us and our Heirs, that we shall not draw such Aid and Pride into Custom for any thing done heretofore, by any other Rule or Precedent that may be found.' So there is now not only for Taxes for War, but for any other Business whatsoever, *forſque de commune conſent de tous la Realme*, saving the antient Aid and Prizes due and accustomed. And this saving is nothing, for this Statute extends to no Particular; for if any extend to Aid by Tenure, all *England* is not bound to this, but some few. The Statutes extend to such Aids as the whole Kingdom is subject unto; none will say that all the Kingdom holds of the King *pur filz marier*, &c.

The Statute of *34 Ed. I.* concerning certain Liberties granted by the King to his Commons, this is printed *Anno 1534. 25 Hen. VIII.* No Tailage to be taken or levied to us, our Heirs or Successors, without the Good-will and Assent of the Archbishops, Bishops, Barons, and other Burgeſſes and Freemen of the Realm. This Statute hath been quarrell'd withal, but the Words are very effectual.

The Statute of *14 Ed. II.* agreed to be perpetual by my Brother Jones, for my part, I can see no Reason why it should be so. The Statute reciteth, That whereas the Barons and Commons of the Realm have granted of their good Free-will the King an Aid towards his Wars as well on this side

the Sea as beyond, of the ninth Sheep, the ninth Sheaf, &c. and the ninth Part of all their Goods, we will and grant for us and our Heirs, that the same so charged shall not be brought into Example to make any Aids, he doth not say such Aids, but by Consent in Parliament. No Man can say against these Words, they are so full and absolute.

The Statute *25 Ed. III.* enacts, that none shall be compelled to find Hobbellers; *Si il ne soit per commune conſent in Parliament.* The Reason given in the Parliament-Roll, is very observable; *Car ceo est incounter le droyt del Royalme.* These Words are in the Roll, yet left out in the printed Statutes, but the Reason I know not. This Statute of *25 Ed. III.* is confirmed by the Statute *4 Hen. IV.*

The Statute *1 Rich. II.* a very good Statute, tho' in a young King's Time, enacted and done by the Lords and Commons: There have been many Inventions to charge the Subject. Now *Hen. IV.* invented many Benevolences, and that is recited, That whereas divers Inventions, &c. (all the World I think is full of Inventions) it is enacted from henceforth, that the Subject shall no ways be charged with any such like Charge. They gave it the Name of Benevolence, but indeed they were Impositions, and great Charges were collected with that Name.

I conclude with that Statute of this King, the *Petition of Right*, which reciteth the Statute *de Tallagio*. Very many particular Things are mentioned there, Men are not to be compelled to lend Money without common Assent in Parliament; which is a Confirmation of these Statutes. I have done with the Statutes.

For the Authority of the Year-Books; I will confirm those two Authorities cited by my Brother Crooke, tho' my Brother Jones slight the Authority, *13 Hen. IV.* the principal Case being then a Grant of an Office of measuring of Cloth and put in Practice, and being granted out of Parliament condemned to be void; for the King cannot grant any common Charge on his People but in Parliament. And tho' my Brother Jones said, that perhaps such a Charge was *Dammum*, yet not *Injuria*; surely had not there been more in it, it had not been damned as illegal.

The other Authority is that of *Fortescue*; tho' my Brother Jones, in that Book, doth omit that which is material; for that Man he was sworn Chief Justice of *England*, and afterwards made Chancellor, who saith expressly in his 9th Chapter, That the King of *England* cannot alter any Law; That he governeth his People, not only by Royal, but by Politick Power, and can lay no Charge upon them but by Parliament. The King can change no Law, nor make Land Gavel-kind which is not, nor make Land divisible which is not; which he might do if it were to be done by Power Royal. And *Fortescue* concludeth with this excellent Saying, *fol. 26. 6.* 'Rejoice therefore, Sovereign Prince, and be glad; for the Law of your Realm administret to you and to your People no small Comfort and Security, &c. Prerogative strengtheneth the Subjects Liberty, and their Liberty strengtheneth the King's Prerogative.' *Cap. 38.* is full and strong against the King, which my Brother Jones was pleased to omit. The King may by his Officers take Necessaries for his House, nevertheless he is bound to pay for them; for by the Law he ought not to take

take away any of the Subjects Goods without making Satisfaction for the same; neither can he lay any Taillage, Subsidy or other Burthen, or make new Laws, or alter old, without express Agreement of his People in Parliament.

I have done with the positive Part of my Argument. I will not trouble you long; I will answer some Objections now made, and heretofore made against these Statutes.

First, For the Statute *de Tallagio non concedendo*. True, it is very probable that it was no Statute, but an Extract out of the Statutes of 25 Ed. I. which is upon Record, the other not being to be found upon the Roll. It was averred *una voce*, it was a Statute, tho' not without Probability it was no Statute, as it was learnedly observed by Mr. Solicitor, in respect of the King's Absence beyond the Seas. Only I collect this out of his Argument that he thought that that Statute did reach very far against the King, which he could answer no way, but to take it away; therefore he thought it a Statute of some Force.

Next, my Brother Berkley would have the Statute of 14 Ed. III. to be but a temporary Statute, and but during the Continuance of the Wars. The 1st Part of the Statute is absolute, but the latter part is but a temporary Statute, and but during the Continuance of those Wars. But it must (the former part thereof) needs be perpetual, for it is granted for the King and his Heirs.

The next Objection is by my Brother Jones and my Brother Crawley, That this Power Royal is part of the Prerogative appertaining to his Person, and inherent to the Crown, a *proprium quarto modo*, so inseparable, that an Act of Parliament cannot take it away.

I confess there are some inseparable Prerogatives belonging to the Crown, such as the Parliament cannot sever from it. And I will prove to you out of Books, Cases and Statutes, that the King cannot release his Tenure *in Capite*. It was endeavoured that a Law should be made that the Court of Wards should be shut up, it was resolved it had been a void Law; such is the Care for the Defence of the Kingdom, which belongeth inseparably to the Crown, as head and supreme Protector of the Kingdom: So that if an Act of Parliament should enact that he should not defend the Kingdom, or that the King should have no Aid from his Subjects to defend the Kingdom, these Acts would not bind, because they would be against natural Reason. But in our Case here, there is no such thing; for there is no Act that restrains the King to lay any Charge at all, but only ties him to one Means, by which he would come by it, to wit, by Parliament. If before the Statute a Man alien Land held of the King without Licence, the King shall seize the Land, and have it forfeited to him and his Heirs for ever. Now by that Statute the Prerogative is restored to a reasonable Fine only; this was as inherent in his Person as any thing could be, and yet it is restrained by Parliament.

Before *Mag. Char.* the King might take any Man's Goods for his Provision, and cut any Man's Woods down, to build or repair his Castles: yet since that Statute it is enacted, *Nullus Vicecomes nec Ballivus noster capiet equos, &c. nisi reddat liberationem. Nec capiemus boscum alien' ad castra vel ad alia agenda nostra, nisi per voluntatem illius cujus bosus ille fuerit.* And to this Day this Sta-

tute is of force, that the King cannot take these things, nor use his Prerogative.

The Prerogative of *Nullum tempus occurrit Regi*, is a great one; yet in some Case of Lapse of Churches, this Prerogative is taken away by the Statute of 25 Ed. III. cap. 1. where the King granteth for him and his Heirs not to present but in his own time: and this being pleaded 11 Hen. IV. fol. 7. is adjudged against the King, notwithstanding the Rule of *Nullum tempus occurrit Regi*.

The Statute of 7 Hen. VIII. c. 3. concerning Restraint of Informations, and that of 21 Jac. whereby the King excludeth himself to make a Title to any Land, whereof he had not been in possession within 60 Years before this time, he was tied to no time, but unlimited; yet this great Prerogative is thus bound. 30 Ed. III. cap. 10. Parliaments to be holden every Year one, or oftner if need be, because of divers Mischances that may happen. It is to be acknowledged as a gracious Favour from his Majesty to his Subjects, that he would admit of this Case to be argued in any ordinary Court of Justice, and not refer it to the Parliament, to which Place all such weighty Causes are most fit to be referred. I am satisfied in my Conscience he would do nothing in this Case, if he were justly informed, or may be informed he ought not to do it by Law.

The Laws of *England mutari non poterunt*, without consent of Counsel gathered together: *Si inusitatum emerit*, saith *Fortescue* (as the Case of ours is) it is referred to the next Parliament; *Si aliquid inusitatum*, then it is to be put to the Parliament.

2 Ed. III. fol. 7. There ariseth a new Question concerning the Statute of *Winchester*, about Recovery by Actions against the County where Robberies were committed; there the Case in respect of the Difficulty was referred to the Parliament, and there the Sheriff was warned to have his Money.

You shall see a notable Case in the Register fol. 224. among the Writs, of two that were at *York*, and served by a Clerk in the Chancery there to appear at *Rome*; and because of this Contempt they were committed to Prison, and a Writ came to bail them, returnable *coram nobis in Parlamento*: so Matters of Difficulty were adjourned into Parliament.

Westminster 2. cap. 28. *In nova causa fiat novum remedium in Parlamento.* To resolve Cases of difficulty, Statutes have enacted that there should be two Parliaments every Year, viz. 4 Ed. III. c. 4. which was a great Confirmation of the Liberties of this Realm. *Littleton* 110, 180. Parliaments ought to be frequent. I know not how it comes about, that this Kingdom which hath thus long flourished by Parliaments, should now forget her frequent kind of Government by Parliament, whether by Reason of some thing past, or some Disaster now fallen out, that this which is the antient way (I do not say that Parliaments is the Government, but Kings have governed by them) is so much out of use now-a-days.

I do not prescribe Power to the Parliament to govern the Realm, but the publick have been governed by the Parliament. There was seen too much of the ambitious Humour of some in the last Parliament, that stirred up nothing but Confusion and Discontentment as we now feel it to our great Prejudice.

Now

Now I come to Precedents. *First*, that of *Danegelt* hath been objected; of which there were two Kinds, as Sir *Henry Spelman* in his *Glossary* observes; the one *ad pacendum*, the other *ad coercendum Danos*: great Sums of Money they had to go home again, from 12000 *l.* to 48000 *l.* *per Annum*; and it was raised in three Years: it was continued until King *Stephen's* Time; at which time 'tis said it was released. For my part, I see not but that it might now be put in use as formerly, had it not been for those Statutes of *Ed. I.* and *Ed. III.* before-mentioned: for it was not laid down when the Danger ceased, but was continued and taken up by Princes when they had a mind to it, as by *William the Conqueror*, and *William Rufus*; but since these Statutes it was never taken (*and here he read the Words of the Statutes.*) So if these Statutes took that away, why do they not bind in our Case? Which is a full Answer, in my Opinion, to that and all other Precedents before these Statutes: there have been shewed 200 on each side; but I say, it had been better they had never made use of them.

So to all the Precedents made before the Statute *de Tallagio non concedendo*, I give this general Answer, to be of no force.

For the Precedents in *Henry III.'s* time, which were many; yet in those Commissions for preparing of Gallies, after they were made they were at the King's Cost: This may be done at this time.

And with the Statute of 14 *Ed. III.* I answer those Precedents of the 10, 11, 12 *Ed. III.* and by the way observe the Times that were then, that Statutes were forced to be made to remedy those Evils; and surely those were the Burdens and unreasonable Taxes which the King, in the 13th Year of his Reign, confessed he had oppressed his Subjects with, and desired they might be forgotten, because he was urged to it by his Necessities, and not for any ill End of his own, (*and so he caused the Record itself to be read openly before all the Judges.*)

2 *Hen. IV.* 2 *Rich. II.* A general Assembly called and resolved, That Money could not be raised but by Parliament. Since this time, all the Precedents that have been vouched were for arraying Men, and putting them in readiness.

28 *Hen. VIII.* There were some forced upon their own Charges to go to suppress some Rebels in *Lincolnshire*, but afterwards were recompensed for their Charges; saith the Record, Our Pleasure is to send a Messenger, and on a Bill of Charges he shall satisfy them. I do agree, and there are many Statutes that Men should be arrayed, as the Statute of *Winchester*, which are only Preparations to make Men ready.

Now for that which hath been urged by Mr. Attorney excellently well, That the King, by the Law of the Land, hath a Prerogative in the Lands and Goods of his Subjects; so that in some Cases, the Sheriff may for him break open a Man's House, and the like, because otherwise he cannot execute Justice.

True, the King hath such a Prerogative, and fit it should be used; for otherwise Justice could not be administered, as it is in many Cases, the Sheriff, tho' a Verdict by Default, hath Power by Prerogative of the King to break into the House, and give Possession; for otherwise Justice could not be administered, if all Laws were contemned: for which Contempt the King may use his Power.

Again, the King of his own Charge maintains his Courts of Justice, and is bound so to do, 39 *Hen. VI.* 34 *Hen. VI.* And in lieu of these Charges the Law gives him those Fines and other Duties; so there is upon the Matter a *quid pro quo*: But where there is an Interest in a Subject, he cannot take it away without his Consent, as he may do it in Murage and Portage, and the like; for there is a particular Benefit to the Subject. So I think I am almost at an End of answering the first and second Part of the Precedents; the antient Time was one Way, and the modern Time another Way.

In *Ed. IV.* *Ric. III.* *Hen. VII.'s* Times, they are all for Wages of the Mariners, certain Allowances they had; what a Week, what a Day is set down.

But you say, here in this Case appears no Money to be paid by the Subject, but only for a Ship to be provided by the Sheriff, and not any Money to come into the King's Purse.

I must conclude this Part with what is agreed by all, That if this Writ had been to levy Money, it had been void.

As I do take it, the Writ is to prepare a Ship of such a Burden; so the Ship is the Matter: Then give me leave to say this, and I say, as it appears plainly by the Record, there was no Ship prepared at all; then if no Ship, no Writ can be had against him for Disobedience. 'Tis known to all the World, 'tis not Ships, but Ship-Money: Ship-Money is in every Man's Mouth. It hath a Name of preparing Ships, but the End of it is to prepare Money, as in *Yorkshire* twelve thousand Pounds.

If the Provision of a Ship had been expressly alledged, it might have been traversed, and therefore Mr. *Hampden's* Counsel could do nothing but demur; and by demurring, they confessed nothing but what is materially and sufficiently alledged, so that it might have been deny'd by a Traverse.

But you will object, That I did subscribe to a contrary Opinion, and set my Hand unto it.

To this, for my own part, I must say, and I can truly say it, 1. My private Opinion was ever against it. I did subscribe, but it was but for Conformity; for it is known to all, when a great Number meet together, the Judgment is that which the greater Number saith: Besides these Words to which we subscribed are no wise pursued.

2. Our Opinions were very suddenly required; for the King's Letter bears date *Feb. 2.* and our Opinions upon it bear date *Feb. 7.* following; and it was in a Case wherein we never heard any Argument: and we usually do, and God forbid but we may dissent from our private Opinions upon a better Reason heard. But I am of the same Opinion now that I was then.

But it will be said, we might have done it more advisedly. No Man of us but sometimes delivers his Opinion, and yet after we have heard an Argument, have changed our Opinions, and gone contrary to our former Judgment.

3. If after any Arguments heard I had been of the same Opinion that was delivered, yet this Writ doth not pursue the Direction thereof; for tho' we agreed, that the King might charge in case of a general Danger, yet this was, and is intended not a Danger of Pirates, but an imminent Necessity, and apparent Danger, which could not be avoided. For I do agree in the Time of War, when there is an Enemy in the Field, the King may

may take Goods from the Subject; such a Danger, and such a Necessity, ought to be in this Case, as in case of a Fire like to consume all without speedy Help, such a Danger as tends to the Overthrow of the Kingdom. Give me leave to say, that Kings of England have exercis'd great Power in taking this to themselves. 17 Hen. VIII. in the Cardinal's Time, it was counted lawful to send forth Commissions throughout England, to take a sixth Part of the Subjects Goods; whereupon many upon Refusal were sent to Prison; the Lord Cobham among the rest sent to Prison from Huntington to London: at length Norfolk and Suffolk grew to such a Heat for taking away their Goods in that undue manner, that the King was forced to call a great Council, who suppressed those kind of Writs; and the King laid the Fault upon the Cardinal; and the Cardinal said it was the Advice of the King's Council, and they deny'd it; so he bore the Shame.

So in the Time of Queen Elizabeth, who was a gracious and a glorious Queen, yet in the End of her Reign, whether through Covetousness, or by reason of the Wars that came upon her, I know not by what Counsel, she desired Benevolence; the Statute of 2 Ric. II. was pressed, yet it went so far, that by Commission and Direction Money was gathered in every Inn of Court; and I myself, for my part, paid 20 s. But when the Queen was informed by her Judges, that this kind of proceeding was against Law, she gave Directions to pay all such Sums, as were collected, back; and so I (as all the rest of our House, and as I think of other Houses too) had my 20 s. repaid me again: And Privy-Counsellors were sent down to all Parts, to tell them that it was for the Defence of the Realm, and it should be repaid them again.

Now for the Exceptions to the Writ itself, I must answer my Brother Berkley, That no Allegation afterwards (if the Writ be not good) will help it. The Writ is said to contain Matter sufficient, *Quia datum est nobis intelligi quod quidam pirate naves & bona subditor' nostror' &c.* and lead our Men into miserable Captivity, and provide Ships, Mariners, &c. *ad gravandum regnum nostrum.* Now here's nothing for the Defence of the Realm, no *cognoscimus hostium adventus*; as the Writs did antiently run.

Again, Pirates are to be withstood with ordinary Defence, which appertaineth to the King himself; but for extraordinary Defence against Invasion, when the Kingdom is like to be overthrown, there indeed the whole Kingdom is to contribute to the Defence. And our Resolution was, when such a Danger was apparent, the whole Kingdom in Danger, then the Defence to be extraordinary.

But you object, That tho' there be no Danger set forth in the Writ, yet in the *Mittimus* it is certify'd, *Quod salus regni periclitabatur.*

The Writ issued 4 Aug. 11 Car. the *Mittimus* came not out till near two Years after: Now the Counsel perceiving the first Writ was not sufficient, they politickly add to the *Mittimus* this Clause of *Salus regni periclitabatur*: so this coming so long after, cannot make that which was not legal *ab initio*, to become good by Matter *ex post factum*; this could not be helped by any subsequent Matter, as in Case of a Fine, &c.

This was much stood upon by my Brother Berkley; but I shall answer him with two Cases not to be deny'd: The First, Vernon's Case in

the 4th Report. A Man conveys Land to the Use of himself for Life, the Remainder to *J. S.* for Life, the Remainder to his Wife for her Jointure; tho' in this Case *J. S.* die before her Husband, so that now it falls out to be as advantageous to the Wife, as if it had been limited her immediately after the Death of the Husband: yet it is resolved, because it is not so limited in the Beginning, no good Jointure to bar her of her Claim to her Dower.

Also in *Chenies* Case, 5 Report. A Will uncertain (and so not good) shall not be holpen by an After-Averment subsequent to alter the Estate: So it is in our Case, if the Writ were not legal when it first issued, no subsequent Matter shall make it good.

The Writ commands the Sheriff *& quos rebelles invenerit* to imprison, and to distrain all such as refuse to pay. This is directly against the Statute of *Mag' Char'* none ought to be distrained or imprisoned, but by the lawful Judgment of his Peers, and according to the Laws of the Land; 'twas never contained in any Writ before, nor can any such Writ be maintained.

Besides, the Words of the Writ are to rate every Man *secundum statum & facultates*; shall the Sheriff be a Judge and Party? If the Assessment be done according to the Writ, he must be Judge and Party: Never such a Writ before. All Sheriffs must pay nothing themselves, or every Sheriff must assess himself, 8 Hen. VI. *Dyer* 320. So, for the Reasons aforesaid, I hold the Writ to be against Law.

Again, no Ship was prepared: If it had been prepared, it had been their own Goods; if not, it might have been pleaded, that there was never a Ship; and then the Sheriffs might have been punished for not obeying the King's Commands.

It hath been said, he hath confessed all Matters contained in the Writ; whereas in a Demurrer he confesseth no Matter of Fact, but what is sufficiently set down, 30 Eliz. *Coke* 23. resolves the same.

But to the Writ of *Sci' Fa'* I conceive it not legal; no such Writ can go forth to two Sheriffs of one County, they being neither of them Sheriff at this Time; for it went out after they were out of their Sheriffwick: therefore some Return should have been made by Inquisition. I never did see or hear of any Writ that went to two Sheriffs of one County, as it was to *Bucks*; and so two Sheriffs made two several Returns.

Again, this Money cannot be levied by *Sci' Fa'*, because the Writ directs other Means, either to distrain or to imprison; therefore not by *Sci' Fa'*, for it is contrary to the Words of the Writ. And seeing the Sheriff hath not followed that Direction, he must answer the Contempt.

But here to answer my Brother Trevor; I do agree in some Cases of a Certificate, or Presentment, that a Bridge was out of Repair, or a Highway stoppt, there shall go a *Sci' Fa'* upon that; but that tells to whom the Money shall be paid. But here the Writ doth not demand the Money to be paid to the King for not preparing a Ship; that must be by Office or Inquisition on Record, if a legal Certificate, as it is. 2 Ed. III. fol. 2. The King commands the Sheriff of *Leicester* to summon *J. S.* &c. to come and meet him with Aid, to go into *Scotland*; he spent the Money to a great Value: There went a Writ out of the Exchequer to attach this Man: yet after long Debates it was held

held fit, the King must be informed by Matter of Record.

I agree, that the King, as he is Lord of the Sea, may lay Impositions; but then he ought to defend the Merchants Goods from Pirates. That famous Case of *Mick' 4 Jac.* in which Case I was of Counsel, of an Imposition of 5 s. a Tun on Currants, one *Bates* stood out, and would not pay it; adjudged that that Imposition was lawful, for the King may lay an Imposition; for he hath the Rule of the Sea, and hath Power to hinder Merchants to traffick; and if they traffick, he secures their Goods.

To conclude with that which my Brother *Berkley* said, that the Subjects of *England* are free Men not Slaves, free Men not Villains. Here is no apparent Necessity of any Invasion; therefore by Law, they cannot be thus compelled to part with their Interest in their Goods. If there were any apparent Necessity, they were without Limit or Stint.

Thus have I, with as much Perspicuity as those Imperfections which attend my Age, would give me leave, set you forth my Reasons; and without any farther Protestation I conclude, both for Matter and Form, that you are not to give Judgment for the King.

The Opinion of Sir John Denham Kt. one of the Barons of his Majesty's Court of Exchequer, in the great Case of Ship-Money, presented in Writing.

May it please your Lordships,

I Had provided myself to have made a short Argument, and to have deliver'd my Opinion, with my Reasons: But by reason of want of Rest the last Night, (my old Discafe being upon me) my Sicknes and Weaknes are greatly increased, inso much that I cannot attend the Business, as I desired. And if my Opinion be required, it is for the Plaintiff.

*Serjeant's-Inn, Fleet-Street,
26 May, 1638.*

Sir John Denham's second Certificate, directed to the Lord Chief Justice Brampton, 28 Maii 1638.

My Lords,

U Nderstanding that some Misconstruction was taken by some, of the Declaration of my Opinion, which I desired your Lordship upon the last *Saturday* to deliver in my Name; for further Satisfaction therein I have sent again, altho' I was most desirous to have passed my Vote in silence in this Work of weight, by reason I heard not the four last Arguments: yet I delivered my Opinion for the Plaintiff, which I took to be Mr. *Hampden*, by reason it appeareth by the Record that he coming in upon Process, *Queritur de colore premissorum graviter vexatum & hoc minus juste*; which satisfied me that he was Plaintiff; and therefore I now declare my Opinion for Mr. *Hampden* who did demur.

I shall only deliver these two Reasons for the maintaining of my Opinion. The 1st is, that the

King's Majesty is *sola & suprema Justitia regni*, and the Rule of the Law is and hath always been, that his Majesty can do no Wrong; and thereupon ariseth another Rule of our Law, which I gave for my second Reason.

The King's Majesty being of a Corporate Capacity, can neither take any Lands or Goods from any of his Subjects, but by and upon a Judgment on Record, (according to our daily Experience in the Exchequer) there must precede some Judgment in that or some other Court of Record, whereby his Majesty may be intitled either to the Lands or Goods of a Subject, as namely where Seizure of Goods is made for his Majesty either upon Outlawries, Attainders, or Matters of the like Nature; as in Cases of Seizures in the Court of Exchequer, where Seizures are given by Statutes; yet without a Judgment in that Court upon a Trial for the King, the Goods are not to be recovered to the Use of the King as forfeited.

Upon Consideration whereof, and comparing the same with his Majesty's Royal Writ, I find no Judgment thereupon had nor given; which were the chiefest Reasons of my Opinion for Mr. *Hampden*.

The Argument of Sir Humphry Davenport Kt. Lord Chief Baron of the Exchequer, in the great Case of Ship-Money in the Exchequer-Chamber.

My Lords,

T H E R E have appeareth unto us upon this Record many several Arguments, and excellently made; it comes now to my Course, to express my own Opinion.

It appeareth upon this Record, that *Pasch. 13. Car. a Sci' Fa'* issued out of the *Exchequer* to the Sheriff of *Bucks*, reciting, Whereas several Sums of Money mentioned in a Schedule to that Writ annexed, by virtue of the Writ 4 *Aug.* assessed upon several Persons for providing of a Ship, were not paid, whereby he was commanded, *quod scire faceret*, to those several Persons in the Schedule annex'd nam'd, to appear in the *Exchequer*, *Octab' Trin' 13 Car.* to shew Cause why they should not pay those Sums of Money assessed upon them.

Thereupon a *Certiorari* 9 *Mar. 13 Car.* was directed to the Sheriffs of *Bucks*, to certify the Sums, and the several Persons upon whom they were assessed, and of the Warning given unto them to pay the same: The *Certiorari* being returned, and in Court in *April 13 Car.*

Then on 5 *May* there came a Writ of *Mittimus* out of the *Chancery*, by which the said former Writs were sent to the Barons of the *Exchequer*; which *Mittimus* recites the Writ 4 *Aug.* and not the Record itself: And the Barons are commanded, that they should thereupon proceed, as by the *Mittimus* is required.

Upon these Records, thus certify'd, there issued out of the Court of *Exchequer* a *Sci' Fa'* that is now in Debate, which was awarded against the Parties mentioned in the Schedule; and Mr. *Hampden* being returned, hath appeared, and demanded Oyer of the Writ 4 *Aug. 11 Car.* of the *Certiorari* 9 *Mar. 13 Car.* and of the *Mittimus* 5 *Maii 13 Car.* Upon Oyer of these, and reading them unto him, as was demanded, Mr. *Hampden* hath

hath demurred in Law, alledging, That the Writs, and every of them, and the Returns of them, and the Matters therein contained, are not sufficient to charge him with the Sum of 20 s. on him charged: And thereupon demandeth Judgment, if the King will be pleased any further to proceed upon this Writ.

To this Demurrer, thus tendred by Mr. *Hampden*, Mr. Attorney hath joined, alledging, That the Writs mentioned, and all of them, and the Matters therein contained, are good and sufficient in Law to charge the Defendant with the Sum of 20 s. and demandeth Judgment thereupon for the King; and that the Defendant *Hampden* should be charged with the Sum of 20 s. and thereupon make Satisfaction; but to whom is not expressed upon the Record.

This Demurrer being thus warily joined on both Sides, there have been several Arguments thereupon at the Bar and Bench, excellently (no doubt) argued, and very fully. There hath been introduced and pressed to the Court (whereof there have been several Notes delivered) a Number of Records appertaining to the Question; so far forth, that in one of the Arguments at the Bar, there were excellently well remembered, at the least above 300 Records, and great Authorities.

Upon this Record, the Demurrer being thus joined, my Purpose is, after my Meanness, (not being able to give an Account of every Particular) to make a summary Collection of what I shall say, and with that Shortness and Brevity that appertains to be (the Weight of the Cause not deserted) upon the Duty of my Place, and upon my Oath, which I have learned and hold to be *ligamentum fidei inter Deum & animam*, to declare unto this Court what I do conceive to be just upon the Question arising upon the Records, wherein my Meaning is to retain myself unto the Parts of the Record.

Judgment is not here to be given, but a judicial Advice; and according to Number of Voices here, Judgment must be given in the Exchequer, without Respect to any of our particular Opinions who sit in this Court. I shall do my best Endeavour to open unto you such Questions, as do appear to me upon the Record to be aptly and fitly debated before us.

The State of the Question out of the Record will appear to be this, That 4 Aug. 11 Car. there issued out of Chancery a Writ, not returnable, unto the Sheriff of *Bucks*: This Writ was *inter Breva irretornabilia*, according to the Stile in that Court, and in the Court of Exchequer. By this Writ 4 Aug. which I do conceive to be the original main Ground of this Record, it appears what was the Occasion and Ground that Writ was awarded. It was touching and in respect of certain grievous Incurfions by the Pirates upon the Seas, who commit Depredations, and take the Goods and Merchandize, both of the King's Subjects and others that traffick here, and carry them into Captivity; and this is said to be to the great Damage of the Kingdom.

That the Times were dangerous, and hostile Times, *tempora hostilia*; and therefore, it was fit there should be a convenient Remedy provided by the Kingdom for Defence thereof: And thereupon, in that Writ, two several Mandates or Commands are imposed.

The First was a Command and Direction to the Sheriff of the County of *Bucks*, and to the

Mayor of *Buckingham*, and to the Bailiffs and Burgessees of *Chipping-Wiccombe*, and Parishes of the County of *Bucks*, & *pro omnib' hominib'* of those Towns, and all others dwelling in that County; these are the Persons who are charged. And by that Writ, 4 Aug. they were charged with this Particular, That they should before the first of *March* then following, at their own Costs, prepare and provide a Ship of War of 450 Tons, furnished and fitted with Men, Ammunition, and Victuals, to be brought to *Portsmouth* at their Charge, at or before the said first Day of *March*; and from thence, to be maintained at their own proper Costs and Charges, for the Space of 26 Weeks then next following, to attend such noble Persons, to whom the King should be pleased to commit the Custody of the Sea, and to pursue their Directions.

The Second sort of those two Mandates descends from the Persons to whom the Writ was directed unto some few, and that is upon the Matter to the Sheriff of *Bucks*, and to the Mayor of *Buckingham*, and the Bailiffs and Burgessees of *Chipping-Wiccombe*: To these is given and limited a Power by the Writ, distributively, as therein is appointed, respectively to tax and assess the whole County, *secundum statum & facultates*: And those that they should find to be Rebels, they should distrain them, or by any due Means commit them to Prison, there to remain until his Majesty sends forth an Order for their Deliverance. This I do conceive to be the End of those two Mandates mentioned and comprized in the Writ 4 Aug. 11 Car.

After this Writ 4 Aug. 11 Car. almost a Year and an half, then cometh the *Certiorari* out of Chancery, dated 9 Mar. 12 Car. directed to the Sheriff of *Bucks*, who, with the other Referees, should certify unto the King the Names of such Persons as were assessed, and what they were assessed, and who have performed the Assessment, and who not. That Writ was returnable 26 April then next following. And therein Mr. *Hampden* appears as a Defendant to the *Sci' Fa'*; therein was he certified to have been taxed to the Sum of 20 s. for his Lands in the Town of *Stoke Mandevile*, and that he did refuse to pay it, and did not pay it unto him, nor any of the Collectors that were appointed.

This being returned into Chancery, and no Order there made, or any Rule, that the Sum imposed on Mr. *Hampden* should be paid, 5 Maii then following, in the same Term cometh a *Mittimus*, reciting the Effect of those Writs, which is directed to the Lord Treasurer and Barons of the Exchequer; herein the Tenor of the Writ (and not the Writ itself) is certified into the Exchequer; and withal it certifieth the rest of the Record, together with the Schedules annexed to those Writs; and by that it is commended to the Court that they should proceed to do for the further Receipt and Collection of the Sums behind, as by the Law and Custom of the Kingdom of *England* should be required.

And upon this Certificate here cometh a Writ of *Sci' Fa'* directed to the Sheriff of *Bucks*, to give Notice to the Persons that were Defaulters, that they should appear and shew Cause, if they could say any thing, why they should not be charged therewith according to the Laws and Customs of the Realm; and the Writ is so returned: And upon that Return Mr. *Hampden* appears upon the Day in Person, and after Oyer of the Proceeding, hath demurred.

Upon this Record, this being the Case, and the Demurrer thereupon joined, we are to see what is the Law and Custom of *England* upon the Matter extant in the Record; for I intend not to expatiate beyond the Record, but to stick close to it, as it is in the Case now depending in Court, upon this Record: And therein I shall confine my self to some few general Heads, I shall not be long in any thing.

The first thing is, Whether these two Powers and Mandates mentioned in the Writ 4 Aug. 11 Car. (the original Ground of this Suit) the one for Preparation of a Ship and Furniture, and of the Residue therein mentioned; and the other, for Taxation at the Pleasure of the Sheriffs, and other Persons to whom it is referred, and that expressed upon the Motives of the Writ 4 Aug. whether, I say, that these same Mandates were and are good in Law, according to the Law and Custom of the Kingdom of *England*, upon the Matter of this Record; that is the first Question: If that do fail, then the *Sci' Fa'* is at an end. If there be no legal Charge imposed upon the Country, then he ought to be discharged.

The second Question is upon the principal Head; admitting these were legal in themselves, according to the Tenor of the Writ, to see then how it is reduced by the Record. Therein I shall offer to Consideration, whether on this Certificate on the Writ 9. Mar. out of Chancery, after the Time so past for Execution of the said Writ which is irreturnable, that upon that it be so legal, and according to the Course of Law convey'd over by the Record to be a sufficient Ground and Warrant of the *Sci' Fa'* here brought, is the second Question.

The Third Question: This Writ of *Sci' Fa'* being issued out, and the Defendant having appeared, and demurred in Law, whether hereupon there be such Matter therein, that they may charge the Defendant with the Sum imposed upon him, so that the King may have a Judgment and Execution upon it: That I conceive to be the last Question.

This Case is a Case of very great Weight, and doth nearly concern every one of us to have an especial Eye unto it. It is an usual Question in our Books, whereof we have much View.

However it be in the Record, to which we are now tied, it concerns the Prerogative of the King, and the Estate of the Subject. In my Conscience I think, for the Act that was done was a gracious, honourable, and royal Act, and proceeding upon just Cause, that there should be a present Remedy for avoiding the Inconvenience that did appear, no doubt for our Good. Herein, tho' it be known to every one that knoweth me, but especially to my self, if I partake of the Rule that every Man is bound unto, *Nosce teipsum*, I know withal, that no Man is more bound, nor oweth a more tender Care to preserve the King's Prerogative, and to do that which may advance the same, as we are all bound to do by the great Oath that we have taken upon our Promotion: And in that Particular, I profess none more bound than myself.

Upon this I have been told, and I have truly looked into the Records, so far forth as my Meanness will give leave; and according to what I understand of the Law, and the Custom of the Kingdom of *England*, to be upon this Record, I must needs say, tho' I do confess for my own particular unwillingly, that upon this Record Judgment ought to be given for the Defendant, *Quod*

Johannes Hampden sit quietus, &c. however with Submission to the greater Vote of my Brothers.

For first, I do conceive, that this Charge, thus commanded, and thus taxed, is not warranted by the Laws and Customs of the Kingdom of *England*: I shall therefore offer to the Consideration of the Court, the several Discussions upon the Writ.

First, For the Writ 4 Aug. 11 Car. directed to the Sheriff of *Bucks*, to the Mayor and Burgeffes of *Buckingham*, and Bailiffs and Burgeffes of *Chipping-Wiccombe*, & *probis hominibus Com' Bucks*; hereby are they charged upon their Allegiance, that they should, before the first of *March* following, prepare at their own Costs and Charges, *per probos homines*, thro'out all the County, a Ship of War well furnished, and that the same Ship of War they shall maintain at their own Costs and Charges, for the Space of 26 Weeks, to attend the King's Navy, for the Custody of the Sea, as the King shall appoint and direct.

This first Point I take is not warrantable by the Law and Custom of *England*; in respect, being a Matter of so great a Charge, and by them, being an Inland County, impossible to be performed to prepare a Ship before that Time, being no Maritime County, but an Inland County: This I do take in itself, that this is not a Charge to be imposed upon a County, by the Name of *probos homines*, or of the particular Men there named, except it were by their own Consent and Approbation. And with their Consent, I agree, a Charge upon *probos homines*, so they receive nothing to their own Uses, is good enough; whereof I find one excellent Record, 24 Ed. I. A Writ that issued out of the *Exchequer*, and whereof there is the Record remaining to this Day inrolled and certifi'd to be a true Copy: There it is directed in Case of Necessity, when the King is absent beyond the Sea, upon Information of the Discovery of a present and instant Invasion of the Enemies in *Flanders* and *France*, under Colour of coming as Fishermen to surprize the Town of *Yarmouth*, and all the Parts of the Coasts thereabouts; the Lord Treasurer that then was (the King being beyond the Sea) the Under-Treasurer who had the Custody of the Sea, and the Barons of the *Exchequer*, caused a Writ to be directed to the Bailiffs *probis hominibus* of that Town; and no doubt of it, in the Judgment of our Predecessor himself, was good Law, and the Writ legally executed upon the instant Necessity appearing. But *Forrescue* speaks not so much of the Necessity, as hath been observed: Therefore it is not good to conclude upon some general Words in him, That in no Case of Necessity the Charge can be laid; for the Scope of the whole Book, consider'd well, will not warrant it: The Intent of it is not against Cases of Extremity. You see not in the Case, but that therein the Regal Course must be observed, according to the Law and Custom of the Kingdom of *England*.

But when I do consider of the first Charge of preparing a Ship at their own Charges, and of the Consideration of the next Charge in the same Writ for Taxation, I do not see, nor I cannot perceive, how the same do agree, but that the one is repugnant unto the other; for that the former Part commands the Charge to be generally by all; and by this last Power it is limited to be done by a particular Person, and that to be done at his Will, and as he shall think fit; whereby the

the Sheriff, Mayor, and Bailiff, thus employed, are excluded from the Charge; for they can do no Act upon themselves. It should have been done *per sacramentum proborum hominum*, considering these two different Powers. I hold the Law so to be clear in this Point. It appears not upon this Record that they were assenting unto it, or agreed upon any Ordinance herein.

Now the Power of the Preparation, upon the whole it is on the Sheriff himself, Mayor, Bailiffs, *probos homines* and all; but when you come to the latter *ipso facto*, by the Laws and Customs of the Realm, a great Part of the former Charge is removed directly from those that were chargeable: Power of Taxation is appointed, to whom? to the Sheriff, and how can he tax himself? He and all his Estate within the County of *Bucks* under the first Charge, and all discharged by the Power of Taxation limited in the second Clause: and therein I take it, that this same is not legal according to the Customs and Laws of *England*, the one doth not agree with the other. If you ask me the Reason of it, my Brother *Hutton* hath given it. The Charge is upon the Sheriff, and 'tis not possible for the Sheriff to tax himself, he cannot find himself *inter Rebelles*, he cannot commit himself to Prison, there to remain till such time as the King's Majesty shall deliver him; that he cannot do. So for the other Referees of *Buckingham* and *Chipping-Wiccombe*, exempted likewise; if they can do this, then clearly the former Charge, imposed by the first and said to be done by them all, is out out of doors.

Now it cannot be done, according to the Law of *England*, upon the Sheriff or upon his Land. The Point I think is very evident in our Books. 18 *Hen. VIII.* If a Defendant that is Sheriff be to be summoned, and he return that he cannot do it, Justice *H—* said that Return was not good, for that he might summon himself. 8 *Ed. III.* But if it come to a further Question, that if there be any Execution to be done where another may be prejudiced, he cannot do it, as to impanel a Jury upon a Writ, where he is a Party, which may prove a Prejudice to another; for if he do, it is not lawfully done, as it is in *Dyer*, fol. 8, 9. Of the Sheriff in a common Recovery. So upon these Authorities, for the first question, I hold it manifest, that this Act which the Sheriff is charged to do, is afterwards by this second Power discharged: these two Powers do not cohere, and therefore are not warranted by the Laws and Customs of the Realm of *England*.

Concerning the first Question my Opinion is clear, that there is a material and legal Exception appearing on the self-same Writ. My Reason is, the Sheriff is the great Officer of the County; but when he must do it, I take it legally, he ought to do it according to the Duty of his Place by the Law of *England*; that I do not take to be at his Will and Pleasure to lay one thing upon one, and another thing upon another: for my part, I conceive this must be done *per sacramentum*; he is not to be Judge in case of Uncertainties, when a division of Charge and Taxes is to be made; where things are put in Certainty in any of the King's Courts, there he may execute, as take a Man's Goods, imprison, &c. but in case of Uncertainty, the Law hath annexed to his Office a Way and Means how to reduce the thing to a Certainty, and that is, *per sacramentum proborum hominum*: as in the Case of Parceners, if they

have a mind to make Partition of their Inheritance, they may do it by Agreement between them if they will, or by making of Lots by a third Person, and the Elder shall chuse; but if she herself make the Partition, she shall not both divide and chuse; that alters the Case for Execution, when it is *in propria persona*. But admit they cannot agree, the Judgment of the Law is, that the Sheriff shall go in his proper Person into the Ground; shall he at his Discretion make the Partition as he pleaseth? No: The Judgment is, the Sheriff shall go in Person unto the Land, and that there *per Sacramentum, per Inquisitionem*, to be taken by chosen Jurors, they must consider of it; upon such a thing so done *per Sacramentum*, then indeed it is in the Sheriff's Power, he may now chuse whether he will prefer the Elder or the Younger. But for our Case, that this should be done by a Sheriff, by his Discretion, whilst the Interest of several Persons is concerned, is as it were to make a Rape. I do not find that in any Book of Law, I must confess. In that Act, which is done by the Law, there can be no Error or Partiality; so in *Fitz. Na' Br* in his Writ *de onerando prorata portione*, see what there is to be done: it goeth to the Sheriff, he is trusted with the doing of this, but he is trusted by legal Means; what shall he there do? Where 20 Acres of Land held of the King in chief, they are sold to several Hands, there must be a Writ *de onerando pro rata* for discharging of the Rent; but this must be done *per Sacramentum*, not by the sole Power of the Sheriff. Hereof I find a notable Precedent; it is true, it is not in our Books of Law, but in an Historian; yet he doth set it down in that manner, that a Man may trust him so far; *Matth. Par.* he saith, and sheweth us that 17 *Hen. III.* eight Years after the making of *Mag' Cbar'* authorized by Parliament, that the King himself in his Parliament was pleased (according to the Institutions of Parliament) to require *Concilium & Auxilium*, for the King's Wars; where, by the way, let me observe, that *Auxilia* from the Subject granted to the King in Parliament are not merely voluntary, but Duties, to give Monies for Supply of Necessities of State; and in that I agree with the Opinion of my Predecessor, *Ho. Chief-Baron.* 19 *Hen. VI.* The King is bound to defend the Kingdom. The same Law that binds him to the Defence of the whole Realm, gives the King a Right of Inheritance to claim Subsidies for the Defence thereof. But to return to *Mat. Paris*: It appeareth there that the King in Parliament did demand Aid of his Subjects, *Concilium & Auxilium*, their Counsel as they were bound, their Help as they were able. It is said, that they made Choice of the Earl of *Chester* to give their Answer, who at first held it not fit to do it, alledging their Estates were but weak, that by the Laws of the Kingdom they that had been there in Person, they for their Escuage might not be troubled. The Prelates they were more courteous in their Answer, they desired Time to assemble themselves together, many being far distant: thereupon was a Time assigned, till *Mens' Pasch'*. In the mean time they all considered, the Lords on the one side, and the Lords Spiritual on the other side; and being demanded a Fifteenth of their Goods, they answered, So as they might have their ancient Laws established to them, for which they had been so much troubled, they would willingly assent unto it. The King consented unto it, and thereupon

Magna Charta was there confirmed upon grant of a Fifteenth to his Majesty. But when they came afterwards, they did all agree, that for Necessity, and for the King's Charges in his Wars, which did require a speedy Supply, they were contented to yield to him a fourth Part of their Goods, to be levied in this manner, that is, (for so it is mentioned expressly in *Matth. Paris*, and the form is there set down *de verbo in verbum*.) I have it here to read it: That every Sheriff within his County should return a Juror in every Town: That to four Gentlemen of good Value, and accounted principal Men in every Town, Power is given, that they shall do (as a Jury, to set forth upon their Oaths) Assessments reasonable according to their Estate and Power; and because it appeared then there, (the very Exception now taken) that the Assessors could not tax themselves, tho' they had Power to tax the Residue, therefore a Power was given to two others of every Town, and they should be sworn, and upon their Oaths tax the four former Assessors. This tells unto me, what the antient and usual Manner was of Taxes and Assessors by the Custom of *England*: the Manner was not at the voluntary Pleasure of the great Officer of the County; but they that did tax others, should be taxed by others. And this Opinion is directly in *Matth. Paris*, that the Laws of *England* were so. And therefore for my own part, for the Sheriff to tax at his discretion, I know no Law for it.

Stat. 1 *Ed. III.* By the true Record, according to the Manuscript of the *Exchequer* Book here, in *French* it is *Chap. 7.* and so it appeareth in the *Tower* there inrolled: It is expressly there upon a Complaint made, that they held themselves aggrieved with an Assessment; their Grief was, that whereas Aid was granted to the Crown, more than formerly was used, &c. and Taxes not rightly laid upon them by the Sheriff and Commissioners: this Grievance thus complained of in Parliament, and the Manner of their Taxing disliked, the King saith that from thenceforth, the Taxations and Assessments should be made as in antient Manner, and not otherwise. Here is an express Negative, no Taxes to be done but by Jury; which excludes in my Opinion this same Tax thus done, that is, by his own Power and Discretion, is not warrantable by the Law of the Land. And herein give me leave, as I think in my Conscience, and as I think the Truth is, if this Inconveniency had not tended to a Grievance in very many Particulars, we should never have heard of this Question; but by this means it cometh in question, both the one and the other: for the Act itself, it is a gracious and a royal Act. It is requisite and necessary, as the State and Condition (if it so appears upon this Record) of the Kingdom may be in, that there be a Supply according to the Necessity; for the King is Lord of the Sea; as it was argued at Bar, in a Cause brought before us the Barons of the *Exchequer*, where we did unanimously agree, and adjudge that the King was, and is in my Conscience, rightly true Lord of the very Propriety and Ownership of the Seas. The Occasion upon which this grew a Question was, as I conceive, upon the writing of two Books: The one called *Mare Liberum*, that no Ownership of the Sea should belong to the King; whereas it is the Sea of our Sovereign, and Defence by Sea, under Almighty God, that is our Protection; and if we should suffer any else to have an Interest in it, it

would hazard the whole Kingdom. But in Answer to this Book, Mr. *Selden* hath wrote very learnedly a notable Book called *Mare Clausum*, approved of by his Majesty, and inrolled in the *Exchequer* by Command from his Majesty, there to remain. But since there is another Book written (which I had at my Argument) by one *Pontanus*, directed to the great Chancellor of the King of *Denmark*; and he undertaketh therein to make an Answer to every particular Chapter in Mr. *Selden's* Book; and truly, as I think in my Opinion tho' weak, Mr. *Selden* hath a Judgment in Law against him upon a *nihil dicit*.

Of how great Consequence the Dominion of the Sea is to this Kingdom, who knows not? So that without question, the Tax was very fit to be done, if the Power given to the Sheriff had been as warrantable. But this same second Power, to free himself and lay it upon the Residue, is not good, nor warrantable by the Law. Thus much for the first Question concerning the Powers contained in the Writ 4 *Aug.* which doth not resort to the Rule and Custom of the Kingdom of *England*.

In the next place, let us see whether the Writ mentions Causes sufficient for the issuing of it. For the Incurfions of Pirates I conceive it no just Cause: But the Expressions in the Writ, as *Quia datum est nobis intelligi, ut informatur, vulgaris opinio est & rumor est*, &c. If the King undertake it upon this, he is not to shew how he discovereth it. I am satisfied in my Opinion, upon view of the Precedents, it is sufficient if the King do alledge, *Quia datum est nobis intelligi*, or *Quia intelleximus*, &c. it is enough, for it is so in these Precedents, *Quod vulgaris opinio*, &c. All these, or any of these containing such a Matter that the Kingdom is in danger, I agree the same doth conclude the Party, and that the King is the sole Judge of it. The Case is not traversable, the Writ must be obeyed, agreeing with the Laws and Customs of *England*.

That this may be done by the King's Writ, excellent and strong Arguments have been made. That this Imperial Power belongeth to the Crown, I heartily acknowledge it; his Power declareth it so; Reason it should be so: Not voluntary at his Pleasure, but it is according to his *Politick Capacity*, not excluding his natural Imperiality. *Quia Rex*, he doth it not; but *Quia Rex Angliæ* he doth it: So I find it in *Fortescue*.

The Grounds premised in this Writ, that the Kingdom was in present danger; Truth in my Conscience it was so, and if that had not been done so, *England* had heard of it before this Day. Therefore there must be an Expression of the Kingdom to be then instantly in danger, or such a Preparation in such a convenient time, or else it will be in a great danger; but that must be expressed, for I hold the Law to be so. *Doctor and Student* saith, it is the old Custom of the Land, the King shall defend the Sea: 'tis true, against whom? Against Pirates and petty Robbers, but not against a sudden Invasion at his own Charge. These *Prædones* who were spoken of in the Laws of King *Edward*, when *Danegelt* was given, they were of that Condition that they endangered the whole Kingdom. They did occasion the Tax of *Danegelt*, to raise from twelve to forty eight thousand Pounds; and *William Rufus* raised it to 4 s. a Hide, imposed upon a just Ground to repel the *Danes*, being common Enemies: and this was continued until *Hen. II's* time, but since taken away

away by several Statutes, as 25 *Edw. I. &c.* That same *Danegelt* which was heretofore imposed on the Kingdom by the Terror of the *Danes*, continued still, tho' the Name be altered; it is mentioned in the Red Book in the *Exchequer* to be used in *Hen. I.*'s Time; but after the Time of *Hen. II.* I hold that it is taken away by the Statutes before-mentioned of *Edw. I. &c.* and therefore if for private Danger this Assessment be imposed, it is not according to the Laws and Customs of this Realm.

I am over-troublesome, and I fear shall hardly hold out; give me leave to proceed to the second Consideration. And admitting those Charges in the first Writ to be legal, the next Consideration to be had is, whether the *Certiorari* and the *Mittimus* do legally revive the first Writ, it being a Writ irreturnable, and not executed according to the Tenure of it within the Time limited and prefixed to be done.

This *Certiorari* issued long after the first Writ, dated a Year and half after. And in my Opinion this cannot be; for the Nature of a Writ not returnable, is to command a positive thing to be done within such a Time; if it be not done accordingly, there is an End of the Force of that Writ: so that here in our Case, the Power given to the Sheriff being not executed in due Time by him, but done out of Time, cannot be renewed now; for otherwise you will make a Man an Offender by a Relation, which being a Fiction in Law, cannot so operate, nor be made penal to him for non-performance: and tho' afterwards by the *Mittimus*, these Words *Salus regni periclitabatur* come in, yet will they not revive or make good the Commands of the first Writ. If the first Writ had been returnable, and a Return made, and a Default according to the Return, the Writ had been still continued, and must have been referred by another Court, and the Party presented by a Jury upon Default; and upon Presentation and Indictment, the King shall have his Remedy: But not being so, it is but a Suggestion, upon which a *Sci' Fa'* cannot issue, as in *Butler and Baker's Case*, Report 3. and being not returnable, is but dead in Law; and being certified upon the second Writ, it is not good, it cannot be to relate to make him a wrong Doer; to that purpose is the Case cited, 26 *Ed. III. Leicestershire Case*, reciting; Whereas one Sir *John de Lamston*, that he had delivered certain Moneys to *Robert de &c.* and that he had waisted such a Manor, and taken away Goods to the Value of 2000 *l.* and thereupon it was commanded he should be attached by his Body, he appeared at his Day, and because, &c. he was discharged of it; and according to that I find it, 7 *Edw. III.* there it was suggested to be made in one King's Time; and whereas it was not, and there abated, then the Question, Whether the King may do it or no? He giveth the Answer, That where it concerneth the King in his own Right, there he may do it; but when the Title came to the King from another Party, there it was otherwise.

Upon this I do conceive this *Brev' irretorn'* falleth short of making him punishable, as if it had been a Writ returnable; let the Writ 4 *Aug.* be never so good, the Writ thereupon is not legally issued.

The next thing is upon the *Sci' Fa'*; the Question upon this Record is, Whether this doth appertain to the King? and I conceive, it doth not

appertain to the King: My Reason is this, because in the very Writ 4 *Aug.* it is expressly provided, that it shall be employed to no other Use, but the Preparation of the Ship therein mentioned, and by no means to any other Purpose. It doth not now appear, who were Collectors therein appointed to receive the Money, whereby to become chargeable over to the King. It doth not appear upon this Record, that any Ship was provided, or that any Fault was in them that were employed, or of Surplusage in the Collectors Hands: tho' it was a worthy and gracious Act in his Majesty, yet this is not so legally executed, as the King may have a Writ of *Sci' Fa'*.

If Judgment be for the King, it must be with this Limitation, that it must not go to the proper Coffer of the King, as my Brother *Jones* observed. And in my Conscience, if it were paid to him, he would be a Loser by it. You see what the Writ is, you should be charged upon *onerare & satisfacere* one Ship; *non constat* there was any Ship, or any Collector, or any Act, concerning it: This Money was pre-ordained only to prepare a Ship, and to be employed merely upon that, and for no other Purpose; and this appeareth not at all, whether any Ship was made, yea or no: now how shall we give Judgment? The *Sci' Fa'* is, That Mr. *Hampden* should shew Cause why he should not satisfy the Sum imposed upon him; but whom he should satisfy, or to whom the Money should be paid, *non constat*, as was well opened upon the Demurrer; for it is not *Si Dominus Rex valet aut debeat onerare* the Defendant, but that the Defendant *oneretur & inde satisfac'*: Nothing is put into the Record to bring this to the King: therefore *quod oneretur* cannot be executed at all; and according to the Books of 39 *Edw. III.* and 49 *Edw. III.* if Judgment be to be given, and it cannot be executed, there it shall not be given at all: So the Judgment required on this Demurrer, is upon the Matter *oneretur*, and shall by no colour come to the King. God knows it belongs to him, and that deservedly; but in a legal Course *non constat*; therefore to give Judgment, *quod oneretur*, and not know to whom (for to the King it cannot) would be wrong; for this Reason I cannot see how Judgment can be given, *quod oneretur*.

But hereupon another thing troubleth me very much, and which, in my Opinion, makes it clear, that Execution cannot be made upon this *Sci' Fa'*; and that is the *Mittimus* to us in the *Exchequer*, which by *Recordum ipsum* is not certified, but only the Tenor of the Record. I do conceive the Law to be so upon this Difference, as it is taken in a Case excellently well argued, 33 *Hen. VI.* where it is said, if the Record be in any other Court, whence Execution may be awarded, and the Tenor of that Record is by *Mittimus* sent into another Court, where Execution may be likewise awarded; in such a Case a *Sci' Fa'* cannot issue upon such a Record; for this is but an Extract of a Record. So if a Man should sue out Execution upon a Judgment given before the Justices of Assize, what will you do with this? And if he have no Goods within the Precinct, you must remove this. How do you remove it? Not by certifying the Tenor of the Record, but *ipsum Recordum*: But if the Record itself be certified into the *Chancery*, and sent by *Mittimus* into the *Common Pleas*, that is good, and we are Judges of the Record: No other Court can give Judgment upon the Record, but we;

Here

Here is sent unto us the Tenor of the Writ, and not the Record itself that I can find; and so two Executions may be upon one Judgment. 37 Hen. VI. A Transcript or Tenor of a Recognizance came out of the *Chancery* into the *Common-Pleas*, to have executed, & *non allocatur*: and so it is *Dyer* 4, & 5, & 22, of the Queen, there was a Transcript there of a Recognizance, to the Intent that they might have a *Sci' Fa'* upon it, and held clearly by the Court, that upon the Tenor of a Record no *Sci' Fa'* could lie. So all this appearing upon the very first Branch of the Record, that this was merely a Tenor of the Record, and not *Recordum ipsum*, I do not know how upon this Record there can be Execution.

Thus have I done with the several Discussions of the Writ and Record, which upon my Reasons before alledged, I conceive it not sufficient in Law to charge Mr. *Hampden*.

I come now to the great Question concerning the Danger of the Kingdom, and our Certificate to his Majesty. Give me leave, according to our former Resolution made in answer to his Majesty's Question proposed, to speak of what we did certify: and in my Conscience truly, and I hold it real, that when any Part of the Kingdom is in Danger, actually in Danger, or in Expectancy of Danger, and the same expressed by his Writ; I agree, the King may charge the Subjects without Parliament, towards the Defence thereof; for *necessitas est lex temporis*, in vain to call for Help when the Enemy is landed. Clearly I hold the King to be the sole Judge of the Danger: And the Danger being certified by his Majesty, I hold it not traversable; and in such a Case he may charge the Subject without Parliament, so that the very Cause be effectually expressed upon the Records, that the Kingdom was in Danger. But if a Parliamentary Advice may be called, and the Danger not so imminent, then regularly no such Charge can be laid out of Parliament: legally and rightly, I hold, things done by the Advice of Parliament it were the best Way: But if it be so, the Necessity will not admit the Delay of a Parliament, when the Enemy is in View, and expectant; that is such a Danger as we did certify to the King in our Opinion to be the Time when he might so charge the Subject. In *Edw. III.*'s Time Writs issued, sitting the Parliament. To say, that there cannot be Incurfions, but that they may be known within seven Months time, wherein a Parliament might be had, is a great Hazard to the Kingdom. It is possible the Danger may be discovered before it comes; but it is possible it may come unexpected. In 88, when that great Invasion was, at which Time if the Queen should not have used her Royal Power, without calling a Parliament, perhaps the Kingdom might have been lost by Delays; and yet then great Expectation was of a Parliament. So *William I.* (not *William the Conqueror*, for he did not conquer the Kingdom, he conquered the King of the Kingdom) his coming was sudden, he landed at *Hastings*; and was not the King advised of this at *York*? Did he not then make all haste by Post, raised a sudden Army, and bad him Battle? And *William the Conqueror* had the Victory, not of the Kingdom, but against the King. *Lambert* saith, That he came not in *per conquestum*, but *per acquisitionem*. After he was crowned, and received by the *Londoners*, he sent forth Commissions to all the Counties of *England*, to enquire, *per sacramentum*,

what the antient Laws of *England* were, and of the State of the Kingdom; and Certificates being made thereof, that of *Danegelt* was certified to be a Tribute enforced. I say, in Times of Necessity, the King may command this Aid by his Writ under the Great Seal, when the Danger is instant; nay, the Expectation of it is not traversable.

Object. Then upon every Certificate that the King makes, that he is of Opinion that the Danger is instant or expectant, this Charge may come to be annual.

Solut. No: we need not fear, that the King will require it but upon just Occasion, the Law presumes it; and legally it cannot be laid upon the Subject, but in such Cases of Necessity, as aforesaid. By the Charters of *William I.* King *John*, *Henry III.* no Charge without Parliament: by the Statute of 10 *Edw. III.* none is forced to go out of his County, except it be in case of Necessity. 14 *Edw. III.* I hold to be a general Statute, and it doth bind, but doth not bind in case of Necessity; for they are not to be understood to be binding in all Cases. The Charter of King *John*, as it is inrolled, not as it is printed, according to *Mag' Char'*, saving two Clauses that are not now in *Mag' Char'*, hath this Exemption in it to the Subject of these, and these Immunities; no Tax nor Taillage, but by Parliament; but he excepts three Cases: 1. *Nisi ad redimendum corpus nostrum.* 2. *Pur faire Fitz Chevalier.* 3. *Pur Fille marier.* These Prerogatives of the King are not bound up by the Parliaments; the very Commons themselves did agree to these three Cases. As for the Statute *de tallagio non concedendo*, I hold it to be a good Statute, and much for the Liberty of the Subject. But if you come to a Case of Necessity, they will not stand in force. There is one Omission in the printed Statute, 25 *Edw. III.* which is in the Records at the *Tower* (as it was observed by my Brother *Hutton*) *Car ceo est encounter le droit del Royame*: How this comes to pass, I know not. I caused it to be searched, and I find these Words only in the Articles upon the Roll, where they do complain for the finding of Hobbellers, and are aggrieved for it, and give this as a Reason, *Car ceo est encounter le droit del Royame*: And the Answer which the King gave unto it, was a Royal Answer to the thing proposed; but those Words are left out of it. But if it were the Right of the Subject (*le droit del Royame*) as *Littleton* saith, that cannot die.

And certainly, in case of Necessity, there is a Right belonging to the King to prevent Danger; for legally, when the Safety of the Kingdom is in Danger, in danger apparent, in that Case the King hath a Power of Prerogative to compel Aid. And if an Act of Parliament should be made to restrain such a Charge on the Subjects in case of Necessity, it would be *Felo de se*, and so void; for it would destroy that *Regale jus*. So this great Question of imposing this Charge, I am of Opinion it may be done without Parliament, as it was in 88, so long as the present and apparent Danger continueth. And I am of Opinion, (as I was when we gave in our Certificates to his Majesty) that the King is the sole Judge of the Danger, and how to provide against it.

But however, I do conceive upon this Record, upon which I am to give Judgment, that the Mandates in the Writ 4 *Aug.* are not good in Law, nor according to the Laws and Customs of the Kingdom of *England*, nor well grounded upon the

the Certificate; and that the Information afterwards in the *Mittimus* cannot make a former Writ good, which was first defective: And the Sheriffs who were, their Return is not effectual, upon which Judgment may be given.

I cannot see how Judgment can be given *quod oneretur*, and not tell to whom, and nothing visible to whom we may find it: And therefore, in my Opinion, Judgment is to be given for Mr. *Hampden*.

The Argument of Sir John Finch, Kt. Lord Chief-Justice of the Court of Common-Pleas, in the Exchequer-Chamber, in the great Case of Ship-Money.

A Writ under the Great Seal of England, dated 4 Aug. 11 Car. when to the Sheriff of Bucks (Sir Peter Temple) commanding a Ship of 450 Tons and 180 Men, to be ready furnished with all Ammunition and Tackling at *Portsmouth* for 26 Weeks, to go with other of his Majesty's Ships, and of the Subjects, to defend the Dominion of the Sea, the Realm being in Danger; and to charge and assess all his Majesty's Subjects, and all the Inhabitants within the said County, and all Occupiers, Tenants, and Terr-Tenants there that have not Part in the Ship, nor serve in the same, to contribute for, and towards the preparation and setting forth of the Ship according to their Abilities.

The Record of *Certiorari* saith, That *Stoke-Mandeville* is within the said County, and was assessed at a reasonable Rate; and that the Sum of 20 s. was assessed upon the Lands of *John Hampden* Esq; as by a Schedule of 9 Mar. 12 Car. annexed to the *Certiorari*, may appear.

Whereupon a *Mittimus* 5 Maii 13 Car. with this *Certiorari* and Schedule, was directed to the Barons of the *Exchequer*, to do there for the Sum unpaid, *prout de jure & per legem & consuetudinem regni nostri Angliæ fuer' faciend'*.

A *Sci' Fa'* upon this went forth of the *Exchequer*, to warn Mr. *Hampden* to shew Cause why he should not pay the 20 s. Upon the Return of which Mr. *Hampden* appeared, and demanded Oyer of the Writ, *Certiorari*, Schedule, *Mittimus*, and *Sci' Fa'*; and upon hearing of them read, he demurred, and Mr. Attorney joined in the Demurrer; then my Lord Chief-Baron, and the Court of *Exchequer*, adjourned it to the Court of *Exchequer-Chamber*, desiring the Advice of all his Majesty's Judges: and look what Advice we or the greatest Number of us give, that Court ought and must give Judgment accordingly.

In the debating of this Case, there hath been great Variety of Opinions among the Judges, a thing usual and frequent in all great Cases and Consultations; which shews commonly the Difficulty of the thing, and argueth a Candor and Clearness in the Judges, between whom Combination and Conspiracy would be most odious. All that have gone before me, have in one thing agreed, that it is the greatest Case that ever came in any of our Memories, or the Memory of any Man.

As the Sun arising in the Horizon shews not the Figure so clear, as when it is beholden in the Meridian; so, by mixing many Impertinences with the Case in Judgment, it hath been apprehended to be of a far tenderer Consequence

than indeed it is; yet tender and weighty it is. If equally weighed, in the one Balance we may put the Regal Power, or rather the Regality itself; in the other the Privileges and Liberties of the Subject, in his Person and Estate.

To look upon either of these, or both, thro' the multiplying Glass of Affection, is to behold neither of them truly; neither can they be so truly discerned, much less to multiply by the Glass of Fancy: and therefore Justice needs to hold the Beam straight.

I cannot fear myself, when vulgar Censure hath exercised itself upon every one that hath delivered himself upon this Matter: yet I will not say, *Domine, posuisti me in lubrico loco*; for we that do sit here, do move in a Sphere, and should be like the *primum mobile*, according to whom all others are to steer their Course; and Judges themselves must move steddily upon their right Poles, as I hope this Court will. What Judge soever he be that is elevated by popular Applause, or animated by the contrary, to accumulate Honour, is fitter to live *in face Romuli quam in Politia Angliæ*.

Nor will I lose Time in remembring the first Oath of a Judge, who should expel all By-Respects, and speak his Conscience. I hope none of us forget the Duty we owe to God, to the King, and to the Commonwealth, and to ourselves. I shall endeavour to satisfy my Conscience in all that I can say: And they forget their Duty to the first, and Humanity towards us, that say or think the contrary of any one of us. Some of us have Fortunes and Posterities, and therein have given Hostages to the Commonwealth, and have as much Interest in this Case as Mr. *Hampden*. Those that want those Blessings, want those Temptations that make them dream of, or hunt for Honour or Riches, to perpetuate their Names and Families; to them nothing can be more precious than the Balm of Integrity, which will preserve their Names and Memories. It cannot be presumed, but we will speak our Consciences; since we well know shortly, as the Psalmist says, *Corruption shall say, I am thy Father, and the Worm, I am thy Mother*.

In handling this Case, no Man can think I shall do other than right; and herein I am rather troubled for a Method than for Matter, rather how to dispose of what I find, than to find what to dispose. I shall endeavour shortly and clearly (considering the Time I have to spend, and the Weightiness of the Matters I am to speak of) to deliver my Opinion with the Reasons of it; and my Endeavour shall be rather to contract than omit.

I have, with the best Care I could, taken Notes of all that hath been said for or against Mr. *Hampden*; and have according to the Measure of my Understanding, weighed and pondered all that hath been spoken, both at the Bar, and by my Brothers, and bestowed many Hours in Meditation about them, which the Time of Rest and Repose might have challenged.

Before I enter into the Case, I shall speak of the Steps and Degrees by which this Cause has come to Judgment; whereby it will clearly appear, with what Clemency, Wisdom, Justice and Goodness, his Majesty hath proceeded in this Business.

The first Writ went out to the Port-Towns and Maritime Parts of the Land, 20 Octob. 10 Regis,

Regis, upon Advice taken between his Majesty and his Council. Before then, of these Writs I can say nothing; for I was commanded at that Time to attend another Service, about another Employment, the Forest of *Deane*: But it is well known, the Resolution taken by his Majesty therein, was grounded, and relied upon the Judgment and Learning of Mr. *Noye*, Attorney-General, a Man of great Learning, and one that had great Insight into Records, by whom the Matter was first prepared, collected, and digested, and afterwards imparted to some of his Majesty's learned Counsel, and afterwards to some other eminent Persons of the Commonwealth, of no less Judgment and Knowledge in the Laws of this Realm. And upon Consultation with my Lord Chief-Baron, and his Majesty's Barons of the *Exchequer*, his Majesty commanded those Writs to be sent forth: Against the Legality of which, nothing hath been truly alledged. 'Tis true, they are not in Judgment properly before us: and if Method did not press it, I should not have mentioned them.

Primo Octob. Anno 10. of his Majesty's Reign, his Majesty was pleased to command me to serve in the Place that now I do; and those Records, Writs, Commissions, and other Precedents, were brought to me, as they had been formerly to my Lord Chief-Justice, and my Lord Chief-Baron; and we three did confer together, and did deliver our Opinions in Writing, under our Hands, upon View and diligent Perusal of a Multitude of antient Records, Writs, and other Precedents of *Edw. I. Edw. II. Edw. III.* Times, and other Records of other Kings Reigns; which Opinions were in these Words, 'That the Dominion of the Sea belongeth to the King; and that he is sole Lord and Proprietor of the same. In which respect his excellent Majesty these Regalities and royal Powers is to defend against all hostile Actions, Intrusions, and Invasions, as well for the Good of his Subjects, as Strangers, importing and exporting their Commodities, and for the Defence of the Kingdom: And for the better performing whereof, the Cinque-Ports have been required to prepare such a Number of Ships of divers Burdens, and Men of Arms, and at such Times, at their own Charges, from Time to Time, as the same Writs and the present Occasion required. And for the Time, and Place, and Residence of their Attendance, his Majesty was the sole Appointer and only Judge; and this was the constant Use in the Reigns of those Kings; and this was agreeable to the Common Law of the Kingdom.'

And 15 Nov. 1634, before the next Summer, his Majesty finding the Danger to grow general, and conceiving, that there was little Reason these Maritime Parts should bear the whole Charge, for that the whole Realm was interested therein; afterwards he required our Opinions, *viz.* my Lord Chief-Justice, my Lord Chief-Baron, and myself, *June 1635*: After Conference together, we delivered our Opinions. And we upon Consultation conceiving the Reason of the Precedents before, and the Rule of the Law, and Reason requiring, that when the whole Kingdom was in Danger that the Defence that concerned the whole Kingdom should be borne by all the Subjects of the Kingdom; this was first verbally delivered to his Majesty, and afterwards we put it in Writing under our Hands, in these Words.

'Whereas the Charge of defending the Sea had been imposed upon the Cinque-Ports; so where the whole Kingdom is in Danger, the whole Charge ought to be maintained by all the Subjects of the Realm.' And amongst other Writs, those to the Sheriff of *Bucks* went forth at the Time aforesaid.

After which, his Majesty finding some Question made of the Legality of it, he called all his Judges, not singly, nor any one in a Corner, but because he would have every one of them truly informed, required them to advise together, and every one of them by themselves to give his Opinion; according to which, we severally, and every Man by himself, and all of us together, delivered our Opinions under our Hands, in this Manner, *viz.*

'That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, of which your Majesty is the sole Judge, your Majesty may, by Writ under the Great Seal of *England*, command all the Subjects of this your Kingdom, at their own Charge, to provide such a Number of Ships, with Men, Ammunition, and Victuals, and for such a Time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom, from such Danger and Peril: And that, by the Law your Majesty may compel the doing thereof in case of Refusal.' In which this Clause (*his Majesty is the sole Judge*) was only put in by ten of us; my Brother *Hutton* having not seen nor weighed the Precedents, took Time to advise, and gave no Opinion, till Conference between us: And my Brother *Crooke* had the same Reason, being not acquainted with those Writs, but yet subscribed his Opinion singly by himself, *Dec. 1635, viz.* 'That where the Good and Safety of the Kingdom is in Danger, of which his Majesty is the sole Judge, his Majesty may command all his Subjects at their Charge, to provide and furnish such Ships to Sea, with Men and Ammunition, as shall be necessary for the Defence thereof.' And this I hold to be agreeable to Law and Reason; and tho' I perceived nothing of this his Opinion in his Argument, yet he still holdeth it.

Wherein I observe, 1. That the King is sole Judge of the Danger, and whether it be imminent. 2. Not only that the King may in such Danger command his Subjects to defend the Kingdom in case of Necessity, but that the Charge of the Defence ought to be borne by all the Realm in general. Which Opinion was more independent than the rest, for that our Opinion before it had relation to the Precedent of Maritime Parts: but this was, that the Subject might be charged absolutely; and this was delivered by him readily, cheerfully, and without Hesitation; he will not deny it.

I speak not of this as of a thing whereby he ought to have been concluded, but that all the World should know, that his Majesty's Regal and Legal Power go hand in hand together, and that his princely Love and Affection to his Subjects are such, that he is willing to prevent all Mistakes: And I speak it also to this End, that when Judges singly deliver their Opinions to the King, not examining the Reasons that moved them to it; we ought to see very good and pregnant Reasons to vary from that Opinion, tho' it be not binding.

This his Majesty required for his own private Satisfaction; and this I dare boldly say was so delivered by us, that no one Judge knew the Opinion of the rest.

When his Majesty found Slackness in some of his Subjects in contributing to this Charge, and thinking that it proceeded rather from Misunderstanding of the Law, than for want of Duty, as desirous, out of his princely Love, to avoid all Mistakes, he did upon 2 Feb. 1636. send a Letter to all his Majesty's Judges and Barons of the *Exchequer*, thereby requiring our several Opinions: about which we all conferred, and the Particulars, wherein our Opinions were required, had been considered of before, or else we were much to blame; for we had Time enough to think upon it. And though our Answers were returned the 7th of the same Month, yet we had it in our Consideration from June 1635, which was fifteen Months before the Answer returned; so there was no Surprise. I will spare to name our Opinion then delivered; for it hath been repeated before. When we came to the Debate and Voting of this, we brake the Writ into several Parts.

1. When the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, Whether it ought not to be defended at the Charge of the whole Kingdom? And agreed it was *una voce, nullo contradicente*, that it ought.

2. Whether the Charge of the Defence might not be commanded by the King? Which was also agreed, that it might.

3. Whether the King was not the sole Judge, both of the Danger, and when and how it was to be prevented? Wherein my Brothers *Hutton* and *Crooke* did agree it likewise, that he was sole Judge of the Danger. What their Opinions are now, and wherein they differ, with their good Leave I shall examine, and their Reasons and Differences; (tho' indeed of the King's being the sole Judge, in their Arguments, my Brother *Crooke* spake nothing of his Opinion therein, nor my Brother *Hutton* nothing against it.) But we deliver'd not our Opinion upon the bye; nor was it so required of his Majesty.

It was then also declared by all of us, that we did not deliver our Opinions as binding, nor were they so required by his Majesty; of all which I dare boldly say, his Majesty was truly informed. And this was also soon after published by his Command, and seconded by my Lord-Keeper and Lord Privy-Seal, the first of them using many Arguments and sound Collections, deliver'd it in Charge to his Majesty's Judges, to deliver it in their Circuits, which might have satisfy'd any that did not respect their own private Benefit. And Mr. *Hampden*, I think, of all hath the least Cause to complain, being assessed but 20s. a contemptible Sum, in respect of his annual Revenues, to bring this Case to Judgment: yet his Majesty's Clemency appears to be great herein, in that he would not debar any to question the Lawfulness of it, tho' he hath permitted *Arcana Imperii*, nay, *Imperium ipsum*, (I would to God I could not say even too licentiously) to be debated at this Bar; yet I speak it not by way of Reprehension, but admonition to the Counsel, who are to be commended, in that they have done their Duty faithfully for their Client: yet I may say, such a ravelling and diving into the King's Revenue, and secret Estate of Princes, and what succeeding

Kings may be, or may do, it doth not well become these present Times; it would not have been endured in the best preceding Times.

It was not well done to doubt succeeding Posterity, that promise as much as any of their Predecessors have done for the Good of the Commonwealth.

It is not well to clog the Case with so many Precedents, impossible to be thorowly observed; but our Example, I hope, shall be a Bar hereafter, and our Care shall be to prevent it, being a great Hindrance of Justice, and Cause of great Expence to the Subjects long Attendance about their Causes here; which may prove a greater Charge than in providing Ships for the Realm.

I come to the Case now, as it stands in Judgment before us; wherein my Method shall be,

I. To examine what the Case is.

II. I will give my Opinion of the Case, with the Reasons thereof.

III. I will answer the Objections made against it.

IV. I will speak to the Legality and Form of the Writ 4 Aug. the *Certiorari*, the *Mittimus*, and *Sci' Fa'* out of the *Exchequer*. And to all these, with what Brevity I can, I will speak according to the Weight of the Case, where Variety of Opinions gives just Cause to balance them: the Case must arise out of the Record, and must stand or fall upon that.

I. For the Case itself; and therein, 1. I will shew what Danger there is, that is the Ground of the Charge. 2. What things there are to maintain it: As for other things, they tend to the Destruction of the Case.

1. I am of Opinion, that the Danger of the whole Kingdom ought to be expressed clearly; for else the Ground-work faileth; for if no Danger, no Reason of the Charge. And I am of Opinion, that in the Writ 4 Aug. it ought to be expressed; and not in the *Mittimus*; tho', as my Brother *Jones* observed, the *Mittimus* comes time enough to Mr. *Hampden* to give him notice, yet he was not liable to the Charge, but by the Writ 4 Aug.

(1.) It is objected, the Danger is not clearly expressed; for it is not upon Words of Certainty, but by way of Uncertainty, *Quod datum est nobis intelligi*.

(2.) For the Causes of the Writ, that it hath not Relation to the Danger of the Kingdom, but to defend the Sea-Coasts against Pirates, &c. And they are not worthy of a Royal Navy, as Brother *Crooke* also observed.

But I hold first, that the Danger is sufficiently expressed, *Certum est sicut res habet; Datum nobis est intelligi*: A thing very ordinary with us; and in all former Writs, *Ex relatione*, &c. *Quod vulgaris opinio est*, &c.

Altho' my Lord Chief Baron parallel'd this to the Case of Patents, *ex certa scientia*, &c. which is nothing a-like; for there before the King pass away Land, he may be informed if he may do it: but I hold, as this Case is, the Danger will not permit it to be examined, whether there be just Cause of Fears; for then it might receive Delay, which is dangerous, and the Kingdom be lost whilst we are disputing.

And then for the Phrase itself, *Datum est nobis intelligi*. It is sufficient that the King knows there

is a Danger; and therefore, if it had been only *Intelligimus*, none can deny but it had been sufficient. And what Difference is there between *Intelligimus* and *Datum est nobis intelligi*? That sets forth the Knowledge of the Danger, and this shews the Means whereby he doth know it; *Ut datum est nobis intelligi*. This goes farther than *ex auditu*, *Rumor est*, &c. Therefore, unless the King should go out of the Kingdom to see the Danger, can it be otherwise expressed?

(3.) I hold, that the Danger itself, with the Motives in the Writ, are sufficient.

The Motives are, great Depredations of the Subjects Goods, and Lives: but it is not upon this I rest, for this hath relation to Pirates leading many Christians into Captivity. These are good Motives, and (as one of my Brothers said well) tho' these have relation to Pirates, yet *Bellum Piraticum* points at as much Terror as *Hannibal ad portas*.

I shall not rely much upon that, that the Enemies of Christendom and of this Nation did prepare *ad Mercatores nostros ulterius molestari*, nor *Ad Regnum gravand' nisi citius remedium apponatur*, &c. But this *Consideratis periculis quæ undique his guerrinis temporibus imminentibus ita quod nobis & subditis nostris defensionem maris & Regni nostri omni festinatione qua poterimus convenit*, &c. shews otherwise than for the Pirate, this Defence was requisite. Therefore the next Clause is, *Nos volentes defensionem Regni, tuitionem maris, securitatem subditorum nostrorum*, &c. And therefore that *Salva conductio Navium & Merchandizarum quæ ad Regnum nostrum Angliæ venerint, & de eodem regno ad Partes externas transeunt*, &c. takes not away the former Works, nor limits them.

As for the Clause in the *Mittimus*, I stand not upon it, nor that *Salus Regni & populi nostri Angliæ periclitabatur*, &c.

(4.) Admit there had been no Preamble nor Expressment of Danger, I hold the Command itself is sufficient for setting forth the Danger, which is, that the Ship be with other his Majesty's Ships, and the Ships of other his Majesty's Subjects, at *Portsmouth* the first Day of *March* next following; the Words of the Record be, *Exinde cum navibus nostris & navibus aliorum fidelium subditorum nostrorum pro tuitione maris & defensione nostrorum & vestrorum*, &c. And particularly to express the Danger, is not necessary; for the King, the sole Arbiter both of Peace and War, best knows it; and it was the Practice in former Times: and so no Wisdom for the King to express the Danger in particular, when Arms usually go before Heralds; nor is it the Use of Princes to complement, to tell the Enemy they will, or intend to invade their Lands. And therefore I hold, tho' it might be more clear, yet *satis est quod sufficit*: I in my own Conscience am satisfied that the Danger is certain enough expressed in the Writ. And so I have done with the first Particular, the Danger, which was the Ground of this Writ.

(2.) As to the second Particular, What is alleged to be for the preventing of that Danger; my Brother *Hutton*, and my Brother *Crooke*, would have it to be raising of Money, by reason of that Clause in the Writ, for the Distribution of the Surplusage. But the Record is, *Ad assidendum omnes homines & ad contribuendum navem vel partem navis non habentes*, &c. which shews it cannot be for Money, neither is there any colour of Money;

for it is to find a Ship: And if they have not of their own, they must build, or buy one with their Money. But there is a great deal of Difference between Payment of Money and finding of a Ship. As if my Brother *Crooke* be required to find a light Horse and Arms, he must buy one, or hire with his Money, if he hath none; but yet the Charge is not for Money, but that he finds a light Horse.

But my Brother *Crooke's* Objection is, If any Surplusage remain, it shall be divided; and so the Sheriff is to detain no Part of it, but employ it for the publick Good, and not convert it to his own proper Benefit.

To this I answer, That this shews the Equality of the Charge, which is fittest to be by Payment of Money.

My Brother *Crooke* hath farther objected, That an Inland County cannot build a Ship: A great Trouble for the County of *Bucks*, so far from the Sea to build a Ship.

To this I answer, That those of *Buckinghamshire* may hire a Ship, if they cannot build one; and the Words are but *parare*, not for the building but preparing a Ship; and it is not meant that they should build it there, but that they should contribute to the building of a Ship in a most fit and convenient Place.

II. I shall now give my Opinion of the Case, with the Reasons thereof. The King knowing and declaring the whole Kingdom to be in Danger, and necessarily requiring his Subjects to defend and provide for this Danger at Sea, he may thereupon command all his Subjects to prepare Ships to join with his Navy Royal against the Enemies of the whole Realm, to defend the whole Realm: and it is clear in the case, and it was the Meaning of us all, that the King must join in the Charge, it being far from us to excuse the King from his ratable Part.

My Reasons that the King may thus charge his Subjects to join with him in the Defence of the Kingdom, are these.

1. The Defence of the Kingdom must be at the Charge of the whole Kingdom in general.

2. The Power of laying this Charge is, by the Policy and Fundamental Laws of this Kingdom, solely invested in the King.

3. The Law that hath given this Power to the King to do these things, hath given him Means to put these things in Execution.

And as to all these I shall ground myself upon Authorities in Law, and Precedents in all Ages.

1. That the Defence of the Kingdom must be at the Charge of the Kingdom, I shall prove, (1.) From the Law of Nature, which is, that every thing in Nature ought to defend itself.

(2.) From the Rule of Reason: for *Quod omnes tangit, ab omnibus supportari debet*.

(3.) From the true Use of all that we enjoy, which must be abused, if not employed to and for the Good also of those that come after us; and necessary it is for our Posterity to have all sure and safe. A good Patient will spare some Blood to preserve his own Health; and a good Husband will spare some of his best Ground for Ditches and Fences to preserve the rest; and he is an ill Husband that finds not Safety in that he doth.

(4.) From the Law of Property: as every one hath a particular Property in his own Goods, so every one hath a Property in general in another Man's

Man's Goods, for the common Good. For the Commonwealth hath a Property in every Man's Goods, not only in time of War, but also in time of Necessity in time of Peace. Therefore if any Man take away my Goods without my Consent, I have my Action, and recover Damage. *Doctor* and *Student* saith, both a Trespass of Lands and Goods is punishable by Indictment, and Trespass, at the King's Suit as well as at the Subject's: And this is by reason of the publick Interest the King hath in every Subject's Goods for the common Good.

Now the Rule and Maxim before so clearly and fully put and agreed by all, is, that in case of Necessity that is apparent, the Subject ought to defend the Kingdom. And my Brother *Crooke* agrees in case of Danger, so it be imminent, all Men are bound in their Persons and Estates to defend the Kingdom; and he says then they must *exponere se & sua*: I think he means a Man that takes a Journey may carry his Money with him, *se & sua*: or else he means the King cannot command their Money without their Consent: of which I will speak in its proper Place.

2. I come now to the second Part of my general Head, which is the Power of laying this Charge. By the fundamental Laws and Policy of this Kingdom, the sole Interest and Property of the Sea, &c. is in the King. I will not speak of this Monarchy, this is rather fit for Civilians, Historians, or the Pen of a Divine, than a Judge at *Westminster-Hall*: Nor will I speak of the Division of Monarchies: The Poets say that *Saturn* was the first Founder of Kingdoms. Only this I will say, that for the Excellency of the Government of this Kingdom, thro' God's Blessing, none are more happy than we. Look and see in other Nations, and tell me if you can find out any Place where they can and do enjoy those Mercies of Peace and Plenty which we do; so as we may justly say, *O fortunatos nimium bona si sua norunt Britannos!* Nor will I perplex myself with the Original of the Nation and Monarchy; some Stories are fabulous, others doubtful, not any so clear as to set it forth certainly, tho' they speak truly what is sufficient for us to know; nor is he the poorest, *Qui non potest numerare Pecus*, nor he one of the worst Gentlemen that cannot shew the Original of his Pedigree. The Excellency of this Monarchy is, that it is sufficient it is a Monarchy; and that it is most true what *Fortescue* saith of our Laws. I agree that *Fortescue* was a Lord Chief Justice in *Hen. VI.*'s Time, but not Chancellor of *England*. Sea and Land make but one Kingdom, and the King is *Sponsus Regni*; *Magdalen College Case*, *Sir Job. Davie's Reports*, Stat. 24 *Hen. VIII.* 1 *Eliz.* and 1 *Jac.* The Soil of the Sea belongs to the King, who is Lord and sole Proprietor of them; and good Reason why he should, as is well maintained by Mr. *Selden*, that worthy and learned Author of *Mare Clausum*; and I hope shall be by his Majesty maintained, with the Sovereignty of the Sea: and without a Navy this Authority can do but little Good.

The King holds this Diadem of God only, all others hold their Lands of him, and he of none but of God: But this is but to light a Candle for others. From hence only I will observe, that none other can share with him in his absolute Power.

A Parliament is an honourable Court; and I confess it an excellent Means of charging the Subject, and defending the Kingdom; but yet it is

not the only Means. An Honour the last Parliament was pleased to bestow on me, which never any shall with more respect remember than myself, when they were pleased to chuse me for their Speaker. And as my Brother *Hutton* said, I conceive it a fit Way to charge the Subject; and I wish that some, for their private Humour, had not sowed the Tares of Discontent in that Field of the Commonwealth, then might we have expected and found good Fruit. But now the best Way to redeem this lost Privilege (for which we may give those Thanks only) is to give all opportune Appearance of Obedience and Dutifulness to his Majesty's Command.

The two Houses of Parliament without the King cannot make a Law, nor without his Royal Assent declare it: he is not bound to call it but when he pleaseth, nor to continue it but at his Pleasure. Certainly there was a King before a Parliament, for how else could there be an Assembly of King, Lords and Commons? And then what Sovereignty was there in the Kingdom but this? His Power then was limited by the positive Law; then it cannot be denied but originally the King had the Sovereignty of the whole Kingdom both by Sea and Land, who hath a Power of charging the whole Kingdom.

3. The Law that hath given that Power, hath given Means to the King by this Authority to put it in Execution. It is a very true Rule, The Law commands nothing to be done, but it permits the Ways and Means how it may be done; else the Law should be imperfect, lame and unjust: therefore the Law that hath given the Interest and Sovereignty of defending and governing the Kingdom to the King, doth also give the King Power to charge his Subjects for the necessary Defence and Good thereof. And as the King is bound to defend, so the Subjects are bound to obey, and to come out of their own Country, if Occasion be, and to provide Horse and Arms in foreign War; and such are compellable now to find Guns instead of Bows and Arrows, so Ammunition, as Powder, Shot, &c. Then if Sea and Land be but one entire Kingdom, and the King Lord of both, the Subject is bound as well to the Defence of the Sea as of the Land; and then all are bound to provide Ships, Men, Ammunition, Victuals, and Necessaries for that Defence. And for us Islanders, it is most necessary for us to defend ourselves at Sea: therefore it was the great Argument in 88, whether it was best to fight with the Royal and Invincible Navy or *Armada* of *Spain* at Sea, or suffer them to land; and it was resolved clearly, that it was better to fight with them at Sea, tho' we lost the Battle and our Ships, than to suffer them to land.

But then there was *Hannibal ad Portas*.

To this I shall answer afterwards. But here the Maritime Towns shall not help the Inland, nor the Inland the Maritime, but each of them bear their own Charge, and defend themselves. But of this I shall likewise speak hereafter; yet undoubtedly it is reasonable that both should join to defend the Kingdom in case of Necessity.

Now I shall endeavour to prove this clearly by Authority in Law, and Precedents in all Ages. And, (1.) It is a great Authority in Law, that there is no express Authority against it: tho' there have been some Books cited by my Brother *Hutton* and my Brother *Crooke*, (which I shall answer in their due Place, amongst other Objections) yet there is not one Authority or Opinion, much less

Resolution or Judgment, in necessary Time of Danger, that says, the King may not charge the Subjects for Defence of the Kingdom.

2. All these Authorities that prove the King is trusted with the Defence of the Kingdom, and in divers Cases give him Aid, Taxes, Subsidies, &c. prove that the Subject is bound in case of Danger and Necessity, to pay them to the King for Defence of the Kingdom.

(3.) All the Authorities of Murage, Pontage, Salt-Peter, &c. shew that for the good of the Publick the King is interested in the Estates of the the Subject, and may charge them much more, if for the Well-being, than where the Being itself of the Commonwealth is at Stake and in Danger.

(4.) The Authority of commanding the Persons of the Subjects to come out of their own Countries proves it. The Power of commanding the Person of the Subject into foreign Parts is in the King; much more the State of Men should be at his Command, in case of necessary Defence of the Kingdom.

(5.) All the Commissions of arraying Men in *Ed. I. Ed. II. Ed. III. Ed. IV. Hen. VII. and Hen. VIII. Times, &c.* are grounded upon the same Reason, and went out for the necessary Defence of the Kingdom. These Writs are not to command the Person, but a Ship only, *juxta facultates suas*; which are answerable in Reason to the antient Precedents.

From Authorities I come to Precedents; tho' they be not Judgments, yet they shew the Practice of the Law: and what better Book have we in the Law than the Book of Precedents, or what is there of more Authority than that, for we have not the twelve Tables for our common Laws.

The Common Law is but the common Usage of the Land; and therefore the Precedents alledged by the King's Counsel are of good Authority to prove the Laws in this Case; wherein I shall not name the Particulars, they have been well remember'd by Mr. Attorney and Mr. Solicitor: but I will mention the Substance of them.

The first sort of Precedents were before the Conquest, in the Times of *Edgar, Alfred, Ethelred, &c.* the Use was to defend the Kingdom at the Charge of the whole Kingdom, by the Edict of the King. A strong Inference from the Precedent of the Grant to the Clergy and Church of divers Privileges, with these Exceptions of *Pontium, &c.* in the Times of *Edgar, Alfred, and Ethelred, &c.*

The Council of *Enoch* in *Edgar's* Time, about 606, mentioned by the learned Antiquary Sir *Henry Spelman*, fo. 510. And after those follows *hæ sunt constitutiones, &c.* fo. 523. in which are excellent Things, good for Church and Commonwealth. *Cap. 23. Navales Expeditiones*, if it be no Act of Parliament, yet nothing is more like an Act of Parliament: take the Phrase of those Times, and certainly it was either an Act of Parliament, or a Proof of the King's Power, that without Parliament he might charge the Subject for the Defence of the Kingdom in case of Danger. And the Word Expedition is used for War, and sometimes for an Army, as *Cassiodorus* giving the Reason of the Name, says. In the third Place, it shews the Practice of the Kings of *England* to charge their Subjects for the Defence of the Kingdom in case of Danger.

Now if this Charge of *Danegelt* be not taken away by any of the Acts of Parliament, it remains still, saith my Brother *Hutton*. And so I think it doth, or something in lieu of it; for it is not taken away by any Act of Parliament.

In these Precedents, observe, (1.) That they are all upon the same common Reason that this is.

(2.) These Writs are not limited for their Number or Time; so they prove the Power was in the King to charge his Subjects.

(3.) In these Precedents, some were to Inland Counties, as *Bucks, Huntingdon, Bedford, Leicester, Oxford, Berks, &c.* And tho' they went not generally to all Counties at one time, yet they went to them as occasion was. And if the Danger had required it, the King might, if he pleased, have sent to all as well as to some.

But because there was never any Time, when all the Ammunition in the Kingdom was drawn at one Time to one Place, may it not therefore be done? The commanding sometimes of one, sometimes of another, is an Argument they may be all commanded as occasion requires. I do not build my Opinion upon confused Notions, but on Matters digested, on Precedents of Weight, the chiefest in respect of Time: and after the making of *Magna Charta*, 9 *Hen. III.* 13 *Hen. III. m. 48.* 18 *Hen. III. m. 7.* 13 *Ed. III. m. 77.* 23 *Ed. III. m. 4.* 28 *Ed. I. m. 23.* and many others in *Ed. I.'s* Time, there is proving Contribution towards the Maintenance of the Sea-Coasts from Inland Towns, as 25 *Ed. I. m. 13.* the Abbot of *Robertsbriidge's* Case is a full Precedent, notwithstanding all that hath been said against it. So 9 *Ed. II. pars. 1.* 20 *Ed. II. m. 7.* 2 *Ed. III. Scot. Roll.* 7 *Ed. III. m. 9.* 10 *Ed. III. m. 16.* 17. 11 *Ed. III. 12 Ed. III. 14, 15, 16.* 18 *Ed. III. 46 Ed. III. m. 34.* 25 *Ed. III. Rot. Franc'* m. 9. 29 *Ed. III. 1 Ric. II. 1 Hen. IV.* Yet *Hen. IV.* had as much Reason to please the People as any King of *England*. So in *Hen. V.'s* Time, tho' busied in the glorious Conquests of *France*, or rather Recovery of *France*; God forbid we should see such Times. So in the Times of *Ed. IV. Hen. VI. Hen. VII. and Hen. VIII.* by way of offensive War, Writs and Commissions to their Subjects to contribute toward it. So in *Queen Eliz.'s* Time, Commissions towards the Maintenance of the Kingdom. 11 *Eliz.* 41 *Eliz.* a Commission to the Earl of *Nottingham*. In 88, Letters from the Lords of the Council, which Letters had the Queen's Writs in them.

But my Brother *Crooke* answer'd all these with this Rule of Law, *Judicandum est legibus non exemplis*. To this I answer, that Examples and Precedents are good Law; they are Authorities out of the Law, and what of more Certainty? Digest of Writs, these are *inter Oracula Legis*, Precedents drawn up by Clerks; tho' they pass sometimes *sub Silentio*, yet are they good Authorities in the Law. The Abbot of *Robertsbriidge's* Case is a Precedent of great Authority.

But it is alledged, no Precedent goes to Inland Counties.

I answer, in truth the Precedents are quite otherwise; for ordinary Defence they go to Maritime Counties only, but when the Danger is general, to Inland Counties also, and after another manner. For this I refer you to my Brother *Weston's* Argument: These could not be so frequent; for first, Such Danger was but seldom: Secondly, We had then double Hostility, one from *France* by Sea, another

another from Scotland by Land. Examine the Precedents therefore.

Another Observation that my Brother Crooke made, is this, that we are compellable by our Persons and Arms, but not with any Sum of Money.

I answer with my Brother Jones, that *bona Corporis* are above *bona Fortune*: but this Power of Liberty to command the Persons of his Subjects, he agrees is in the King; then I say, more reason that their Estates should be in his Power in this Case of Defence.

Besides, the Precedents warrant the quite contrary, and Wages have been paid the Soldiers by the Subject in this Case.

III. The third thing I shall do in this Case, is the answering of all the Objections which have been made against it, which were three.

1. That this Writ was against the Common Law.

2. That it was against the Statute Law.

3. That many Inconveniences will grow thereby.

1. It is against the Common Law, because it is without Precedent: This is the first of this kind since the Conquest; and where there is no Precedent, the Law will not bear it; *Littleton* fol. 32. Lord Coke's Comment upon it: and they put divers Cases to the same Purpose.

I answer, that there are Precedents for it, and the Law is so, that the King may charge his Subjects towards the Defence of the Kingdom in this Case.

2. The second Objection is, that it is against the Freedom of the Subject, who hath a true Property in his Goods, which cannot be taken away without his actual or implied Consent. *Lambert* fol. 294. *Mag. Char.* 17 King John, *Mat. Paris* fol. 242. *Fortescue* fol. 9. cap. 13, &c. 13 Hen. IV. the Chamberlain of London's Case, *Reg'* fol. 127. *Fitz-herb. Na. Br.* &c.

I answer, That the Authority of *Lambert* rehearsing the Laws of the Conqueror, is, *Volumus & concedimus ut omnes liberi homines totius Monarchie Regni nostri habeant & teneant terras suas & possessiones suas bene & in pace, liberas ab omni exactione injusta, & ab omni tallagio, ita quod nihil exigatur vel capiatur nisi per commune concilium, &c.* It cannot be construed that they should not be charged, but that they should be free from all unjust Taxes. The King is not concluded by the subsequent Words *omne Tallagium*; this cannot be so general, but the King may impose just Charges towards the necessary Defence of the whole Kingdom. For this is meant, as by the Work Taillage plainly appeareth. *Tallagium* is derived from a French Word, and is indeed a cutting Word, and therefore *injusta Exactio*; which shews that for the most part it is taken in the worst Sense, and as my Brother Crooke said it, the manner of expounding it must be from the Law.

But my Brother Crooke quite left out these Words following that declare and expound the former, *viz. Statuimus & firmiter precipimus ut omnes liberi homines totius regni præd' sint fratres conjurati ad monarchiam nostram pro viribus suis & facultatibus contra inimicos pro posse suo defendend' & viriliter servand' &c.* Whereby it is apparent,

(1.) That the Kingdom is to be defended by the whole Kingdom *pro facultatibus* with their Goods, as well as *viribus* with their Persons.

(2.) It comes after the Chapter of Tenure and Services, by which they are bound to defend, *Terras & honores suos, &c.* which shews that he meant not to discharge any from the general Charge of defending the Kingdom in case of Necessity.

The next Objection is the Charter of King John, *Nullum tallagium imponatur nisi per commune concilium.*

I answer, The Words are concerning the Defence of his own Person, and not the Kingdom; and therefore it is excepted, *nisi ad redimendum corpus nostrum*; and in the original Act these Words are left out. Scutage, Murage, and other Aids there mentioned, shews that only those were meant, that were of private Benefit. They were not to be imposed by the King upon any Subject, without Parliament, but not to bar himself from laying such as were for the Publick Good.

The next Authority that was objected, was *Fortescue*, which was most press'd and insisted on by my Brother Crooke.

Before I come to the Words themselves, note (1.) The Time when he wrote that Book, it was after all the Acts of Parliament that took away the Royal Power; yet it did not mention them, so as must needs relate to the Common Law. It was writ when the Civil Wars were between the two Houses of York and Lancaster, and he himself was in Exile; no time then to displease the People.

(2.) It shews the Difference between Kingdoms, when a Monarch rules, that challengeth all Power over his Subjects, and a Monarch that governs according to the positive Laws. The Words that seemed to be against this Charge are, *fol. 9. Cap. 26. Rex Angliæ politice imperans genti suæ nec legem ipse sine subditorum assensu mutare poterit, nec subiectum populum renitentem onerare impositionibus peregrinis. Cap. 13. fol. 32. Rex caput corporis politici mutare non potest leges corporis illius nec ejusd' populi substantias proprias subtrahere reclamantibus eis aut invitis.* And *Cap. 36. fol. 84.* which my Brother Crooke says is the express Authority in *hoc individuo*: The Words are, *Rex regni Angliæ ibidem per se aut ministros tallagia subsidia aut quovis onera alia imponit legibus suis aut leges eorum mutat vel novas condit sine concessione vel assensu totius regni sui in parlamento suo expresso, &c.*

From them all, I take the true Meaning of him to be; and I hold, (1.) That the Kingdom ought to be govern'd by the positive Laws of the Land; and that the King cannot change or make new Laws without a Parliament.

(2.) That the Subject hath an absolute Property in his Goods and Estate, and that the King cannot take them to his own Use.

(3.) That for his own Use he cannot lay any Burden upon his Subjects, without the Subjects Consent in Parliament.

(4.) That for the Benefit of Trade, the King may lay fitting Impositions, and may command that which is for the necessary Defence of the Kingdom; which is no Command of Charge, but Command of employing.

(5.) I answer therefore to the great Objection, That the Liberty of the Subject is lost, and the Property is drown'd which they have in their Estates.

First, I say, all private Property must give way to the Publick; and therefore a Trespass to private Men may be punished by Indictment, because

it is an Offence of the publick Weal : and tho' every Man hath a Property in his Goods, yet he must not use them in detriment of the Commonwealth. A Man may give his Grasse or Corn away in the Field, or when it is in his Barn : But if he will cut it unusually, or burn or destroy his Corn, or if he throw his Goods into the Sea, that they may perish, these are Crimes punishable by the Common Law : so is transporting of Goods, Commodities, against the publick Good : Therefore the Directions of the Statutes, for the Restraint hereof, are from the Common Law. And the Reason of this is, because the publick Property must take place : And if in petty Business it may be, then much more in time of publick, and great Necessity and Danger. And it is rather an Averment of the Subjects Property, that in Case of Necessity only they may be taken away, than contrary to it.

My Brother *Hutton* and my Brother *Crooke* agree, that all are bound in case of Necessity *exponere se & sua*, to defend the Kingdom ; and may not the King command a Part, with more Reason than all ?

In the next place, I shall remove a Scandal that hath been put upon the King, how that his Majesty hath meant to make a private personal Profit of it.

What he hath done is well known ; and I dare confidently say, all hath been spent, without any Account to himself, and that his Majesty hath been at great Charge besides towards the same : And I heard it from his own Royal Mouth, he spake it to me, and my Lord *Brampston* can testify as much, that he said, it never entered into his Thoughts to make such use of it ; and therefore said, he was bound in Conscience to convert it to the Use it was received for, and none other ; and that he would sooner eat the Money, than convert it to his Use. Therefore, he that thinks the King made a Revenue of it, doth highly slander his Majesty. But let Kings be as *David* was, Men after God's own Heart, yet they will not want a *Shimei* to rail on them.

But tho' (blessed be God) his Majesty is so gracious and loving to his Subjects, and so just, that we need not fear he will charge them but upon urgent Necessity ; yet we know not what succeeding Ages will do.

It is not well to blast succeeding Ages ; and if they should hereafter charge unreasonably without Cause, yet this Judgment warrants no such thing. Again, it is no Argument to condemn the true Use of a thing, because it may be abused. And again, The Law reposes as great Trust in the King as this. The King may pardon all Offences ; but if he should, then none should be safe. The King may make Peace and War at his pleasure : but yet should he make Peace, when Peace would ruin us ; or War, when War would undo us ; it would be worse than this. Therefore it cannot be suspected, that the King will do any thing against Law and the publick Good of the Kingdom : Therefore the Law says, the King can do no Wrong ; for he is *Sponsus Regni*, as in *Magdalen-College Case*.

Then they object *Clark's*, and the Chamberlain of *London's Case*. These Cases are nothing against this, but rather for it.

The Record of 14 Ric. II. Rot. 60. B. R. *Lever's Case*, in an Action of Trespass, for taking

away his Goods, without his Consent, had Judgment to recover in *Durham*.

But the Case was this : One *Lever* of *Durham* brought his Action against another for entering into his House, and taking away his Goods, and 60*l.* in Money ; the Defendant pleaded Not Guilty, and the Jury upon a special Verdict found that the Defendant took away his Money, but upon this Occasion : The Scots had invaded the Realm, and were in *Durham*, and could not be gone without a certain Sum of Money : Whereupon the Inhabitants assembled, and amongst the rest, the Plaintiff was one ; and they made an Order to abide the Ordinance of the greater Part, which was to give the Scots the Money desired ; and because the Money was to be paid presently, ready down, therefore they made another Order, to search in all Men's Houses, and take away what Money they found ; and according to which the Defendant searched the Plaintiff's House, and took away 60*l.* and because it was without Consent the Plaintiff had Judgment in *Durham* : but upon the special Verdict it was reversed in the *King's-Bench*, because it was with his Consent. Indeed the Reasons were, 1st, because he had sufficient Remedy against the Commonalty of *Durham*, and 2^{dly}, because he did it as a Servant.

But I answer, 1st, Tho' the Ordinance was good by Consent, yet it followed not that it was void without Consent ; the Question is there only, whether good by Consent. 2^{dly}, It follows not but that all Men without Consent are bound to contribute towards a general Charge for necessary Defence.

Another Objection made by my Brother *Crooke* was 2 Ric. II. Pars 1. where all the Lords and Sages met together after Parliament, and it was agreed by them, that they could not charge the Commons without Parliament ; that this was a Declaration of the Law in Parliament, and almost equivalent to an Act of Parliament.

I answer, (1.) that this was no Act, but a Declaration in Parliament of the Law, and indeed no Declaration, but a Relation by the Chancellor.

(2.) If it had been a Declaration, yet it had not been binding without the King.

(3.) It is no Precedent of a good look, it was when the King was young, and the Parliament had the Regency : Counsellors, Treasurers, and all his Officers about his Person, were chosen by the Parliament ; and therefore, no wonder if they endeavoured to please the Parliament.

(4.) It is a Precedent that they, *i. e.* the Lords, could not charge the Commons by themselves.

Again, the Case was not for the Defence of the Realm, but for Wars in *France*, *Scotland*, and *Ireland* ; these were the many Wars. Tho' Subjects may be charged for necessary Defence of the Kingdom, yet if Foreign Wars be together with them, it is otherwise. And therefore in the Parliament before, they said such Charge belong not to them ; and therefore they hold, they ought not to bear it : and so that Rule of *Gascoigne*, 24 Hen. IV. fol. 4. That no Man shall be charged without Parliament, where Bulwarks were built, &c. it proves not, tho' it implies, that if it had concern'd the Kingdom, it had been otherwise.

3. The next general Objection was the great Inconveniency that would hereupon ensue ; if such a Charge might be, then none knows what his Charge will be, for the King may command it as often as he

he pleases, an Example hereof they put in *Danegelt*, that in eleven Years grew from twelve to forty-eight thousand Pounds : therefore the Law hath provided against that Uncertainty, and limited it to a Parliament.

I answer to this, (1.) That if Danger increase, so must the Charge ; again, the King may command all Persons when there is Necessity, and as often as he pleases he may do it. Is not this as great an Inconveniency as in this Case, and yet that abates not the Writ ? My Brother *Crooke* shewed how Subsidies increased, and yet no Inconveniency in that he conceived ; and indeed this shews the Provision of Charge must be according to the Danger.

Besides, No Abuse of any thing, must take away the true and lawful Use thereof. But we cannot suspect that there will be such Abuse. *Ubi confidit Deus & lex, & nos etiam confidemus.* God and the Law hath trusted his Majesty, and we should not distrust him.

In time of imminent Danger, *tempore belli*, any thing, and by any Man may be done, Murder cannot be punished : yet, says my Brother *Crooke*, the King cannot charge his Subjects in any Case without Parliament ; no, not when the Kingdom is actually invaded by the Enemy. But truly I think, as he was the first, so he will be the last of that Opinion, especially having delivered his Opinion, that the King is sole Judge of the Danger before, as indeed he is ; and that the King is sole Judge of the Danger, not any have denied it, and therefore else it should be no Danger, but when every one shall say, you shall judge that the Kingdom is in Danger.

(2.) There hath been and may be, as great Danger when the Enemy is not discerned, as when in Arms and on the Land.

In the Time of War when the Course of Law is stopped, when Judges have no Power or Place, when the Courts of Justice can send out no Process, in this Case the King may charge his Subjects, you grant. Mark what you grant ; when there is such a Confusion as no Law, then the King may do it. *Dato uno absurdo, infinita sequuntur.*

Then there may be a Time of War in one Part of the Kingdom, and the Courts of Justice may sit ; as in 14 *Hen. III. Ricb. II. and Hen. VII.*'s Time, Wars were in some Parts of the Land, yet the Judges sat in *Westminster-Hall*.

(1.) Now, whether a Danger be to all the Kingdom, or to a Part, they are alike perillous, and all ought to be charged.

(2.) The King may charge the Subjects for the Defence of the Land. Now the Land and the Sea make but one intire Kingdom, and there is but one Lord of both, and the King is bound to defend both.

(3.) Expectancy of Danger, I hold, is sufficient Ground for the King to charge his Subjects ; for if we stay till the Danger comes, it will be then too late, it may be.

And (4.) His Averment of the Danger is not traversable, it must be binding when he perceives and says there is a Danger ; as in 88, the Enemy had been upon us, if it had not been foreseen, and provided for, before it came.

But I will not determine the Danger now. Do not we see our potent Neighbours, and our great Enemies heretofore, were they not prepared for War ; and was there not another Navy floated upon the Sea ? and was not the Dominion of the Sea

threatned to be taken away ? As long as this Danger remains, I shall bless God for such a King as will provide for the Defence of the Kingdom timely, and rejoice to see such a Navy as other Nations must veil to ; and we are not in Case of Safety without it, and should lose our Glory besides.

The next Objection of my Brother *Crooke* was, that there is a Means provided by Parliament, which will not withhold Aid for the Defence of the Kingdom, and it were a Sin to deny it in case of Necessity. And in *Ed. I.*'s Time, *Ed. II.*'s Time, and 4 *Ed. III.*'s a Parliament was to be held every Year for the Defence of the Kingdom, & *propter ardua Regni.*

I answer, that might well be, but then, in the Time of *Ed. I. Ed. II. Ed. III.* there were Pleas in Parliament, but those are now laid aside ; and that the Subjects ought to give the King Subsidies ; I will not say that, inferring they will not do it, nor am I apt to believe it ; but I hold, Parliaments are the excellent Means to raise Aid for the Defence of the Kingdom, and yet they are not the only Means, for then the Parliament, and not the King, should be the only Judge, and have the Defence of the Realm ; or else it should give the King a Charge of Defence, without Power or Means.

The Objection of the King's Revenues, Tenures and Prerogative, they have been unfitly remembered, and they have been fully answered.

The Statute of Tonnage and Poundage given to the King, for and towards the Defence of the Sea, and the other Acts of Parliament, that restrain the King's Power, so that he cannot now charge the Subject without his Consent in Parliament, I shall answer in the next Place ; and before I come to the particular Acts, I will shew what, in my Opinion, they may do.

1. Acts of Parliament may take away Flowers and Ornaments of the Crown, but not the Crown itself ; they cannot bar a Succession, nor can they be attainted by them, and Acts that bar them of Possession are void.

2. No Act of Parliament can bar a King of his Regality, as that no Lands should hold of him ; or bar him of the Allegiance of his Subjects ; or the Relative on his Part, as Trust and Power to defend his People : therefore Acts of Parliament, to take away his Royal Power in the Defence of his Kingdom, are void (as my Lord Chief Baron said ;) they are void Acts of Parliament, to bind the King not to command the Subjects, their Persons and Goods, and I say, their Money too : for no Acts of Parliament make any Difference. Now to the particular Statute objected.

(1.) 25 *Ed. I. Chap. 5. Confirmatio Chartarum*, the Words are these, 'Aids or Taxes, granted to the King shall not be taken for a Custom or Precedent : and *cap. 6.* Moreover, we have granted for us and our Heirs, that for no Business from henceforth, we shall take such Manner of Aids, Taxes, nor Prizes, due and accustomed.' And *cap. 7.* a Release of Toll upon every Sack of Wool 'And grant, that we will not take such things without their common Assent and good liking, saving to us and our Heirs, the Customs granted by the Commons afore said.'

As to the other Statute, *de Tallagio non concedendo, cap. 1. Nullum tallagium imponetur nisi per commune concilium regni nostri. cap. 2, 3, 4, 5, &c.*

First, These Words must have relation to the Aids before, and there be divers Aids ; as some by

by Taillage, some by way of Prize upon Goods, and Ransom of his Majesty's Person, &c. the King thereupon makes this Grant, which hath Relation to such Aids as were granted voluntarily. Secondly, Antient Aids are there reserved, as redeeming the King's Body, *pur faire fitz Chevalier, & pur marier son file eigne*; and so all other antient Aids, which are to be understood with an *ad redimendum corpus*, &c.

And to the Statute *de Tallagio non concedendo*, in some Books it is not in Print, but mentioned in *Mag' Char' Russell*, and the Petition of Right, 3 Car. 1628, to be in 24 or 25 Edw. I. And therefore I answer. It is not in the Parliament-Roll, and there is Variance about it; and therefore it is but an Abstract, and no substantial Statute.

But since it hath passed for a Statute, and possibly may be one, I agree with all the rest of my Brothers, that it is a Statute: And then I answer, (1.) That *nullum tallagium imponetur*, &c. that is, no unlawful Taillage shall be imposed upon the Subject without his Consent; or else the Aids *pur faire Fitz Chevalier & pur file marier*, had not been excepted.

(2.) No Aids shall be imposed but by Contribution of the King and People; and here the King is taxed as well as they.

(3.) An Act of Parliament can by no Means take it away, much less by those general Words.

Obj. In 14 Ed. III. cap. 1. No Man from henceforth shall be chargeable, but by common Consent in Parliament.

To this I answer, That tho' it be but temporary in some Parts, yet it is binding only *secundum subiectam materiam*: And the Words are general, as in the other Statute *de tallagio*, &c. besides, the Practice in that King's Time, and after, best interprets it.

Obj. 25 Ed. III. cap. 8. No finding of Men at Arms, unless by Consent, much less finding of Ships.

Ans. This takes not away any former Law; and therefore the Precedents following, 4 Hen. IV. shew that it does not reach to this Case.

Obj. 2 Hen. IV. m. 2. which is absolute in the Point, saith my Brother Crooke, where a Commission went forth for the Defence of the Sea, whereof Complaint was made in Parliament, with Desire that it might be repealed, and it was done.

Ans. I am of the contrary Opinion; for the Petition was, that it might be released; and the Answer was but this, that it should, but the King would treat with the Council about it; and it was but a Repeal of his Commission then only.

Obj. 1 Ric. III. cap. 2. where the King grants, that he would not hereafter charge them by Benevolence, or any such Charge, but that they should be dampned by the Law, by no such Charge or Imposition, *i. e.* by no such Charge of Money.

Ans. That Statute was only against Benevolences, and made by a King that had Reason, as we all know, to please the People for his own Ends.

Obj. 2. The Statute of *Tonnage and Poundage*, granted for the Defence of the Sea, the Words are, That no Taillage or Aid shall be without Act of Parliament, 2. That the King hath Means to defend the Kingdom, with a Protestation not to draw it into Example, 4 Hen. IV. 13 Hen. IV. Pari. Roll, m. 10.

Ans. I will not argue whether *Tonnage* and *Poundage* was before this Act of Parliament, nor that Time out of Mind they were granted to the King: But my Answer is, They are only for the ordinary Defence of the Sea. And the Protestation of 4 Hen. IV. is a Protestation of the Commons only; and this Charge is not taken away thereby, and *Tonnage* and *Poundage* is for and towards the Defence of the Sea: so all the Acts are, and so I agree. But for Extraordinaries, and but solely in case of Danger of the whole Kingdom, that the should not be granted, cannot be collected out of these Grants.

The Last Objection is the Petition of Right, 3 Car. That no Charge shall be imposed upon the Subject, but by Parliament.

Ans. I was then Speaker of the Lower House, and I have Reason to remember what then was made. And I say, 1. There is no mention of this Case. 2. There was no new thing granted, but only the ancient Liberties confirmed, taking notice of the Commons Protestation, not to bind the King from his antient Rights. 3. Look upon the Prayer what is desired; and the main Scope was, (1.) Generally against Loans, and this could not be included in these Words. (2.) Imprisonment without shewing Cause. (3.) Billleting of Soldiers. And, (4.) Mariners lying within the Land.

IV. I have now done with my third general Head, I come to the last, touching the *Form* and *Legality* of the Writ.

First, For the Legality of the Writ, and the Objections touching the Necessity, I have answered before; the main Objection is to the Body of the Writ.

It is said, [1.] The Command to charge the Sheriff to levy and assess Money according to his Discretion, is not legal; for that the Sheriff should make it *per sacramentum*, by the Oaths of a Jury, as in the Writs of Partition, Distribution *pro rata*, &c. This Assessment is not warranted by the Precedents, (say my Lord Chief Baron and my Brother Crooke) they do it not upon their Knowledge, but Presumption of Mens Estates; and from thence they speak against the too vast Power given to the Sheriff, to enhance it as he pleases.

[2.] The Inconvenience is great hereby; for by this means there is a great Inequality in the Assessment.

I answer, first, to the Assessment *per sacramentum*, No Reason why it should be here; for it is not done in the Commissions to levy Subsidies, much less should it be done here for a Matter of great Haste: And besides, the Sheriff is trusted with more; for he hath the Trust of the whole County, and takes an Oath to execute his Office justly, whereof this is one Part.

As to what they say, that there is no Precedent for it. (1.) I say, That there is no Precedent that it hath been done by Jury, but always by the Sheriff, or such whom the King was pleased to trust; and since one must be trusted, none more fit than he.

(2.) By Example, we see, he speeds all, and is most ready for it.

(3.) I say, the Writ leads not the Assessment, it commands the Ship to be provided; so if that be done, there is no Necessity of Assessment: And if the Towns and Counties say they will provide a Ship, and do it, then no Assessment is requisite; but

but if they do it not, then the Sheriff is to levy it, that the Defence may be seasonable: so that the Clause of the Assessment shews the Manner of it. When a Multitude is to join, none more fit than he to do it; and no way, better, than to write to him to do it according to Mens Abilities.

(4.) The Clause of the Assessment is not only to the Sheriff, but to the Head Officer of the Town and Borough; and tho' the Discretion of the Clause be to the Sheriff, yet it appears not, that it is limited to him only.

And whereas it was said, That the Sheriff cannot assess himself, and the Precedents warrant not this Assessment by the Sheriff.

I answer, All the Precedents are not against it, but commonly it is not so; and yet there have been a Multitude of Precedents thus. As to the Inequality of it, Mr. *Hampden* had the least Cause of any Man in *England* to complain, considering how he was rated.

Again, all that the Writ commands, is but an Assessment *juxta facultates suas, ita quod omnes &c.* and if the Sheriff do otherwise, and wrong the Subjects, he is answerable. By divers antient Precedents it appears, where the Sheriffs have been faulty this Way, they have been punished; and Sir *Walter Norton's* Case, now depending in the *Star-Chamber*, concerns this, for an Abuse in levying this Charge, when High Sheriff of *Lincolnshire*.

Truly, I think, as my Lord Chief Baron said, if there had not been an Inequality by the Abuse of the Assessors, the Charge had not been complained of; yet the like Inequalities is in Subsidies: And this is no just Cause of Exception against it, but of Accusation against the Sheriff who is to answer it. And I can say truly, his Majesty hath been very careful to prevent and remedy the Abuses therein, and hath often sat daily in the *Council-Chamber* to give his Advice herein himself; and upon his Command Reformation hath been in divers Parts; and it hath been given in Command to all his Judges in their Circuit, to endeavour the same in all Parts: And I myself, by this Command, have rectify'd Rates in this Kind, that have been unequal. And I doubt not, if the Necessity of Danger shall still require it, or again, hereafter it may be done with all Equity.

The *Second* Objection is, That the Sheriff cannot tax himself, for then he should be Judge and Party in one Case; nor can he commit himself: and if he be omitted out of the Assessment, then it cannot be equal, nor cannot be according to the Writ that commands all should be assessed according to their Abilities rateably.

I answer, This *prima facie* carries some Shew with it; but examine Causes of less Consequence, and it is easily answered. The Justices of Peace, in levying Subsidies, make Rates for themselves. The Commissioners of Sewers tax their own Lands; and so if by Jurors it were done, it would be the like. There must be either new Assessors appointed, or they themselves must do it: That would bring Delay, and this requires Hasten and Expedition; and therefore the Sheriff is fittest for this Business. Authorities in Law there are divers herein, as the Writs for the levying Expences for Knights of the Shire, Direction is to the Sheriff to do it, who assesses himself, and yet he is to execute it: So in a Writ of Recovery *de bonis habitantium*, the Sheriff is chargeable with his Part; yet he is to execute it. If a Fine be laid upon the

whole County, he levies it, yet is chargeable with his Part towards it.

Obj. The Writ is directed *probis hominibus*, and these cannot be charged in an Inland County.

Ans. What difference there is *inter probus homines*, between Inland Counties and Maritime Counties, I know not. 24 *Edw.* III. a Writ whereby they were charged in case of necessity; as to *Yarmouth* it was *probis hominibus*, &c. True, a grant by the King *probis hominibus* generally is void. 1 *Hen.* VI. *Dyer Phil' & Mar.* 7 *Edw.* IV. 14. But a Commission or Writ to assess them good enough. *Probi homines*, that they know not, nor see not, it is not material, for that would make them sole Judges of the Danger, when as the King only is, and this not traversable neither.

Obj. The Writ commands an Inland County to find a Ship and Mariners, which is impossible; and *lex non cogit ad impossibilia*; and for this my Brother *Crooke* puts the common Cases, that a general Return, 49. *Ed.* III. 6. and Impossibilities are void; a Covenant for impossible things is void, but a Bond may be good.

I answer now to the point of Impossibility. And possibly the Ship may be built in an inland County, tho' to carry it to *Portsmouth* is impossible; but it's possible to provide a Ship and Mariners, as the Writ commands, which may very well be done with Money.

Obj. But we have none but trained Soldiers, no Mariners; our Country consists in Tillage, and our Men are trained up to the Plough and Husbandry.

I answer, We have the like occasion of Ploughs and Husbandry in *Kent*, and we have in many places no Maritime Towns; some lie 20 Miles from the Sea, and yet we are justly charged to find a Ship. Precedents we have as well as you in *Oxon* and *Bucks*, or else none should be charged but Port Towns, and in particular no Law or Statute to exempt them. Until *Alfred's* time, there was no distinction of Maritime or Inland Counties, for then all *England* was but one Maritime County.

Then they objected, the Payment of Soldiers Wages for 26 Weeks, to be in the King's Service, is against many Precedents: as 16 *Edw.* II. 10. *Edw.* III. and entirely for Wages to be paid by the County is against all the Precedents: and Tenants by Knights Service after 40 Days, are to be paid by the King. And other Precedents my Brother *Crooke* cited, when divers refused to go out of their own Country till paid, and Order taken for their Pay by the King. And whereas the County had given Bond for Payment of Soldiers Wages, they were cancelled, and Order made in Parliament, that Soldiers should be at the King's Pay, 2 *Edw.* III. 16. 18 *Edw.* III. cap. 7.

These are easily answered, for these Precedents prove no more than Payment of Wages *de facto*, and so the King may pay it where it is not due; and for their refusal, I have nothing to do with that now: but 10 *Edw.* III. M. 2. there is mention made of *Berkshire* Men, commanded to carry their Soldiers forth of their County at their own Costs; and when the Soldiers refused to go thence, no Charge or Payment; for Soldiers used to be paid by their County, as in that Case; and they were forced to go, and did go, and stay there three Years: so 13 *Edw.* III. M. 8.

Obj. 1 *Ed. III. m. 14.* None compelled to go out of their County without Wages paid. 18 *Edw. III. m. 6, 7.* that none should go out of their Counties: And not only those that had Offices and Patents to serve the King, but all with this Proviso, that the King should pay them their Wages.

Ans. 1 *Edw. III.* It is clear, and hath in it the Exception in Case of Necessity, and to be done as in times past.

18 *Ed. III.* It is expressed in the Act, when they go to the King's Wars out of the Kingdom: so 19 *Hen. VII. &c.* These are all but declarative to the Common Law, *Corbet's Case*; the Reason is, because the Allegiance of the Subject is not natural, but local.

But that the King shall give Wages within his Kingdom, there is no Act of Parliament for it. Now it was resolved in the Exchequer, that the Sea and Land made but one entire Kingdom, and so no going out of the Kingdom here; and consequently the Payment of the Soldiers Wages within the Kingdom is not against Law.

The last Objection is, that the Writ is illegal, because contrary to *Mag' Char'*, *nullus liber homo imprisonetur.*

Ans. As touching the Objection of the Nobility, that they are privileged from Imprisonment, it might well have been spared; and I know not wherefore it was spoken of, unless to make them think they were more interested than the rest of his Majesty's Subjects in this Case.

Obj. But yet, I say, Noblemen may be imprisoned upon Contempt, as my Brother *Crooke* knows well; and it was resolved in the Earl of *Lincoln's Case*, in the *Star-Chamber*. It is true, that upon ordinary Process, they are not to be brought to Trial or imprisoned.

Now I answer, there is no Imprisonment in question, but the Assessment only, why he should not pay the Money assessed, or shew Cause to the contrary.

Secondly, Were the Writ illegal for Form and Circumstance, yet this makes not the Command itself illegal for Substance.

The Exceptions to the *Certiorari* are these.

1. The Direction of it to two Sheriffs, one out of his Office, when as the Sheriff in being ought only to return it.

Ans. Of this there is little doubt, nothing more frequent than for a *Certiorari* to issue out of the Chancery to two Parties, as to the Executors, or the Judge that took the Fine, and is removed, And so upon Commission to take a Fine by *dedimus potestatem*; in this Case the Writ is *inter brevia irretornabil'*: and this must remain with the old Sheriff, and are never deliver'd over by the Jury to the new Sheriff. In *Hobart's Case*, in the King's Bench, being convicted of *Heresy* before Sir *Julius Caesar* Judge of the Admiralty, Certificate to him after Master of the Rolls, and directed to him: so in the Case of my Lord *Paget*.

Obj. The Writ is without Return, saith my Lord Chief Baron; and the *Certiorari*, which is a Year and a half after, cannot renew it.

I answer, That shall not be the determining of it only; for the time limited expiring, shall not deprive one of his just Debt.

It is not sufficient, because it appears not, that Mr. *Hampden* was Tenant or Ter-Tenant, or that *Stoke Mandeville* is within the County of *Bucks*.

2. It appears not that there was any Ammunition or Ship prepared.

I answer, It doth sufficiently appear, that Mr. *Hampden* was Ter-Tenant, for the *Certiorari* was to the Sheriff, who certifies that he was Tenant; for it was in pursuance of the Writ: the Words are, *Virtute brevis Domini Regis huius schedul' annexat. certifico quod virtute & secundum exigentiam ipsius, &c. Assessari, Anglice* have assessed, *super separales homines & terrae tenentes Com' Bucks prædictorum nomina subscribuntur, &c.* It relates to the Place there, Tenants in the County of *Bucks*, and makes Mr. *Hampden* one. And thus the business of Knighthood was done, and in no other manner.

Then it appears not that the Ship was prepared.

To this I answer, 1st, That the Ship was done according to the Command of the Writ. 2^{dly}, It was prepared. 3^{dly}, If none had been prepared, the Fault was in them, for that they paid not in their Money.

For the Exceptions to this *Mittimus* I say nothing, because I told you the Case rests not upon these Words, *Salus Regni periclitabatur*, which is only to bring it to issue.

Then they except against the *Sci' Fa'*, 1st, That the King is not intitled to bring the *Sci' Fa'*. So there is no *cui oneretur*, to whom he should pay the Money, for whose Good or Benefit Mr. *Hampden* should satisfy the Money assessed.

I answer, the King is interested in all Actions for publick good, and shall recover accordingly, as in Case of *High-ways, Pontage, Murage, &c.* much more when it is for the general Defence of the Realm. In a *quare impedit* between two common Persons; tho' the King be neither Plaintiff nor Defendant, the King shall recover therein. Many times in Case of a common Informer, the King recovers the one Moiety tho' no Party; so it was in the Case of Knighthood, tho' Suit was depending.

Again, all Writs in the Kingdom are the King's Writs, tho' no Fine, much more here for the Defence of the Realm. And it is usual for the King's Attorney to compel Men to perform charitable Uses; and the King may question any one for them, in the Case of *Aurum Regine*, by Process out of the Exchequer.

Again, where it is said, *Quare ipse de prædicta summa specificat' onerari & inde satisfac' debeat, prout ulterius tibi præcept' &c.* for tho' the Writ be in the King's Name, yet it is but for the performance of the Work and Charge; and tho' it appears not, who were Collectors or Assessors, yet it appears it was done. Upon publick Service, Process goes forth in the King's Name; but then it is not so fit it should be expressed in particular for the King, when it is for the general Good only.

Was not this Objection made by my Brother *Denham*? Tho' none more cheartfully did subscribe to his Majesty's Letter, neither was the *Sci' Fa'* without his Advice, being the aptest Course, and better than *Trespas*: but the Objection that he made was, That the King cannot do any Wrong, nor take without Record, as in Seizure upon Outlawry, Attainder, or the like; and in this Case there is no Record upon the Writ 4 *Aug.* no Judgment, &c.

I answer, This *Sci' Fa'* is not annexed to the Writ, and is a new Action, that Mr. *Hampden* *oneretur & inde satisfaciet*, and after that Judgment upon the Writ, and upon his saying nothing, why *revocetur*,

revocetur, there shall be a good Record whereupon he shall be charged. 3 *Eliz. Dyer* 156. *Ignoramus* is sufficient Title for the King, and Ground for a *Melius inquirendum*.

No *Sci' Fa'* lies upon the Tenor of a Writ, say they: 39 *Hen. VI. fol. 34. 21 Eliz. Dyer fol. 205.*

I answer, a *Sci' Fa'* upon a Recognizance will not lie in *Chancery* but upon the Record there; yet in debate, an Action of Debt lies upon the Tenor of the Record. 39 *Hen. VI.* the doubt was, because the Party might be subject to a double Execution, one upon the Record there, and the other upon the Tenor of the Record in another Court. 33 *Edw. III.* Title Tenure by transcript 8 *Hen. V. Fitz-Her' Error Sci' Fa' Reg' fol. 51.* The Record was before the Justices of the King's-Bench, the Tenure was of the Treasury to the Barons of the Exchequer; and it is the usual Order, if a Recognizance be forfeited, to certify the Tenor of a Recognizance; so of a Fine of Amerciament, &c. to certify the Transcript thereof. So the Transcript was sent from *Ireland* of an Act of Parliament; a *Sci' Fa'* thereupon went against a Baron in *England*: so in Debt, upon the Transcript of a Record from *Ireland*, a *Sci' Fa'* here went forth.

Objected it was in the last place by my Lord Chief Baron, that Judgment in this Case would be fruitless, and none should take Benefit thereby; upon this Record he put several Cases, wherein Judgment in such a Case ought to pass.

I answer my Lord Chief Baron with a Judgment of his own, in Case of Knighthood, resolved here in this Court; the Case was this, The King by Writ *Jan. 1.* of his Reign, commanded the Sheriff of *Berkshire*, that all that had 40*l.* should be in the *Chancery* 31 *January* following, to take upon them the Order of Knighthood. Sir *John Dayxel*, Sheriff of *Berkshire*, made his return, (as the Sheriff of *Bucks* here) all that are not Knights under the Name of *Illorum*, and sets down their Names. A *Mittimus* thereupon went out of the *Chancery*, reciting the Substance of the former Writ, *Vobis Mittimus presentibus*, &c. with a Clause to enquire after such as were not returned, and to fine them. And upon this a Writ of *distingas* to the Sheriff. My Lord Chief Baron and my Brother *Denham* know what Judgment was given; when I observed, 1st, Not the Record, but the Tenor of the Record, was sent into the *Exchequer*, yet returnable in the *Chancery*. 2^{dly}, For the returning of the Names of the Defaulters as here: 3^{dly}, Upon the *distingas* thereupon was had Execution, much more than here, upon the *Sci' Fa'*. 4^{thly}, There was no more Judgment of Record to warrant than here in this.

Now I come to conclude. I have been somewhat too bold, in taking more time than is usual, but I did it to satisfy my own Heart, according to which I must give my Judgment. What I have omitted I refer to the rest of my Brothers that went before me, and to my Lord Chief Justice that comes after me. The Reasons I shewed whereupon I conceive by the Common Law, and the Fundamental Policy of the Kingdom, that the King may charge his Subjects for the Defence of the Kingdom, and that the King may charge his Subjects towards the Defence thereof when it is in danger; and I hold that the King is sole Judge of the Danger, and ought to direct the means of Defence.

And therefore this Writ of *Sci' Fa'*, and all the Proceedings in this Case, are well grounded according to Law.

My Opinion therefore is, That Mr. *Hampden* shall be charged with 20*s.* assessed, and that my Lord Chief Baron ought to give Judgment accordingly.

The Argument of Sir John Brampton Kt. Lord Chief Justice of his Majesty's Court of King's-Bench, in the great Case of Ship-Money.

QUARTO Aug 11 *Car.* a Writ issued out of the *Chancery*, being directed to all Counties of the Realm of *England*, both Inland and Maritime; and among the rest it was directed to the Sheriff of *Bucks*, for the making and building of a Ship of 450 Tons, and to provide a certain Number of Men with Ammunition and Victuals, to be brought to *Portsmouth*, and from thence to be employed in his Majesty's Service, for Defence of the Realm, and of the Sea.

Mr. *Hampden*, in the County of *Bucks*, was assessed at 20*s.* for his Manor of *Stoke Mandeville*, who refused to pay the same; whereupon a *Certiorari* issued to the Sheriff of *Bucks*, to return the Defaulters; amongst whom Mr. *Hampden* was returned to make Default of Payment of the 20*s.* assessed upon him.

Whereupon it was by *Mittimus* sent into the Exchequer, and a *Sci' Fa'* thereupon issued out of the Exchequer against Mr. *Hampden*, to shew Cause why he made Default of Payment of the said 20*s.* Whereupon Mr. *Hampden* appeared in Person, and demanded Oyer of the Writs, and Returns thereof, and demurred in Law, with whom Mr. Attorney joined in Demurrer.

Now three Points have been debated already at large in this Matter, viz. 1. Whether the King may command this general Charge of his Subjects by Law, or no, without their Consent in Parliament? 2. Whether this Kind of Assessment be warrantable by Law, or no? and, 3. Whether the *Sci' Fa'* did well issue or not?

In all these Matters, so much hath been already spoken, that if I should not say what hath been already spoken, I should say little to purpose. I will not be long; for if I had intended it, my Lord *Finch* hath prevented me in it; for he hath taken from me very much that I should have said, and insisted upon.

That which this Case resteth upon, in my Opinion, the Vote of the Court hath passed already by the greater Number of Voices, that mine will do nothing which way soever I go: yet being to deliver my Opinion, I shall shew my Reasons; and that I shall do without any other Defence.

Concerning the first Point, Whether his Majesty may impose that general Charge upon his Subjects by Law or no? I am of Opinion, that whensoever the whole Kingdom is in danger, his Majesty may command all his Subjects to join with him in this Case for the Defence of the Kingdom.

My Brother *Finch* hath insisted so fully upon this Matter, that I shall need to say but little: But yet something I must say, as well as my Brothers that have spoken before me, to discharge my Conscience: And for that which I shall say, my Intent is to insist upon some few of the principal Statutes, which have been already recited.

For this Point, in my Opinion, will rest upon the several Statutes and Acts of Parliament that concern this Case; and I take these Statutes to be merely Declarations in affirmance of the Common Law. And I shall begin with the Statute 1 *Edw. III. cap. 5.* and I shall not go far from the Intent of the Statute; I shall scarce make use of any Precedents, tho' many have been used, but only so far as they may seem to expound and declare the true Meaning of those Statutes.

And whereas it is objected from the Statute 1 *Edw. III.* That no Man shall be compelled to go out of his County wherein he liveth, except in case of Invasion, and Necessity requireth, and then it shall be done as in Times past.

I answer, That this is merely declarative, and spoken in affirmance of the Common Law, and this Use is declared by this Statute to be the antient Law of the Realm. Now what that Use was, will be a very great Question in this Case. Indeed it hath been much insisted upon, both by Mr. *Hampden's* Counsel and my Brother *Crooke*, that the Subjects going forth of the Shire shall be at the King's Charge, which they have affirmed by divers Statutes: But that which will go far in this Case, as my Brother *Barkley* well observed, is out of the Precedents of *Edw. I. Edw. II. and H. III.* times; and in them you shall find it to be for foreign Wars, or else for ordinary Defence, as for pillaging of Boroughs or private Towns by Pirates, when the Subjects have not given their Aids in such Cases. And there is no doubt but the King hath paid the Charge in such a Case, for the Defence of the Realm; but the Subjects gave the King Subsidies to do it withal.

But the Question is, What the Subject in this Case, *secundum legem Angliæ*, may be compelled to in case of Necessity, for Defence of the Kingdom?

I answer, They may be compelled to this Charge, *sumptibus propriis*, for the Soldiers Wages; but to go out of the Realm, or their Shire, must be at the King's Pay, according to the Common Law of *England*: But in times of sudden Defence, there is no time to stand upon Wages. It appears both in *Fitz-Herb. Na. br. fol. 28.* and also in my Lord *Coke* in *Calvin's* Case, the King may command his Subjects upon their Allegiance, to go with him, as well in Wars without the Realm, as in his Wars within, and with him, and without him, in the King's Service.

By the Statute of 18 *Edw. III.* and 11 *Edw. III.* Men of Arms, as Hobbellers, Archers, &c. are to go in the King's Service, as in *England*, so out of *England*, was the Matter of these Laws.

And my Lord *Finch* said, This was the very Common Law of *England*; so that it is clear, these two Statutes are declaratory Laws in affirmance of the Common Law. In 7 *Hen. IV.* Title *Tenure* 44. there it is said, a Man is not to go with the King in his Wars, out of the Realm, without Wages. And so 7 *Hen. IV.* Title *Tenure* 73. the Subjects of *England* are not to go with the King beyond the Seas, without their Wages: But in the Realm they are at his Command, and there is no Wages to be given. So it is in going out of *England*, when they are at the King's Charges; but within, at their own. And if the going out of the County be at their own Charges, I know not but that should put an end to the Case, that the Defence of the Realm must be at the Subjects Charge.

It is of dangerous Consequence for Judges, in their Judgments, to rely too much upon Precedents, that perhaps went forth thro' the Necessity of the present Times. But that is not our Case here; we are here directed to know what was used in times past, in this Case, before the making of this Statute: So that in this Case we take the Usage not to declare or prove a Law, but that Use is declared by this Statute to be a Law. Now therefore, we must know what the Use was: now that the Use was, that the Subjects of this Realm ought to be charged in time of common Danger, appears by a Multitude of Precedents applied rightly to the Statute of *Edw. III.* which do declare the Law upon the Statute.

And to shew what the Use was, I shall rely chiefly upon those Precedents that are most judicial. First, that of 25 *Edw. I. Term Mich' Rot. 72. Banc' Regis*, in the Abbot of *Robertsbridge's* Case; compare that and this together, and I know not what more can be answered, than that this Use for the Subject to maintain their Peace, was an Usage, Law, and Custom of the Realm. 10 *Ed. III. m. 2. fo. 18.* the King by his Writ sent a Command to send to *Portsmouth* one hundred Foot and twenty Horsemen to guard the Sea-Coasts. They refused to do that Service, and would not go without Wages. The King sent Answer in these very Words, *That no Wages were due, for it was a publick Danger.* And so 25 *Ed. III. cap. 8.* it is generally assented to by Parliament.

But there we have a general Law in the first Statute 1 *Edw. III.* which was grounded merely on the Common Law, and so was the Statute 25 *Edw. III.* and the rest to the same purpose, because it was against the Right of the Realm. And this Statute of 25 *Edw. III.* was merely grounded upon the Petition of the Commons; then certainly this finding of Arms was intended by that Statute, to be against the Right of the Realm.

Besides all this, to keep ourselves to that which is legal and authentical, so the Parliament Roll 13 *Ed. III. M. 9. & 11.* It is there apparent, that it is not against the Right of the Land to charge the Subject; then how comes it to be against the Right of the Realm 25 *Edw. III.* for then there was no Statute?

Now to bring it down to our Times. In 26 *Ed. III. M. 44.* every Maritime Town was charged to keep a petty Watch, there being some imminent Danger; therefore they pray, not to be discharged, but that it might be reduced to a lesser Charge, being it was but a petty Watch to guard the Sea-Coast; much less then is there cause for the Subject to seek to be discharged when the Enemy is approaching. 5 *Ed. III.* there was a Commission issued out, to distrain every one *secundum potestatem*, in Matters of Array; here is now the Judgment of the whole House of Parliament, that Men according to their Abilities are to be charged to join in charge with the King, to defend the Realm *sumptibus propriis*. Thus much for Defence upon the Land; now for Defence upon the Sea.

In the Statute 18 *Ed. III. cap. 7.* that they who serve the King out of the Kingdom, serve for Wages; but in case of necessity, without the Realm, in times past, by no Precedents, saith my Brother *Crooke*, can it be proved it was done before.

I answer, that the Sea is within the Kingdom; see 2 *Ed. III. cap. 10. Protes. 46. Braſſ' lib. 2. fol. 365.* there the Sea is made part of the Kingdom.

Doctor

Doctor and Student, cap. 51. It is the ancient Custom of *England*, that the King is Lord of the narrow Seas. But that which I most rely upon is, from the Statutes of 1 and 18 *Ed. III.* for they both meet in one, which is according to the Common Law, for all the difference thereof is, the Subject to go out of his own County whether to defend the Land or the Sea.

In the Statute of 1 *Ed. III.* it is objected, that there is no Precedent for Inland Counties.

But I answer, if not from Inland Counties, yet there is for Maritime, as in 14 *Ed. III. Term. Mich.* But I rely not upon Precedents for either, but only upon those Precedents that went out to the Ports and Maritime Towns: for it was well observed by the King's Counsel, that they were not grounded upon any Precedents or Charters, but only upon ancient Customs. But if the Precedents to the Maritime Towns were directed in Case of Necessity, then I see no Reason but that it may be done now; which was indeed intended by the Statute of 1 *Ed. III.* as the Precedents do plainly declare; and they were then more common than Writs of this nature issuing forth in this Case, and the Commons were then bound to Land-Service, and the Mariners to Sea-Service; and they were compelled to it at their own Charge, merely upon their Allegiance, both in *Bedford, Bucks, Lincoln*, with many other Counties. If then they may be compelled to go out of their own proper Counties, to defend that Part of the Realm that they live near unto, why may they not also be compelled to go to defend the Sea-Coast? The Sea-men were willing to bear some Part of the Charge for the Defence of the Sea, because the Inland Counties did bear their Charge of the Land-Service and of the Ports: And if they may be compelled in the Inland Counties to defend their Inland Counties, and the Sea-Men to defend the Sea-Coast; then I know no Reason but that they may be compell'd all in general to bear a publick Charge in Case of Necessity.

I am still upon the Statute 1 *Ed. III.* wherein I find Mr. *Selden* in his *Mare clausum*, says it was an ancient Use to charge the Inland and Maritime Counties in Case of Necessity; and therefore in my understanding, I hold it to be *secundum legem Anglie*.

But here my Brother *Crooke* objects, there is no Statute or Precedent to shew that any Inland Counties were charged.

I answer that Statutes and Precedents do not extend to our Case, for this was in use many Years before the making of any Statute. See the Statutes of 1 *Ed. I.* and 1 *Ed. III.* they cannot cross one another, for then could not the Statute of *Ed. I.* be confirmed by the Statute of *Ed. III.*

Again, concerning the Statute of finding of Men and Arms, it is true, it is merely the Common Law of *England*, and that merely without common consent in Parliament, as my Brother *Barkly* saith, that the Statute of 9 *Hen. III.* and 25 *Ed. III. cap. 11.* are the great Charters rather than Statutes; and in King *John's* time it was not taken for a Statute, but only for a Declaration. And so it was taken in the time of *Hen. IV.*

But now if concerning the charging of the County, the said Statutes were nothing but according to the Common Law of *England*, I cannot see how they should cross another now; for there is no difference, but only in such things as are given as a Benevolence to the King, as in 1 *Ed. III. cap. 5, 6.*

As for the Statute *de Tallagio non concedendo*, we deny it not; but the difference is in the occasion of the Statute of 14 *Ed. III.* There was a pretty Case put by Mr. *Holborne* about the Office of Alnage, where there was but a Fee to be paid out of it, and held a Taillage; but there is great difference between the Taillage and this Service, which every Subject is bound to do by his Allegiance to his Sovereign Lord *Fitz' Her'*. *Na. Br.* 103. The King may impose this Charge upon the Subject in Case of Necessity, *pro bono publico*; and it is nothing but what every Subject owes to the Common-wealth in a time of common Danger. And after King *Edward the Confessor*, it was ordered by several Statutes, Let every one have their own Goods and Lands free from Taillage, and let nothing be taken from them. But in this Case of Necessity in common Danger is another thing, the King may then compel his Subjects to this Charge; and I may add the Reasons strongly insisted upon by the King's Counsel. My Lord *Coke* saith, it could never be the meaning of the great Charter of the Liberty of the Subjects by this Statute to take away the Power of the King's Prerogative, and so to exempt themselves from this Charge of Defence: for there is a difference between a Taillage upon the People, and a Service in a Case of Necessity, which they may be compelled unto. My Brother *Jones* cited a most excellent Case 4 *Jac.* upon the Opinion of *Coke* and *Popham*, that the Taillage-Statute taketh not away: And shall it take away this Royal Power of the King, so inherent in the Crown, the Protection and Preservation of his Kingdom?

From this Statute 1 *Ed. III.* Mr. *St. John* raised this Objection. Here is 7 Months from the Date of the Writ, to the time the Ship was to be brought to *Portsmouth*, in which time there might have been a Parliament and therefore it ought to have been done in a Parliamentary Way.

But this will not admit the calling of a Parliament; but if the Danger be not sudden, you must have it in a Parliamentary Way.

My Lord *Finch* gave a full Answer to this: There must be a Preparation before the Enemy come, else the Defence is too late: there is a Necessity to prevent a Necessity, and who shall give warning in such a Case but the King? Saith *Littleton*, who gives Warning? not the Tenant by Castle-guard, but the Lord; and so consequently in this Case our Sovereign Lord the King: And therefore in such a Case the Subject is bound by his Allegiance to the King, to assist in Case of publick Danger. My Lord *Coke* tells us the Reason of the Warning: He saith, there must in that Case be a Preparation before hand, lest your Defence come too late: Enemies are more easily kept out than overcome when they are got in.

By the Statute of 8 *Ed. IV.* there Bulwarks may be made in another Man's Ground; but this Preparation cannot be without Warning, and none can give the Warning but the King, and the Subjects are to be at his Command, and none other; for there must be a Preparation of the Subjects in the Realm, to meet the Enemy before he enter the Land. No Subjects can take upon them to build Bulwarks, &c. It is an Assuming of the Royal Power, for it must be done *juxta præceptum Domini Regis*.

Now I come to the second Part, whether this Assessment be warranted by Law or not. The Writ was dated 4 *Aug.* to prepare a Ship against the

the 1st of March. Therefore we see it is not against the great Laws concerning the Subjects Liberty, because it is no Taillage but a Service: for howsoever it must be granted, it must be a general Danger that causeth a general Defence; and there must be Matter in the Body of the Record to satisfy therein; there must be, I say, a publick Danger, and then it is *secundum legem & consuetudinem Regni Angliæ*, as appears 20 Ed. III. m. 21. And also in *Doctor and Student*, cited before, that when Necessity doth require, the King may compel his Subjects to this publick Service and Charge. Tho' the King be the sole Judge, and his Certificate is not traversable and cannot be denied, yet there must be Matter apparent within the Record to satisfy the Conscience of the Court, or else we cannot be Judges of the Case at all. If the Danger be general, then the Defence must be general; but if ordinary Danger, as robbing of Merchants by Pirates, &c. it must be at the King's Charge. And we do see by the Petitions of the Commons in many Parliaments, that they never conceived themselves subject to the Charge of ordinary Defence.

Now upon all that which hath been observed by my Brothers, there is enough in the Record to satisfy them fully (as if the King were not sole Judge) that it was a Publick Danger, being *pro defensione regni & tuitione maris, &c.* It did issue to all the King's Subjects, as a general Charge and not to the County of Bucks alone: Therefore I may conclude, when the whole Kingdom is in Danger, the King may compel his Subjects to assist in such publick Danger.

Then for the Assessment; many Exceptions have been taken to it, and to the Record and *Sci' Fa'*: I had provided myself to have given a full Answer thereunto, but my Lord Finch hath prevented me, and hath cited the very Authorities that I myself did rely upon.

But for the Assessment itself to the Sheriff, I do not say that I do find he hath like Power in any other Case of Law: Commissions of Sewers may be directed to the Sheriff, but not to give Power to assess Men's Coods.

I answer, that this is in Case of Necessity; for the very main Case is but a Case of Necessity, the ordinary and usual Way is *per sacramentum*. My Lord Finch gave an excellent Answer to that, and warranted it by Law, that the Sheriff hath no such unlimited Power granted him; he is not made Judge of the Estates of Men, but only to pursue the Direction of the Writ, to assess them as he is commanded, and not *secundum discretionem suam*; but as my Lord Coke 5 Rep. 99. saith, he must do it *secundum legem & secundum arbitrium*; that is to say, according to Law and Reason. But it is impossible, in such a Case of Necessity, to put it into such an Equality, to make it without Exception; but in as much as in him lieth, he ought to order it proportionably, his Power is unlimited; for by his Discretion he is to discern between Right and Wrong, between Substance and Shadow; and he must go within the Bounds of Law and Right. In the Chamberlain of London's Case, they might rate and assess *in bono publico*, as in making a High-way to a Church, and the like, wherein the Subject is brought to no Distress or Inconvenience, so as the greater Part, in such a Case as this, shall ever bind the lesser, it being *pro bono publico*. Yet this Assessment cannot make a Law a Debt or a Duty, but is only a Means to bring this Duty to a Certainty, and so make it

a Duty, so that he be rated in an equal Proportion. Hath the Sheriff rated Mr. Hampden disproportionably, according to his Estate and Degree? If he hath, let him tell. If the Sheriff hath followed his own Will, and done corruptly, then he hath done contrary to the Intent of the Writ; it turneth upon the Sheriff himself; and a great Offence it is for a publick Minister of Justice to abuse himself in such a Place of Justice. The Sheriff returns, he hath assessed 20s. which is no great Sum; and also confesseth upon the Record, that it is an equal Assessment. When Mr. Hampden appeared upon the *Sci' Fa'* he demanded Oyer of the Writs, and so demurred in Law; which upon the Matter, being a general Demurrer, is a Confession.

And as for the *Sci' Fa'*, my Lord Finch hath handled it fully, and hath cited the same Books and Authorities that I intended to have cited; and so hath prevented me in that. And also in *Bodmin's Case in Cornwall*, and upon the Exceptions *super tenorem record' in 9 Hen. VI. fol. 23.* And the Reason why he should not have Execution *super tenorem record'* is, because otherwise the Subject might be charged double. And divers Cases were put upon suing forth Execution upon the Tenor of the Record; and yet no Execution can go out of the Chancery at the first, because it is not returnable by the Sheriff, but it is sent out of the Chancery, by *Mittimus* into the *Exchequer*, 24 Hen. VI. 4 Hen. VI.

But it is true, it doth concern every one to be satisfy'd in the Truth of the Case; for if the Sheriff should not assess *per sacramentum*, it might be made another way.

And as for the *Certiorari*, my Lord Finch hath likewise cited the same Books and Authorities, which I also intended; therefore I forbear to insist upon that.

There is another Exception to the Record, *Quod oneretur*, and not know to whom it should be, no Money demanded to the King by the first Writ, no, nor by the second Writ; therefore can give no Judgment *quod satisfaceret domino regi*: then if Judgment shall not be given for the King, then for whom? *non constat*, it doth not appear to whom it is due, for any thing I can see in this Record.

Truly for my own part, of all the Exceptions that I have heard, none sticketh with me but this Exception; for I do not know any Precedent, that a Judgment was given, and not say to whom. This Scruple, I confess, still remaineth with me. I must needs say, That in my Opinion, I do rather incline, as far as I am well satisfy'd, that this is a good Exception, according and upon those Reasons which my Lord Chief Baron gave; and yet I am not so far satisfy'd, that it is Law.

I must rather incline as my Opinion inclines than go against the Inclination of my own Opinion: as I have gone thro' all the rest with the Warrant of my own Conscience, I cannot go upon any String in a thing of the least Weight, but I must deliver my Opinion as it inclines; and therefore, upon those Reasons that I have heard, and upon Consideration taken with myself, I do rather incline to the Opinion of my Lord Chief Baron, and upon his Reasons, which I think was in that with the lesser Number: But for my Opinion in all other Points, I agree with the general Vote of the Court.

Upon

Upon the 12th of June, 14 Car. Mr. Attorney moved the Court of Exchequer for Judgment against Mr. Hampden, and after he had opened the Record he said,

YOUR Lordship and the Court, in respect of the Greatness of the Cause, did adjourn it into the *Exchequer-Chamber*, that your Lordship and the Court might receive Advice of all the Judges; whose Advice and Opinions your Lordship hath already received, and the Plurality of their Voices is, that Judgment should be given against Mr. Hampden, and accordingly I do pray Judgment.

To which my Lord Chief Baron answered:

It is very true, it was referred from hence to the *Exchequer-Chamber*, to receive the Advice of all the Judges of the Land. We do not take them to assist only by way of Advice, but for a judicial Direction: For admitting we four were of one Opinion, and the rest of the Judges of another, (though the Cause properly depend in this Court) yet we must apply ourselves to their Resolution, and our four Voices are involved in theirs; and therefore accordingly, *secundum legem, &c. oneretur Johannes Hampden.*

The Copy of the Order, as it was drawn up upon the Motion of Mr. Attorney-General, and now remains entered in the Exchequer.

Remem'
Regis.

Termin' Ste' Trin' Anno 14 Car.
12 die Junii.

Bucks. **W**Hereas several Sums of Money by virtue of the King's Majesty's Writ under the Great Seal of *England*, bearing Date the 4th Day of *August* in the 11th Year of his Majesty's Reign, were assessed and charged upon several Persons, for and towards the Provision of a Ship of War, together with the Furniture and other things thereunto belonging, in the said Writ particularly mentioned; which said several Sums of Money, so assessed and charged, and not being satisfied and paid, the Names of the said several Persons, together with the several Sums charged upon them, were returned into the *Chancery*, whereby his Majesty's Writ of *Certiorari*, bearing date the 9th Day of *March* in the 12th Year of his Majesty's Reign, certified into his Court of *Chancery*, and by his Majesty's Writ of *Mittimus*, under the same Seal, bearing Date the 5th Day of *May* in the 13th Year of his Majesty's Reign, were sent into the Court of *Exchequer* for further Process to be had thereupon, as by the said several Writs may appear: And whereas Process of *Sci' Fa'* was the 20th Day of *May*, in the said 13th Year of his Majesty's Reign, awarded to the Sheriff of the County of *Bucks*, directing to garnish the several Persons, in a Schedule to the said *Sci' Fa'* annexed contained, in shew Cause the Octaves of the Holy Trinity then ensuing, why they should not be charged, and satisfy the said Sums of Money assessed upon them; in which Schedule it was contained, amongst divers others, that *John Hampden Esq;* was assessed at 20*s.* as by the said *Sci' Fa'* and Schedules thereunto annexed, may also more fully appear: Whereupon the said *John Hampden Esq;* being garnished by Sir *Anthony Chester* Baronet, then Sheriff of the said County of

Bucks, appeared, and demanded Oyer of all the aforesaid Writs; which being read unto him, he thereupon demurred in Law. And thereupon Sir *John Banks* Knight, his Majesty's Attorney-General, joined in the said Demurrer: And the Record thereof being made up, it pleased the Barons of this Court (the same Matter being a Matter of great Consequence and Weight) to adjourn the Arguing of the same Matter into the *Exchequer-Chamber*, and to desire the Assistance and Judgment of all the Judges of *England*, touching the same. Now upon the Motion of his Majesty's Attorney-General this Day, informing this Court, that seeing the said Matter hath been so solemnly debated and argued, as well by the Counsel of the said Defendant, and by some of his Majesty's learned Counsel, and also by all the Judges of *England*, and by the Barons of the *Exchequer*, and that the major Part of the said Judges and Barons have deliver'd their Opinions and Judgments that the said *John Hampden* ought to be charged with, and to satisfy the said Sum of 20*s.* and therefore the said Mr. Attorney moved the Court, That Judgment might be entered accordingly: It is thereupon ordered by this Court, that Judgment shall be forthwith entered, that the aforesaid *John Hampden* ought to be charged with, and satisfy the aforesaid Sum of 20*s.*

A Copy of the Judgment in English, as it is enter'd upon Record, in pursuance of the said Motion, and according to the major Votes.

*** AND** because the Barons here will advise themselves of and upon the Premises, before they give Judgment thereupon, a Day is given to the aforesaid *John Hampden*, in the same State as now here, upon the Octave of St. *Michael*, that the said Barons in the mean while of the said Premises may advise, and with the Justices of both Benches may thereupon deliberate: for the said Barons here, not yet thereupon, &c. And upon this it is agreed between the Barons here, as well with Consent of the said Attorney-General of our said Lord the King, as of the said Attorney of the aforesaid *John Hampden*, and the Counsel learned in the Law of the said *John Hampden*, that some Persons learned in the Law as well of Counsel, and on the behalf of our said Lord the King, as of Counsel and on the behalf of the said *John Hampden*, of the aforesaid Matter in Law and the other Premises, in the Chamber of this *Exchequer*, commonly called the *Exchequer-Chamber*, before the said Barons, together sitting with the aforesaid Justices of both Benches, should in the mean time be heard publickly to argue: At which said Octave of St. *Michael*, came the aforesaid *John Hampden* here as before. And because the Barons here further will advise themselves of and upon the Premises, before they give Judgment thereupon, a Day is further given to the aforesaid *John Hampden* in the same State as now here, until the Octave of St. *Hilary*, that some Persons learned in the Law, as well of Counsel and on the behalf of our said Lord the King, as of Counsel and on the behalf of the said *John Hampden*, of the aforesaid Matter in Law, and the other Premises in the Chamber of this *Exchequer*, commonly

“ monly called the *Exchequer-Chamber*, before the
 “ said Barons together sitting with the aforesaid
 “ Justices of both Benches, should in the mean
 “ time be heard publickly to argue, and the said
 “ Barons with the said Justices deliberate there-
 “ upon; so that no Person learned in the Law,
 “ either of the Counsel of our said Lord the King,
 “ or of the Counsel of the said *John Hampden*, is
 “ yet heard, and the Barons here thereupon are
 “ not advised, &c. And afterwards in the time
 “ between the aforesaid Octave of *St. Michael*,
 “ and the aforesaid Octave of *St. Hilary*, as well
 “ the Attorney and Solicitor of our said Lord the
 “ King, as two learned in the Law of the Coun-
 “ sel of the aforesaid *John Hampden* in the Pre-
 “ mises, being on the Part of the said *John Hamp-*
 “ *den*, twelve several Days in the aforesaid *Exche-*
 “ *quer-Chamber*, before the Barons of this *Exche-*
 “ *quer*, sitting with them then there the aforesaid
 “ Justices of both Benches, were openly and sin-
 “ gly heard to argue at large, and particularly of
 “ the said Matter in Law, and other the Pre-
 “ mises (the aforesaid Record being recited) and
 “ what thereupon they could or would say. And
 “ the aforesaid Attorney, and Solicitor-General,
 “ divers and very many Records, Writs, Com-
 “ missions and Precedents, as well of this *Exche-*
 “ *quer*, as of the Court of *Chancery*, the Court of
 “ *King’s-Bench* and *Common-Pleas*, the Matter in
 “ Law, and other Premises in the several Writs,
 “ Returns, and Schedules aforesaid contained, on
 “ the Part of our said Lord the King, to prove,
 “ confirm and maintain, then and there produ-
 “ ced, shewed and expounded. And on the
 “ aforesaid Octave of *St. Hilary*, the said *John*
 “ *Hampden* came here as before; and because the
 “ Barons here further will advise themselves of,
 “ and upon the Premises before they give Judg-
 “ ment thereupon, a Day is further given to the
 “ aforesaid *John Hampden*, in the same state as
 “ now here, until from the Day of *Easter*, on
 “ fifteen Days, that the said Barons in the mean
 “ while, with the aforesaid Justices of both
 “ Benches, may further thereupon deliberate, for
 “ that the said Barons have not yet thereupon, &c.
 “ At which Day, the said *John Hampden* came
 “ here as before; and because the Barons here
 “ further will advise themselves of, and upon the
 “ Premises, before they give Judgment thereupon,
 “ a Day is further given to the aforesaid *John*
 “ *Hampden* in the same state as now here, until
 “ upon the Morrow of the Holy Trinity, that the
 “ said Barons in the mean while, with the aforesaid
 “ Justices of both Benches, may further thereupon
 “ deliberate, for that the said Barons here not
 “ yet thereupon, &c. At which Day the afore-
 “ said *John Hampden* came here as before; and
 “ upon this, the Premises being seen, and by the
 “ Barons here plainly understood, and mature
 “ Deliberation thereupon being had with the a-
 “ toresaid Justices of both Benches, and after the
 “ Arguments, as well by the said Justices, as by
 “ the aforesaid Barons singly, in the aforesaid
 “ *Exchequer-Chamber*, publickly thereupon made,
 “ it appeareth thereupon to the Barons, by Ad-
 “ vice of the Justices aforesaid, that the several
 “ Writs aforesaid, and their Returns, and the
 “ Schedules aforesaid to the same annexed, and
 “ the Matter therein contained, are sufficient in
 “ the Law to charge the aforesaid *John Hampden*

“ with the aforesaid 20s. assessed upon him in
 “ the Form and for the Cause aforesaid. It is
 “ therefore agreed by the said Barons, that the
 “ aforesaid *John Hampden* be charged with the
 “ said 20s. and thereof make Satisfaction, &c.”

This Judgment in the Case of Ship-Money gave much Offence to the Nation, and occasioned great Heart-burnings in the House of Commons: It was particularly taken notice of in Mr. *Waller’s* Speech in that House April 22 1640, which was as follows.

Mr. *Speaker*,

I Will use no Preface, as they do who prepare Men for something in which they have a particular Interest. I will only propose what I conceive fit for the House to consider; and shall be no more concerned in the Event than they that shall hear me.

Two Things I observe in his Majesty’s Demands.

First, the Supply.

Secondly, our speedy Dispatch thereof.

Touching the first: His Majesty’s Occasions for Money are but too evident. For to say nothing how we are neglected abroad, and distracted at home; the calling of the Parliament, and our sitting here (an Effect which no light Cause could have in those times produced) is enough to make any reasonable Man believe, that the Exchequer abounds not so much in Money, as the State does in Occasions to use it: and I hope we shall all appear willing to disprove those who have thought to dissuade his Majesty from this way of Parliaments, as uncertain; and to let him see it is as ready, and more safe for the Advancement of his Affairs, than any new or pretended old way whatever.

For the speedy Dispatch required, which was the second thing, not only his Majesty, but *Res ipsa loquitur*; the Occasion seems to importune no less; Necessity is come upon us like an armed Man.

Yet the Use of Parliaments heretofore (as appears by the Writs that call us hither) was to advise with his Majesty, of all things concerning the Church and Commonwealth. And it hath ever been the Custom of Parliaments, by good and wholesome Laws, to refresh the Commonwealth in general, yea and to descend into Remedies of particular Grievances, before any mention made of a Supply. Look back upon the best Parliaments, and still you shall find, that the last Acts are for the free Gifts of Subsidies on the Peoples part, and general Pardons on the King’s part. Even the wisest Kings have first acquainted the Parliaments with their Designs, and the Reasons thereof; and then demanded the Assistance both of their Counsel and Purse. But Physicians, tho’ they be called of the latest, must not stomach it, or talk what they might have been, but apply themselves roundly to the Cure. Let us not stand too nicely upon Circumstances, nor too rigidly postpone the Matter of Supply, to the healing of our lighter Wounds. Let us do what possibly may be done with Reason and Honesty on our Parts, to comply with his Majesty’s Desires, and to prevent the imminent Ills which threaten us.

But

But consider, Mr. *Speaker*, that they who think themselves already undone, can never apprehend themselves in Danger: And they that have nothing left, can never give freely. Nor shall we ever discharge the Trust of those that sent us hither, or make them believe that they contribute to their own Defence and Safety, unless his Majesty be pleased, first to restore them to the Property of their Goods and lawful Liberties, whereof they esteem themselves now out of Possession. One need not tell you that the Property of Goods is the Mother of Courage, and the Nurse of Industry; makes us valiant in War, and good Husbands in Peace. The Experience I have of former Parliaments, and my present Observation of the Care the Country has had to chuse Persons of Worth and Courage, makes me think this House like the *Spartans*, whose forward Valour required some softer Musick to allay and quiet their Spirits, too much mov'd with the sound of martial Instruments. 'Tis not the Fear of Imprisonment, or if need be, of Death itself, that keeps a true-hearted *English* Man from the Care to leave this Part of his Inheritance as entirely to Posterity, as he received it from his Ancestors.

This therefore let us first do, and the more speedily, that we may come to the Matter of Supply; let us give new Force to the many Laws which have been hitherto made for the maintaining of our Rights and Privileges, and endeavour to restore this Nation to its fundamental and vital Liberties, the Property of our Goods, and the Freedom of our Persons: no way doubting, but we shall find his Majesty as gracious and ready, as any of his Royal Progenitors have been, to grant our just Desires therein. For not only the People do think, but the wisest do know, that what we have suffered in this long Vacancy of Parliaments, we have suffered from his Ministers: that the Person of no King was ever better beloved of his People, and that no People were ever more unsatisfied with the Ways of the levying Monies, are two Truths which may serve, one to demonstrate the other; for such is their aversion to the present Courses, that neither the Admiration they have of his Majesty's native Inclinations to Justice and Clemency, nor the pretended Consent of the Judges could make them willingly submit themselves to the late Tax of Ship-money: And such is the natural Love and just Esteem of his Majesty's Goodness, that no late Pressure could provoke them, nor any Example invite them, to Disloyalty or Disobedience.

But what is it then, that hath bred this misunderstanding betwixt the King and his People? How is it, that having so good a King we have so much to complain of? Why, we are told of the Son of *Solomon*, that he was a Prince of a tender Heart; and yet we see, by the Advice of violent Councillors, how rough an Answer he gave to his People. *That his Finger should be as heavy as his Father's Loins*, was not his own but the Voice of some Persons about him, that wanted the Gravity and Moderation requisite for the Counsellors of a young King. I love not to press Allegories too far; but the resemblance of *Job's* Story with ours holds so well, that I cannot but observe it to you. It pleased God to give his Enemy leave to afflict him more than once or twice, and to take all he had from him; and yet he was not provok'd to rebel so much as with his Tongue; tho' he had no very good Example

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of one that lay very near him, and felt not half that which he suffered. I hope his Majesty will imitate God in the benigner Parts too: and as he was severe to *Job* only while he discoursed with another concerning him, but when he vouchsafed to speak himself to him, began to rebuke those who had mistaken and mis-judged his Case, and to restore the patient Man to his former Prosperity; so now, that his Majesty hath admitted us to his Presence, and spoken face to face with us, I doubt not but we shall see fairer Days, and be as rich in the Possession of our own as ever we were.

I wonder at those that seem to doubt the Success of this Parliament, or that the Misunderstanding between the King and his People should last any longer, now they are so happily met. His Majesty's Wants are not so great, but that we may find Means to supply him, nor our Desires so unreasonable, or so incompatible with Government, but that his Majesty may well satisfy them. For our late Experience, I hope, will teach us what Rocks to shun, and how necessary the Use of Moderation is: and for his Majesty, he has had Experience enough, how that prospers which is gotten without the concurrent Good-Will of his People: Never more Money taken from the Subject; never more went into the *Exchequer*. If we look upon what has been paid, it is more than ever the People of *England* were wont to pay in such a time: If we look upon what has been effected therewith, it shews as if never King had been worse supplied. So that we seem to have endeavoured the filling a Sieve with Water. Whosoever gave Advice for these Courses, has made good the Saying of the wise Man; *Qui conturbat domum suam, possidebit ventum*. By new Ways they think to accomplish Wonders; but in truth they grasp the Wind, and are at the same time cruel to us, and to the King too. For if the Commonwealth flourish, then he that hath the Sovereignty can never want, nor do amiss; so as he govern not according to the Interest of others, but go the shortest and the safest Ways to his own, and the common Good.

The Kings of this Nation have always govern'd by Parliaments; and if we look upon the Success of things since Parliaments were laid by, it resembles that of the *Gracians*,

*Ex illo fluere & retro sublapsa referri
Res Danaum*—————

especially on the Subject's Part. For tho' the King hath gotten little, they have lost all.

But his Majesty shall hear the Truth from us, and we shall make appear the Errors of those Divines, who would persuade us, that a Monarch must be absolute, and that he may do all things *ad libitum*; receding not only from their Text (tho' that be a wandring too) but from the Way their own Profession might teach them, *state super vias antiquas*, and remove not the antient Bounds and Land-marks which our Fathers have set. If to be absolute, were to be restrained by no Laws, then can no King in Christendom be so; for they all stand obliged to the Laws *Christian*, and we ask no more: for to this Pillar are our Privileges fixed, our Kings at their Coronation taking a sacred Oath not to infringe them.

I am sorry these Men take no more care to gain our belief of things, which they tell us for our

Souls Health; while we know them so manifestly in the wrong, in that which concerns the Liberties and Privileges of the Subjects of *England*: But they gain Preferment, and then 'tis no matter, tho' they neither believe themselves, nor are believed by others. But since they are so ready to let loose the Conscience of their Kings, we are the more careful to provide for our Protection against this Pulpit Law, by declaring and reinforcing the municipal Laws of this Kingdom.

It is worth observing, how new this Opinion is, or rather this Way of ruling, even among themselves. For Mr. *Hooker*, who sure was no refractory Man, (as they term it) thinks that the first Government was arbitrary, *till it was found, that to live by one Man's Will, became the Cause of all Mens Misery*: (these are his Words) concluding, that this was the Original of inventing Laws. And if we look farther back, our Histories will tell us, that the Prelates of this Kingdom have often been the Mediators between the King and his Subjects, to present and to pray Redress of their Grievances; and had reciprocally then as much Love and Reverence from the People.

But these Preachers, more active than the Predecessors, and wiser than the Laws, have found out a better Form of Government. The King must be a more absolute Monarch than any of his Predecessors; and to them he must owe it, tho' in the mean time they hazard the Hearts of his People, and involve him in a thousand Difficulties: For suppose this Form of Government were inconvenient, and yet this is but a Supposition; for these five hundred Years, it hath not only maintained us in Safety, but made us victorious over other Nations: But, I say, suppose they have another Idea of one more convenient, we all know how dangerous Innovations are, tho' to the better: and what Hazard those Princes must run, that enterprize the Change of a long established Government. Now, of all our Kings that have gone before, and of all that are to succeed in this happy Race, why should so pious and so good a King be exposed to this Trouble and Hazard? Besides, that Kings so diverted can never do any great Matter abroad.

But while these Men have thus bent their Wits against the Laws of their Country, whether they have neglected their own Province, and what Tares are grown up in the Field, which they should have tilled, I leave to a second Consideration; not but that Religion ought to be the first thing in our Purposes and Desires: but that which is first in Dignity, is not always to precede in Order of Time, for Well-being purports a Being. And the first Impediment, which Men naturally endeavour to remove, is the Want of these things, without which they cannot subsist. God first assigned to *Adam* Maintenance of Life, and gave him a Title to the rest of the Creatures, before he appointed a Law to observe. And let me tell you, if our Adversaries have any such Design, as there is nothing more easy, than to impose Religion on a People depriv'd of their Liberties; so there is nothing more hard, than to do the same upon Freemen.

And therefore, Mr. *Speaker*, I conclude with this Motion, That there may be an Order presently made, That the first thing this House will consider of, shall be the restoring this Nation in general to its Fundamental and Vital Liberties, the Property of our Goods, and Freedom of our

Persons; and that then we will further consider of the Supply desired.

And thus we shall discharge the Trust reposed in us by those that sent us hither: his Majesty will see, that we make more than ordinary Haste to satisfy his Demands; and we shall let all those know, that seek to hasten the Matter of Supply, that they will so far delay it, as they give Interruption to the former.

Afterwards the House of Commons took the Affair directly under Consideration, in calling those Judges to an account, who had given their Opinions for the Ship-Money; at which time Lord *Falkland* deliver'd himself in the following manner:

Mr. *Speaker*,

THE Constitution of this Commonwealth hath established, or rather endeavoured to establish to us the *Security of our Goods*, and the *Security of those Laws* which would secure us and our Goods, by appointing for us *Judges*, so settled, so sworn, that there can be no oppression, but they of necessity must be accessory; since if they neither deny nor delay us Justice, which neither for the great nor little Seal they ought to do, the greatest Person in this Kingdom cannot continue the least Violence upon the meanest. But this Security hath been almost our Ruin; for it hath been turned, or rather turned itself into a Battery against us: and those Persons who should have been as Dogs to defend the Sheep, have been as Wolves to worry them.

These *Judges*, to instance not them only, but their greatest Crime, have delivered an Opinion, and Judgment in an extrajudicial manner, that is, such as came not within their Cognizance, they being Judges, and neither Philosophers, nor Politicians. In which when that is so absolute and evident, the Law of the Land ceases; and of general Reason and Equity, by which particular Laws at first were framed, returns to his Throne and Government, where *Salus Populi* becomes not only *suprema*, but *sola lex*; at which, and to which end, whatsoever should dispense with the King, to make use of any Money, dispenses with us to make use of his, and one another's. In this Judgment they contradicted both many and learned Acts and Declarations of Parliaments; and those in this very Case, in this very Reign: so that for them they needed to have consulted with no other Record, but with their Memories.

2. They have contradicted apparent Evidences, by supposing mighty and imminent dangers, in the most serene, quiet, and halcyon days that could possibly be imagined; a few contemptible Pirates, being our most formidable Enemies, and there being neither Prince nor State, with whom we had not either Alliance, or Amity, or both.

3. They contradict the Writ itself, by supposing that supposed Danger to be so sudden, that it would not stay for a Parliament, which required but forty days stay, and the Writ being in no such haste, but being content to stay seven times over.

It seemed generally strange, that they saw not the Law which all Men else saw but themselves. Yet tho' this begot the more general Wonder, three other Particulars begot the more general Indignation.

When they had allowed to the King, the *sole Power in Necessity*, the *sole Judgment of Necessity*, and

and by that enabled him to take both from us, what he would, when he would, and how he would, they yet continued to persuade us, that they had left us our Liberties and our Properties.

And, which I confess moved most, that by the Transformation of us from the state of Free-Subjects (a good Phrase under Dr. Heylin's Favour) unto that of Villains, they disable us by legal and voluntary Supplies to express our Affections to his Majesty, and by that to cherish his to us, that is, by Parliaments.

The Cause of all the Miseries, we have suffer'd, and the Cause of all the Jealousies we have had, that we should yet suffer; is, That a most excellent Prince, hath been most infinitely abused by his Judges, telling him that *By Policy he might do what he pleased*.

We must now be forced to think of abolishing of our Grievances, and of taking away this Judgment and these Judges together, and of regulating their Successors by their exemplary Punishment.

Hereupon the Opinions of the Judges, the Ship-Writs, and the Judgment against Mr. Hampden being read openly in the House on Monday Dec. 7, 1640. after long Debate these four several Votes were agreed to by the House, *nemine contradicente*.

1. **T**HAT the Charge imposed upon the Subjects for the providing and furnishing of Ships, and the Assessment for raising of Money for that purpose, commonly called *Ship-Money*, are against the Laws of the Realm, the Subjects Right of Property, and contrary to former Resolutions in Parliament, and to the Petition of Right.

2. That the extrajudicial Opinions of the Judges, published in the *Star-Chamber*, and inrolled in the Courts at *Westminster*, in *hæc verba*,

The CASE.

Charles Rex.

WHEN the good and safety of the Kingdom in general is concerned, and the whole Kingdom in danger, whether may not the King by Writ under the great Seal of England, command all the Subjects in this Kingdom at their Charge to provide and furnish such Number of Ships, with Men, Victual, and Munition, and for such a time as he shall think fit, for the Defence and Safeguard of the Kingdom from such Danger and Peril, and by Law compel the doing thereof, in Case of Refusal or Refractoriness; and whether in such Case is not the King the sole Judge both of the Danger, and when and how the same is to be prevented and avoided?

C. R.

Their Opinions.

MAY it please your most excellent Majesty, We have according to your Majesty's Command, severally, and every Man by himself, and all of us together, taken into serious Consideration the Case and Questions signed by your Majesty, and inclosed in your Letter: And we are of Opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, your Majesty may by Writ under the Great Seal of England, command all the Subjects of this your Kingdom, at their Charge to provide and furnish such Number of Ships, with Men, Victual, and Munition, and for such time as your Majesty shall think fit for the Defence and Safeguard

of the Kingdom from such Danger and Peril; and that by Law your Majesty may compel the doing thereof in case of Refusal or Refractoriness. And we are also of Opinion, that in such Case your Majesty is the sole Judge both of the Danger, and when and how the same is to be prevented and avoided.

In the whole, and in every part of them, are against the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

3. That the Writ following in *hæc verba*, viz.

CHARLES by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our Right Trusty and Well-beloved Counsellor, Thomas Lord Coventry, Keeper of our Great Seal of England, greeting. These are to will and require you, that for the Safeguard of the Seas, and Defence of the Realm, you issue forth, or cause to be issued forth of our High Court of Chancery these ensuing Writs in the Form following, with Duplicates of them, under our Great Seal of England, unto the Counties, Cities, Towns, and Places hereafter ensuing, and for so doing this shall be your Warrant.

And the other Writs, commonly called the Ship-Writs, are against the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

4. That the Judgment in the Exchequer in Mr. Hampden's Case, a Transcript whereof followeth in *hæc verba*: (*viz. Quod separalia brevia prædicta & rotunda eorundem, ac schedul. prædict. eisdem annexat. ac materia in eisdem content. sufficien. in lege exist. ad præf. Joh. Hampden de prædictis viginti solidis super ipsum in forma & ex causa præd. assessis, onerand. Ideo consideratum est per eosdem Barones, quod præd. Johannes Hampden de eisdem viginti solidis oneretur, & inde satisfaciatur.*) In the Matter and Substance thereof, and in that is was conceived that Mr. Hampden was any way chargeable, is against the Laws of the Realm, the Right of Property, the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

These Votes were afterwards transmitted by the House of Commons to the Lords, and delivered by Mr. Saint-John (afterwards his Majesty's Solicitor-General) at a Conference of both Houses of Parliament, held 16 Car. 1640.

Mr. St. John addressed himself to the Lords as follows.

My Lords,

THE Knights, Citizens, and Burgeses of the Commons House, have entrusted me with a Message to your Lordships of a general and very high Concernment; so general, that the whole Body of the Kingdom, both Peers and People, are interested in it; of so high a Consequence, as that there is nothing that can concern us nearer.

It's one of the *Grandia Regni*, so great, as that I shall not need to present it to your Lordships in a magnifying Glass; it will appear too big in its own Dimensions.

It's not that Ship-money hath been levied upon us; but it's that Right whereby Ship-money is claimed, which, if it be true, is such as that makes the Payment of Ship-money the Gift and earnest Penny of all we have.

It's not that our Persons have been imprisoned for Payment of Ship-money, but that our Persons, and (as it is conceived) our Lives too, are upon the same Grounds of Law, delivered up to bare Will and Pleasure.

It's that our Birth-right, our Ancestral Right, our Condition of continuing free Subjects, is lost; that of late there hath been an Endeavour to reduce us to the State of Villainage, nay to a lower.

It's true, the Lord might tax his Villain *de haute & de basse*, might take all his Lands and Goods; the Villain had no Property against the Lord, the Villain he could not *ire quo voluit*, he had no liberty of Person, the Lord might imprison him at his pleasure: but the Villain's Life was his own, and not his Lord's, the Law secured him that. But, my Lords, as the Law stands now declared, it's disputable whether it doth so much for us.

My Lords, the Subject of this Message is, to present the Sense of the Commons to your Lordships; that the Laws of the Realm instituted at first, and freely assented unto, and chosen by their Ancestors for the Preservation of themselves and us their Descendents, in our Persons, Lives and Estates, have been of late entrusted unto such Hands, as have endeavoured to force upon them a contrary End to that for which they were ordained; from defensive to turn them to offensive; and instead of protecting us, to make the Laws the Instrument of taking from us all we have. Those Carriages which have produced this Sense of the Commons, I am commanded at this present to declare to your Lordships.

They are certain extra-judicial Opinions delivered by the Judges at several times; the one in November 1635, the other a Year after, in February 1636.

The Ship-Writs, that have issued to all the Counties of England for these many Years last past without intermission: The principal thing in these Writs which I am to present to your Lordships, is not the Charge and Burden which hath been thereby imposed upon the Subjects, tho' that be great, but the Declarations in them of the Law, and of the Right whereby this Burden may be imposed.

The last is, the Judgment in Master *Hampden's* Case in the Exchequer upon these Ship-Writs.

My Lords, the two last, that is, the Ship-Writ and the Judgment, because they are very long, I am only to open them without reading, and to deliver them to your Lordships; the other two I am to read them, and then to deliver to your Lordships.

The first Opinion in November 1635. was read as followeth.

I Am of Opinion, that as where the Benefit doth more particularly redound to the Good of the Ports or Maritime Parts, as in case of Piracy or Depredations upon the Seas, there the Charge hath been, and may be lawfully imposed upon them according to Precedents of former Times; so where the Good and Safety of the

Kingdom in general is concerned, and the whole Kingdom in danger, (of which his Majesty is the only Judge) there the Charge of the Defence ought to be borne by all the Realm. This I hold agreeable both to Law and Reason.'

My Lords, these Opinions were delivered by the Judges severally and apart, they were procured by the Solicitation of my Lord *Finch*. The Judges, as he severally procured their Hands, were by him enjoined Secrecy: accordingly these Opinions waited in the dark for a Year and upwards. Afterwards the Procurer of them, my Lord *Finch*, liked them so well, as that he presumed to deliver them to his Majesty. By his Procurement, a Letter was directed from his Majesty to the Judges, for the delivery of their Opinions in these and some other Additionals. The former that hath been read is more modest; it's only that his Majesty is the sole Judge of the Danger, and that the Inland as well as the Maritime Towns are chargeable to the Defence of the Kingdom.

It's not declared in these, that this Charge may be imposed by his Majesty alone; for the Expression is only, that the Charge may lawfully be imposed; say not by whom.

In the other Opinions they proceed *a malo ad pejus*, and speak plain English, which followeth in *hac Verba*.

The Case.

Charles Rex.

WHEN the Good, and the Ease and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, whether may not the King, by Writ under the Great Seal of England, command all the Subjects in this Kingdom, at their Charge, to provide and furnish such number of Ships with Men, Victuals and Ammunition, and for such Time as he shall think fit, for the Defence and Safeguard of the Kingdom from such Danger and Peril; and by Law compel the doing thereof in case of Refusal or Refractoriness? and whether in such Case, is not the King the sole Judge, both of the Danger, and when and how the same is to be prevented and avoided?

The Judges Answer.

MAY it please your excellent Majesty, we have, according to your Majesty's Command, severally, and every Man by himself, and all of us together, taken into serious Consideration the Case and Questions signed by your Majesty, and inclosed in your Royal Letter; and we are of Opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, your Majesty may by Writ under the Great Seal of England, command all the Subjects of this your Kingdom at their charge to provide and furnish such number of Ships, with Men, Victuals and Ammunition, and for such time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom from such Danger and Peril; and that by Law your Majesty may, compel the doing thereof, in case of Refusal or Refractoriness: And we are also of Opinion, that in such case your Majesty is the sole Judge, both

‘ both of the Danger, and when, and how the same is to be prevented and avoided.’

These Opinions were subscribed by all the Judges in *Serjeants-Inn-Hall*; they were afterwards published in the *Star-Chamber*, that the Subjects might take notice of them; and that they might never be forgotten, they are enrolled in all the Courts of *Westminster-Hall*, in *perpetuam rei memoriam*. Your Lordships will be pleased to give me leave to repeat them in their plain and legal sense, which I conceive to be thus.

That his Majesty, as often as himself pleaseth, may declare that the Kingdom is in Danger; that so often, for prevention of such Danger, his Majesty, by his Writ under the great Seal of *England*, may alter the Property of the Subjects Goods, without their Consent in Parliament, and that in such Proportion, as his Majesty shall think fit; and besides, the altering of the Property of their Goods, for the prevention of such Danger, may deprive them of the Liberty of their Persons, and of their Lives, and that in such manner as himself shall please.

1. The first of these, *viz.* That his Majesty may declare the Danger as often as he pleaseth, is made good in these Words, That the King is the sole Judge of the Danger, and when the same is to be prevented and avoided.

2. The second, that so often he may alter the Property of the Subjects Goods, without Consent in Parliament, in these Words; That his Majesty may, by Writ under the Seal of *England*, command and compel all the Subjects of the Realm, at their charge, to provide and furnish Ships.

3. That this may be in what proportion his Majesty shall please, in these Words; That his Majesty may command them to provide and furnish such number of Ships, with Men, Victuals, and Ammunition, and for such time as his Majesty shall think fit.

4. The last, *viz.* that which concerns our Persons, in these two Clauses:

1. That his Majesty in case of Refractoriness may compel the doing of it. This Compulsion in case of Refractoriness, includes the Person as well as the Estate; nay, it sounds more in the Personality than otherwise. For the other, *viz.* whether this personal Compulsion may extend so far as to Life, I humbly leave it to your Lordships Consideration, upon the other Clause; that is, that his Majesty is the sole Judge of such Danger, and when, and how the same is to be prevented: Whether the Words, how it is to be prevented, in this Case of personal Compulsion, doth not leave the manner of it wholly in his Majesty's Breast.

My Lords, if these Opinions extend only to Ship-Money, it is enough his Majesty takes what he will, and when he will. If all be taken to Day, and afterwards by Descent or my own Labour, I got a new Stock or Livelihood, that is no more mine than the former, so that there is no Property left unto the Subject, tho' the Opinions go no further. But, my Lords, Ship-Money is not the whole Extent of them; Ship-Money, by these Opinions, is not due by any Peculiarity in Ship-Money: But Ship-Money is therefore due, because his Majesty is the sole Judge of the Danger of the Kingdom, and when, and how the same is to be prevented; because his Majesty for the Defence of the Kingdom, may at his Will and Pleasure

charge the People. This is the Ground; and upon the same Reason the Compulsion may be as well for the making and maintaining Castles, Forts and Bulwarks, making of Bridges, for transporting his Armies, for Provision of Wages and Victuals, for Soldiers, for Horses and Carriages; it may be multiplied in infinitum.

It may be done when the Good and Safety of the Kingdom is concerned; this extends to all Things, and at all Times: *Qui jacet in terra, non habet unde cadet.*

If these Opinions be Law, I humbly leave it to your Lordships Considerations, whether the Government be not *Imperium legibus solutum*. The next thing I shall offer to your Lordships is the Ship-Writs: a Transcript of one of them directed to the Sheriff of *Dorsetshire*, I shall deliver; all the rest being of the same Form. Because the Writ is long, I shall open it briefly; 'tis to this Effect.

There is a Declaration in it, that *Salus Regni periclitabatur*; That the Safety of the Kingdom was in Danger.

Therefore the Inhabitants of the several Counties are commanded, for the Defence of the Kingdom, for the Custody of the Seas, for the Safeguard of the Merchants from Piracy inward and outward, that they should provide a Ship of War, furnished with Guns, Gun-powder, double Tackle, and all other Necessaries; and this Ship thus furnished at a day set, to be brought to *Portsmouth*, to be provided for 26 Weeks of Mariners Wages, Victuals and other Necessaries: and for the doing of this, Authority is given to the Sheriffs of the several Counties, to assess every one of the Inhabitants *secundum statum & facultates suas*, according to their Estates and Means; and further Power given him, by distraining and selling of the Distress, to levy these Monies; *si contrarios invenerit*, then to imprison their Persons: And further declares, that all this may be done, *secundum Legem & Consuetudinem Regni*. The Sense I conceive is briefly thus: That by the Laws of the Kingdom, when his Majesty shall declare that the Kingdom is in Danger, he may alter the Property of the Subjects Goods, and imprison their Persons; nay, that not only his Majesty, but the Sheriffs may imprison their Persons. By the Law the Lord might imprison his Villain, but could not transfer that Power to the Bailiff, or to any other, it was personal. That the Execution of this Power over the Persons of the Subjects hath gone no farther than their Imprisonment, whether therein we be not beholden to his Majesty's Grace and Goodness, and nothing at all to the Opinions of the Judges, I leave it to your Lordships Considerations.

The last thing is, the Judgment in the *Exchequer*, in the 13th Year of his now Majesty's Reign, against Mr. *Hampden*. The Record is very long: I shall briefly open it to your Lordships. *Quarto Aug. 11 Car.* there issued Ship-Writs to the several Counties; amongst the rest to the County of *Bucks*. The Sheriff assessed the Inhabitants; some of them made Default, and did not pay. Upon a *Certiorari* out of the Chancery, directed to the Sheriff, he certifies the Persons that made default, together with the Sums assessed upon them. From the Chancery, by *Mittimus*, these Certificates were sent into the *Exchequer*, to the intent Processes might issue against the Defaulters. A *Scire facias* issued to the Sheriff of *Bucks*.

Bucks, who thereupon, amongst other Returns, returns that Mr. *Hampden* had been assessed 20 Shillings, for some Lands in *Stoke-Mandeville* in that County, which he had not paid. Mr. *Hampden* appeared, and upon his Appearance, demands *Oyer* of the Ship-writs, and the other Proceedings. After his hearing thereof, and understanding the Contents, he demurs in Law, that is, demands the Judgment and Opinion of the Judges, whether this Writ was sufficient in Law, and to force him to pay the said 20 Shillings.

This being a great and general Case, the Barons of the Exchequer desired the Assistance of the rest of the Judges, who did join accordingly. The Case came to be argued; there were four Arguments, two on Mr. *Hampden's* Side, and two on the other Side: The first was in *Michaelmas* Term, after *All-Hallontide*; and all the four Arguments were speeded before *Christmas* Day, two of them in the Term; and no longer time could be procured for the rest, but the short Vacation between *Michaelmas* Term and *Christmas*. It was a Case of so little Concernment, that whereas in *Westminster-Hall*, Term after Term is usually given to argue any Demurrer, this must be argued betwixt *All-Hallontide* and *Christmas* thro'out. After the Arguments, the Counsel on both sides were commanded to bring before the Judges the Records and Authorities cited: They were brought; and for the Ease of the Judges, many of them on Mr. *Hampden's* part were abbreviated on the back-sides: Those Abbreviations were commanded to be expounded. Afterwards the Case came to Argument at the Bench; there the Case was judged, and by the greater part of the Judges, Judgment was given against Mr. *Hampden*. When the Judges had deliver'd their Opinions, it was the Barons part to give Judgment; the Judgment was, *Quod separatim brevia prædicta & return' ecrundem ac Scedulæ prædictæ eisdem annex' ac materia in eisdem content' sufficien' in lege existunt ad præfatum Johannem Hampden de prædict. viginti solidis super ipsum in forma & ex causa prædict. assessis onerand' Ideo consideratum est per eosdem Baron' quod prædictus Johannes Hampden de eisdem viginti solidis oneratum exinde satisfiat.*

My Lords, this Judgment is a full and plenary Execution of the former Opinions of the Judges, and of the Ship-Writs, for so much as it concerns our Propriety: It was given in Mr. *Hampden's* Case only, but binds all the Subjects; for so binding it is, as that an honourable Person, now in my Eye, in a Case depending in the *King's-Bench*, was denied any Argument or Debate concerning the Right of Ship-Money, for no other Reason, but that had it been by the former Judgment adjudged already in the Exchequer.

My Lords, these extra-judicial Opinions of the Judges, these Ship-Writs, and this Judgment, are those Carriages, which have introduced this Sense of the Commons, That the fundamental Laws of the Realm concerning our Property and our Persons are shaken.

My Lords, the Commons have taken the extra-judicial Opinions published and inrolled, and the rest, severally into Consideration; they have been read openly in the House, and after long Debate, and long rather in consideration of the Greatness of the Matter than of the Difficulty of it, they came to vote; four several Votes passed upon them, the Votes passed without so much as one negative Voice to any of them.

The Votes were in Substance, that they were against the Laws of the Realm, the Right of the Property, the Liberties of the Subject, contrary to the former Resolutions of the Parliament, and to the Petition of Right.

The extra-judicial Opinions inrolled, they voted in the whole, and every part of them, to be contrary to all these; for they did conceive, that in these Opinions there was not any one Clause that was agreeable to the Law, but that throughout they were contrary to the Laws.

My Lords, The Things which the Commons took into their Consideration, before they proceeded to their Votes, were the Proceedings in the Parliament held 3 Car. when the Petition of Right was framed.

The Commons went no higher; the Reasons inducing them thereto were, because in that Parliament all those three had been debated, Property of Goods, Liberty of Persons, and Security of our Lives.

Two of them, that is, Property of Goods and Liberty of Persons, by the Occasion of the Commissions for the Loan, and the Instruction where-with these Commissions were accompanied; that concerning our Lives, by Occasion of the Commissions that had issued for the executing of Martial Law.

They conceive, that if any thing concerning these had passed both Houses and his Majesty, or the Judgment of both Houses without his Majesty, it would be in vain to look further, that it would be *actum agere*: Nay, my Lords, they had further Consideration, that if those were already settled in that Parliament, it would not only be derogatory to the Jurisdiction of Parliament, but dangerous to look higher, as that they would infer a Defect in those Proceedings, and cast an Asperision upon that Parliament. I am commanded now to present to your Lordships Consideration, those things which satisfy the Commons, which are these three:

1. The Commissions for the Loans, with the Instructions.
2. A Commission call'd, *The Commission of Excise*.
3. An Addition of Saving, which was desired by your Lordships to have been added to the Petition of Right, at the time of the framing of it.

The Case upon the Commission for the Loans, standeth thus;

13 Octob. 2. Car. divers Commissions were directed to sundry Commissioners, to the number of sixty or seventy Lords and Gentlemen, in the several Counties issued, whereby a compulsory Aid, by way of Loan, was required of the Subject: The Causes and Grounds of this Command, are in the Commissions expressed to be these.

The King found the Crown engaged in a War, by the Advice of both Houses in Parliament; that not only the King and the Subject, but also his Allies beyond Sea were in danger.

The Parts beyond Sea, where our Cloth is vented, and from whence we have most of our Provision for Shipping, were indangered; his Majesty's Treasures were exhausted, and his Cofters empty. A Parliament had been summoned, but no Supply.

Unavoidable Necessity both at Home and Abroad, multiplied the Enemies. Great and mighty Preparations, both at Sea and Land, threatned the Kingdom daily.

Not

Not only the King's Honour, but the Safety and very Subsistence of the King and People, and of the true Religion abroad, are in apparent danger of suffering irreparably, unless not only a speedy, but also a present Stop be made; which cannot admit so long Delay as the calling of a Parliament: The King assured on the Royal Word of a King, that not one Penny should be bestowed, but upon those publick Services only, wherein every one of them, and the whole Body of the Kingdom, their Wives, Children, and Posterity, have their personal and common Interests.

The Commissioners Diligence commanded, as they tendred the King's Honour and Safety of the Realm. Here *Salus regni periclitabatur*, the whole Kingdom was in danger, as in the Judges Opinions, and as in the Ship-Writs, and Judgments in the Exchequer. Nay, my Lords, further, the Safety and very Subsistence of the King, People, and true Religion, were in danger of suffering irreparably; the dangerous Instance, not a speedy, but present Stop must be made; the Supply could not stay for a Parliament; at this time his Majesty's Coffers were exhausted, the King found the Crown engaged in this War, before the Access of it to himself, and that by Advice in Parliament; all this expressed, only lending of Monies for Prevention required; but it was a compulsory thing, and became compulsory, by the Instructions to bind over to the Board, and Imprisonment for Refusal. These Commissions were, in the Parliament 3 Car. first resolved in the Commons House to be against Law, afterwards by your Lordships, and consented unto by his Majesty; and are declared to be so in the *Petition of Right*; and the Imprisonment of the Subjects for Refusal, declared in the *Petition of Right* to be against Law.

My Lords,

The next is the Commission called, *The Commission of Excise*. This was dated *ultimo Febr.* it was dated after the Summons to that Parliament: This Commission issued to 33 Lords, and others of his Majesty's Privy-Council; the Commissioners are thereby commanded to raise Monies by Impositions, or otherwise; as in their Judgments they shall find to be most convenient.

The Causes wherefore these Monies are to be raised, are expressed to be these.

The Defence and Safety of the King and People, which without extremest Hazard of the King, Kingdom, and People, and of the King's Friends and Allies beyond Seas, cannot admit any longer Delay; inevitable Necessity, wherein Form and Circumstance must rather be dispensed withal, than the Substance lost.

The Commissioners not to fail therein, as they tendred his Majesty's Honour, and the Safety of the Kingdom and People.

Here *Salus Regni periclitabatur*, the whole Kingdom declared to be in danger, in greater and nearer, than in the Opinion of the Ship-Writs, or Judgment in the Chequer.

In the Parliament 3 Car. this Commission was adjudged by the Commons to be against the Laws of this Realm, and contrary to the Judgment given in the *Petition of Right*; and after a Conference with your Lordships, desired his Majesty, that it might be cancelled. The then Lord-Keeper shortly after brought it cancelled to your Lordships in the House, and there said it was cancelled

in his Majesty's Presence: You sent it cancelled to the Commons to be viewed, who afterwards sent it back to your Lordships.

My Lords, The last is the Addition of Saving, desired to be added to the *Petition of Right*, which was in these Words:

'We humbly present this Petition unto your Majesty, not only with a Care of preserving our own Liberties, but with due Regard to leave entire the sovereign Power, wherewith your Majesty is trusted, for the Protection, Safety, and Happiness of your People.' Your Lordships Desire of this Addition to the *Petition of Right*, was taken into consideration by the Commons; and after Debate, it was thought fit by them to be rejected. A Conference was had with your Lordships, and Mr. Noy appointed by the Commons to declare the Reasons of their Resolution. Your Lordships not receiving Satisfaction at that Conference, whether this Addition should be rejected or not; it was again debated in the Commons House, they ventur'd upon the same Bottom again: It was thereupon resolved to be rejected; the Reasons of their Rejection were these in Sum.

First, They confess, that if these Words were taken as a bare Proposition only, without any further reference to the *Petition of Right*, that it was a true Proposition.

That is, that the Law hath trusted the King with sovereign Power for the Protection, Safety, and Happiness of the People.

But if it should be added to the *Petition of Right*, as was desired, then was it not true, but would make the *Petition of Right*, *felo de se*, and wholly destructive to itself in all the Parts of it; that it would proceed *a bene divisis ad mala conjuncta*: for then the *Petition of Right*, as they resolved, would have this Sense.

Whereas in the *Petition of Right* it is said, That no Aid, Tax, Taillage, or other Charge whatsoever, may be imposed upon the People, without their free Consent in Parliament; it would have this Construction. 'Tis true, it cannot be done by the King's ordinary Power, but it may be done by that sovereign Power wherewith the Law hath entrusted his Majesty for the Protection, Safety, and Happiness of the People.

So likewise for Imprisonment, that they ought not to be imprisoned without due Process of Law. It is true ordinarily, but the King may imprison by his sovereign Power, wherewith the Law hath intrusted him for the Protection, Safety, and Happiness of the People.

So that, for that Martial Law, that the Subjects Lives ought not to be taken away, unless by due Process of Law. 'Tis true ordinarily, but the King may do it by his sovereign Power, wherewith the Law hath intrusted him for the Protection Safety, and Happiness of the People. Whereby they conceived that it would not only make the *Petition of Right* to be wholly destructive of itself, but likewise this *Petition of Right* would leave the Subject in a far worse Condition than it found them; for it would necessarily infer, that which is against the Law, *viz.* That the King by his sovereign Power, when he pleased to declare that it was for the Good of the People, might do all this.

Your Lordships, at a Conference of both Houses, engaged on the Part of the Commons by Serjeant *Glanville*, and Sir *Henry Martin*, received Satisfaction

Satisfaction from these Reasons, and consented to the leaving out this Addition; and accordingly the Petition of Right passed, and is printed without it.

My Lords, These were the things I was commanded to present unto your Lordships; other things there were, as the Sentence against Bishop *Manwaring*: But these weighed so much with the Commons, as that they conceived they needed no more.

My Lords, These Precedents of that Parliament, and these Opinions of the Judges, the Ship-Writs, and the Judgments in the *Exchequer*; they are like the two Buckets of a Well, if one go up, the other must go down: *Non bene conveniunt.*

My Lords, we have not cited these Precedents out of diffidence that your Lordships had forgotten them, but because others have; or that we distrust your Lordships Justice, if you had forgot them: for before these were, your Lordships concurred in Opinion with your worthy Ancestors, that first gave them. Their noble Blood runs in your Veins. It's now to confirm your own Judgment as well as theirs: In your Lordships Breasts, there are the same Magazines and Fountains of Honour and Justice as were then; these Judgments and Proceedings were the Actions of both Houses, the Danger by the Violation is equal.

The Commons see nothing in the Judges Opinions or Judgment, why they should recede from their former Judgments; they hope the same from your Lordships.

Besides, *my Lords,* that the Case is now much varied from what it was then; not only in the Matter, but as it concerns the Honour and Jurisdiction of this great Judicatory, the Parliament.

The Breach of Privileges in the Members is tenderly resented, because that without this Freedom, they cannot advise and consult concerning the *Ardua Regni.*

But when they have done all to have their Judgments, and their Acts of Parliament overthrown by the Judges afterwards, this makes Parliaments to be nothing; this sets up the Judges above the Parliament, this puts us out of hope of Redress: if they may overthrow the Proceedings of that Parliament of 3 Car. they may by the same Reason overthrow the Actions of this, and of all future Parliaments.

My Lords, This was not the Practice of their Predecessors, tho' but in private Causes; if difficulty of Law arose, they always consulted this Oracle, and thence received their Answer how to give Judgment. Judgments in the highest Court of *Westminster-Hall*, I mean in the *King's-Bench*, where the Proceedings are *coram Rege*, are here reverfable by Writ of Error. In Causes of great and general Concernment, they ever adjourned them hither, as things too high for them.

Qui consulta patrum, qui leges juraque servat, doth well; they have taken that in their hands they had not to do withal; and how they have handled the Matter, your Lordships have heard.

The Judges, as is declared in the Parliament Roll of *Rich. II.* are the Executors of the Statutes, and of the Judgments and Ordinances of Parliament; they have here made themselves the Executioners of them; they have endeavoured the Destruction of the Fundamentals of our Laws and Liberties. *Holland* in the *Low-Countries* lies under

the Sea, the Superficies of the Land is lower than the Superficies of the Sea: It's capital therefore for any Man to cut the Banks, because they defend the Country.

Besides our own, even foreign Authors, as *Commynes*, observe, that the Statute *de Tallagio*, and other old Laws, are the Sea-Walls and Banks which keep the Commons from the Inundation of the Prerogative.

These Pioneers, they have not only undermined these Banks, but they have levelled them even with the Ground.

If one that was known to be *hostis Patriæ*, had done this, tho' the Damage be the same, yet the Guilt is less.

But the *Conservatores Riparum*, the Overseers intrusted with the Defence of these Banks, for them to destroy them, the Breach of Trust aggravates, nay alters the Nature of the Offence.

Breach of Trust, tho' in a private Person, and in the least things, is odious amongst all Men; much more in a publick Person, and in things of great and publick Concernment, because great Trust binds the Party trusted to greatest Care and Fidelity.

It's Treason in the Constable of *Dover Castle* to deliver the Keys to the known Enemies of the Kingdom; because that Castle is the Key of the Kingdom: Whereas if the House-keeper of a private Person deliver'd Possession to his Adversary, it's a Crime scarce punishable by Law.

The Judges under his Majesty are the Persons trusted with the Laws; and in them, with the Lives, Liberties, and Estates of the whole Kingdom: This Trust of all we have, is primarily in his Majesty, and from him delegated to his Judges.

His Majesty, at his Coronation, is bound by his Oath to execute Justice to his People according to the Laws; thereby to assure the People of the faithful Performance of this great Trust. His Majesty again, as he trusts the Judges with the Performance of this part of the Oath, so doth he likewise exact another Oath of them, for their due Execution of Justice to the People, according to the Laws: Hereby the Judges stand entrusted with this part of his Majesty's Oath.

If therefore the Judges shall do wittingly against Law, they do not only break their Oaths, and therein the common Faith and Trust of the whole Kingdom, but do as much as in them lies smear and blemish the sacred Person of his Majesty, with the odious and hateful Sin of Perjury.

My Lords,

The Heinousness of this Offence is most legible in the severe Punishments which former Ages have inflicted upon those Judges, who have broken any part of their Oaths wittingly, tho' in things not so dangerous to the Subject, as in this Case in question.

Sir *Thomas Wayland*, Chief Justice of the *Common Pleas*, *Edw. I.* was attainted of Felony for taking Bribes, and his Lands and Goods forfeited, as appears in the Pleas of Parliament, 18 *Edw. I.* and he was banished the Kingdom as unworthy to live in that State, against which he had so much offended.

Sir *William Thorpe*, Chief Justice of the *King's-Bench*, in *Edw. III.*'s times, having of five Persons received five several Bribes, which in all amounted to 100*l.* was for this alone adjudged to be hanged,

hanged, and all his Lands and Goods forfeited, The Reason of this Judgment is entred in the Roll, in these Words:

Quia prædictus Willielmus Thorpe, *qui sacramentum Domini Regis erga populum suum habuit ad custodiendum, fregit malitiose, false & rebelliter, quantum in ipso fuit*; because that he, as much as in him lay, had broken the King's Oath made unto the People, which the King had intrusted him withal.

There is this notable Declaration in that Judgment; that is, That this Judgment was not to be drawn into Example against any other Officers who should break their Oaths, but only against those *qui prædictum sacramentum fecerunt & fregunt, & habent leges Angliæ ad custodiendum*; that is, only to the Judges Oaths, who have the Laws entrusted to them.

This Judgment was given 24 *Edw. III.* The next Year in the Parliament 25 *Edw. III.* it was debated in Parliament, whether this Judgment was legal; & *nullo contradicente*, it was declared to be just, and according to the Law; and that the same Judgment may be given in time to come upon the like Occasion. This Case is in point, that its Death for any Judge wittingly to break his Oath, or any part of it.

This Oath of *Thorpe* is entred in the Roll, and is the same *verbatim* with the Judges Oath in 18 *Edw. III.* and the same which the Judges now take.

Your Lordships will give me leave to observe the Differences between that and the Case in question.

First, That of *Thorpe* was only a felling of the Law by Retale to those five Persons; for he had only five several Bribes of those five Persons; the Passage of the Law to the rest of the Subjects, for ought appears, was free and open.

But these Opinions are a Conveyance of the Law by wholesale, and that not to but from the Subject.

In that of *Thorpe*, as to those five Persons, it was not an absolute Denial of Justice; it was not a damming up, but a freighting only of the Channel.

For whereas the Judge ought *judicium reddere*, that is, the Law being the Birth-right and Inheritance of the Subject, the Judge, when the Parties in Suit demand Judgment, should *redare*, freely restore this right unto them; now he doth not *dare*, but *vendere*, with the Hazard only of perverting Justice; for the Party that buys the Judgment may have a good and honest Cause.

But these Opinions, besides that they have cost the Subject very dear, dearer than any; nay, I think I may truly say, than all the unjust Judgments that ever yet have been given: Witness the many hundred thousand Pounds which under Colour of them have been levy'd upon the Subject, amounting to seven hundred thousand Pounds and upwards in Money paid unto the Treasurer of the Navy; besides what the Subjects have been forced to pay to Sheriffs, Bailiffs, and others, which altogether, as is conceived, amounts not to much less than a Million; besides the infinite Vexation of the Subjects by Suits in Law, binding them over to Attendance at the Council-Board, taking of them from their necessary Employments in making of Assesses, and Collections, and Imprisonment of their Persons: I say, *my Lords*, besides what is past, to make our Miseries complete,

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they have as much as in them lies made them endless; for by these Opinions they have put upon themselves and their Successors an Impossibility of ever doing us Right again, and an Incapacity upon us of demanding it so long as they continue.

My Lords, In that sore Famine in the Land of *Egypt*, when the Inhabitants were reduced to the next door to Death, for there they say, *Why should we die for Bread?* First they gave their Money; next, their Flocks and Cattle; and last of all, their Persons and their Lands, for Bread; and all became *Pharaoh's*. But by this *Lex Regia*, there is a Transaction made, not only of our Persons, but of our Bread likewise, wherewith our Persons should be sustained. That was for Bread, this is of our Bread. For, *my Lords*, since these Opinions (if we have any thing at all) we are not at all beholden to the Law for it, but are wholly cast upon the Mercy and Goodness of the King.

Again, There the *Egyptians* themselves sold themselves, and all they had to the King; if ours had been so done, if it had been done by our own free Consent in Parliament we had the less Cause to complain: but it was done against our Wills, and by those who were trusted, and that upon Oath, with the Preservation of those things for us.

My Lords, The Laws are our Forts and Bulwarks of Defence. If the Captain of a Castle, only thro' Fear and Cowardice, and not from any Compliance with the Enemy, surrender it; this is Treason, as was adjudged in the Parliament, 1 *Ric. 2.* in the two Cases of *Grymes* and *Weston*, and in the Case of the Lord *Gray*, for surrendering of *Berwick Castle* to the *Scots* in *Edw. III.*'s time, tho' good Defence had been made by him, and that he lost his eldest Son in maintenance of the Siege; and yet the Loss of a Castle only loseth not a Kingdom, but the Place and adjacent Parts, without Trouble to the whole.

But by these Opinions, there is a Surrender made of all legal Defence of Propriety; that which hath been preached is now judged, that there is no *meum & tuum* between the King and the People, besides that which concerns our Persons.

My Lords, The Law, it is the Temple, the Sanctuary whither the Subject is to run for Shelter and Refuge. Hereby it is become *Templum sine Numine*, as was the Temple built by the *Roman* Emperor, who after he had built it, put no Gods into it.

We have the Letter of the Law still, but not the Sense.

We have the Fabrick of the Temple still; but the Gods, the *Dii Tutelares* are gone.

But, *my Lords*, this is not all the Case (that is) that the Law now ceaseth to aid and defend us in our Rights, for then Possession alone were a good Title, if there were no Law to take it away; *occupanti concederetur & melior esset possidentis conditio*. But this (tho' too bad) is not the worst; for besides that which is privative in these Opinions, there is somewhat positive: for now the Law doth not only not defend us, but the Law itself is made the Instrument of taking all away.

For whensoever his Majesty or his Successors shall be pleased to say, That the Good and Safety of the Kingdom is concerned, and that the whole Kingdom is in danger, then when and how the same is to be prevented, makes our Persons and all we have liable to bare Will and Pleasure.

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By this Means, the Sanctuary is turned into a Shambles: The Forts are not slighted, that so they might neither do us Good or Hurt; but they are held against us by those who ought to have held them for us, the Mouth of our own Cannon is turned upon ourselves.

My Lords, in these Expressions there is no Reflection upon his Majesty: It is only that those Judges would have forced upon the Law an unnatural and contrary Motion; his Majesty's Carriage in the Business clears his Justice.

The first Opinion of the Judges under their Hands, was procured by my Lord *Finch's* Solicitation only, and by him brought to his Majesty. These Opinions procured the Letter from his Majesty for the Opinions inrolled, wherein, as likewise in the Case in the *Exchequer*, the Judges were left free, as was acknowledged by two of the Judges in the *Exchequer-Chamber*, who argued against those Opinions, with this Protestation, that if there were any Miscarriages in that Business it must fall wholly upon themselves; that the King was blameless.

My Lords, we know his Majesty's Justice is the fairest, the richest Diamond in his Crown; the Dust which these Men would have blown, and forced upon it, is fallen short; and with your Lordships helping Hands, it will, we hope, be cast upon their own Faces, a fitter place for it than the other.

My Lords, the Oaths of the Judges, as they bind them to the due Administration of Justice to the Subjects, according to the Laws, so as they be of the King's Council by their Oaths, they are bound lawfully to counsel him; that is, when their Opinions are demanded, they are to deliver them according to the Law.

I shall therefore put your Lordships in mind of the memorable Proceedings against those Judges who have broken this part of their Oath, in that notable Parliament held the eleventh of *Richard* the Second.

In this Parliament, Judgment of High-Treason was given against eighteen several Persons, † and all (save one of them) of eminent Rank; three Privy Counsellors; the Arch-Bishop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*; the Bishop of *Exeter* the King's Confessor; five Knights, some whereof had been Servants to *Edward* the Third, and all, save one, Servants to the then King; and some of them of Noble Descent; six Judges, *Lockton* the King's Serjeant at Law, *Blake* of the King's Counsel at Law, and *Uske* the Under-Sheriff of *Middlesex*. Of these eighteen, eight were executed, that is, Sir *Robert Tresilian* the Chief Justice, five Knights, *Blake* of the King's Counsel at Law, and *Uske* the Under-Sheriff. Three, that is, the Arch-Bishop of *York*, Duke of *Ireland*, and Earl of *Suffolk*, fled.

The rest had their Lives pardoned, but were banished; their Lands and Goods forfeited, and little Pensions allowed them during their Lives. It was made Felony for any one to procure their Pardons, and they to be dealt with as Traitors, if they returned from their Banishment: And of those eighteen Persons all save three were impeached by the Commons.

The Offences which procured these exemplary Punishments, altho' their Proceedings be long, and comprehended all that was done in this Parliament, I'll briefly open them to your Lordships.

† *Vid.* Trial I. in this Collection.

During the Minority of that King, by ill Counsel of some near his Person, there were Miscarriages in Government. In the tenth Year of his Reign, and the twentieth of his Age, a Parliament was holden: in that Parliament, in aid of good Government, and of due Execution of the Laws, a Commission was awarded to 12 several Peers, and others of greatest Wisdom and Fidelity. The Commissioners had Power in all things concerning the Household, Courts of Justice, and the Revenues; in a Word, in all things concerning the Good of the Realm; with full Power finally to determine and put in Execution such Determination for the Honour of the King, the better Governance of the Peace and Laws of the Realm, and Relief of the People.

This Commission was to endure one Year; at the Year's end the King would be of full Age.

My Lords, the endeavouring to overthrow this Commission issued by Authority of Parliament for the Welfare of the Realm, upon pretence that it trenched upon the Royal Power, tended to the Disherison of the King, and Derogation of the Crown, together with the Destruction of the Commissioners who procured it, and put the same in Execution, upon pretence that they and some others had in Parliament forced the Royal Assent.

My Lords, the conspiring to overthrow this Commission, and the Procurers of it, is the Case in brief: for altho' there be divers other Articles against many of them, yet this was the Ground-Work of all, and this singly and alone is declared in all the Proceedings in Parliament to be Treason. Of these 18 Persons condemned, 5 of them were Plotters, *viz.* the Arch-Bishop, Duke of *Ireland*, Earl of *Suffolk*, *Tresilian* the Chief Justice, and Sir *Nicolas Bramber*; these insinuated into the King, That this Commission was in diminution of his Kingly Power, that the Procurers of it had extorted his Royal Assent; and that this was Treason. Thereupon *Blake* one of the King's Counsel at Law was advised withal, who declared his Opinion, that it was Treason; he was commanded to prepare an Indictment of Treason against the Commissioners, and some of the Procurers of it, who had been active therein.

The Indictment was drawn by him, which is entred in the Roll, and is to this effect.

That they had traiterously conspired amongst themselves in the Parliament, to make this Commission by Authority of Parliament against the Regality of the King, to his Disherison, and Derogation of the Crown; that they compelled the King's Consent, and that they confederated and bound themselves to maintain one another in so doing.

It was intended that they should be tried upon this Indictment in *Middlesex* or in *London*. *Uske* the Under-Sheriff of *Middlesex* was acquainted with the Business, who was to prepare Things for the effecting of this Design, some of the Parties to be indicted, not being Peers: which he performing accordingly, was therefore executed.

The five Plotters, that the King might the more confide in their Counsels, (for so are the Words of the Record) and that under the Colour of Law they might cover their Malice from the King and the Kingdom, before the Trial was to be had, they advise the King to demand the Opinion of some of the Judges, that is of the two Chief Justices, and Chief Baron, the Judges of the Common Pleas, six in number, and of *Lockton* the King's

King's Serjeant. *Blake* of the King's Counsel at Law was commanded to draw up these Questions for the Judges Opinions, who did it accordingly.

For the drawing up of these Questions, and the Indictment, *Blake* was condemned and executed.

The Question being drawn into Writing, the Judges were sent for to *Nottingham* Castle, where, in the King's Presence, they were commanded upon their Allegiance to deliver their Opinions.

1. The first Question was, Whether the Commission was in Derogation of the Crown? They answered, it was.

2. The second Question was, Whether the persuading and urging the King's Consent in Parliament thereto was Treason? They answered, That it was. Tho' there were some other Questions asked, all concerning Parliamentary Proceedings, yet these were the main, and those for which they were condemned, as appears by the Replication of the Commons to the Judges Answer, and by the Words of the Judgment, *viz.* That they knew that this Commission was awarded in Parliament, that it was for the publick Good, that they knew of the traitorous Intents to destroy the Procurers of this Commission; that they knew the Law, and that it was not Treason; and had delivered their Opinions thereby under colour of Law, to cover their treasonable Intent: and therefore Judgment of Treason was given against them, and against *Lockton* the King's Serjeant at Law, who had subscribed the Opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned only for conspiring the Death of the Procurers of this Commission: and altho' there be other Articles against the rest, yet this alone is adjudged Treason in the several Judgments against every one of the eighteen.

1. My Lords, it is observable in all these Judgments, that they are adjudged Traitors, as well against the Person of the King as against the Commonwealth.

2. It is there declared upon great Advice taken, that in Treasons which concern the King and Kingdom, they are not bound to proceed according to the Rules of the Common Law and inferior Courts, but according to the Course of Parliaments, so as may be for the common Good.

3. Judgment was given in Parliament, and Execution awarded, and afterwards a Bill of Confirmation passed, in respect of their Lands, to give them from a Day past; and for Declaration that this should be no Precedent to inferior Courts to adjudge the same Cases Treason, save only in Parliament.

These Judgments were not huddled up in haste, but they were given upon long and mature Deliberation. These Judgments were the whole Work of that Parliament; and the Proceedings against the five Plotters, were begun the fourteenth of *November*, and the Judgments were not given till the thirteenth of *February* following, which was a quarter of a Year. And it is declared in the Roll, that they spent a long time, and took great pains to examine the Evidences, the better thereby to satisfy their own Consciences and the World.

I insist the more upon this, to take away all Blemish from these Proceedings.

It is true, my Lords, these Judgments were afterwards in the Parliament of 21 *Rich. I.* revoked and made void.

But, my Lords, that Parliament of 21 *Rich. 2.* of Revocation was held by Force, as it is declared in the Parliament Rolls of 1 *Hen. IV. N. 21, 22.* that it was held *viris armatis, & sagittariis immensis.*

The Knights of Parliament were not elected by the Commons, *prout mos exigit, sed per regiam voluntatem*: And so the Lords, *summoniri fecit Rex Dominos sibi adhaerentes.*

My Lords, by these Proceedings it doth appear, that this Parliament of Revocation was no free Parliament, if at all it deserves the name of a Parliament. But to put all out of doubt, in the Parliament of 1 *Hen. 4. n. 48.* these Judgments of Revocation are declared to be *contra, iniqua, & omni juri & rationi repugnantia*, erroneous, wicked, and contrary to all Right and Reason. In the Parliament of 1 *Hen. IV.* in Print, these Attainders are confirmed: So that these Judgments of Attainder have the Authority of two Acts of Parliament, both of them of Force at this Day.

Your Lordships will give me leave to observe the Differences and Agreements, between the Offences of those and of the present Judges, and as well in the Way and Manner of Procurement, as in the Matter of them. For the Manner of Procurement, those Judges in *Rich. II.*'s time were in the King's Presence; and as it is in the Parliament Roll of 1 *Hen. IV. n. 18.* they were *violenter attracti*, violently drawn to deliver their Opinions, and that *metu mortis & cruciatu corporis*, for the fear of Death and Tortures of their Bodies: and at their Trials severally they say, That in part Violence had been offered to their Persons; because they had differed in the delivery of their Opinions. My Lords, this was such a Miscarriage in the Judges, these Circumstances considered, as might *cadere in virum fortem & constantem*. But, my Lords, Fear or Cowardice is no Plea for delivering up of the Forts and Bulwarks of the Kingdom.

But in the present Business, there is none of all this, it came from within; there is no outward Force. In those of *Rich. II.* it was *Actus unicus*, once done at *Nottingham* Castle; if the Judges had been put to it the Second time perhaps the rest, as well as some of them, had repented, and would not have done it over again: for *Belknappe*, the Chief Justice of the *Common-Pleas*, the same Day declared his Sorrow, and said, That now there remained nothing but a Horse, a Hurdle, and a Halter; and *Fulthorp*, another of them, the next Day declared his Grief for what he had done. But here, after the Opinion in *November* 1635, a Year after *viz.* 1636, they proceed *a pessimo ad pejus pessimo*; for that was with Additions: Most of them declared their Opinions in their Circuits, and a Year after confirmed it again by the Judgment in the *Exchequer*. Here it was done Year after Year in cold Blood: One murderous Blow, whereupon Death follows, is Felony; but to multiply Wounds upon the dead Body, and to come again in cool Blood to do it, it shews the Height of Malice. In these two things they agree:

1. That which the Judges did in *Rich. II.*'s time, they did against their own Knowledge; they knew the Commission was done by Act of Parliament: so here these knew the Petition of *Right* damned the Commissioners of *Loans*, a stronger Case than that; they subscribed many of them, knew that the Commission of *Excise* was damn'd in Parliament; they knew the other Proceedings in Parliament, and if they had forgotten them, they were

afterwards put in mind of them; they needed not to have consulted with Books and Journals of Parliaments, saving only with their own Memories.

2. They agree in this, That their Opinions tended to the Subversion of the Laws and Statutes of the Kingdom: for in that of *Rich. II.* the Pretence was, the endeavouring to overthrow Parliaments, and Parliamentary Proceedings; the Conspiracy of the Death of the Procurers, was only an Aggravation. It was not Treason to conspire the Death of a Privy-Counsellor, or to kill a Judge, unless he be upon the Bench; and in that Case it is Treason, because of the Malice, not of the Person, but to the Law: so that there the Treason lay in this, not that they conspired barely against their Persons, but with reference to their Proceedings in Parliament, and thereby to overthrow the Acts of Parliament, wherein these Persons had been principal Actors. But in this again they disagree; for in that Case there was only a Conspiracy, no Death followed to the Procurers of the Commission, nor was the Commission overthrown; all that was done, was only this, That a Warrant was directed to the Lord Mayor of *London*, for apprehending their Persons to bring them to Trial, which yet was not done. But here (after the Opinions delivered) Judgment was afterwards given by them in the *Exchequer*, and Execution awarded thereupon, for so much as concerns our Property.

And likewise in the *King's-Bench*, where the Judges after the Judgments in the *Exchequer* refused to hear any more Debate of the Matter; and so for the Liberty of our Persons, by keeping divers of the Subjects in Prison, Term after Term, for not paying Ship-Money, and other things depending upon those Opinions, when they had been brought before them upon their *Habeas Corpus*.

In that of *Rich. II.* it was for overthrowing but one Act of Parliament, which was likewise introductive of a new Law; for the Commission had no Rise from the Common Law; for in truth it was derogatory to the Crown: It had only the Strength of the Parliament to support it, which was sufficient, it was for the common Good.

But here the Endeavour was at once, not to blow up one Act of Parliament, but all; and these not introductive, but declaratory of the Common Law, as was the Petition of *Right*, the Statutes there mentioned, and the Resolutions.

That of *Rich. II.* was but the blowing up of the upper Deck; this of the Common Law, and the Statutes too, and the old Foundations, and the Structures built upon them, all together.

In that of *Rich. II.* it was only to overthrow a temporary Act of Parliament, that was to continue no longer than one Year; but this to make an eternal Devastation; (for *toties quoties*) to the World's End as his Majesty or his Successors shall say, That the Kingdom is in Danger, may these Opinions be put in Execution, and likewise they are enrolled in all the Courts of *Westminster-Hall*, in *perpetuam rei memoriam*.

This Sin against the Holy Ghost is therefore unpardonable, because it takes from the Party Repentance, the Means of Pardon. To put us therefore into a Case of Desperation, some of them have publicly, and upon the Bench, de-

clared, That this Prerogative is so inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an Impossibility upon themselves, so would they put an Impossibility upon his Majesty, your Lordships, and the whole Parliament, for ever righting us again.

My Lords, *Contraria juxta se posita magis elucescunt*. I have presented your Lordships with the Obliquity of the ill Judges in *Rich. II.*'s Time, give me leave to present your Lordships with one Example of a contrary Nature; and that was in Queen *Elizabeth's* time, in the 29th Year of her Majesty's Reign: She erects a new Office in the *Common-Pleas*, for the making of *Superfedeas* in *Exigents* that issued there; she grants it to *Richard Cavendish*, her Servant, sends to have him admitted; but the Judges delay the doing of it, for this Reason, because the *Prothonotaries* and *Philazers* claimed the making of those Writs. The Queen sends a sharp Letter, and commands them forthwith to admit him, yet the Judges forbear. The Queen sends a sharper Letter, commanding them to shew the Reasons of their Contempt and Disobedience to the then Lord Keeper, and the Earl of *Leicester*, no mean Men in those Days: the Judges deliver their Reasons why they had refused, that it was because others claimed the making of those Writs.

The Queen sends a fourth peremptory Message for their admitting him, with this Reason, That if the others were put out, they were rich and able Men; and that her Courts of Justice were open, where they might demand their Rights.

This was not to take away the Right, but to put them to their Action.

The Judges humbly returned this Answer, That the Queen had taken her Oath for the Execution of Justice, according to the Law; that they did not doubt, but that when her Majesty was inform'd that it was against Law, she would do what befitted her: for their parts they had taken an Oath to God, to her, and the Commonwealth; and if they should do it without Process of Law before them, and only upon her Command put the other out of Possession, tho' the Right remained to them, it were a Breach of their Oaths; and therefore if the Fear of God were not sufficient, they told her the Punishment that was inflicted upon their Predecessors for Breach of their Oaths, (citing these of *Thorpe*, in *Rich. II.*'s time) that they might be sufficient Warning to them. The Queen hearing of these Reasons, was satisfy'd; and the Judges heard no more of the Business.

These Judges have had Examples of both kinds before them; they might have chosen the Good, and refused the Bad.

My Lords, Besides these Judgments and Opinions, the Commons will in due time bring up these Judges with their other Judgments, *Corporum causis*; for your Lordships will easily conceive, that they who have done this, have done more: the Principal of them, I mean my Lord Keeper, stands accused before your Lordships of High-Treason: He is not here, Justice goes *pede lento*, sed *certo*, it will overtake him at the last.

This remains under the Hand of Anderson the Lord Chief Justice in his Reports, Vol. I. pag. 152-158.

The next Step that is making after him, are the Articles of his Impeachment, which, with your Lordship's Patience, are now ready to be opened and delivered to your Lordships.

Mr. Hide * *spake afterwards in the following manner.*

My Lords,

THERE cannot be a greater Instance of a sick and languishing Commonwealth, than the Business of this Day. Good God! how have the Guilty these late Years been punished, when the Judges themselves have been such Delinquents! 'Tis no marvel that an irregular, extravagant Arbitrary Power, like a Torrent, hath broke in upon us, when our Banks, and our Bulwarks, the Laws, were in the Custody of such Persons. Men who had lost their Innocence, could not preserve their Courage; nor could we look that they who had so visibly undone us themselves, should have the Virtue or Credit to rescue us from the Oppression of other Men. It was said by one who always spake excellently, That the twelve Judges were like the twelve Lions under the Throne of Solomon; *Under the Throne in Obedience, but yet Lions*: Your Lordships shall this day hear of six, who (be they what they will be else) were no Lions, who upon vulgar fears delivered up the precious Forts they were trusted with, almost without assault; and in a tame easy Trance of Flattery and Servitude, lost and forfeited (shamefully forfeited) that Reputation, Awe, and Reverence, which the Wisdom, Courage, and Gravity of their venerable Predecessors had contracted and fastned to the Places they now hold; and even rendred that Study and Profession, which in all Ages hath been, and I hope now shall be of an honourable Estimation, so contemptible and vile, that had not this blessed Day come, all Men would have had that quarrel to the Law itself, which *Marcus* had to the *Greek* Tongue, who thought it a Mockery to learn that Language, the Masters whereof lived in Bondage under others. And I appeal to these unhappy Gentlemen themselves, with what a strange Negligence, Scorn, and Indignation, the Faces of all Men, even of the meanest, have been directed towards them, since (to call it no worse) that fatal Declension of their Understandings, in those Judgments of which they stand here charged before your Lordships.

But, my Lords, the Work of this Day is the greatest Instance of a growing, and thriving Commonwealth too; and is as the Dawning of a fair and lasting Day of Happiness to this Kingdom.

It is in your Lordships Power (and I am sure it is in your Lordships Will) to restore the dejected broken People of this Island to their former Joy and Security, the Successors of these Men to their own Privilege and Veneration: *Et sepultas prope leges revocare.*

So these Judges enter themselves, and harden their Hearts by more particular Trespasses upon the Law; by Impositions and Taxes upon the Merchants in Trade; by Burdens and Pressures upon the Gentry in Knighthood; before they could arrive at that universal Destruction of the King by Ship-Money, which promised Reward and Security for all their former Services, by doing the Work of a Parliament to his Majesty in Supplies, and seemed to delude Justice, in leaving none to

judge them, by making the whole Kingdom Party to their Oppression.

My Lords, the Commons assembled in Parliament hope that your Lordships will call these Judges speedily before you to answer these Articles laid to their charge, that the Nation may be satisfied in your Lordships Justice upon them, as their Crimes merit.

Then Mr. *Pierpont* delivered in the following Articles against Sir *Robert Berkley*, one of the Justices of the *King's-Bench*.

Articles of Impeachment of Sir Robert Berkley Kt. one of the Justices of the Court of King's-Bench, by the Commons in this present Parliament assembled, in their own Name, and in the Name of all the Commons of England, in maintenance of their Accusation, whereby he standeth charged with High-Treason, and other great Misdemeanours.

Imprimis, THAT the said Sir *Robert Berkley*, then being one of the Justices of said Court of *King's-Bench*, hath traiterously and wickedly endeavoured to subvert the fundamental Laws, and establish'd Government of the Realm of *England*; and instead thereof, to introduce an Arbitrary and Tyrannical Government against Law, which he hath declared by traiterous and wicked Words, Opinions, Judgments, Practices, and Actions appearing in the several Articles ensuing.

2. Whereas by the Statute made in the 25th Year of the Reign of *K. Henry VIII.* Prices of Victuals are appointed to be rated in such manner, as in the said Statute is declared; but it is manifest by the said Statute, Corn is none of the Victuals thereby intended: Nevertheless some ill-affected Persons endeavouring to bring a Charge upon the Subjects contrary to Law, did surmise, that the Prices of Corn might be rated, and set according to the direction of that Statute; and thereupon great gain might be raised to his Majesty by Licences and Dispensations for selling Corn at other Prices: And a Command from his Majesty being procured to the Judges, and sent to them by *William Noy Esq;* his Majesty's then Attorney-General, to deliver their Opinions touching the Question, whether Corn was such Victuals as was intended to have the Price rated within the said Statute: In answer to which, the said Sir *Robert Berkley* then being one of his Majesty's Justices of the Court of *King's-Bench*, in furtherance of the said unlawful Charge, endeavoured to be imposed as aforesaid, the thirtieth day of *November*, in the eighth year of his now Majesty's Reign, did deliver his Opinion, That Corn was such Victual as was intended to have the Price rated within the said Statute; which said Opinion was contrary to Law, and to the plain sense and meaning of the said Statute, and contrary to his own Knowledge, and was given and delivered by him, with a purpose and intention, that the said unlawful Charge might be imposed upon the Subject.

3. That an Information being preferred in the Court of *Star-Chamber* by the said *William Noy*, his Majesty's then Attorney-General, against *John Overman*,

* Afterwards Lord Chancellor of England.

man, and fifteen other Soap-makers, Defendants, charging them with several pretended Offences, contrary to divers Letters Patents, and Proclamations, touching the making and uttering Soap, and using the Trade of Soap-makers, and other offences in the said Information mentioned; whereunto the Defendants did plead, and demur as to part, and answer to other parts of the said Information: And the said Plea and Demurrer being over-ruled, for that the Particulars therein insisted upon, would appear more full after Answer and Proof; therefore the Defendants were ordered to answer without prejudice, and were to be admitted to such Exceptions to the said Informations, and Advantages of the matter of the Plea and Demurrer upon the Hearing, as shall be material; and accordingly the Defendants did put in their Answers, and set forth several Acts of Parliament, Letters Patents, Charters, Customs, and Acts of Common-Council of the City of London, and other matters materially conducing to their Defence; and, in conclusion, pleaded not guilty. The said Sir Robert Berkley then being one of the Justices of the Court of King's-Bench, upon the 30th day of March, in the eighth Year of his Majesty's Reign, upon an Order of Reference to him and others, by the said Court of Star-Chamber, to consider of the Impertinency of the said Answers, did certify the said Court of Star-Chamber, That the whole Answers, excepting the four words and ten last lines, should be expunged; leaving thereby no more substance of the said Answers, than the Plea of Not guilty. And after, upon a Reference to him and others, by Order of the said Court, of the Impertinency of the Interrogatories, and Depositions of Witnesses taken on the Defendants part in the same Case, Sir Robert Berkley, upon the second day of May, in the eighth year of his now Majesty's Reign, certified, That nine and thirty of the said Interrogatories, and the Depositions upon them taken, should be suppressed, with the Answers, (except as aforesaid) and Depositions, altho' the same did contain the said Defendants most material Defence, yet were they expunged and suppressed according to the said Certificates; both which said Certificates were contrary to Law and Justice, and contrary to his the said Robert Berkley's own Knowledge, and contrary to the said former Order, whereby the Advantages were saved to the Defendants, as aforesaid: And by reason thereof the said John Overman, and the said other fifteen Defendants, were sentenced in the said Court of Star-Chamber to be committed Prisoners to the Fleet, and disabled from using their Trade of Soap-makers; and one of them fined in 1500*l.* two of them in 1000*l.* a-piece, four of them in 1000 Marks a-piece; which Fines were estreated into the Exchequer without any mitigation: And the said Defendants, according to the said Sentence, were imprison'd, and deprived of their Trade and Livelihood, tending to the utter Ruin of the said Defendants, and to the Overthrow of free Trade, and contrary to the Liberty of the Subject.

4. That he the said Sir Robert Berkley, then being one of the Justices of the King's-Bench, and having taken an Oath for the due Administration of Justice, according to the Laws and Statutes of this Realm, to his Majesty's Liege People, on or about the last of December subscribed an Opinion, *in hæc verba*: 'I am of opinion, that as where the Benefit doth more particularly redound to the good of the Ports or Maritime Parts, (as in

' Case of Piracy or Depredations upon the Seas) there the Charge hath been, and may be lawfully imposed upon them, according to Precedents of former Times; so where the Safety and Good of the Kingdom in general is concerned, and the whole Kingdom in danger, (of which his Majesty is the only Judge) there the Charge of the Defence ought to be borne by all the Realm in general: This I hold agreeable both to Law and Reason.'

5. That he the said Sir Robert Berkley, then being one of the Justices of the Court of King's-Bench, and duly sworn as aforesaid, in Feb. 1636. subscribed an extra-judicial Opinion, in answer to Questions in a Letter from his Majesty, *in hæc verba*.

Charles Rex.

' WHEN the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger; whether may not the King, by Writ under the great Seal of England, command all the Subjects of this Kingdom at their charge to provide and furnish such number of Ships with Men, Victuals and Munition, and for such time as he shall think fit, for the defence and safeguard of the Kingdom, from such Danger and Peril? and by Law compel the doing thereof in case of refusal, or refractoriness? and whether in such case, is not the King sole Judge, both of the Danger, and when and how the same is to be prevented and avoided? C. R. ' May it please your most excellent Majesty, we have, according to your Majesty's Command, severally every Man by himself, and all of us together, taken into serious consideration the Case and Question signed by your Majesty, and inclosed in your Royal Letter: And we are of opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, your Majesty may, by Writ under the Great Seal of England, command all your Subjects of this your Kingdom, at their charge to provide and furnish such number of Ships, with Men, Victuals, and Munition, and for such time as your Majesty shall think fit, for the defence and safeguard of the Kingdom from such Danger and Peril; and that by Law your Majesty may compel the doing thereof in case of refusal, and refractoriness: And we are also of opinion, that in such Case your Majesty is the sole Judge, both of the Danger, and when and how the same is to be prevented and avoided. ' John Bramston, John Finch, Humphrey Davenport, John Denham, Richard Hutton, William Jones, George Crooke, Thomas Trevor, George Vernon, Robert Berkley, Francis Crawley, Richard Weston.'

6. That he the said Sir Robert Berkley, then being one of the Justices of the Court of King's-Bench, and duly sworn as aforesaid, did on the deliver his Opinion in the Exchequer-Chamber against John Hampden, Esq; in the Case of Ship-Money, That he the said John Hampden, upon the matter and substance of the Case, was chargeable with the Money then in question; a Copy of which Proceeding and Judgment the Commons of this present Parliament have deliver'd to your Lordships.

7. That he the said Sir Robert Berkley, then being one of the Justices of the Court of King's-Bench, and one of the Justices of Assize for the County of York, did at the Assizes held at York, in

in Lent 1636, deliver his Charge to the Grand Jury, *That it was a lawful and inseparable Flower of the Crown for the King to command, not only the Maritime Counties, but also those that were Inland, to find Ships for the defence of the Kingdom.* And then likewise falsely and maliciously affirmed, That it was not his single Judgment, but the Judgment of all his Brethren, witnessed by their Subscriptions. And then also said, That there was a Rumor, that some of his Brethren that had subscribed, were of a contrary Judgment; but it was a base and unworthy thing, for any to give his Hand contrary to his Heart; and then wished for his own part, that his Hand might rot from his Arm, that was guilty of any such Crime; when as he knew that Mr. Justice Hutton, and Mr. Justice Croke, who had subscribed, were of a contrary opinion, and was present when they were persuaded to subscribe; and did subscribe for Conformity, only because the major number of the Judges had subscribed. And he the said Sir Robert Berkley then also said, That in some Cases the Judges were above an Act of Parliament; which said false malicious Words were uttered, as aforesaid, with intent and purpose to countenance and maintain the said unjust opinions, and to terrify his Majesty's Subjects that should refuse to pay Ship-Money, or seek any remedy by Law against the said unjust and illegal Taxation.

8. That whereas Richard Chambers Merchant, having commenced a Suit for Trespass, and false Imprisonment, against Sir Edward Bromfeild Kt. for imprisoning him the said Chambers for refusing to pay Ship-Money, in the time that the said Sir Edward Bromfeild was Lord Mayor of the City of London; in which Suit the said Sir Edward Bromfeild did make a special Justification: The said Sir Robert Berkley, then being one of the Justices of the Court of King's-Bench, in Trinity Term last, then sitting on the Bench in the said Court, upon debate of the said Case between the said Chambers and Sir Edward Bromfeild, said openly in the Court, *That there was a Rule of Law, and a Rule of Government; and that many things which might not be done by the Rule of Law, might be done by the Rule of Government:* And would not suffer the point of Legality of Ship-Money to be argued by Chambers's Counsel. All which Opinions, Declarations, Words, and Speeches, contained in the third, fourth, fifth, sixth, seventh and eighth Articles, are destructive to the fundamental Laws of this Realm, the Subjects Right of Property, and contrary to former Resolutions in Parliament, and to the Petition of Right; which Resolution in Parliament, and Petition of Right, were well known to him, and resolved and enacted when he was the King's Serjeant at Law, and attendant in the Lords House of Parliament.

9. That the said Sir Robert Berkley, then being one of the Judges of the Court of King's-Bench, and being in Commission of the Peace, and duly sworn to execute the Office of a Justice of the Peace in the County of Hertford, on or about the 7th of January 1638. at which time the general Sessions of the Peace for the said County were there holden; the said Sir Robert Berkley, then and there sitting on the Bench, did revile and threaten the Grand Jury returned to serve at the said Sessions, for presenting the Removal of the Communion-Table in All-Saints Church in Hertford aforesaid, out of the place where it anciently and usually stood, and setting it Altar-ways, against the Laws

of this Realm in that Case made and provided, as an Innovation in matters concerning the Church; the said Grand-Jury having delivered to them in charge at the said Sessions, by Mr. Serjeant Atkins, a Justice of the Peace for the said County of Hertford, that by the Oath they had taken, they were bound to present all Innovations concerning Church-Matters. And he the said Sir Robert Berkley compelled the Foreman of the Jury to tell him who gave him any such Information; and thereby knowing it to be one Henry Brown, one of the said Grand-Jury, he asked the said Brown, how he durst meddle with Church-Matters, who affirming, that in the said Charge from Mr. Serjeant Atkins, the said Jury was charged so to do, he the said Sir Robert Berkley told the said Brown, He should therefore find Sureties for his good Behaviour; and that he the said Sir Robert Berkley would set a great Fine on his Head, to make him an example to others; and thereupon the said Brown offered sufficient Bail; but he the said Sir Robert Berkley, being incensed against him, refused the said Bail, and committed the said Brown to Prison, where he lay in Irons till the next Morning; and used to the said Brown, and the rest of the Jurors, many other reviling and terrifying Speeches; and said, he knew no Law for the said Presentment; and told the said Brown that he had sinned in the said Presentment: And he compelled the said Grand-Jurors to say, *they were sorry for what they had done in that Presentment,* and did bid them to trample the said Presentment under their Feet; and caused Brown to tear the said Presentment in his sight. And he the said Sir Robert Berkley, when as John Houland, and Ralph Pemberton, late Mayors of St. Albans, came to desire his Opinion on several Indictments against John Brown, Parson of St. Albans, and Anthony Smith, Vicar of St. Peter's in St. Albans, at the Quarter-Sessions held at the said Town of St. Albans, on the 24th of June 1639. for the Removal of the Communion Table out of the usual Place, and not administering the Sacrament according to Law in that case provided; he the said Sir Robert Berkley then told them, that such an Indictment was before him at Hertford, and that he quashed the same, and imprisoned the Promoters: by which threatening and reviling Speeches, unjust Actions and Declarations, he so terrified the Jurors in those parts, that they durst not present any Innovations in Church-Matters, to their great Grief, and Trouble of their Consciences.

And whereas several Indictments were preferred against Matthew Brook, Parson of Yarmouth, by John Ingram and John Carter, for refusing several times to administer the Sacrament of the Lord's Supper to them without any lawful Cause, at the Assizes held at Norwich in the Year 1633, he the said Sir Robert Berkley, then being one of the Judges of the Assize, proceeded then to the Trial on the said Indictments; where the Matter in issue being, That the said Brooks refused to administer the said Sacrament, because the said Ingram and Carter would not receive Tickets with their Surnames before their Christian-names; which was a Course never used amongst them, but by the said Brook: And the said Sir Robert Berkley did then much discourage the said Ingram's Counsel, and over-rule the Cause for Matter of Law, so as the Jury never went from the Bar, but there found for the said Brook: And the said Sir Robert Berkley bound the said Ingram to the good Behaviour for the prosecuting the said Indictments, and ordered him to pay Costs to the said Brook for wrong-

wrongfully indicting him. And whereas the said *Carter*, not expecting the Trial at the same Assizes he preferred his Indictment, was then absent; whereupon the said *Sir Robert Berkley* did cause to be entred upon the said Indictment a *Vacat, quia non sufficiens in lege*, and order'd an Attachment against the said *Carter*. Which said Proceedings against the said *Ingram* and *Carter*, by the said *Sir Robert Berkley*, were contrary to Law and Justice, and to his own Knowledge.

10. That the said *Sir Robert Berkley*, being one of the Justices of the Court of *King's-Bench*, and duly sworn as aforesaid, in *Trinity Term* 1637, deferred to discharge or bail *Alexander Jennings* Prisoner in the *Fleet*, (brought by *Habeas Corpus* to the Bar of the said Court; the Return of his Commitment being, that he was committed by two several Warrants from the Lords of the Council, dated the 5th of *November* 1636. the first being only read in Court, expressing no Cause, the other for not paying Messengers Fees,) until he should bring a Certificate that he had paid his Assessment for Ship-Money in the County of *Bucks*, but remitted him. And in *Michaelmas Term* after, the said *Jennings* being brought by another *Habeas Corpus* before him as aforesaid, and the same returned; yet he the said *Sir Robert Berkley* refused to discharge or bail him, but remitted him. And in *Easter-Term*, after several Rules were given for his Majesty's Counsel, to shew Cause why the said *Jennings* should not be bailed, a fourth Rule was made for the said *Jennings* to let his Majesty's Attorney-General have notice thereof, and notice was given accordingly; and the said *Jennings* by another *Habeas Corpus*, being brought to the Bar in *Trinity Term* after, and the same Return made, with this Addition, of a new Commitment of the 4th of *May*, suggesting the said *Jennings* had used divers scandalous words in derogation and disparagement of his Majesty's Government: He the said *Jennings* after several Rules, in the end of the said *Trinity Term*, was again remitted to Prison. And he the said *Sir Robert Berkley* did on the 5th of *June* last, defer to grant his Majesty's Writs of *Habeas Corpus* for *William Pargiter* and *Samuel Danvers* Esquires, Prisoners in the Gate-house, and in the *Fleet*; and afterwards having granted the said Writ of *Habeas Corpus*, the said *Pargiter* and *Danvers* were on the 18th of *June* last brought to the Bar of the said Court, where the Returns of their Commitments were several Warrants from the Lords of the Council not expressing any Cause: yet he the said *Sir Robert Berkley*, then sitting in the said Court, deferred to bail the said *Pargiter*, and *Danvers* and the 18th of *June* last, made a Rule for a new Return to be received, which was returned the 25th of *June* last, *in hæc verba*.

Whereas his Majesty finding that his Subjects of *Scotland* have in rebellious and hostile manner assembled themselves together, and intend not only to shake of their Obedience unto his Majesty, but also as Enemies to invade and infect this his Kingdom of *England*, to the danger of his Royal Person, &c.

For prevention whereof his Majesty hath by the advice of his Council-board, given special Commandment to all the Lord Lieutenants of the Counties of this Realm, to assemble the Militia at the Places appointed for their Rendezvous in their several and respective Counties, there to be conducted and drawn to-

gether into a Body for this Service. And whereas his Majesty, according to the Laws and Statutes of this Realm, and the constant Custom of his Predecessors Kings and Queens of this Realm, hath Power for the defence of this Kingdom, and resisting the Force of the Enemies thereof, to grant forth Commissions under his Great Seal to such fit Persons as he shall make choice of, to array and arm the Subjects of this Kingdom, and to compel those who are of able Bodies and able Estates, to arm themselves; and such as should not be of able Bodies, but of Ability in Estate, to assess them according to their Estates, to contribute towards the Charge of arraying others, being able of Body, and not able in Estate, to arm themselves; and such Persons as should be contrariant to commit to Prison, there to remain until the King should take further order therein. And whereas the Earl of *Exeter*, by virtue of his Majesty's Commission to him directed, for the arraying and arming of a certain number of Persons in the County of *Northampton*, hath assessed *William Pargiter*, being a Man unfit of Body for that Service, but being of Estate and Ability, to contribute amongst others, to pay the Sum of five Shillings towards the arraying and arming of others of able Bodies, and wanting Ability to array and arm themselves.

And whereas we have received Information from the said Earl, that the said *William Pargiter* hath not only in a wilful disobedient manner refused to pay the said Money assessed upon him towards so important a Service, to the disturbance and hindrance of the necessary defence of this kingdom; but also by his ill example hath misled many others; and, as we have just cause to believe, hath practised to seduce others from that ready Obedience which they owe, and would otherwise have yielded to his Majesty's just Command for the publick defence of his Person and Kingdom, which we purpose with all convenient speed to enquire further of and examine. These are therefore to will and require you to take into your Custody the Persons of the said *William Pargiter* and *Samuel Danvers*, and them safely to keep Prisoners till further Order from this Board, or until by due Course of Law they shall be delivered.

Yet he the said *Sir Robert Berkley* being desired to bail the said *Pargiter* and *Danvers*, remitted them, where they remained Prisoners till the ninth of *November* last, or thereabouts; altho' the said *Jennings*, *Pargiter* and *Danvers*, on all and every the said Returns, were clearly bailable by Law; and the Counsel of the said *Jennings*, *Pargiter* and *Danvers*, offered in Court very sufficient Bail. And he the said *Sir Robert Berkley*, being one of the Justices of the Court of *King's Bench*, denied to grant his Majesty's Writs of *Habeas Corpus* to very many others his Majesty's Subjects; and when he had granted the said Writs of *Habeas Corpus* to very many others his Majesty's Subjects, and on the Return no Cause appeared, or such only as was clearly bailed by Law; yet he remanded them, where they remained Prisoners very long: which said deferring to grant the said Writs of *Habeas Corpus*, and Refusals and Delays to discharge Prisoners, or to suffer them to be bailed, contained in this Article, are destructive to the fundamental Laws of this Realm, and contrary to former Resolutions in Parliament, and to the Petition of Right; which said Resolutions and Petition of Right were well known to him

him the said Sir Robert Berkley, and were resolved on and enacted when he was the King's Serjeant at Law, and Attendant in the Lords House of Parliament.

11. That whereas there was a Cause depending in the Court-Christian at *Norwich*, between *Samuel Booty* Clerk and *Collard* for two Shillings in the Pound, for Tithes for Rents and Houses in *Norwich*, and the said *Collard* moved by his Counsel in the Court of *King's-Bench* for a Prohibition to stay Proceedings in the Court-Christian at *Norwich*, and delivered into the said Court of *King's-Bench* his Suggestions, that the said Cause in the said Court-Christian was only for Tithes for Rents of Houses in *Norwich*, which was determinable by the Common-Law only; yet he the said Sir Robert Berkley, being one of the Justices of the said Court of *King's-Bench*, and sitting in the said Court, deferred to grant a Prohibition to the said Court-Christian in the said Cause, altho the Counsel did move in the said Court many several times, and several Terms, for a Prohibition. And he the said Sir Robert Berkley deferred to grant his Majesty's Writ of Prohibition to several other Courts, on the Motions of divers others of his Majesty's Subjects, where the same by the Laws of this Realm ought to have been granted, contrary to the Laws of this Realm and his own Knowledge.

All which Words, Opinions, and Actions, were spoken and done by him the said Sir Robert Berkley traiterously and wickedly, to alienate the hearts of his Majesty's Liege People from his Majesty, and to set a Division betwixt them, and to subvert the fundamental Laws and established Government of his Majesty's Realm of *England*: For which they do impeach him the said Sir Robert Berkley, one of the Justices of the Court of *King's-Bench*, of High-Treason against our Sovereign Lord the King, his Crown and Dignity, and of the Misdemeanors abovementioned.

And the said Commons by Protestation, saving to themselves only the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said Sir Robert Berkley, and also of replying to the Answer that he the said Sir Robert Berkley, shall make to the said Articles, or any of them, or of offering Proof of the Premises, or any other Impeachments or Accusations that shall be exhibited by them, as the Case shall, according to the course of Parliaments require, do pray that the said Sir Robert Berkley, one of the Justices of the Court of *King's-Bench*, may be put to answer to all and every the Premises; and that such Proceedings, Examinations, Trials, Judgments and Executions may be upon every of them had and used, as is agreeable to Law and Justice.

At the presenting these Articles, Mr. *Pierpoint* deliver'd himself as follows.

My Lords,

I AM commanded to present your Lordships these Articles, with which the Knights, Citizens, and Burgesses of the Commons House of Parliament, in their own name and in the name of all the Commons of *England*, impeach Sir Robert Berkley, Kt. one of the Justices of his Majesty's Court of *King's-Bench*, in maintenance of their Accusation of High-Treason, and other great Misdemeanors; the Articles they desire may be read. Whereupon the Articles were read by Mr. *Francis Newport*, a Member of the House of

Commons. Then Mr. *Pierpoint* proceeded and said.

The High-Treason is in the first Article, in his Endeavours to subvert the fundamental Laws of this Realm, and to introduce an arbitrary and tyrannical Government, which hath been lately adjudged Treason in the Cause of the Earl of *Strafford*.

The other Articles prove the first by his Opinions, Certificates, Judgments, by his Denials of the Benefit of our Laws, which have been read by your Lordships. No fundamental Law to the Subjects is left; our Goods, our Lands, our Bodies, the Peace of a good Conscience, are by him given up to arbitrary tyrannical Government.

Nothing hath been omitted to make a Judge know the Laws, to make him just, or fright him from being evil: We have Inns of Court peculiar to that Study, Judges from thence only chosen; seldom any but what have been twenty years there; Honours and Revenues are given to Judges, encouragement to do well; this Judge had these: Judges are sworn according to Law to serve the King, and his People; according to Law to counsel the King; and for not so doing, to be at his Will for Body, Lands, and Goods. This Judge took that Oath; the Laws (the Judges Study) impose the greatest Punishment upon unjust Judges; they shew that these Punishments have been inflicted, and more could not be done to persuade or fright a Judge.

His Offences shew in him great Ambition, yet he was most timorous of displeasing the great in Power; he did not only forbear doing what he was sworn to do, but was most active against our Laws, and in opposing and punishing any that did maintain them.

To have only received Bribes, (tho' they blind the Eyes, and tho' the desire to get Money increaseth with Age) that heinous Crime in a Judge had been, in comparison with his Offences, a tolerable Vice; for from such a Judge Justice is also to be had for Money. Ambition is violent, and ruins whilst Covetousness is making a bargain.

The Words of his Opinion and Judgment are for the King's Power. It is pleasing to the nature of Man, that others should obey his Will; and well-framed Dispositions of Princes may easily be persuaded, their Power is unlimited, when they are also put in mind, that therefore they have more cause to do well, and for doing well are more renowned: for in the most oppressive Designs, (which we have suffered under) the Pretences of his Majesty have ever been the Good of his Subjects; his is the Sin, that is to judge by the Laws, and knows the Laws are to the contrary, yet puts and confirms such thoughts in his Prince.

He that incites another to arbitrary Government, when his Self-ends are thereby compassed, hates him for taking that Power he persuaded him unto.

The Writs, those *Monsters of Necessity*, to provide Ships to avoid imminent Danger, that could not stay 40 Days for the Calling of a Parliament, were therefore to go out in *September*, to have Ships ready in *March*. This hath been adjudged by your Lordships to be destructive to the fundamental Laws of this Realm, and to the Subjects Right of Property and Liberty, &c. that I shall say but this concerning them; that this Judge published them to be inseparable Flowers of the

Crown; and that we have lived to see for five Years together imminent Danger, and thus to be prevented.

This Judge did advise to such a Government, as future Kings here might exercise the highest Tyranny, and the Subjects want the Benefit of Restraints, known to the most slavish Eastern Nations; where, if their Prince do unjustly, he hath Hatred for it, and the Dangers that follow that. This Judge will have that Hatred to go to our good Laws: *No such Bondage, as when the Laws of Freedom are mis-interpreted by Judges to make Men Slaves.*

What can be considered of in a Judge of Law, to give his Opinion and Advice to his Prince, how the Laws (the mutual Covenants of Kings and Subjects) are to be broken, but that his intentions are to have his Prince do ill, by making his evil Servants to study, and to be pleased with their wicked Designs; because they see means to put them in execution, by making them to persuade their Prince, because in imminent Danger his Subjects Goods are at his Will, *that there is such Danger when there is not*, and that they have only some by-ends of their own?

This Judge will have the Law to be what to him seems Reason; the Reason limited to him to judge of, is what the Common Law faith is so, what a Statute hath so enacted. For him to judge this or that is Law, else a Mischief shall follow, because the Law in such a thing is imperfect, therefore he will make a Law to supply it; or because that the Law written in such Particulars is against his Reason, therefore his Reasons to be Law; then must follow, as often as a Judge's Reason changes, or Judges change, our Laws change also.

Our Liberties are in our Laws, which a Subject may read, or hear read; this is his, this he may do and be safe: and that thus the Judge ought to give Judgment, and then he is free. The excessive growth of Courts of Reason and Conscience came from great and cunning Persons; and tho' not the most sudden, yet the most dangerous, and sure ways to eat out our Laws, our Liberties.

Unlimited Power must be in some to make and repeal Laws, to fit the dispositions of Times and Persons: Nature placeth this in common Consent only; and where all cannot conveniently meet, instructeth them to give their Consents to some they know or believe so well of, as to be bound to what they agree on. His Majesty, your Lordships, and the Commons, are thus met in Parliament; and so long as we are often reduced to this main Foundation, our King and we shall prosper.

This Judge will not allow us our Knowledge, or any Reason; he will have our Minds our Souls Slaves. A Grand Jury Man gave his Fellows true Information; they present an Innovation in Church, are threatned and reviled for it; he that told this truth is charged (I shall use this Judge's own words) to sin in that, and that he made others forswear themselves; this Judge sent him to the common Goal, where he is laid in Irons; and all this, because he and they durst meddle with Church-Matters. He is forced to tear the Presentment in Pieces in open Court. Our Laws provide for the Peace of our Consciences, many Acts of Parliament are for it, and the Trust by those Acts set to Juries: this Judge well knew all this; your Lordships have heard what he did to the Jury at *Hertford*;

he would have us know no more Divinity than to obey what the chief of the Clergy directed, no more Law than what he said was so.

Judges in former Times (except only such as were examples of Punishment, as of Injustice in Cases of great and publick Concernment) forbear Proceedings till the next Parliament. This necessitated the Calling of Parliaments. This Judge had as many such Causes before him, as ever any had; yet he never desired the Resolution of Parliament in any one; for the ways he went, the Necessity was never to have a Parliament; he would pull up that Root of our Safeties and Liberties, which whilst ye enjoy, the Malice and Injustice of all other Courts and Persons can never ruin; and when near to Ruin, (as most near of late) this only sure Remedy will help us; nothing can ruin a Parliament, but itself.

The Evils which we have suffered under, they were committed by the Judges; or by them ought to have been, and might have been prevented.

This Judge assisted in causing the Miseries we suffered in the *Star-Chamber*, and at the Council-Table: he denied the known Rights, which he ought to have granted us, to stop our Grievances in the Ecclesiastical Courts; he was the Causer of our Sufferings in other Courts.

The best Lovers of their Laws and Liberties, the most honest, suffer most by an unjust Judge, they most oppose his Vices; dishonest Persons find such a Judge to fit their purposes, the Judge finds them for his, the Bond of Iniquity confederates them.

He that will do no wrong, will suffer none which he can help: The Man that knows himself born free, will do his utmost to live so, and to leave Freedom to his Posterity; were he in Slavery, when by outward gesture thought to be most delighted, were his Mind then known, there would be found vexation, and his busy thoughts employed to redeem himself and his Posterity from Thralldom. But to say, could this Judge intend to make himself and his own Posterity Slaves? what he did was thro' Error of Judgment only. No, my Lords, what his Aims and Endeavours were, is apparent. To consider Man in the general, we shall find in every Age he will be a Slave to some few, that many may be Slaves to him, he looks to himself only; this he would do, or forbear doing, to be great, to be rich, had he Children or Kindred, or had he none. This highly unjust Judge, by continuing Sins, maintained his actions to preserve himself; he knows; to be found guilty in one of his Offences, the Penalty of the Law for it, therefore covers the Offences committed with inventing and acting other.

For a Judge to be unjust, more hurts the Publick than any other; he is not suspected. What a Judge doth, is looked on as a thing that ought to be done. The most pernicious great Man, that by Cunning hath got to himself the Heart and Tongue of his Prince, his ill Acts have died with him, if not taken up by others, and then they walk in Darknes; no Man will justify what he doth, by saying such a Favourite did it: But the unjust Judgments of this Judge, were given in Noon-day, were done in the face of the whole Kingdom, in the hearing of such as might carry the news to all parts of the Realm, and was therefore done; his unjust Judgments were our Records. We have seen wicked great Men most craftily politick; they hated our Laws, yet not meeting with

with active Judges moulded to their purposes, they and their Acts have died, the Realm flourished: but of late, others less politick meeting with most unjust Judges, every way as ill as they could wish them to be, then did the Kingdom faint, under the load of its Misery did long struggle: Now it's rising, I assure myself, your Lordships will assist to take off the burden.

If the Designs of some would not have such a Man to be at liberty, a Warrant from some Lords of the Council would soon have laid him in Prison, and given no Cause; had he moved this Judge to be discharged or bailed, he could have obtained neither. If their Ways would not have endured that Man to live, a Judge reviling the Prisoner, and the Counsel that moved for his Discharge or Bail, joined with the hate of some great Man, might soon have moved a Goaler for unwholesome Rooms and Lodging, and ill Diet for his Prisoner, and they may soon take Life away. Offenders in Prisons are looked after to be safe only; such as are brought in by Power against Law, are abused.

Had a great Man desired the Estates of others, the breach of a Proclamation might readily have been charged against them in *Star-chamber*; but they, it may be, could have answered and cleared themselves, and proved their Answer by Testimonies: had they been referred to this Judge, he would have expunged the one, suppressed the other. Then followed Fines to the value of their Estates or more; then Imprisonment of course, till they paid such Fines: your Lordships have heard what this Judge did to the *Soap-boilers*.

The Country-man followed the Plough, and to his thinking he was assured of his Right, Property, and Liberty, which gave him ability to do it. He believed his Neighbour, his Landlord, his King, could not take his Goods from him without his consent. He knew the usual Payments by Law; and in extraordinary Causes thought to have that care to chuse such for the Knights of his Shire, or for his Burgeses, as might be mindful of the Cause of Payment, and of his Estate.

This Country-man hath heard the Opinions and Judgment of this Judge, hath seen his Goods taken from him, without his, or his Knights of the Shire, or Burgeses Consent or Advice. These have made him, his Wife and Children, to join in tears to wish they had never been born; they have made them think on many ways to keep safe that Estate which was yet left them, have made them desire to sell all their Goods, and hide the Money: but then he remembers this Judge, how that he shall be carried to Prison, and remain there, if he pay not what it pleases others to assess him. Then they think idle persons (the Drones and Moths of the Commonwealth) to be a wise People, whilst the Country-men expect, and can think of nothing, but being Beggars.

Where publick and enormous Offences have been committed, eminent and notorious Punishments must be: such will make your Lordships Proceedings highly esteemed, else there will be so many Offenders, and none without danger can be punished.

This Judge subverting our Laws, took away the Hearts of many; he subscribes for the King's Power, but so as he put him on taking his Subjects Goods; and of all other, such ways be most dangerous: for we know his Majesty is not the

last that suffers, and is not the King worth many thousands?

The place of this Judge was to have given and preserved to the King the Hearts of his Subjects, the due Execution of the Laws had done this; and when such notice is taken of a Prince, none will conspire against him, who cannot feign to themselves Safety before or after any Fact committed, foreign Enemies will not invade his Kingdoms.

Thus hath his Majesty now got our Hearts, and will for ever have them. This Judge is to answer for what his Majesty, and for what we have suffered.

I am commanded by the House of Commons to desire of your Lordships, that the Proceedings against Sir *Robert Berkley* Kt. one of the Justices of his Majesty's Court of *King's-Bench*, may be put in as speedy a way of Trial, as the Course of Parliament will allow.

At the same time Mr. *Hollis* made a Speech in behalf of Sir *Randolph Crew*, formerly Lord Chief Justice of the *King's-Bench*, but remov'd for giving his Opinion against Loan-Money.

My Lords,

These Gentlemen have presented unto your Lordships the sad Object of Justice perverted, Liberty oppressed, of Judgment turned into Wormwood, the Laws, which should be the Bars of our Gates to protect us, keep us, and all that is ours in safety, made weak and impotent, to betray us unto the hands of Violence; instead of Props to support us, become broken Reeds to deceive us, and run into our sides when we lean upon them; even so many Snares to entrap and entangle us.

And all this by the Perfidioufness of those who are intrusted with our Laws, who call themselves the Guardians, and the Interpreters of the Law; but by their accursed Glosses have confounded the Text, and made it speak another Language, and another Sense, than ever our Ancestors, the Law-makers intended.

Our Ancestors made Laws to keep themselves, and their Posterity after them, in the possession of their Estates: these Judges could make the Law itself rob us, and despoil us of our Estates. Were we invaded or persecuted at any time for pretended Crimes, or rather because we were free from Crimes? And did we put ourselves upon a Legal Defence, and shelter ourselves under the Buckler of the Law, use those lawful Weapons which Justice, and Truth, and the common Right of the Subject did put into our Hands, would this avail us? No: These Judges would make the Law wrest our Weapons from us, disarm us, take away all our Defence, expunge our Answers, even bind us hand and foot, and so expose us naked and bound to the Mercilessness of our Oppressors. Were our Persons forced, and imprisoned by an Act of Pover, would the Law relieve us when we appealed unto it? No: It would join hands with Violence, and add Bitterness to our Sorrow. These Judges would not hear us when we did cry; no Importunity could get a *Habeas Corpus*: Nay, our Cries would displease them, and they would beat us for crying; and over-do the unjust Judge in the Gospel, with whom yet importunity could prevail.

My Lords, the Commons of *England* finding themselves in this lamentable Condition, by the Wickedness of these Judges, it is no wonder that we complain of them. It is no wonder if the Knights, Citizens, and Burgeffes assembled in Parliament, have sent up some of their Members to stand upon Mount *Ebal* to curse these Judges; to denounce a Curse upon them who have removed our Land-Marks, have taken away the Bound-Stones of the Propriety of the Subject, have left us no *Meum & Tuum*; but he that had most Might had most Right, and the Law was sure to be of his side.

It hath been the part of these Gentlemen who have spoken before me, to pray for Justice upon those Men, who would not do Justice to others. My Lords, I come upon another Errand, and yet for Justice too; for there is Justice upon Mount *Gerizim*, as well as upon Mount *Ebal*. It is as great a point of Justice to give a Blessing, a Reward where it is due, as Punishment were Punishment is due: for Reward and Punishment, *præmium & pœna* be the two Legs that Justice walks on, and Reward is her right Leg, the more noble and the most glorious Supporture of that Sacred and Divine Body, that which God himself, the Foundation of Justice doth more delight in.

Tardior ad pœnas Deus est, ad præmia velox;

Punishment is good as Physick in the Consequence, Reward as wholesome and nourishing Food in the Essence; the one we do, because we must do it as necessary; the other, because we love to do it, as being pleasing and delightful.

Your Lordships then, I doubt not, will as willingly join with the Commons in doing good to a good Judge, as in publishing of the bad.

My Lords, We honour them, and reckon them Martyrs for the Commonwealth, who suffer any thing by defending the common Right of the Subject, when they will not part with their own Goods contrary to Law; when indeed their private Interest goes along with it, or rather before it; and the publick Concernment seems to come but in a second place. Such were those many whom these Judges have oppressed; yet these Men we magnify, and judge worthy of Praise and Reward.

But what Honour then is he worthy of, who merely for the Publick, hath suffered himself to be divested and deprived of his particular; such a Judge as would lose his Place, rather than to do that which his Conscience told him was prejudicial to the Commonwealth? is not he worthy of double Honour?

And this did that worthy reverend Judge, the Chief Judge of *England* at that time, Sir *Randal Crew*, because he would not, by subscribing, countenance the Loan in the first Year of the King, contrary to his Oath and Conscience, he drew upon himself the Displeasure of some great Persons about his Majesty, who put on that Project, which was afterwards condemned by the Petition of Right, in the Parliament of *Tertio*, as unjust and unlawful; and by that means he lost his Place of Chief Justice of the *King's-Bench*; and hath these 14 Years, by keeping his Innocency, lost the Profit of that Office, which upon a just Calculation, in so long a Revolution of time, amounts to 26000*l.* or thereabout. He kept his Innocency when others let theirs go; when himself and the Commonwealth were alike deserted: which raises

his Merit to a higher pitch. For to be honest when every body else is honest, when Honesty is in Fashion, and is Trump, as I may say, is nothing so meritorious; but to stand alone in the Breach, to own Honesty when others dare not do it, cannot be sufficiently applauded, nor sufficiently rewarded. And that did this good old Man do in a time of general Desertion, he preserved himself pure and untainted.

Temporibusque malis ausus is esse bonus.

My Lords, The House of Commons are therefore Suitors unto your Lordships, to join with them in the Representation of this good Man's Case unto his Majesty, and humbly to beseech his Majesty to be so good and gracious unto him, as to give him such Honour (the quality of this Case considered) as may be a noble Mark of Sovereign Grace and Favour, to remain to him and his Posterity; and may be in some measure, a proportionable Compensation for the great Loss he hath with so much Patience and Resolution sustained.

After the Conference the Lords came to the following Resolutions.

Die Mercur. 20 die Jan. 1640.

It was Resolved by the Lords upon the Question, *Nemine contradicente*;

I. **T**Hat the Ship-Writs, the extra-judicial Opinions of the Judges therein, both first and last, and the Judgment given in Mr. *Hampden's* Case, and the Proceedings thereupon in the Exchequer-Chamber, are all illegal, and contrary to the Laws and Statutes of this Realm, contrary to the Rights and Proprieties of the Subjects of this Realm, contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Likewise resolved upon the Question, *Nemine contradicente*;

II. **T**Hat the extra-judicial Opinions enrolled in the Exchequer-Chamber, and in other Courts concerning Ship-Money, and all the Proceedings thereupon, are illegal in part and in whole, and contrary to the Laws and Statutes of this Realm, and contrary to the Rights and Proprieties of the Subjects of this Realm, and contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Die Veneris, 26 die Februarii, 1640.

UPon the Report of the Right Honourable the Lords Committees appointed to consider of the way of Vacating of the Judgment in the Exchequer concerning Ship-Money, it was Ordered by the Lords Spiritual and Temporal in the High Court of Parliament assembled, That the Lord Keeper or the Master of the Rolls, the two Lord Chief Justices, and the Lord Chief Baron, and likewise the Chief Clerk of the Star-chamber, shall bring into the Upper House of Parliament the Record in the Exchequer of the Judgment in Mr. *Hampden's* Case concerning Ship-Money; and also the several Rolls in each several Court of *King's-Bench*, Common-Pleas, Exchequer, Star-Chamber, and Chancery, wherein the Judges

extra-judicial Opinions in the Cases made touching Ship-Money be entred; and that a *Vacat* shall be made in the Upper House of Parliament of the said several Records: And likewise the Judgment of Parliament touching the Illegality of the said Judgments in the Exchequer, and the Proceedings thereupon; and touching the Illegality of the extra-judicial Opinions of the Judges in the said several Courts concerning Ship-Money be annexed and apostiled unto the same. And that a Copy of the Judgment of the Parliament concerning the Illegality of the said Judgment in the Exchequer, and the said extra-judicial Opinions of the said Judges concerning Ship-Money, be delivered to the several Judges of Assize; and that they be required to publish the same at the Assizes in each several County within their Circuits, and to take care that the same be entered and enrolled by the several Clerks of Assizes: And if any Entry be made by any *Custos Rotulorum*, or Clerk of Assize, of the said Judgment in the Exchequer, or of the said extra-judicial Opinions of the Judges, that several *Vacats* be made thereof, *per judicium in Parlamento*: And that an Act of Parliament be prepared against the said Judgment and extra-judicial Opinions, and against the Proceedings touching Ship-Money.

Memorandum quod vicesimo septimo die Febr. 1640. Annoque regni Regis Domini nostri Caroli Anglie decimo sexto;

*V*Acatur istud Recordum & Judicium inde habitum per considerationem & judicium Dominorum Spiritualium & Temporalium in Curia Parliamenti. & Irrotulamentum ejusdem cancellatur.

Memorandum quod vicesimo septimo die Febr. præd.

*I*stud Irrotul. & omnia & singula in eodem contenta & expressa vacantur per Judicium Dominorum Spiritualium & Temporalium in Curia Parliamenti.

And that all the Rolls be rased cross with a Pen, and subscribed with the Clerk of the Parliament's Hand. All which was accordingly done in open Court.

After this it was Resolved upon the Question,
Nemine contradicente;

That the Resolutions of the Judges touching the Shipping-Money, and the Judgment given against Mr. *Hampden* in the Exchequer, and all the Proceedings thereupon, are against the great Charter, and therefore void in Law.

Resolved upon the Question, *Nemine contradicente;*

That *Vacats* and Cancellations shall be made of the Resolutions of the Judges touching the Shipping-Money; and of the Enrolments thereof in the several Courts, and of the Warrants for Ship-Writs, and Proceedings therein; and the Judgment given against Mr. *Hampden*, and Proceedings thereupon; and that Entries be made of those *Vacats* upon the several Rolls, according to the Form read in the House.

The same Session an Act of Parliament passed for that purpose, *viz.*

That the Charge imposed upon the Subject for providing and furnishing of Ships, commonly called Ship-Money, and the extra-judicial Opinions of the Justices and Barons, and the Writs,

and every of them, and the Agreement or Opinion of the greater part of the Justices and Barons, and the Judgment given against *John Hampden*, Esq; for the Payment of Ship-Money, were, and are contrary to, and against the Laws and Statutes of the Realm, the Right of Property, the Liberty of the Subjects, former Resolutions of Parliament, and the Petition of Right made in the third Year of his Majesty that now is.

That all and every the Particulars prayed and desired in the Petition of Right, shall from henceforth be put in execution, and shall be firmly and strictly holden and observed, as in the same Petition they are prayed and expressed; and that all and every the Records and Remembrances of all and every the said Judgments against the said *John Hampden*, and all and every the Proceedings whatsoever, upon or by colour of any of the said Writs, called *Ship-Writs*, and all and every the Defendants on every of them, shall be adjudged to all Intents, Constructions and Purposes, to be utterly void; and that all and every the said Judgment, Inrolment, Entries, Proceedings, and Dependents of what kind soever, shall be vacated and cancelled, in such Manner and Form as Records use to be that are vacated.

Afterwards Articles were exhibited against the other Judges. Those against Mr. Justice *Crawley* were delivered by Mr. *Waller*, July 6, 1641. who spoke as follows:

My Lords,

I Am commanded by the House of Commons, to present you with these Articles against Mr. Justice *Crawley*, which when your Lordships shall have been pleased to hear read, I shall take leave (according to Custom) to say something of what I have collected from the Sense of that House, concerning the Crimes therein contained.

Then the Charge was read, containing his extra-judicial Opinions subscribed, and Judgment given for Ship-Money; and after a Declaration in his Charge at an Assize, That Ship-Money was so inherent a Right in the Crown, that it would not be in the Power of a Parliament to take it away.

My Lords,

Not only my Wants, but my Affections, render me less fit for this Employment; for tho' it has not been my Happiness to have the Law a part of my Breeding, there is no Man honours that Profession more, or has a greater Reverence towards the grave Judges, the Oracles thereof. Out of Parliament all our Courts of Justice are govern'd or directed by them; and when a Parliament is called, if your Lordships were not assisted by them, and the House of Commons by other Gentlemen of that Robe, Experience tells us, it might run a Hazard of being styl'd *Parliamentum indoctorum*. But as all Professions are obnoxious to the Malice of the Professors, and by them most easily betray'd; so, my Lords, these Articles have told you, how these Brothers of the Coif are become *fratres in malo*; how these Sons of the Law have torn out the Bowels of their Mother: But the Judge (whose Charge you last heard) in one Expression of his, excels no less his Fellows, than they have done the worst of their Predecessors, in this Conspiracy against the Commonwealth. Of the Judgment for *Ship-Money*, and those extra-judicial Opinions preceding the same, (wherein they

are jointly concern'd) you have already: How unjust and pernicious a Proceeding that was, in so publick a Cause, has been sufficiently expressed to your Lordships: But this Man adding Despair to our Misery, tells us from the Bench. That *Ship-Money* was a Right so inherent in the Crown, that it would not be in the power of any Act of Parliament to take it away. Herein, my Lords, he did not only give as deep a Wound to the Commonwealth as any of the rest, but dipped his Dart in such a Poison, that, so far as in him lay, it might never receive a Cure. As by those abortive Opinions, subscribing to the Subversion of our Property, before he heard what could be said for it, he prevented his own; so by this Declaration of his, he endeavours to prevent the Judgment of your Lordships too, and to confine the Power of a Parliament, the only Place where this Mischief might be redress'd. Sure he is more wise and learned, than to believe himself in this Opinion, or not to know how ridiculous it would appear to a Parliament, and how dangerous to himself: And therefore, no doubt, but by saying no Parliament could abolish this Judgment, his Meaning was, That this Judgment had abolish'd Parliaments.

This Imposition of *Ship-Money* springing from a pretended Necessity, was it not enough that it was now grown annual, but he must entail it upon the State for ever; making Necessity inherent to the Crown, and Slavery to the Subject? Necessity, which dissolving all Law, is so much more prejudicial to his Majesty, than to any of us, by how much the Law has invested the Royal State with a greater Power and ample Fortune: For so undoubted a Truth it has ever been, that Kings as well as Subjects are involved in the Confusion which Necessity produces, that the Heathen thought their Gods also obliged by the same, *Parcamus necessitati, quam nec Homines nec Dii superant*. This Judge then having in his Charge at the Assize declared the Dissolution of the Law, by this supposed Necessity; with what conscience could he, at the same Assize, proceed to condemn and punish Men, unless, perhaps, he meant the Law was still in force for our Destruction, and not for our Preservation? that it should have power to kill, and none to protect us? A thing no less horrid, than if the Sun should burn without lighting us, or the Earth serve only to bury, and not to feed and nourish us. But, my Lords, to demonstrate that it was a supposititious, imposed Necessity, and such as they could remove when they pleased; at the last Convention in Parliament, a Price was set upon it, *for twelve Subsidies you may reverse this Sentence*. It may be said, that so much Money would have removed the present Necessity; *for twelve Subsidies you shall never suffer Necessity again, you shall for ever abolish that Judgment*. Here this Mystery is revealed, this Vizard of Necessity is pull'd off; and now it appears, that this Parliament of Judges hath very frankly and bountifully presented his Majesty with twelve Subsidies, to be levy'd on your Lordships and the Commons. Certainly there is no Privilege, which more properly belongs to us, than to open the Purse of a Subject; and yet these Judges, who are neither capable of sitting among us in the House of Commons, nor with your Lordships otherwise than your Assistants, have not only assumed to themselves the Privilege of Parliament, but presumed at once to make a Present to the Crown of all that either your

Lordships, or the Commons of *England* do, or shall hereafter possess.

And because this Man has had the Boldness to put the Power of Parliament in Balance with the Opinion of the Judges, I shall intreat your Lordships to observe by way of Comparison, the solemn and safe Proceeding of the one, with the precipitate Dispatch of the other. In Parliament (as your Lordships know well) no new Law can pass, or old be abrogated, till it has been thrice read with your Lordships, thrice in the Commons House, then it receives the Royal Assent; so that 'tis like Gold seven times purify'd: Whereas these Judges, by this one Resolution of theirs, would persuade his Majesty, that by naming *Necessity*, he might at once dissolve, (at least suspend) the great Charter, thirty-two times confirmed by his Royal Progenitors, the Petition of *Right*, and all other Laws provided for the Maintenance of the Right and Property of the Subject. A strange Force, *my Lords*, in the Sound of this Word *Necessity*, that, like a Charm, it should silence the Laws, while we are despoil'd of all we have; for that but a Part of our Goods was taken, was owing to the Grace and Goodness of the King: for so much as concerns these Judges, we have no more left than they perhaps may deserve to have, when your Lordships shall have pass'd Judgment upon them for this Neglect of their Oaths, and betraying that publick Trust, which, for the Conservation of our Laws, was repos'd in them.

Now for the Cruelty and Unmercifulness of this Judgment, you may please to remember, that in the old Law they are forbid to seeke a Kid in his Mother's Milk; of which the received Interpretation is, That we should not use that to the Destruction of any Creature, which was intended for its Preservation. Now, *my Lords*, God and Nature have given us the Sea, as our best Guard against our Enemies; and our Ships, as our greatest Glory above other Nations: And how barbarously would these Men have let in the Sea upon us at once, to wash away our Liberties; and to overwhelm, if not our Land, all the Property we have therein, making the Supply of our Navy a Pretence for the Ruin of our Nation? For observe, I beseech you, the Fruit and Consequence of this Judgment, how this Money has prosper'd, how contrary an Effect it has had to the End for which they pretended to take it. On every County a Ship is annually imposed; and who would not expect, but our Seas by this time should be cover'd by the Number of our Ships? Alas! *my Lords*, the daily Complaints of the Decay of our Navy tell us, how ill *Ship-Money* has maintain'd the Sovereignty of the Sea; and by the many Petitions which we receive from the Wives of those miserable Captives at *Algiers* (being between four and five thousand of our Countrymen) it does too evidently appear, that to make us Slaves at Home, is not the Way to keep us from being made Slaves Abroad. So far has this Judgment been from relieving the present, or preventing the future Necessity, that as it changed our real Property into a Shadow of a Property, so of a feigned it is made a real Necessity.

A little before the approach of the *Gauls* to *Rome*, while the *Romans* had yet no apprehension of that Danger, there was heard a Voice in the Air, louder than ordinary, *The Gauls are come*; which Cry, after they had sack'd the City, and besieged the Capitol, was held so ominous, that

Livy

Livy * relates it as a Prodigy. This Anticipation of Necessity seems to have been no less ominous to us: These Judges, like ill-boding Birds, have call'd Necessity upon the State, in a time, which, I dare say, they thought themselves in greatest Security. But if it seem superstitious to take this as an Omen, sure I am we may look on it as a Cause of the unfeigned Necessity we now suffer: For what Regret and Discontent had this Judgment bred among us? And as when the Noise and Tumult in a private House grows so loud, as to be heard in the Streets, it calls in the next Dwellers, either kindly to appease, or to make their own use of domestick Strife; so in all likelihood, our known Discontentments at Home have been a concurrent Cause to invite our Neighbours to visit us, so much to the Expence and Trouble of both these Kingdoms.

And here, my Lords, I cannot but take notice of the most sad Effect of this Oppression, the ill Influence it has had upon the antient Reputation and Valour of the *English* Nation: And no wonder; for if it be true, that Oppression makes a wise Man mad, it may well suspend the Courage of the Valiant. The same happened to the *Romans*, when, for Renown in Arms, they most excelled the rest of the World; the Story is but short. 'Twas in the Time of the *Decemviri*, (and I think the chief Troublers of our State may make up that Number.) The *Decemviri*, my Lords, had subverted the Laws, suspended the Courts of Justice, and (which was the greatest Grievance both to the Nobility and People) had, for some time, omitted to assemble the Senate, which was their Parliament: This, says the Historian, did not only deject the *Romans*, and make them despair of their Liberty, but caused them to be less valued by their Neighbours. The *Sabines* take the Advantage, and invade them; and now the *Decemviri* are forced to call a long desired Senate, whereof the People were so glad, that *Hofibus bellogue gratiam habuerunt*: This Assembly breaks up in Discontent, nevertheless the War proceeds; Forces are raised, led by some of the *Decemviri*; and with the *Sabines*, they meet in the Field. I know your Lordships expect the Event: My Author's Words of his Countrymen are these, *Ne quid ductu aut auspicio Decemviorum prospere gereretur, vinci se patiebantur*; they chose rather to suffer a present Diminution of their Honour, than by Victory to confirm the Tyranny of their new Masters. At their Return from their unfortunate Expedition, after some Distempers and Expostulations of the People, another Senate, that is, a second Parliament is call'd; and there the *Decemviri* are questioned, depriv'd of their Authority, imprison'd, banish'd, and some lose their Lives: And soon after this Vindication of their Liberties, the *Romans*, by their better Success, made it appear to the World, that Liberty and Courage dwell always in the same Breast, and are never to be divorced. No doubt, my Lords, but your Justice shall have the like Effect upon this dispirited People. 'Tis not the Restitution of our antient Laws alone, but the Restoration of our antient Courage, which is expected from your Lordships. I need not say any thing to move your just Indignation, that this Man should so cheaply give away that

which your noble Ancestors, with so much Courage and Industry, had so long maintain'd. You have often been told how careful they were, tho' with the hazard of their Lives and Fortunes, to derive those Rights and Liberties as entire to Posterity, as they received them from their Fathers; what they did with Labour, you may do with Ease; what they did with Danger, you may do securely. The Foundation of our Laws is not shaken with the Engine of War; they are only blasted with the Breath of these Men, and by your Breath they may be restored.

What Judgment your Predecessors have given, and what Punishments their Predecessors have suffered for Offences of this Nature, your Lordships have already been so well informed, I shall not trouble you with a Repetition of those Precedents. Only, my Lords, something I shall take leave to observe of the Person with whose Charge I have presented you, that you may the less doubt of the Wilfulness of this Offence.

His Education in the Inns of Court, his constant Practice as a Counsellor, and his Experience as a Judge, considered with the Mischief he has done, makes it appear that this Progress of his thro' the Law has been like that of a diligent Spy thro' a Country, into which he meant to conduct an Enemy.

To let you see he did not offend for Company, there is one Crime so peculiar to himself, and of such Malignity, that it makes him at once incapable of your Lordships Favour, and his own Subsistence incompatible with the Right and Property of the Subject. For if you leave him in a Capacity of interpreting the Laws; has he not declared his Opinion, That your Votes and Resolutions against Ship-Money are void, and that it is not in the Power of Parliament to abolish that Judgment? To him, my Lords, that has thus played with the Power of Parliament, we may well apply what was once said to a Goat browsing on a Vine:

*Rode, Caper, vitem, tamen hinc cum stabis ad aras,
In tua quod fundi Cornua possit, erit.*

He has cropt and infring'd the Privileges of a banish'd Parliament; but now it is returned, he may find it has Power enough to make a Sacrifice of him, to the better Establishment of our Laws: And in truth, what other Satisfaction can he make his injured Country, than to confirm, by his Example, those Rights and Liberties which he had ruined by his Opinion?

For the Proofs, my Lords, they are so manifest, that they will give you little trouble in the Disquisition: his Crimes are already upon Record, the Delinquent and the Witness is the same; having from several Seats of *Judicature* proclaimed himself an Enemy to our Laws and Nation, *ex ore suo judicabitur*. To which purpose I am commanded by the Knights, Citizens, and Burgessees of the House of Commons, to desire your Lordships, that a speedy Proceeding may be had against Mr. Justice *Crawley*, as the Course of Parliament will permit.

* Lib. 5. c. 32.



XXXVIII. *The Trial of THOMAS HARRISON, † Clerk, at the King's-Bench, for a Misdemeanour, in speaking reflecting Words of Judge Hutton. 1638. Trin. 14. Car. I. **

Middx' ff.
BEFORE this time, that is to say, upon *Thursday* next after the Octaves of the Holy Trinity in the said Term, before our Sovereign Lord the King at *Westminster*, upon the Oath of twelve Jurors, it is presented, That whereas the Court of our Lord the King of *Common Pleas* is, and from the time to the contrary of which there is no Memory of Man, hath been an antient Court of Record of our said now Lord the King and his Progenitors and Ancestors, Kings and Queens of *England*, for the Administration of Justice to the Subjects of this Kingdom of *England*, and others in *Common Pleas*, moved and arising thro' all the Kingdom of *England*: And whereas it is against the Crown and Dignity of the King's Majesty, and against the Law and Custom of this Kingdom of *England*, for any Person or Persons to disturb the Court aforesaid, or any Justices of the said Court, the said Court being open, and the Judges of the said Court being present, and Judicially sitting: And whereas *Richard Hutton* Knight is, and for divers Years now last past, hath been, and yet is one of the Justices of our said now Lord the King of this Court: Nevertheless one *Thomas Harrison* of *Creeke* in the County of *Northampton*, Clerk, not having God before his Eyes, but by the Instigation of the Devil moved and seduced, maliciously with himself imagining, and in his Mind compassing by what Means he might, the aforesaid *Richard Hutton* Knight, there and then, and yet being one of the Justices of our said now Lord the King of the *Common Pleas* aforesaid, many ways to defame and scandalize, and contriving and maliciously intending, as much as was in his power, to bring the said *Richard Hutton* into Scandal, Ignominy, Contempt, and vile Character, and the said *Richard Hutton*, of his Life and Goods and Chattels, Lands and Tenements, wickedly and maliciously to deprive; as also the Displeasure and Indignation of our said now Lord the King against the said *Richard Hutton* to stir up and provoke, and using his utmost Endeavour to make the said *Richard Hutton* be held and esteemed a Traitor as well by our said Lord the King and the Peers of this Kingdom of *England*, as by all the loyal Subjects of our said Lord the King: And the aforesaid Court of our said now Lord the King of *Common Pleas*, and the Justices of our said Lord the King of the said Court in the said Court being present, and Judicially sitting, to disturb, and the Ad-

ministration of Justice in the said Court to hinder, the fourth Day of *May*, in the fourteenth Year of the Reign of our Lord *Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, &c. at the City of *Westminster* in the County of *Middx'*, viz. in the great Hall of Pleas there, the Court of our said Lord the King, that is to say, the Court of our said Lord the King before him the King, the Court of *Chancery*, and the Court of our said Lord the King of *Common Pleas*, in the aforesaid great Hall of Pleas aforesaid open, and the Justices of our said Lord the King in the Court aforesaid then there present, and Judicially sitting, in assiduously attending and hearing the Matters and Causes of our said Lord the King, his People and Kingdom of *England*, and in ministring the Laws of the Kingdom aforesaid to the Subjects of our said Lord the King; the aforesaid *Thomas Harrison* to the Bar of the aforesaid Court of our said Lord the King of the *Common Pleas*, then and there violently and by Force and Arms, &c. came, the said Court of *Common Pleas* then and there in the aforesaid great Hall being open as aforesaid, and the aforesaid *Richard Hutton* Knight, and the other Justices of our said Lord the King of the Court of *Common Pleas* aforesaid in that Court, then there as aforesaid being present, and Judicially sitting; and the aforesaid *Thomas Harrison*, then and there out of his mere Malice, evil Mind, and wicked Intention, in the Presence and Hearing of the aforesaid Justices of the aforesaid Court of *Common Pleas*, and divers Serjeants at Law, and many venerable Men, and other faithful Subjects of our said now Lord the King, falsely, wickedly, and maliciously accused the aforesaid *Richard Hutton* Knight, of High Treason, and then and there falsely, wickedly, and maliciously, these scandalous, venomous, defamatory *English* Words, openly, publickly, and with a loud Voice said, published and spoke, viz. *I* (him the said *Thomas Harrison* meaning) *do accuse Mr. Justice Hutton* (the aforesaid *Richard Hutton* Knight, one of the Justices of our said Lord the King of the *Common Pleas*, meaning) *of High Treason*: To the great hurt and derogation of the Crown and Dignity of our said Lord the King, and of his Royal Power, and the manifest Contempt and Scandal of his Courts aforesaid, and of the Justice and Laws of our said Lord the King, his Kingdom aforesaid, and the Court of *Common Pleas* aforesaid, and the Justices of our said Lord the King, and

Admi-

† He was Parson of *Creeke* in *Northamptonshire*.
 * Cr. Car. 503. *Hut. Rep.* 131.

Administration of Justice in the said Court, to the most evil Example of all other Offenders hereafter in the like Case, and to the more grievous Scandal, Infamy, Disgrace, and final Destruction of the aforesaid *Richard Hutton* Knight, and against the Peace of our said now Lord the King, his Crown and Dignity, &c.'

To this the said *Thomas Harrison* hath pleaded Not Guilty, and hath put himself upon the County, and the King's Attorney of this Court likewise. You are now to enquire whether the said *Thomas Harrison* be guilty of this Crime, Yea or No.

Mr. Serjeant *Heath*. May it please your Lordship, and you Gentlemen of the Jury do hear, that by reading of the Record, that there is an Indictment preferred on the Behalf of the King against *Thomas Harrison* who is now at the Bar, and that it is for a notable and insolent Contempt in this Hall against Justice *Hutton* and the Laws of this Kingdom. The Indictment sets it out thus: That the Court of *Common Pleas* is an ancient Court, and that it is against the Crown and Dignity of the King, and the Courts of Justice, that when the said Courts were sitting, they, or any of the Ministers of the said Court shall be disturbed. It is further said, that Mr. Justice *Hutton* is, and for many Years last past hath been one of the Judges of the Court of *Common Pleas*; and that the Defendant who is now at the Bar (Mr. *Harrison* a Clerk) being moved with Malice against the Person of Mr. Justice *Hutton*, and intending to bring Mr. Justice *Hutton* into the King's high Displeasure, and to hazard the losing of his Life and his Estate, and the Forfeiture of his Goods, and to disturb the Peace of the King, and the Court of Justice sitting, did falsely and maliciously the 4th of May last in *Westminster-Hall* in the City of *Westminster*, the Court being sitting, this Court and the Court of *Chancery*, and the Court of *Common Pleas*, this Defendant, boldly, audaciously, and maliciously did rush to the Bar of the said Court of *Common Pleas*, Mr. Justice *Hutton* and Mr. Justice *Crawley* then and there sitting, there attending to the Service of the said Court, there with a loud Voice spake to Mr. Justice *Hutton* sitting as a Judge: *I do accuse Mr. Justice Hutton of High-Treason*. This Offence being committed in this Manner and in this Place, and with such a Boldness, is laid to be of a high Nature, and to the Contempt of the Crown, and Dignity of all the Courts of Justice, where the King is wholly interested. Whether this Offence may be punished, that is the Force and Intent of this Indictment. My Lords, to this the Defendant hath pleaded not guilty: we that be of the King's Counsel shall make it appear, that this Defendant did do this, and in this Manner as it is set forth.

* Sir John Banks. Mr. Attorney*. I desire that this Examination may be read; but let him see it, whether it be his Hand, yea, or no.

Harrison. It is my Hand.

The Examination of *Thomas Harrison* of *Creeke* in the County of *Northampton*, Clerk; being examined before my Lord Chief Justice *Brampston*, faith, that it is true, that whereas Mr. Justice *Hutton*, and Mr. Justice *Crawley* sitting in the Court of *Common Pleas*, he came to the Bar, and there did publicly charge Mr. Justice *Hutton* with High-

Treason. He charged him first with denying the King's Supremacy, next with moving the People to Sedition, and these be the Points on which he charged him with High-Treason, as aforesaid. Farther, he was asked why he charged him with the first, and how he doth deny the King's Supremacy: he answers, for that by common Fame upon *Saturday* last in the *Exchequer-Chamber* he did deliver his Opinion, that the King had no lawful Power to levy the Ship-Money. Being asked whether he heard the Argument, he answered, he heard it not, but received it from the common Report of others. Being further asked why he charged him with stirring up the People to Sedition; he answered, that was because by the Report of divers near to the Place where this Examinant dwells, the People go on more and more in their Stubbornness, refusing the paying of Ship-Money; the which is contrary to the Opinion of all the Orthodox Divines of this Kingdom; and in that Mr. Justice *Hutton* riding that Circuit, hath given the People such an Encouragement to their Disobedience. Being farther asked, whether any other Person did know of this his Intent; he answered, that there were two other Persons with him, but they did not know any thing of his Intentions, till they heard it spoken at the Bar. Being asked why he made choice of this publick Way; the Reason he saith was, because he delivered his Opinion publickly, therefore he thought that to be the best Way; and if it had been done in a private Way, he thought it fit to acquaint him with it in a private Way.

THOMAS HARRISON.

Mr. Attorney. May it please your Lordship, and you of the Jury, the Prisoner at the Bar, Mr. *Harrison*, stands indicted of a very foul and horrible Offence, of a forged Accusation framed and contrived out of his own Brain. It should seem it was out of some rotten and inveterate Malice, a thing for which there is no Colour nor Appearance of Truth, and he confesseth it was upon the Ground of common Fame. Now you know what common Fame is, a *Mendax*, he charged this Reverend Judge, as you have heard, that he did deny the King's Supremacy, and the Reason was, because he heard by common Fame, that the Judge had delivered his Opinion, that the King had no Power to levy Ship-Money. Secondly, because he stirreth up the King's Subjects to Sedition; and he giveth that for a Reason, in that the People of *Northampton* do go on in the Denial of the Payment of Ship-Money.

My Lord, it is a heavy Thing to accuse any Man of Treason, whereby he shall forfeit his Lands and Goods, and lose his Life: and surely by the old Law, this false Accuser should undergo the same Punishment as he should, that is accused, if found guilty.

My Lord, the Place of a Judge is a Place of great Honour and Trust. Of Honour, for they be reckoned in the old Statutes among the *Magnates Regni*, 2 Ric. 2. &c. And these People that be the Authors and Publishers of these base Scandals, they are reckoned to be the Sowers of Discord, and are Subverters of the Peace of the Commonwealth. And surely if Mr. *Harrison* had looked upon these Statutes, he would have been better advised: Of Trust, for he trusted with the Administration

of equal Justice between the King and his Subjects, and the Lives, Fortunes, and Estates of Men. Therefore being a Place of so great Honour and Trust, the Scandal is the greater; and Offences and Crimes against them have been punished not with ordinary Punishment.

25 *Edw. III.* 1 *pr.* It is declared to be Treason to kill a Judge in execution of his Office.

Our Books say, That if one draw a Weapon upon a Judge sitting in Judicature, tho' he strike him not, he shall be imprisoned during Life, and forfeit his Goods and Lands, and lose his Right Hand.

Tho' the Offence be not done to the Judge, yet being in the Judges presence (the Courts sitting) as if one strike a Juror, or any other Person in *Westminster-Hall*, sitting in the Courts, it hath been punished with the loss of Hand, Goods, and Lands during Life; this appeareth, 19 *Ed. 3.* Judgment, 174. 22 *Ed. 3.* 13. *Mich. 6 Ed. 3.* *Coram Rege*, *Rot. 55.* *Stamford's Pleas* of the Crown, 38.

The Offence of Mr. *Harrison* is not for accusing Judge *Hutton*, or any other, of Treason, for God forbid but that should be lawful where there is just Cause; but to do it without any colour of Ground, and to forge a false Accusation out of his own Brain, and to act in such an insolent and mad way against a reverend Judge, sitting in the Seat of Judgment, this is the Offence.

37 *Hen. 6.* 3. If one call another Traitor, an Appeal lieth before the Constable and Marshal; and if the Appellant be killed in Battle, it is justifiable.

30 *lib. Ass.* One called Justice *Seaton* Traitor, and answered well in Damages, as appeareth more at large in the Record than in the Printed Book.

Mich. 5 Car. in Banco Regis, Nich. Jeffes was indicted and fined in the King's-Bench, for writing a Petition, wherein he said the Lord Chief Justice *Coke* was a Traitor.

Treasons are declared by the Statute 25 *Ed. 3.* and this Gentleman may expound a Text, he cannot expound Statutes, for this is proper for the Judges of the Realm.

He is not to judge what is Treason, and what not: *Trecent fabrilis fabri*, let him keep himself within the compass of his own Profession.

This Offence is *contra Coronam & Dignitatem*, and the Scandals against the King's Judges and Ministers trench upon the King himself, and therefore his Royal Majesty detesting this odious and foul Fact in the Prisoner at the Bar, hath commanded us his Counsel to give Evidence.

The Person of the Party accused is best known to your Lordships to be a most grave, honest, learned, and reverend Judge, and, I presume, free from any thought of Treason.

Mich. 33. 34 Ed. 1. In this Court, *Rot. 75*

there was *Roger de Heigham* gave Judgment against one *De Bruce* in the *Exchequer-Chamber*. This *De Bruce* was of a noble Family: He asked this *Roger*, whether he would avow the Judgment, and he told him yes. Now, says *De Bruce*, thou hast thy Will, which of long time thou hast fought: The Judge asked him what was that, he said, My Shame and Loss, and this I will think on. For this Offence, in a kind of implicit Way taxing the Judge of Injustice, he was indicted, and confessed the Indictment, as Mr. *Harrison* doth: The Judgment was, That he should be committed, and there to remain during the King's Pleasure, besides a great Fine.

The Record saith, *Et quia sicut honor, & reverentia qui Ministris Domini Regis ratione officii sui faciuntur, ipsi Regi attribuuntur, sic dedecus & contemptus ministris suis fact. eidem Domino Regi inferuntur, consideratum est quod predictus Willielmus de Bruce districtus in corpore, capite nudo, toga deposita eat à Banco Domini Regis ubi placita tenentur in Aula Westminsterii per medium Aule predictae cum curia plena fuerit, usque ad Scac. ubi deliquit & ibidem veniam petat à prefato Rogero, &c. Et postea committatur Turri London. ibidem moretur ad voluntatem Regis.*

My Lords,

This Offence, which was offered to the Person of a most reverend, learned, and honest Judge, by the Rules of our Books, is a Scandal done to the King himself, if there be no Colour nor Ground why he should take upon him to make this bold and impudent Assertion.

I doubt not but you will maintain the Honour of a Judge, and punish this Delinquent according to his Demerits. His Offence contained in the Indictment, is confessed in his Examination, and by himself *ore tenus*, therefore you of the Jury need not depart from the Bar.

Whereupon the Jury immediately gave in a Verdict, that he was guilty of the Indictment.

Mr. *Attorney General*. Now, my Lord, I desire Judgment.

Upon which the Court pronounc'd the following Sentence*.

That he should pay a Fine to the King of 50000 l. and be imprisoned during the King's Pleasure, and should have a Paper upon his Head, shewing his Offence, and go therewith to all the Courts of Westminster, and make his Submission in every Court in Westminster-Hall, and in the Exchequer: For it is an Offence to every Court. Afterwards Justice Hutton brought an Action for these Words against Harrison, in which he recovered Ten thousand Pounds Damages.

* Vide *Croke's Reports*, pag. 362. *Thomas Harrison's Case*.



XXXIX. *The Trial of THOMAS Earl of STRAFFORD*,
Lord Lieutenant of Ireland, for High-Treason, the 22d of
March 1640. 16 Car. I.*

Articles of the Commons assembled in Parliament against Thomas Earl of Strafford, in maintenance of the Accusation, whereby he stands charged of High-Treason.

I. **THAT** he the said Thomas Earl of Strafford hath traitorously endeavoured to subvert the fundamental Laws and Government of the Realms of England and Ireland, and, instead thereof, to introduce an Arbitrary and Tyrannical Government against Law; which he hath declared by traitorous Words, Counsels, and Actions; and by giving his Majesty Advice, by Force of Arms to compel his loyal Subjects to submit thereunto.

II. That he hath traitorously assumed to himself Regal Power over the Lives, Liberties, Persons, Lands, and Goods of his Majesty's Subjects in England and Ireland; and hath exercised the same tyrannically, to the subversion and undoing of many, both of Peers, and others of his Majesty's liege People.

III. That the better to enrich and enable himself to go thro' with his traitorous Designs, he hath detained a great Part of his Majesty's Revenue, without giving legal Account; and hath taken great Sums out of the Exchequer, converting them to his own Use, when his Majesty wanted Money for his own urgent Occasions, and his Army had been a long time unpaid.

IV. That he hath traitorously abused the Power and Authority of his Government, to the increasing, countenancing, and encouraging of Papists; that so he might settle a mutual Dependence and Confidence betwixt himself and that Party, and, by their Help, prosecute and accomplish his malicious and tyrannical Designs.

V. That he hath maliciously endeavoured to stir up Enmity and Hostility between his Majesty's Subjects of England and those of Scotland.

VI. That he hath traitorously broke the great Trust reposed in him by his Majesty, of Lieutenant-General of his Army, by wilful betraying divers of his Majesty's Subjects to Death, his Army to a dishonourable Defeat by the Scots at Newburne, and the Town of Newcastle into their Hands; to the end, that by the Effusion of Blood, by Dishonour, and so great a Loss as that of Newcastle, his Majesty's Realm of England might be engaged in a national and irreconcilable Quarrel with the Scots.

VII. That to preserve himself from being questioned for those, and other his traitorous Courses, he laboured to subvert the Right of Parliaments, and the antient Course of Parliamentary Proceedings; and, by false and malicious Slanders, to incense his Majesty against Parliaments. By which Words, Counsels, and Actions, he hath traitorously, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majesty, to set a Division between them, and to ruin and destroy his Majesty's Kingdoms: for which they impeach him of High-Treason against our Sovereign Lord the King, his Crown and Dignity.

VIII. And he the said Earl of Strafford was Lord-Deputy of Ireland, and Lieutenant-General of the Army of his most Excellent Majesty, for his Kingdoms both of England and Ireland, and the Lord President of the North, during the Time that all and every the Crimes and Offences before set forth were done and committed; and he the said Earl was Lieutenant-General of all his Majesty's Army in the North Parts of England, during the time that the Crimes and Offences in the fifth and sixth Articles set forth were done and committed.

IX. That the said Commons, by Protestations saving to themselves the Liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said Earl; and also of replying to the Answers that he the said Earl shall make unto the said Articles, or to any of them, and of offering Proofs; also of the Premises or any of them; or any other Impeachment or Accusation that shall be exhibited by them, as the Cause shall, according to the Course of Parliament, require: do pray that the said Earl may be put to answer for all and every of the Premises, that such Proceedings, Examinations, Trials and Judgments may be upon every of them had and used, as is agreeable to Law and Justice.

Articles of the Commons assembled in Parliament against Thomas Earl of Strafford, in maintenance of their Accusation whereby he stands charged with High-Treason.

WHEREAS the said Commons have already exhibited Articles against the said Earl, *in hæc verba*, now the said Commons do further impeach the said Earl as followeth: (*That is to say*)

I. That the said Earl of Strafford, the 21st Day of March, in the eighth Year of his Majesty's

* *Clar. Hist. Vol. I. pag. 118, 152, &c.*

See the larger Trial, which being an entire Volume in *Rushworth's Collections*, to be had by itself, is here purposely omitted, and this inserted in the stead thereof.

Reign, was President of the King's Council in the Northern Parts of *England*.

That the said Earl being President of the said Council, on the 21st of *March* a Commission under the Great Seal of *England*, with certain Schedules of Instructions thereunto annexed, was directed to the said Earl, and others the Commissioners therein named, whereby, among other Things, Power and Authority is limited to the said Earl, and others the Commissioners therein named, to hear and determine all Offences, and Misdemeanours, Suits, Debates, Controversies, and Demands, Causes, Things and Matters whatsoever therein contained, and within certain Precincts in the said Northern Parts therein specified, and in such manner, as by the said Schedule is limited and appointed.

That, amongst other Things in the said Instructions, it is directed, that the said President, and others therein appointed, shall hear and determine according to the Course of Proceedings in the Court of *Star-Chamber*, divers Offences, Deceits and Falsities, therein mentioned, whether the same be provided for by Acts of Parliament or not; so that the Fines imposed be not less than by the Act or Acts of Parliament provided against those Offences is appointed.

That also, amongst other Things in the said Instructions, it is directed, that the said President, and others therein appointed, have power to examine, hear, and determine, according to the Course of Proceedings in the Court of *Chancery*, all manner of Complaints, for any Matter within the said Precincts; as well concerning Lands, Tenements, and Hereditaments, either Free-hold, Customary, or Copy-hold, as Leases, and other Things therein mentioned; and to stay Proceedings in the Court of *Common Law* by Injunction, or otherwise, by all Ways and Means, as is used in the Court of *Chancery*.

And altho' the former Presidents of the said Council had never put in practice such Instructions, nor had they any such Instructions; yet the said Earl, in the Month of *May*, in the said eighth Year, and divers Years following, did put in practice, exercise and use, and caused to be used and put in practice the said Commission and Instructions; and did direct and exercise an exorbitant and unlawful Power and Jurisdiction over the Persons and Estates of his Majesty's Subjects in those Parts, and did disinherit divers of his Majesty's Subjects, in those Parts, of their Inheritances, sequestered their Possessions, and did fine, ransom, punish and imprison them; and caused them to be fined, ransomed, punished, and imprisoned, to their Ruin and Destruction: and namely, Sir *Coniers Darcy*, Sir *John Bourcher*, and divers others, against the Laws, and in subversion of the same. And the said Commission and Instructions were procured and issued by Advice of the said Earl.

And he the said Earl, to the intent that such illegal and unjust Power might be exercised with the greater Licence and Will, did advise, counsel, and procure further Directions; in and by the said Instructions to be given, that no Prohibition be granted at all, but in Cases where the said Council shall exceed the Limits of the said Instructions: And that if any Writ of *Habeas Corpus* be granted, the Party be not discharged till the Party perform the Decree and Order of the said Council.

And the said Earl, in the 13th Year of his Majesty's Reign, did procure a new Commission to

himself, and others therein appointed, with the said Instructions, and other unlawful Additions.

That the said Commission and Instructions were procured by the Solicitation and Advice of the said Earl of *Strafford*.

II. That shortly after the obtaining of the said Commission, dated the 21st of *March*, in the eighth Year of his Majesty's Reign, to wit, the last Day of *August* then next following, he the said Earl (to bring his Majesty's liege People into a dislike of his Majesty, and of his Government, and to terrify the Justices of the Peace from executing of the Laws; he the said Earl being then President, as aforesaid, and a Justice of Peace) did publickly, at the Assizes held for the County of *York*, in the City of *York*, in and upon the said last Day of *August*, declare and publish before the People there attending for the Administration of Justice according to Law, (and in the presence of Justices sitting) that some of the Justices were all for Law, and nothing would please them but Law; but they should find that the King's Little-finger should be heavier than the Loins of the Law.

III. That the Realm of *Ireland* having been time out of mind annexed to the Imperial Crown of this his Majesty's Realm of *England*, and governed by the same Laws; the said Earl being Lord-Deputy of that Realm, to bring his Majesty's liege Subjects of that Kingdom likewise into dislike of his Majesty's Government, and intending the Subversion of the fundamental Laws and settled Government of that Realm, and the Destruction of his Majesty's liege People there, did upon the 30th Day of *September*, in the ninth Year of his now Majesty's Reign, in the City of *Dublin* (the chief City of that Realm, where his Majesty's Privy-Council and Courts of Justice do ordinarily reside, and whither the Nobility and Gentry of that Realm do usually resort for Justice) in a publick Speech, before divers of the Nobility and Gentry of that Kingdom, and before the Mayor, Aldermen, and Recorder, and many Citizens of *Dublin*, and other his Majesty's liege People, declare and publish, That *Ireland* was a conquered Nation, and that the King might do with them what he pleased. And speaking of the Charters of former Kings of *England* made to that City, he further then said, That their Charters were nothing worth, and did bind the King no further than he pleased.

IV. That *Richard Earl of Cork* having sued out Process in Course of Law, for Recovery of his Possessions, from which he was put by colour of an Order made by the said Earl of *Strafford*, and the Council-Table of the said Realm of *Ireland*, upon a Paper-Petition, without legal Proceeding, did the 20th Day of *February*, in the 11th Year of his now Majesty's Reign, threaten the said Earl, (being then a Peer of the said Realm) to imprison him, unless he would surcease his Suit; and said, That he would have neither Law nor Lawyers dispute or question his Orders. And the 20th Day of *March*, in the said 11th Year, the said Earl of *Strafford*, speaking of an Order of the said Council-Table of that Realm, made in the Time of King *James*, which concerned a Lease which the said Earl of *Cork* claimed in certain Rectories or Tythes, which the said Earl of *Cork* alledged to

be of no Force, said, That he would make the said Earl, and all *Ireland* know, that so long as he had the Government there, any Act of State there made, or to be made, should be as binding to the Subjects of that Kingdom, as an Act of Parliament. And did question the said Earl of *Cork*, in the Castle-Chamber there, upon pretence of Breach of the said Order of Council-Table: and did sundry other Times, and upon sundry other Occasions, by his Words and Speeches, arrogate to himself a Power above the Fundamental Laws and Established Government of that Kingdom; and scorned the said Laws and established Government.

V. That according to such his Declarations and Speeches, the said Earl of *Strafford* did use and exercise a Power above, and against, and to the subversion of the said Fundamental Laws and Established Government of the said Realm of *Ireland*; extending such his Power to the Goods, Freeholds, Inheritances, Liberties, and Lives of his Majesty's Subjects of the said Realm: and namely, the said Earl of *Strafford*, the 12th Day of *December*, 1635. in the time of full Peace, did in the said Realm of *Ireland* give, and procure to be given, against the Lord *Mountnorris*, (then and yet a Peer of the said Realm of *Ireland*, and then Vice-Treasurer and Receiver-General of the Realm of *Ireland*, and Treasurer at War, and one of the Principal Secretaries of State, and Keeper of the Privy-Signet of the said Kingdom) a Sentence of Death by a Council of War, called together by the said Earl of *Strafford*, without any Warrant or Authority of Law, or Offence deserving any such Punishment. And he the said Earl did also at *Dublin*, within the said Realm of *Ireland*, in the Month of *March*, in the fourteenth Year of his Majesty's Reign, without any legal or due Proceedings or Trial, give, and cause to be given, a Sentence of Death against one other of his Majesty's Subjects, whose Name is yet unknown; and caused him to be put to death in execution of the same Sentence.

VI. That the said Earl of *Strafford*, without any legal Proceedings, and upon a Paper Petition of *Richard Rolston*, did cause the said Lord *Mountnorris* to be disseized, and put out of possession of his Freehold and Inheritance of his Manor of *Tymore* in the County of *Armagh*, in the Kingdom of *Ireland*, the said Lord *Mountnorris* having been eighteen Years before in quiet possession thereof.

VII. That the said Earl of *Strafford*, in the Term of *Holy Trinity*, in the thirteenth Year of his now Majesty's Reign, did cause a Case, commonly called, *The Case of Tenures upon defective Titles*, to be made and drawn up without any Jury or Trial, or other legal Process, and without the Consent of Parties; and did then procure the Judges of the said Realm of *Ireland*, to deliver their Opinions and Resolutions to that Case: and by colour of such Opinion, did, without any legal Proceedings, cause *Thomas Lord Dillon*, a Peer of the said Realm of *Ireland*, to be put out of the Possession of divers Lands and Tenements, being his Freehold, in the Counties of *Mayo* and *Roscommon*, in the said Kingdom: And divers other of his Majesty's Subjects to be put out of Possession, and disseized of their Freehold, by colour of the same Resolution, without legal Proceedings;

whereby many Hundreds of his Majesty's Subjects were undone, and their Families utterly ruined.

VIII. That the said Earl of *Strafford*, upon a Petition of Sir *John Gifford* Knight, the first Day of *February*, in the said thirteenth Year of his Majesty's Reign, without any legal Process, made a Decree or Order against *Adam Viscount Loftus* of *Ely*, a Peer of the said Realm of *Ireland*, and Lord Chancellor of *Ireland*, and did cause the said Viscount to be imprisoned, and kept close Prisoner, on pretence of Disobedience to the said Decree or Order.

And the said Earl, without any Authority, and contrary to his Commission, required and commanded the said Lord Viscount to yield up unto him the great Seal of the Realm of *Ireland*, which was then in his Custody by his Majesty's Command, and imprisoned the said Chancellor for not obeying such his Command.

And without any legal Proceeding did, in the same thirteenth Year, imprison *George Earl of Kildare*, a Peer of *Ireland*, against Law, thereby to enforce him to submit his Title to the Manor and Lordship of *Castleleigh* in the *Queen's County*, (being of great yearly Value) to the said Earl of *Strafford's* Will and Pleasure, and kept him a Year Prisoner for the said Cause; two Months whereof he kept him close Prisoner, and refused to enlarge him, notwithstanding his Majesty's Letters for his Enlargement, to the said Earl of *Strafford* directed.

And upon a Petition exhibited in *October*, Anno Domini 1635, by *Thomas Hibbotts*, against Dame *Mary Hibbotts* Widow, to him the said Earl of *Strafford*; the said Earl of *Strafford* recommended the said Petition to the Council-Table of *Ireland*, where the most part of the Council gave their Vote and Opinion for the said Lady: but the said Earl finding fault herewith, caused an Order to be entered against the said Lady, and threatened her that if she refused to submit thereunto, he would imprison her, and fine her Five hundred Pounds: that if she continued obstinate, he would continue her Imprisonment, and double her Fine every Month. By means whereof she was enforced to relinquish her Estate in the Lands questioned in the said Petition, which shortly after were conveyed to Sir *Robert Meredith*, to the Use of the said Earl of *Strafford*.

And the said Earl in like manner did imprison divers others of his Majesty's Subjects, upon pretence of Disobedience to his Orders, Decrees, and other illegal Commands by him made for pretended Debts, Titles of Lands, and other Causes, in an arbitrary and extra-judicial Course, upon Paper Petitions to him preferred, and no Cause legally depending.

IX. That the said Earl of *Strafford*, the sixteenth Day of *February*, in the twelfth Year of his Majesty's Reign, assuming to himself a Power above and against Law, took upon him, by a general Warrant under his Hand, to give power to the Lord Bishop of *Downe* and *Connor*, his Chancellor or Chancellors, and their several Officers thereto to be appointed, to attach and arrest the Bodies of all such of the meaner and poorer sort, who, after Citation, should either refuse to appear before them, or appearing, should omit, or deny to perform, or undergo all lawful Decrees, Sentences, and Orders, issued, imposed, or given out against them,

them, and them to commit, and keep in the next Goal until they should either perform such Sentences, or put in sufficient Bail, to shew some reason before the Council-Table, of such their Contempt and Neglect. And the said Earl, the Day and Year last mentioned, signed and issued a Warrant to that effect; and made the like Warrants to several other Bishops, and their Chancellors, in the said Realm of *Ireland*, to the same effect.

X. That the said Earl of *Strafford* being Lord Lieutenant or Deputy of *Ireland*, procured the Customs of the Merchandize exported out, and imported into that Realm to be farmed to his own use.

And in the ninth Year of his now Majesty's Reign he having then Interest in the said Customs, (to advance his own Gain and Lucre) did cause and procure the Native Commodities of *Ireland* to be rated in the Book of Rates for the Customs (according to which the Customs were usually gathered) at far greater Values and Prices than in truth they were worth; that is to say, every Hide at twenty Shillings, which in truth was worth but five Shillings; every Stone of Wool at thirteen Shillings four Pence, tho' the same were really worth but five Shillings, at the utmost nine Shillings: by which means the Custom, which before was but a twentieth part of the true Value of the Commodity, was enhanced sometimes a fifth part, and sometimes to a fourth, and sometimes to a third Part of the true Value, to the great Oppression of the Subjects, and Decay of Merchandize.

XI. That the said Earl, in the ninth Year of his Majesty's Reign, did by his own Will and Pleasure, and for his own Lucre, restrain the Exportation of the Commodities of that Kingdom without his Licence; as namely, Pipe-staves, and other Commodities: and then raised great Sums of Money for Licences of Exportation of those Commodities, and Dispensation of the said Restraints imposed on them; by which means the Pipe-staves were raised from four Pound ten Shillings, or five Pound *per* Thousand, to ten Pound, and sometimes eleven Pound *per* Thousand. And other Commodities were enhanced in the like proportion, and by the same means, by him the said Earl.

XII. That the said Earl, being Lord Deputy of *Ireland*, on the ninth Day of *January*, in the thirteenth Year of his now Majesty's Reign, did then under colour to regulate the Importation of Tobacco into the said Realm of *Ireland*, issue a Proclamation in his Majesty's Name, prohibiting the Importation of Tobacco, without Licence of him and the Council there, from and after the first Day of *May*, *Anno Dom.* 1638. After which Restraint, the said Earl, notwithstanding the said Restraint, caused divers great quantities of Tobacco to be imported to his own use, and freighted divers Ships with Tobacco, which he imported to his own use: and that if any Ship brought Tobacco into any Port there, the said Earl and his Agents, used to buy the same to his own use, at their own Price; and if that the Owners refused to let him have the same at Under-values, then they were not permitted to vent the same there. By which undue means, the said Earl having gotten the whole Trade of Tobacco into his own hands, he

fold it at great and excessive Prices, such as he list to impose for his own profit.

And the more to assure the said Monopoly of Tobacco, he the said Earl, on the three and twentieth Day of *February*, in the thirteenth Year aforesaid, did issue another Proclamation, commanding that none should put to sale any Tobacco by wholesale from and after the last Day of *May* then next following, but what should be made up into Rolls, and the same sealed with two Seals by himself appointed, one at each end of the Roll. And such as was not sealed, to be seized, appointing Sixpence the Pound for a Reward to such Persons as should seize the same; and the Person in whose custody the unsealed Tobacco should be found, to be committed to Goal: which last Proclamation was coloured by a Pretence for the restraining of the Sale of unwholesome Tobacco, but it was truly to advance the said Monopoly.

Which Proclamation the said Earl did rigorously put in execution, by seizing the Goods, fining, imprisoning, whipping, and putting the Offenders against the same Proclamation on the Pillory; as namely, *Barnaby Hubbard*, *Edward Cavena*, *John Tumen*, and divers others; and made the Officers of State, and Justices of Peace, and other Officers to serve him in the compassing and executing these unjust and undue Courses. By which Cruelties, and unjust Monopolies, the said Earl raised 100000*l.* *per annum* Gain to himself. And yet the said Earl, tho' he enhanced the Customs, where it concerned the Merchants in general, yet drew down the Impost formerly taken on Tobacco from six Pence the Pound to three Pence the Pound; it being for his own Profit so to do.

And the said Earl, by the same and other rigorous and undue means, raised several other Monopolies and unlawful Exactions for his own Gain, *viz.* on Starch, Iron Pots, Glasses, Tobacco-Pipes, and several other Commodities.

XIII. That Flax being one of the principal and native Commodities of that Kingdom of *Ireland*, the said Earl having gotten great quantities thereof into his hand, and growing on his own Lands, did issue out several Proclamations, *viz.* the one dated the one and thirtieth of *May*, in the twelfth of his Majesty's Reign; and the other dated the one and thirtieth of *January*, in the same Year; thereby prescribing and enjoining the Working of Flax into Yarn and Thread, and the ordering of the same in such ways, wherein the Natives of that Kingdom were unpractised and unskilful. Which Proclamations so issued, were by his Commands and Warrants to his Majesty's Justices of Peace, and other Officers, and by other rigorous means, put in execution; and the Flax wrought, or ordered in other manner than as the said Proclamation prescribed, was seized and employed to the Use of him and his Agents: and thereby the said Earl endeavour'd to gain, and did gain in effect, the sole Sale of that native Commodity.

XIV. That the said Earl, by Proclamation dated the sixteenth of *October*, in the fourteenth Year of his Majesty's Reign, did impose upon the Owners, Masters, Purfers, and Boatswains of every Ship, a new and unlawful Oath, *viz.* That they (or two or more of them) immediately after the Arrival of any Ship within any Port or Creek in the said Kingdom of *Ireland*, should give in a

true

true Invoice of the outward Bulk of Wares and Merchandizes first laden aboard them, together with the several Marks and Number of Goods, and the Qualities and Condition of the said Goods as far as to them should be known; the Names of the several Merchants Proprietors of the said Goods, and the Place from whence they were freighted, and whither they were bound to discharge: which Proclamation was accordingly put in execution, and sundry Persons enforced to take the said unlawful Oath.

XV. That the said Earl of *Strafford* traitorously and wickedly devised and contrived, by Force of Arms, and in a warlike manner, to subdue the Subjects of the said Realm of *Ireland*, and to bring them under his Tyrannical Power and Will; and in pursuance of his wicked and traitorous Purposes aforesaid, the said Earl of *Strafford*, in the eighth Year of his Majesty's Reign, did by his own Authority, without any Warrant or Colour of Law, tax and impose great Sums of Money upon the Towns of *Baltimore*, *Baudenbridge*, *Talowe*, and divers other Towns and Places in the said Realm of *Ireland*; and did cause the same to be levied upon the Inhabitants of those Towns by Troops of Soldiers, with Force and Arms, in warlike manner. And on the ninth Day of *March*, in the twelfth Year of his now Majesty's Reign, traitorously did give Authority unto *Robert Savile*, a Serjeant at Arms, and to the Captains of the Companies of Soldiers in several parts of that Realm, to send such numbers of Soldiers to lie on the Lands and Houses of such as would not conform to his Orders, until they should render Obedience to his said orders and Warrants; and after such submission (and not before) the said Soldiers to return to their Garisons. And did also issue the like Warrants unto divers others, which Warrants were in warlike manner, with Force and Arms, put in execution accordingly; and by such warlike means did force divers of his Majesty's Subjects of that Realm to submit themselves to his unlawful Commands.

And in the said twelfth Year of his Majesty's Reign, the said Earl of *Strafford* did traitorously cause certain Troops of Horse and Foot, armed in warlike Manner and in warlike Array, with Force and Arms, to expel *Richard Butler* from the Possession of the Manor of *Castle-Cumber*, in the Territory of *Idough*, in the said Realm of *Ireland*; and did likewise, and in like warlike manner, expel divers of his Majesty's Subjects from their Houses, Families, and Possessions; as namely, *Edward Obrenman*, *Owen Oberman*, *John Brenman*, *Patrick Oberman*, *Sir Cyprian Horsfield*, and divers others, to the number of about an hundred Families; and took and imprisoned them and their Wives, and carried them Prisoners to *Dublin*, and there detained, until they did yield up, surrender, or release their respective Estates and Rights.

And the said Earl in like warlike manner, hath during his Government of the said Kingdom of *Ireland*, subdued divers others of his Majesty's Subjects there to his Will; and thereby, and by the means aforesaid, hath levied War within the said Realm against his Majesty and his liege People of that Kingdom.

XVI. That the Earl of *Strafford*, the two and twentieth of *February*, in the seventh Year of his Majesty's Reign, intending to oppress the said

Subjects of *Ireland*, did make a Proposition, and obtained from his Majesty an Allowance thereof, That no Complaint of Injustice or Oppression done in *Ireland*, should be received in *England* against any, unless it appeared that the Party made first his Address to him the said Earl: and the said Earl having by such usurped, tyrannical, and exorbitant Power, expressed in the former Articles, destroyed and oppressed the Peers, and other Subjects of that Kingdom of *Ireland*, in their Lives, Consciences, Lands, Liberties and Estates; the said Earl, to the intent the better to maintain and strengthen his said Power, and to bring the People into a Disaffection of his Majesty, as aforesaid, did use his Majesty's Name in the Execution of the said Power.

And to prevent the Subjects of that Realm of all means of Complaints to his Majesty, and of Redress against him and his Agents, did issue a Proclamation, bearing date the seventeenth Day of *September*, in the eleventh Year of his Majesty's Reign, thereby commanding all the Nobility, Undertakers, and others who held Estates and Offices in the said Kingdom, (except such as were employed in his Majesty's Service, or attending in *England* by his special Command) to make their personal Residence in the said Kingdom of *Ireland*, and not to depart thence without Licence of himself.

And the said Earl hath since issued other Proclamations to the same Purpose, by means whereof the Subjects of the said Realm are restrained from seeking Relief against the Oppressions of the said Earl, without his Licence; which Proclamations the said Earl hath by several rigorous ways, as by Fine, Imprisonment, and otherwise, put in execution on his Majesty's Subjects; as namely, one — *Parry*, and others, who came over only to complain of the Exorbitances and Oppressions of the said Earl.

XVII. That the said Earl having, by such means as aforesaid, subverted the Government and Laws of the Kingdom of *Ireland*, did, in *March*, in the sixteenth Year of his Majesty's Reign, in scandal of his Majesty's Government of all his Kingdoms, and in further execution of his wicked Purposes aforesaid, speaking of the Army in *Ireland*, declare, That his Majesty was so well pleased with the Army of *Ireland*, and the Consequences thereof, that his Majesty would certainly make the same a Pattern for all his three Kingdoms.

XVIII. That the said Earl of *Strafford*, for the better effecting of his traitorous Designs and wicked Purposes, did endeavour to draw a Dependency upon himself of the Papists in both Kingdoms of *England* and *Ireland*; and to that end, during the time of his Government in *Ireland*, he restored divers Fryeries and Mass-Houses (which had been formerly suppressed by the precedent Deputies of that Kingdom; two of which Houses are in the City of *Dublin*, and had been assigned to the Use of the University there) to the pretended Owners thereof, who have since employed the same to the Exercise of the Popish Religion.

And in the Months of *May* and *June* last, the said Earl did raise an Army in the said Realm, consisting of 8000 Foot, all of which, except one thousand, or thereabouts, were Papists; and the said one thousand were drawn out of the old Army there, consisting of two thousand Foot, and in their Places

Places there were a thousand Papists, or thereabouts put into the said old Army by the said Earl.

And the more to engage and tie the said new Army of Papists to himself, and to encourage them, and to discourage and weary out the said old Army, the said Earl did so provide, that the said new Army of Papists were duly paid, and had all Necessaries provided for them, and permitted the Exercise of their Religion; but the said old Army were for the Space of one whole Year and upwards unpaid.

And the said Earl being appointed a Commissioner within eleven several Counties of the Northern Parts of *England*, for compounding with Recusants for their Forfeitures due to his Majesty, which Commission beareth Date the 8th Day of *July*, in the fifth Year of his Majesty's Reign that now is; and being also Receiver of the Composition-Money thereby arising, and of other Debts, Duties, and Penalties, by reason of Recusancy within the said Counties, for his Majesty's Use, by Letters Patents dated the 9th Day of the same *July*; he, to engage the said Recusants to him, did compound with them at low and under Rates, and provided that they should be discharged of all Proceedings against them in all his Majesty's Courts, both Temporal and Ecclesiastical, in manifest breach of, and contrary to the Laws and Statutes of this Realm, in that Behalf established.

XIX. That the said Earl having taxed and levied the said Impositions, and raised the said Monopolies, and committed the said other Oppressions in his Majesty's Name, and as by his Majesty's Royal Command; he, the said Earl, in *May*, the fifteenth Year of his Majesty's Reign, did of his own Authority contrive and frame a new and unusual Oath, by the Purport whereof, among many other Things, the Party taking the said Oath was to swear, That he should not protest against any his Majesty's Royal Commands, but submit himself in all due Obedience thereunto. Which Oath he so contrived, to enforce the same on the Subjects of the *Scotish* Nation inhabiting in *Ireland*; and out of a Hatred to the said Nation, and to put them to a Discontent with his Majesty and his Government there; and compelled divers of his Majesty's said Subjects there to take the said Oath against their Wills; and of such as refused to take the said Oath, some he grievously fined and imprisoned, and others he destroyed and exiled; and namely, the 10th of *October*, *Anno Dom.* 1639, he fined *Henry Steward* and his Wife, who refused to take the said Oath, 5000*l.* a-piece, and their two Daughters and *James Gray* 3000*l.* a-piece, and imprisoned them for not paying the said Fines: the said *Henry Steward*, his Wife, and Daughters, and *James Gray*, being the King's liege People of the *Scotish* Nation. And divers others he used in like manner. And the said Earl upon that occasion did declare, That the said Oath did not only oblige them in point of Allegiance to his Majesty, and Acknowledgment of his Supremacy only, but to the Ceremonies and Government of the Church established, and to be established by his Majesty's Royal Authority; and said, That the Refusers to obey, he would prosecute to the Blood.

XX. That the said Earl hath in the 15th and 16th Years of his Majesty's Reign, and divers Years past, laboured and endeavoured to breed in his

Majesty an ill Opinion of his Subjects, namely, of those of the *Scotish* Nation; and divers and sundry times, and especially since the Pacification made by his Majesty with his said Subjects of *Scotland* in Summer, in the 15th Year of his Majesty's Reign, he the said Earl did labour and endeavour to persuade, incite, and provoke his Majesty to an offensive War against his said Subjects of the *Scotish* Nation. And the said Earl, by his Counsels, Actions, and Endeavours, hath been and is a principal and chief Incendiary of the War and Discord between his Majesty and his Subjects of *England*, and the said Subjects of *Scotland*; and hath declared and advised his Majesty, that the Demands made by the *Scots*, in their Parliament, were a sufficient Cause of War against them.

The said Earl having formerly expressed the Height and Rancour of his Mind towards his Majesty's Subjects of the *Scotish* Nation, viz. the 10th Day of *October*, in the 15th Year of his Majesty's Reign, he said, That the Nation of the *Scots* were Rebels and Traytors; and he being then about to come to *England*, he then farther said, That if it pleased his Master (meaning his Majesty) to send him back again, he would root out of the said Kingdom (meaning the said Kingdom of *Ireland*) the *Scotish* Nation both Root and Branch, some Lords and others, who had taken the said Oath in the precedent Article, only excepted: And the said Earl hath caused divers of the Ships and Goods of the *Scots* to be stayed, seized, and molested, to the Intent to set on the said War.

XXI. That the said Earl of *Strafford*, shortly after his Speeches mentioned in the last precedent Articles, to wit, in the 15th Year of his Majesty's Reign, came into this Realm of *England*, and was made Lord Lieutenant of *Ireland*, and continued his Government of that Kingdom by a Deputy; at his Arrival here, finding that his Majesty with much Wisdom and Goodness had composed the Troubles in the *North*, and had a Pacification with his Subjects of *Scotland*, he laboured by all means to procure his Majesty to break that Pacification, incensing his Majesty against his Subjects of that Kingdom, and the Proceedings of the Parliament there.

And having incited his Majesty to an offensive War against his Subjects of *Scotland* by Sea and Land; and the Pretext thereof, to raise Forces for the Maintenance of that War; he counselled his Majesty to call a Parliament in *England*: yet the said Earl intended, that if the said Proceedings of that Parliament should not be such as would stand with the said Earl of *Strafford's* mischievous Designs, he would then procure his Majesty to break the same, and by ways of Force and Power to raise Moneys upon the Subjects of this Kingdom. And for the Encouragement of his Majesty to hearken to his Advice, he did before his Majesty and his Privy-Council, then sitting in Council, make large Declaration, That he would serve his Majesty in any other Way, in case the Parliament should not supply him.

XXII. That in the Month of *March*, before the beginning of the last Parliament, the said Earl of *Strafford* went into *Ireland*, and procured the Parliament of that Kingdom to declare their Assistance in a War against the *Scots*, and gave Directions for the raising of an Army there, consisting of 8000 Foot, and 1000 Horse, being for the most part

part Papists. And confederating with one Sir *George Ratcliffe*, did, together with him the said Sir *George*, traitorously conspire to employ the said Army for the Ruin and Destruction of the Kingdom of *England*, and of his Majesty's Subjects, and of altering and subverting of the fundamental Laws and established Government of this Kingdom.

And shortly after the said Earl of *Strafford* returned into *England*, and to sundry Persons declared his Opinion to be, That his Majesty should first try the Parliament here; and if that did not supply him according to his Occasions, he might use then his Prerogative as he pleased, to levy what he needed; and that he should be acquitted both of God and Man, if he took some other Courses to supply himself, tho' it were against the Wills of his Subjects.

XXIII. That upon the 13th Day of *April* last the Parliament of *England* met, and the Commons House (then being the Representative Body of all the Commons in the Kingdom) did, according to the Trust reposed in them, enter into Debate and Consideration of the great Grievances of this Kingdom, both in respect of Religion and the publick Liberty of the Kingdom; and his Majesty referring chiefly to the said Earl of *Strafford* and the Archbishop of *Canterbury* the ordering and disposing of all Matters concerning the Parliament; he, the said Earl of *Strafford*, with the Assistance of the said Archbishop, did procure his Majesty by sundry Speeches and Messages to urge the said Commons House to enter into some Resolution for his Majesty's Supply, for Maintenance of his War against his Subjects of *Scotland*, before any Course taken for the Relief of the great and pressing Grievances wherewith this Kingdom was then afflicted. Whereupon a Demand was then made from his Majesty of twelve Subsidies, for the Release of Ship-Money only. And while the said Commons then assembled (with Expression of great Affection to his Majesty and his Service) were in Debate and Consideration concerning some Supply, before any Resolution by them made, he the said Earl of *Strafford*, with the Help and Assistance of the said Archbishop, did procure his Majesty to dissolve the said Parliament upon the 5th Day of *May* last. And upon the same Day the said Earl of *Strafford* did treacherously, falsely, and maliciously endeavour to incense his Majesty against his loving and faithful Subjects, who had been Members of the said House of Commons, by telling his Majesty they had denied to supply him. And afterwards, upon the same Day, did traitorously and wickedly counsel and advise his Majesty to this Effect, *viz.* That having tried the Affections of his People, he was loose and absolved from all Rules of Government, and that he was to do every thing that Power would admit; and that his Majesty had tried all Ways, and was refused, and should be acquitted towards God and Man; and that he had an Army in *Ireland*, (meaning the Army above-mentioned, consisting of *Papists*, his Defendants, as is aforesaid) which he might imploy to reduce this Kingdom.

XXIV. That in the said Month of *May*, he, the said Earl of *Strafford*, falsely, traitorously, and maliciously published and declared before others of his Majesty's Privy-Council, That the Parliament of *England* had forsaken the King; and that in de-

nying to supply the King, they had given him Advantage to supply himself by other Ways. And several other times he did maliciously, wickedly, and falsely publish and declare, That seeing the Parliament had refused to supply his Majesty in the ordinary and usual Way, the King might provide for the Kingdom in such Ways as he should hold fit; and that he was not to suffer himself to be master'd by the Forwardness and Undutifulness of the People. And having so maliciously slandered the said late House of Commons, he did, with the Help and Advice of the said Archbishop of *Canterbury*, and the Lord *Finch*, late Lord-Keeper of the Great-Seal of *England*, cause to be printed and published in his Majesty's Name a false and scandalous Book, entituled, *His Majesty's Declaration of the Causes that moved him to dissolve the last Parliament*, full of bitter and malicious Invectives, and false and scandalous Aspersions against the said House of Commons.

XXV. That not long after the Dissolution of the said last Parliament (*viz.* in the Months of *May* and *June*) he, the said Earl of *Strafford*, did advise the King to go on vigorously in levying the Ship-Money, and did procure the Sheriffs of several Counties to be sent for, for not levying the Ship-Money, divers of which were threaten'd by him to be sued in the *Star-Chamber*; and afterwards, by his Advice, they were sued in the *Star-Chamber* for not levying the same; and divers of his Majesty's loving Subjects were sent for and imprisoned, by his Advice, for that and other illegal Payments.

And a great Loan of a hundred thousand Pounds was demanded of the City of *London*; and the Lord-Mayor, and Sheriffs, and Aldermen of the said City were often sent for, by his Advice, to the Council-Table, to give an Account of their Proceedings in raising of Ship-Money, and furthering of that Loan; and were required to certify the Names of such Inhabitants of the said City as were fit to lend: which they with much Humility refusing to do, he the said Earl of *Strafford*, did use these and the like Speeches, *viz.* That they deserved to be put to Fine and Ransom; and that no Good would be done with them till an Example were made of them, and that they were laid by the Heels, and some of the Aldermen hanged up.

XXVI. That the said Earl, by his wicked Counsels, having brought his Majesty into excessive Charge, without any just Cause, he did in the Month of *July* last (for the Support of the said great Charges) counsel and approve two dangerous and wicked Projects, *viz.*

To seize upon the Bullion and the Money in the *Mint*.

And to imbase his Majesty's Coin with the Mixtures of Brass.

And accordingly, he procured one hundred and thirty thousand Pounds, which was then in the *Mint*, and belonged to divers Merchants, Strangers, and others, to be seized on and stayed to his Majesty's Use. And when divers Merchants of *London*, Owners of the said Bullion and Money, came to his House to let him understand the great Mischief that Course would produce here and in other Parts, and what Prejudice it would be to the Kingdom, by discrediting the *Mint*, and hindring the Importation of Bullion; he, the said Earl,

told them, That the City of *London* dealt undutifully and unthankfully with his Majesty; and that they were more ready to help the Rebels than to help his Majesty; and that if any Hurt came to them, they may thank themselves; and that it was the Course of other Princes to make use of such Monies to serve their Occasions.

And when in the same Month of *July* the Officers of his Majesty's Mint came to him, and gave him divers Reasons against the imbasing the said Money, he told them, That the *French* King did use to send Commissaries of Horse with Commission to search into Men's Estates, and to peruse their Accounts, that so they may know what to levy of them by Force, which they did accordingly levy. And turning to the Lord *Cottington*, then present, said, That this was a Point worthy of his Lordship's Consideration: Meaning this Course of the *French* King to raise Monies by Force was a Point worthy of his Lordship's Consideration.

XXVII. That in or about the Month of *August* last, he was made Lieutenant-General of all his Majesty's Forces in the *North*, prepared against the *Scots*; and being at *York*, did then in the Month of *September*, by his own Authority, and without any lawful Warrant, impose a Tax on his Majesty's Subjects in the County of *York* of Eight-pence *per diem*, for Maintenance of every Soldier of the Trained-Bands of that County, which Sums of Money he caused to be levied by Force. And to the end to compel his Majesty's Subjects out of Fear and Terror to yield to the Payment of the same, he did declare, That he would commit them that refused the Payment thereof, and the Soldiers should be satisfied out of their Estates; and they that refused it, were in very little better Condition than of High-Treason.

XXVIII. That in the Months of *September* and *October* last, he the said Earl of *Strafford* being certified of the *Scotish* Army coming into the Kingdom, and he the said Earl of *Strafford* being Lieutenant-General of his Majesty's Army, he did not provide for the Defence of the Town of *Newcastle*, as he ought to have done, but suffered the same to be lost, that so he might the more incense the *English* against the *Scots*.

And for the same wicked Purpose, and out of a malicious Desire to engage the Kingdoms of *England* and *Scotland* in a National and Bloody War, he did write to the Lord *Conway*, the General of the Horse, and under the said Earl's Command, That he should fight with the *Scotish* Army at the Passage over the *Tine*, whatsoever should follow; notwithstanding that the said Lord *Conway* had formerly by Letters informed the said Earl, that his Majesty's Army, then under his Command, was not of Force sufficient to encounter the *Scots*: by which Advice of his he did, contrary to the Duty of his Place, betray his Majesty's Army, then under his Command, to apparent Danger and Loss.

All and every which Words, Counsels, and Actions of the said Earl of *Strafford* were spoken, given, and done by him, the said Earl of *Strafford*, traitorously, and contrary to his Allegiance to our Sovereign Lord the King, and with an Intention and Endeavour to alienate and withdraw the Hearts and Affections of the King's liege People of all his Realms from his Majesty, and to set Division between them, and to ruin and destroy his Ma-

jefty, and his Majesty's said Kingdoms; for which they do further impeach him the said *Thomas* Earl of *Strafford* of High-Treason against our Sovereign Lord the King, his Crown and Dignity. And he, the said Earl of *Strafford*, was Lord Deputy of *Ireland*, or Lord Lieutenant of *Ireland*, and Lieutenant-General of the Army there under his most excellent Majesty, and a sworn Privy-Counsellor to his Majesty for his Kingdoms, both of *England* and *Ireland*, and Lord President of the *North*, during the Time that all and every the Crimes and Offences, before set forth, were done and committed; and he, the said Earl, was Lieutenant-General of his Majesty's Army in the North Parts of *England* during the Time that the Crimes and Offences, in the 27th and 28th Articles set forth, were done and committed.

Answer to the Twenty-eight Special Articles.

TO the First Article, he saith, he conceives that the Commission and Instruction differ not from those formerly granted, but refers to them; and that such Alterations and Additions as were made, were (for ought he knoweth) rather for the Explanation, than for the enlarging of the Jurisdiction: The Care whereof was left to the Secretary of that Council, and to the King's Learned Counsel, to be passed for the Good of the King's Service, and the publick Welfare of that Province. For the Legality of the Proceedings, divers eminent Lawyers were joined with the President, who, for the Legal Parts, was by them to be directed. He did not advise or procure the Enlargement of the Commission and Instructions, and he believeth nothing hath been practised since, that was not in former Times contained in former Commissions, under general Words. He believeth Sir *Conyers Darcy* was lawfully fined for Misdemeanours, as a Justice of Peace; and hath heard, he being in *Ireland*, that Sir *John Boucher* was fined for some great Abuse at the King's being at *York*, going into *Scotland* to be crowned: to the Proceedings he refers himself. He denies that he hath done any thing by that Commission or Instruction, other than he conceived he might by Virtue thereof lawfully do.

To the Second Article, He denieth the speaking of those Words: but saith, That 30, 40*l.* or more, being returned as Issues out of the *Exchequer*, against some that had compounded for Knighthood for 10*l.* or 30*l.* so as the Issues far exceeded the Composition, and yet would next time have been increased; the said Earl upon this Occasion said, That now they might see, that the Little-finger of the Law was heavier than the King's Loins; which he spake to nourish good Affections in them towards his Majesty, and not to threaten or terrify any, as the Article supposed.

To the Third Article, he saith, *Ireland* is not governed by the same Laws that this Kingdom is, unless it be meant by the Common Laws; their Customs, Statutes, Execution of Martial Laws, Proceedings at Council-Board very much differ: the Words in the Article were not spoke to any such Intent. He saith, It might be fit enough for him to remember them of the great Obligation they had to the King and his Progenitors, that suffered them,

them, being a conquered Nation, to enjoy Freedom and Laws, as their own People of this Kingdom: and it might be, that upon some such occasion, he said to those of *Dublin*, That some of their Charters were void and nothing worth, and did not bind his Majesty farther than he pleased; which he believes to be true, having been formerly so informed by his Majesty's Learned Counsel upon sundry occasions.

To the Fourth, he saith, That the legal and ordinary Proceedings at Council-Table are, and time out of mind have been by Petition, Answers, Examination of Witnesses, as in other Courts of Justice concerning *British* Plantations, the Church, and Cases hence recommended by the King for the time being, and in Appeals from other Courts there; and the Council-Board have always punished Contempts to Orders there made, to Proclamations, and Acts of State, by Fine and Imprisonment. He saith, That it might be, he told the Earl of *Cork*, that he would imprison him if he disobeyed the Orders of the Council-Table, and that he would not have Lawyers dispute or question those Orders, and that they should bind; but remembreth not the Comparison of Acts of Parliament: and he hath been so far from scorning the Laws, that he hath endeavoured to maintain them. The Suit against the Earl in the Castle-Chamber, was concerning the Possessions of the College of *Youghall*, worth 6 or 700*l.* which he hath endeavoured to get, by causing of unlawful Oaths to be taken, and very undue means: the matter proceeded to Examination and Publication of Witnesses; and after, upon the Earl of *Cork*'s humble Suit, and Payment of 1500*l.* to his Majesty, and his Acknowledgment of his Misdemeanours, obtained a Pardon, and the Bill and Proceedings were taken off the File: and he remembers not any Suit for breach of any Order made at Council-Table.

To the Fifth, he saith, The Deputies and Generals of the Army have always executed Martial Law, which is necessary there; and the Army, and the Members thereof, have been long time governed by printed Orders, according to which, divers, by Sentence of the Council of War, have formerly been put to death, as well in the time of Peace as War. The Lord *Mountrorris* being a Captain of a Company in the Army, for mutinous Words against the said Earl, General of that Army, and upon two of those ancient Orders was proceeded against by a Council of War, being the principal Officers of the Army, about twenty in number, and by them, upon clear Evidence, sentenced to death: wherein the said Earl was no Judge, but laboured so effectually with his Majesty, that he obtained the Lord *Mountrorris*'s Pardon; who, by that Sentence, suffered no personal Hurt or Damage, save about two days Imprisonment. And as to the other Persons, he can make no Answer thereunto, no Particulars being described.

To the Sixth, he saith, The Suit had depended many Years in Chancery; and the Plaintiff complaining of that Delay, the said Earl upon a Petition, (as in such Cases hath been usual) calling to him the then Master of the Rolls, the now Lord Chancellor, and the Chief Justice of the *Common-Pleas*, upon the Proofs in the *Chancery*, decreed

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for the Plaintiff; to which he refers himself: and it may be the Lord *Mountrorris* was thereupon put out of his Possession.

To the Seventh, he saith, His Majesty being intitled to divers Lands, upon an Inquisition found, Proclamation was made, That such as claimed by Patent should come in by a day, and have their Patents allowed, as if they had been found in the Inquisition; and accordingly divers were allowed. The Lord *Dillon* produced his Patent, which being questionable, he consented, and desired that a Case might be drawn; which was drawn by Counsel, and argued, and the Judges delivered their Opinions: but the Lord *Dillon*, nor any other, were bound thereby, or put out of Possession; but might have traversed the Office, or otherwise legally have proceeded, that Case or Opinion notwithstanding.

To the Eighth, he saith, That upon Sir *John Gifford*'s Petition to the King, his Majesty referred it to the Deputy and Council of *Ireland*, where the Matter proceeded legally to a Decree against the Lord *Loftus*; and upon his Appeal, that Decree, by his Majesty and his Council of *England*, was confirmed: to which Decree and Order he refers himself, believing the Lord *Loftus* was committed for disobeying that Decree, and for Continuance in Contempt committed close Prisoner. He saith, That the Lord *Loftus* having committed divers Contempts, the Council by Warrant required him to appear at the Board, and to bring the Great Seal with him; which Order he disobeyed, and was shortly after committed, and the Great Seal was delivered up by his Majesty's express Command, and not otherwise. And an Information was exhibited in the Star-Chamber, for grievous Oppressions done by the Lord *Loftus* as Chancellor; whereof he was so far from justifying, as that he submitted, desiring to be an Object of his Majesty's Mercy, and not of his Justice.

The Earl of *Kildare* for not performing of an Award made by King *James*, and of an Award made in pursuance thereof by the said Earl of *Strafford*, upon a Reference from his Majesty, was by the Deputy and Council committed: and a Letter being unduly obtained, he did not thereupon enlarge him: but upon another Letter, and Submission to the Orders, as by the King was directed, he was enlarged.

The Lady *Hibbotts*, and one *Hoy* her Son, having upon a Petition, Answer, Examination of Witnesses, and other Proceedings at Council-Board, been found to have committed foul Abuses by Fraud and Circumvention, to have made a Bargain with the Petitioner *Hibbotts*, for Lands of a great value, for a small Sum of Money; was ordered to deliver up the Writing, no Assurances being perfected, or Money paid; and it's like he threatened her with Commitment if she obeyed not that Order, but denieth that the Lands were after sold to Sir *Robert Meredith* to his use, or that by any Order by himself made, any one hath been imprisoned concerning Freeholds, but for Debts and personal things, as some have been used by all his Predecessors in like Causes.

To the Ninth, he saith, Warrants to such effects have been usually granted to the Bishops in *Ireland*, in the times of all former Deputies; but the Earl not satisfied with the Conveniency thereof, refused

to give any such Warrants in general to the Bishops as had been formerly done: but being informed that divers in the Diocese of *Downe* gave not fitting Obedience, he granted a Warrant to that Bishop, whereto he referreth, which was the only Warrant he granted of that nature; and hearing of some Complaints of the Execution thereof, he recalled it.

To the Tenth, he saith, The Lord Treasurer *Portland* offered the Farm of the Customs for 13000 *l. per Annum* in some particular Species, but the Earl of *Strafford* advanced the same Customs to 15500 *l. per Annum*, and 8000 *l. Fine*; and by his Majesty's Command became a Farmer at those Rates proposed, without addition to those Rates, as by the printed Books 7 *Car. Regis* may appear. He dissuaded the Advance of Rates lately proposed by Sir *Abraham Daves*, so as it was declined: The Rates of Hides and Wool are moderate, Consideration being had of their true Value, and of the Places whereto they are to be transported, and of the Statute made in the Time of Queen *Elizabeth*, and there in force, prohibiting the Exportation of Wool, unless they pay to the Crown 5 *s.* the Stone. The Trade and Shipping of that Kingdom are exceedingly increased.

To the Eleventh, he saith, Pipe-staves were prohibited in King *James's* Time, and not exported but by Licence from the Lord Treasurer of *England*, or Lord Deputy of *Ireland*, who had 6 *s.* 8 *d.* per 1000, and his Secretary 3 *s.* 4 *d.* for the Licence: but to restrain that Destruction of Timber, by Command of his Majesty, and Advice of his Council, for his Revenue in *Ireland*, first 30 *s.* then 3 *l.* was charg'd. The Money was paid to his Majesty, who hath thereby about 1500 *l. per Annum*; and his Lordship lost about 4 or 500 *l. per Annum*, which his Predecessors had for such Licences. This is paid by the Transporter, not by the Natives, whose Commodity nevertheless appears by the Article to be very much increased.

To the Twelfth, he saith, The Subsidies there are an Inheritance in the Crown by Act of Parliament; 6 *d.* was paid for Subsidy, and 1 *s.* 6 *d.* for Imposit upon every Pound of Tobacco, and farmed at 10 or 20 *l. per Annum*. The Commons in Parliament, 10 *Car. Regis*, finding the Revenue to be short of the Expence of that Kingdom 24000 *l. per Annum*, petitioned those Grants might be applied to increase his Majesty's Revenue, without calling upon the Subject, but upon urgent Occasions. Hereupon, upon the Advice of the Committee of the Revenue, and in consideration of a Proclamation made in *England*, several Proclamations were made, and this settled in a Way, till it could be confirmed by Parliament; for which Purpose a Bill is transmitted, according to the Desire of the Commons, and the Imposit of Tobacco is let to Contractors for eleven Years, at 5000 *l. per Annum* for the first five Years, and 10000 *l. per Annum* for the other six Years. And the Earl hath lent Money to forward the Business, and by his Majesty's Allowance is a Partner; but hath not as yet, in two Years last past, had any Accounts thereof, or made Benefit thereby. He knoweth of no Whipping, or other Punishment. The Farms of the Customs are better than formerly 2000 *l. per Annum*, five 8 parts whereof is yearly paid unto his Majesty: the Prices of Tobacco exceed not 2 *s.* or 2 *s.* 4 *d.* the Pound; the settling of that Re-

venue, is according to the Petition of the Commons; he hath not raised, or countenanced any Monopolies, but opposed the same.

To the Thirteenth, he saith, He endeavoured to advance the Manufacture of Linen rather than of Woollen-Cloth, which might prejudice that Trade here: he bought Flax-Seed in the *Low-Countries*, and sold it at the same Rate to such as desired it; they making their Cloths not above a Foot broad, and winding eight or ten Threads from several Bottoms together; the contrary was twined: their Flax, formerly not above a Foot, became a Yard in length: and that Soil is fit to bear it, and the People love such easy Works. He hath set up many Looms, made much Cloth, and sold it to the loss of some Thousands of Pounds; but when the State saw the Natives would not change their old Courses for new and better, the Proclamation was declined. What he did was for the publick Good, and had nothing from them that was not fully paid for.

To the Fourteenth, he saith, He refers to the Oath and Proclamation, which was set forth by the said Earl and Council of State there, at the instance of the Farmers of the Customs, to prevent the defrauding of the King's Duties, whereof his Majesty had five eight parts. He never heard any Complaint of the Oath, or of any that refused to take it; and conceived it to be lawful, divers of the Council approving it, being learned Judges of the Law, to whose Judgment, for the Legality, he submitted, as well in that, as to other Matters of the like nature.

To the Fifteenth, He denieth what is in the Article objected; but saith, That about the Year 1626, certain Agents authorized in *Ireland* were sent into *England*, and offered and agreed to pay to his Majesty 120000 *l.* in six Years, towards the Maintenance of his Army; and a like Payment of 20000 *l. per Annum*, was after agreed, and continued for three Years longer. The Assessments were made, and it was shortly after, by them and the Lord *Faulkland*, then Deputy, agreed in *Ireland*, that the Money should not be charged upon Record, but levied by Captains, by Paper-Assignments, upon Warrants from the Lord Deputy: and this Course was held four Years in the Lord *Faulkland's* time, and the four Years wherein the Lord *Loftus* and the Earl of *Cork* were Lords Justices there; and it held for the remaining Year only, after the Earl of *Strafford* came thither. But the Earl of *Cork* having spared those Towns, for the Benefit of himself and Tenants, during the time of his being Justice; the Earl of *Strafford* reduced the Assessment to what it was made by the Lord *Faulkland*, and gave way that Sir *William St. Leger*, Lord President of *Munster*, should take the same Arrearages, in satisfaction of a Debt due unto him by his Majesty: and he is confident no Force was used in levying the same. It hath been usual to lay Soldiers to levy that Contribution, to send Soldiers to apprehend Contemners of Orders made at Council-Board, and the like; and when Out-laws and Rebels have been in the Woods, no Soldiers have in his time been laid, but by the Advice of the Council there. Touching the *Castle-Cumber*, it's a Parcel of the Territory of *Idough*, whereto the King was intitled by Inquisition, and the Possession established in a legal Way, when the

the said Earl was in *England*; and no Soldiers were sent, but only Twelve, at the intreaty of Mr. *Wanesford*, for the security of his Houses and Plantations against Rebels that then were out, and burned and spoiled Houses thereabouts: and neither *Richard Butler's*, nor any other Family, were thence expelled by the said Earl from their Estates.

To the Sixteenth, he saith, There was such a Proposition, which was just, to prevent clamorous Complaints here, which there might be redressed; but conceives, that by the Laws there, and the Articles known since, (by the Name of the Articles of Grace, made about fourteen Years since) none ought to depart that Kingdom without Licence.

Thereupon, by the Advice of the State, the Proclamations were set forth, but not with such Intent as in the Article.

He denied Licence only to Three, the Earl of *Cork*, the Lord *Mountnorris*, and Sir *Frederick Hamilton*; to the two former, in regard of Criminal Suits then against them in the *Castle-Chamber*; to the other, by special Command from his Majesty. But so soon as Sir *Frederick* said he would complain of the Earl, he made suit to his Majesty that Sir *Frederick* might come over; which was granted. He conceives such Restraint to be necessary, and if that be not continued, it will prove of evil Consequence to that Kingdom.

Parry was questioned at the Council-Board for Misdemeanours, and, to avoid Sentence, secretly went out of the Kingdom; and at his return, for that, and other Offences, was fined and imprisoned; to the Sentence thereof he refers, and knows of no other that were imprisoned, as by the Article is charged.

To the Seventeenth, he saith, It's like he might say, (for the better encouragement of the Officers and Soldiers of the old *Irish* Army, in discharge of their several Duties) that his Majesty was so well satisfied in the Way and Pains they took in using and practising of their Arms, that, in that Point, he would set them as a Pattern to be imitated: and conceives it would not be ill if they were so, they being, in the Opinion of those that have seen them exercise, very able and expert Soldiers. He spake not other Words, or to other Purpose.

To the Eighteenth, he saith, When the Earl of *Cork* was one of the Lords Justices, he seized some Houses in *Dublin*, pretending they belonged to Jesuits and Friars, without legal Proceedings; which upon Suits prosecuted at Council-Board, were, according to Justice, restored to the Owners: but how since employed, the Earl of *Strafford* knoweth not, but endeavoured the utmost he could to maintain that Seizure. Touching the 8000 Men, he saith, They were raised according to the King's Warrant, and that the said Earl left the Care thereof to the Earl of *Ormond* and others; and what number are Protestants, what Papists, he knoweth not, but believeth such a Body cannot be there raised, without many Papists: the greatest number of the Captains and Officers are Protestants, chosen by the said Earl. The Thousand Men were drawn out of the old, to make Officers for the new Army; and believeth the Thousand put to the old Army are Protestants, in

regard, by his express Order, no Papist is to be admitted there a common Soldier. He never preferred any Captain, Lieutenant, or Ensign, to be of that Army that was a Papist, and conceives they are duly paid; and believes those newly raised exercise the Religion no otherwise than was practised before the Earl's coming thither. He was a Commissioner to compound with the Recusants for their Forfeitures, and endeavoured to be informed of the utmost Value of their Estates: in four Years he brought that Revenue from 2300 *l.* to be between 11 and 12000 *l. per Annum*, more than ever was raised formerly in so short a time; by which faithful Dealings for his Majesty, he procured the hard Opinion of the Recusants throughout the Kingdom: That out of those Compositions he hath paid near 100000 *l.* into the Exchequer; and they had no other Privileges than what were exercised in the Commission, and in former like Commissions, and as are in the present Commission to the Lord Treasurer, and others.

To the Nineteenth, he saith, The last Summer was twelve Months, when the *English* and *Scotch* lay in the Fields near *Berwick*, the Earl and Council of *Ireland* having a general Notion thereof, were in fear that the *Scots* in *Ulster* (being almost 100000 in number) might be drawn to side with the Covenanters; and advising how to secure that Kingdom, the Principal of the Nation of *Scotland*, living in *Ireland*, came to *Dublin*, and petitioned, That they might have an Oath whereby they might give Testimony of future Obedience to his Majesty. Whereupon an Oath was by the Advice of the Council of State framed, and cheerfully taken by those *Scotch* Gentlemen, and generally by all the Nation in *Ireland*, as the Earl conceives, to their Advantage, and the Satisfaction of others. He believes that some were sentenced for refusing it, but none were otherwise exiled. The Earl in his Vote said, That he would endeavour that all of that Nation should take that Oath, or leave the Kingdom. All which was done by his Majesty's Direction and Approbation: And it was not contrived to the Intents of the Article charged, but to prevent their adhering to the Covenanters then in open Arms, and not concerning the Ceremony or Government of the Church.

To the Twentieth, he saith, That in the Year 1638, the Earl was in *Ireland*, when Preparations were made for War, and Summons sent to the Nobility of this Kingdom. In the Year 1639, a General was appointed, and an Army drawn to the Field, and encamped near *Berwick*; whereby it appears he was not acquainted that the Article of Pacification had been broken on both Sides, and so distempered, that it was held fit an Army in *England* should be raised to suppress the Covenanters, if the Business could not with Honour and Safety be otherwise composed. The said Earl humbly advised his Majesty to call a Parliament, and used many Motives thereunto. After the Parliament was called, and before the Sitting thereof, ten of the Lords, and other of the Council for foreign Affairs, being assembled, his Majesty then present, an honourable Person related the Covenanters Demands. It was then voted by all, That they were such as might not in Honour and Safety be condescended unto by his Majesty; and if they could not be otherwise reduced, his Majesty must be constrained to bring them to it by Force. The like

like Resolution was after at the Council-Table by twenty of the Council. Whereupon his Majesty appointed a Council of War; and it was held necessary to borrow 200000*l.* upon good Security, till the Supplies by the Parliament might come in. He never said the *Scotch* Nation were Rebels, but was ever persuaded that many of them were most loyal Subjects.

Those that raised Arms, when they were at such a distance from his Majesty, he might say they were no less than Rebels and Traitors. By Warrant from the Lord Admiral he caused divers Ships and Goods to be seized, but not with an Intent to set on the War, but, as much as in him lay, to bring all to fair Accommodations without Expence of Blood.

To the Twenty-first, he saith, The Pacification was broken before he came over, as in the Answer to the former Article: he moved his Majesty for a Parliament in *England*, but not with such Intent as in the Article, but out of a Desire to have settled a right Understanding between the King and his People. It may be said, (tho' he remembreth it not) That if the Parliament would not supply his Majesty, he would serve his Majesty in any other lawful Way; being well assured that his Majesty would not imploy him, nor any Man else, in any other kind.

To the Twenty-second, he saith, According to his Majesty's Instructions, he did set forth to the Parliament of *Ireland* the State of the Affairs, as they then stood; and they freely gave four Subsidies, as an Acknowledgment of his Goodness and happy Government, as by the Act and Remonstrance appears in Print. He, by his Majesty's Direction, then gave Order for the raising of 8000 Men, who still remain in the King's Pay, and were sent into *Ulster* to secure those Parts, or to land in *Scotland*, to divert the Earl of *Argyle*, in case he joined with the Covenanters Army against the King. But it was mentioned in the King's Letter, 2 *Martii* 1639, he had purposely given out, That they should join with the King's Army at *Berwick*, to colour other Designs: But the true Cause of their levying was made known to be as aforesaid unto the Earl of *Ormond*, Sir *John Burlace*, and the Marquis of *Hamilton*, and the Earl of *Northumberland*, at the time of the writing the Letter. And he denies the Words charged in the Articles, or any other Words to such Intent and Purpose.

To the Twenty-third, he saith, The Matters of the Parliament were no otherwise referred to him than to the rest of the Council: That coming sick from *Ireland* about ten Days after the Parliament were set, and after the Treaty with the Earl of *Dunfermline* and Lord *Lowdon*, *Scotch* Commissioners, was broken off, and the Army preparing, and the Parliament not supplying Monies as his Majesty desired, his Majesty advised what might move them to prefer his Supply. In debate whereof, he humbly advised his Majesty, by a Message to the House, to lay down Ship-Money, and promise never to demand it, and give way to reverse the Judgment by a Writ of Error in Parliament, and to promise a Redress of Grievances when they should be prepared. And secondly, That they would presently agree upon such Supply as should maintain his Army for reducing the *Scots* to their Obedience, wherein their Safety and his Honour was

concerned. His Majesty assented conditionally, that he might have twelve Subsidies: The Earl besought him that it might not pass as a Condition, but to relinquish Ship-Money, and put himself upon their Affections; and drew up the Message in Writing, and delivered it to Mr. Secretary *Vane*, to deliver to the House of Commons. He desired to know if his Majesty would not take less than twelve. His Majesty answered, He feared less would not serve his Occasions. The Earl of *Strafford* besought his Majesty to accept of eight. So his Majesty assented, and desired Mr. Secretary to signify so much, as occasion should be offered: But whether he did so or not, the said Earl knoweth not. The House of Commons being in debate two Days, and not resolving, his Majesty about the 5th of *May* last called a Council at seven of the Clock in the Morning: The said Earl being sick, came late, and was told (as he remembreth) by the Earl of *Berkshire*, the King had declared his Resolution to dissolve the Parliament. The Earl of *Strafford* besought his Majesty to hear the Advice of his Council, and first of those that were Members of the House of Commons, by whom the rest might the better be guided. Mr. Secretary *Windebank* said, He feared the House would first be answered of their Grievances, and voted for a Breach of the Parliament. Mr. Secretary *Vane*, in opposite Terms, said, That there was no hope that they would give the King a Penny, and therefore absolutely voted for a Breach. And the Earl of *Strafford* conceiving his Majesty's Pleasure to have accepted eight Subsidies had been delivered to the House of Commons by Mr. Secretary *Vane*, did in his Turn deliver his Vote for Breach of the Parliament, which otherwise he would not have done, it being contrary to what he resolved when he came thither; and the like Opinion was delivered by the rest of the Lords, being about twenty, except two or three at the most. The Parliament being dissolved, his Majesty desired Advice of his Council how Money might be raised, affirming that the *Scotch* Army was ready to enter into the Kingdom: The said Earl, in presence of others in the Council, delivered his Opinion, That in a Case of absolute and unavoidable Necessity, which neither would nor could be prevented by ordinary Remedies provided by the Laws, nor all his Majesty's other means sufficient to defend the Commonwealth, himself, or their Lives and Estates from an Enemy, without Force of Arms, either actually entred, or daily expected to invade the Realm; he conceived that his Majesty was absolved from ordinary Rules, and might use (in a moderate way, as the Necessity of the Cause would permit) all Ways and Means for defence of himself and Kingdom; for that he conceived in such Extremity, *Salus Populi was Suprema Lex*, provided it were not colourable, nor any thing demanded imployed to other use, nor drawn into Example, when Law and Justice might take place: and that when Peace was settled, Reparation was to be given to particular Men, otherwise it would be unjust. This was not officiously declared, but in Council, forced by the Duty of the Oath of a Counsellor, which is, That he shall in all things to be moved, treated, and debated in Council, faithfully and truly declare his Mind and Opinion according to his Heart and Conscience: Which Oath the said Earl took, and humbly prays their Lordship's Consideration thereof. He denies the Words in the Article, or any Words to the Intent thereby expressed.

To the Twenty-fourth, he saith, He delivered his Opinion with such Cautions and Restrictions, as in the Answer to the precedent Article; and is well assured his Discourse at all times hath been without ill Intentions to either of the Houses of Parliament, which he ever did and shall speak of with all Reverence. He denies that he knew of the publishing or printing of the Book, or who caused it to be printed or published; for at that time he was sick in his Bed, more like to die than to live.

To the Twenty-fifth, he saith, Ship-Money was levied, and adjudged to be due, before his coming over. Sheriffs were then called up as before, and not otherwise. If any were sued in *Star-Chamber*, it was without any particular Endeavour of his. It appearing at the Board that the Mayor and Sheriffs of *London* had been slow in collecting Ship-Money, he saith, They were but ministerial, and ought to exact, and not dispute the King's Writs; and that if thro' their Remissness the King should be less able to provide for the publick Safety, when any foreign Army was ready to enter the Kingdom, they might deserve to be fined and ransomed: which he spake more to hasten them, than of purpose to advise any such Prosecution. But denies the other Words, being, under favour, such Expressions as he is not accustomed unto.

To the Twenty-sixth, he saith, He advised not either of those Projects, (being then sick in Bed:) But it being debated at the Council-Table whether it were better for the King to raise Gold and Silver, or coin base Money, he (for the Reasons then given) deliver'd his Opinion for the latter. Sundry Merchants Adventurers coming to his House, desired him to move his Majesty, then at *Oatlands*, to release the Bullion, or Money: He told them he knew of no such Thing, and would not meddle with it; nor would his Health permit him to go abroad: and said, That if by their denying the King in such a publick Danger the Loan of 100000 *l.* upon good Security, the King were constrained, for the Preservation of the Land, to stay the Bullion, they might thank themselves; and the City receiving so great a Benefit by residing amongst them, they made but an unthankful Acknowledgment in such a Strait, to refuse the Loan of that Sum. The Officers of the Mint came to the Council-Board, and the Earl then shewed a Letter he received from the Earl of *Leicester*, wherein was related, That the Cardinal had appointed Commissioners to go into the Merchants Houses at *Paris*, to peruse their Shop-Books and Accompts, and cels every Man according to his Ability, towards the Payment of the King's Army; and then said, That it was but just for us here in *England* to bless God for being under a King which could not think upon such a pressing upon the People. But the Words in the Article, or Words to any such Intent, he did not speak; and cannot sufficiently bemoan himself to have been in all his Words so ill understood, or so untruly reported as he hath been.

To the Twenty-seventh, he saith, He perswaded the Gentry of that County to allow the Trained-Bands a Month's Pay; which they yielded, and his Majesty graciously accepted. It was by Council of War (his Majesty being present) thought fit

the Trained-Bands should return, save the two Regiments under the Command of Sir *William Pennyman*, and Sir *Thomas Danby*. It was assented unto by his Majesty, and the great Council of Peers then assembled, That those spared should contribute; and the said Earl was commanded by them to see it done. Which was done accordingly by Warrants from him, and from his Deputy-Lieutenants, which was much less Charge to the Countries than otherwise. And denies the other Particular in the Article mentioned.

To the Twenty-eighth, he saith, He was Lieutenant-General to the Earl of *Northumberland*, about the 24th of *August*, of 10 or 12000 Foot, and 2000 Horse, being at *Newcastle*, under the Command of the Lord *Conway* and Sir *Jacob Astley*, and the rest of the Army at *York*. The said Earl went from *London* on the 26th of *August*, notwithstanding his extreme Weakness, and came to *York*. And having received a Letter from Sir *Jacob Astley* that *Newcastle* was fortified, and that they must be infamous Beasts to lose it, and that it was fully secured; and being acquainted with several Dispatches sent by Mr. Secretary *Vane*, by his Majesty's Directions, to the Lord *Conway*, General of the Horse, to oppose the Passage of the *Scots* over the River *Tyne*, the one dated 22 *Augusti*, the other 23 *Augusti*, another 24 *Augusti*, another 26 *Augusti*, the Substance of which Letters are particularly mentioned in the Answer to this Article: and to the same Letters the said Earl referreth himself.

The said Earl, upon sight of this and Sir *Jacob Astley's* Letter, had reason to believe that all fitting Preparation was made; and then understanding that if the *Scotish* Army should pass the River, not only *Newcastle*, altogether unfortified on the south part, would be lost, but the said Army of 11000 Foot and 2000 Horse endangered; and hearing that the *Scotish* Army was distressed for want of Victuals, and knowing the Advantage that was in opposing the Passage of such a River: Hereupon the said Earl, by a Letter dated the 27th of *August*, advised the Lord *Conway*, with all the Horse, and at least 8000 Foot, and all the Cannon, to march and fight with them, upon the Passage of the River: At which time the said Earl had no Charge of the Army. But the Truth is, the Lord *Conway* having not with him all the Horse, and not above 1500 Foot, and only some part of the Cannon, was in a posture to fight for the Passage before the said Letter of Advice came, which he received not half an Hour before the Fight began, and proceeded according to his own Judgment, and his Majesty's said general Direction. And afterwards, that is, about the 30th of *August*, and not before, the said Earl took upon him the Charge of the Army at *Darlington*, and brought it to *York* to be supplied with Necessaries that they wanted, and purposed to have staid where they were quartered. But hearing from many Hands that there was a Purpose to question him in Parliament, and his Majesty having giving him liberty of staying there, or coming away, he left the Charge of the Army with the Lord *Conway*, and other Officers, as his Majesty had directed, and came to *London* on Monday the 9th; and the 11th of *November* was put under Restraint, and so hath ever since remained. And saith, That the Town of *Newcastle* was no way under his care. And as to other Matters, whereto by Law he ought to answer, and hath not answered, he saith, He is not guilty of them, or any of them, in such manner

manner and form as in the said Article is expressed; and humbly prayeth a convenient Time for making his Proofs, and to justify and maintain his Actions in *Ireland* by sight of his Majesty's Warrants, Records, and Witnesses, in that Kingdom; and that if any Mistake be in his Answer, it may be amended.

And this the said Earl hopeth, that, upon equal Construction of his Words and Actions, he shall appear free from any great and heinous Offences wherewith he is charged: And howsoever it shall please God to dispose of him, he shall ever pray, that by their Lordship's great Wisdom and Prudence, the Affections of his Majesty, and Duty of his Subjects, may this Parliament be so surely knit together, as may by God's Blessing lastingly tend to the Prosperity and flourishing Estate both of King and People.

THE Place appointed for the Trial was the great Hall in *Westminster*, where there was a Throne erected for the King, on each Side thereof a Cabinet enclosed about with Boards, and before with a Tarras. Before that, were the Seats for the Lords of the Upper House, and Sacks of Wool for the Judges; before them, ten Stages of Seats, extending farther than the midst of the Hall, for the Gentlemen of the House of Commons: at the End of all was a Desk closed about, and set apart for the Lord-Lieutenant and his Counsel.

March 22. Monday Morning about seven of the Clock he came from the *Tower*, accompanied with six Barges, wherein were one hundred Soldiers of the *Tower*, all with Partizans, for his Guard, and fifty Pair of Oars. At his landing at *Westminster*, there he was attended with two hundred of the Trained-Bands; and went in, guarded by them, into the Hall. The Entries at *White-Hall*, *King-street*, and *Westminster*, were guarded by the Constables and Watchmen, from four of the Clock in the Morning, to keep away all base and idle Persons.

The King, Queen, and Prince, came to the House about nine of the Clock, but kept themselves private within their Closets, only the Prince came out once or twice to the Cloth of State; so that the King saw and heard all that passed, but was seen of none. Some give the Reason of this, from the received Practice of *England* in such Cases: Others say, that the Lords did intreat the King either to be absent, or to be there privately, lest Pretensions might be made hereafter, that his being there was either to threaten, or some otherwise to interrupt the Course of Justice: A third sort, That the King was not willing to be accessary to the Process till it came to his part, but rather chose to be present, that he might note and understand what Violence, Rigour, or Injustice happened.

When the Lieutenant entered the Hall, the Porter of the Hall (whose Office it is) asked Mr. *Maxwel*, whether the Ax should be carried before him or no? who did answer, That the King had expressly forbidden it: nor was it the Custom of *England* to use that Ceremony, but only when the Party accused was to be put upon his Jury. Those of the Upper House did sit with their Heads covered, those of the Lower House uncovered. The Bishops upon the *Saturday* before did voluntarily decline the giving of their Suffrages in Matters Criminal, and of that Nature, according to the Provision of the Canon Law, and Practice of the Kingdom to this Day; and therefore would not be present: yet withal they gave in a Protestation, that their Absence should not prejudice them of

that or any other Privilege competent to them, as the Lords Spiritual in Parliament, which was accepted.

The Earl of *Arundel*, as Lord High Steward of *England*, set apart by himself, and at the Lieutenant's Entry, commanded the House to proceed. Mr. *Pym* being Speaker of the Committee for his Accusation, gave in the same Articles which were presented at his last being before the Upper House; which being read, his Replies were subjoined and read also, the very same which were presented before in the Upper House. Some give the Reason of this, because the Lower House had not heard those Accusations in publick before; others that the Formality of the Process required no less: However, that Day was spent in that Exercise.

The Queen went from the House about eleven of the Clock, the King and Prince staid till the Meeting was dissolved, which was after Two. The Lieutenant was sent to the *Tower* by his Guard, and appointed to return upon *Tuesday* at nine of the Clock in the Morning. The Croud of People was neither great nor troublesome; all of them saluted him, and let them, with great Humility and Courtesy, both at his Entrance and at his Return: therefore let Fame pretend what it pleases about the Malice and Discontent of the Multitude, *That if he pass the Stroke of Justice, they will tear him in Pieces*; yet I see there is more in Rumour than in Sight and Appearance; and in this Report, as in all others of this Nature, more is thrust upon the Vulgar (who seem as well fearful of Punishment, as exempt from it, for all their great Number) than they do justly deserve.

March 23. On *Tuesday* in the Morning he came accompanied as before to *Westminster*; and having staid in the *Exchequer-Chamber* till nine of the Clock, the King, Queen, and Prince came, as before upon the first Day.

Then Master *Pym* being called for, aggravated the Charge, which was given the Day before, by a very ample Speech. It is impossible to call to Mind all the Hyperboles, the Flashes, and superlative Expressions that he used; the main Points were, That it was Treason far beyond the Reach of Words, that he the Lieutenant, a native Subject and a Peer of *England*, the prime Governor of *Ireland*, the Commander of his Majesty's Forces, and a Protestant in Religion, should have in such an impious and gross Manner recompensed his Majesty's Favours, abused his Goodness, and drawn all his Dominions into Hazard and Peril of their Religion, Lives, Goods, and Privileges: That one of these Faults alone had been enough, and too much, for the fulfilling of the Exorbitancy and Wickedness of any one Man; and that no Punishment could be thought upon, sufficient to expiate Crimes of such a transcendent Nature.

The Lieutenant, with no less Moderation and Wisdom than the other with Heat and Passion, spake to his own Defence; and that with such a Measure of Eloquence and Livelyhood, that his very Enemies were affected with it, and do marvelously report of it.

He modestly recounted his Services done to the King and Crown of *England*, his Endeavours for Advancement as well of the Honour as Commodity of both Kingdoms in general, but in particular that of *Ireland*; how he had engreatned and advanced the King's Revenues there, restored the Churches Maintenance, suppressed the Outlaws, established Obedience to Royal Authority, and impeded the Tyranny and Usurpation of Greater Ones

Ones over the Commons. And for the effecting of all these Actions, he mentioned himself the most weak and meanest Instrument, with a wonderful Prudence, in a middle Way, betwixt the Affectation of Baseness, or Dejectedness, and Arrogance.

Master Pym, after the Close of his Speech, told him that there were three new Articles adjoined (by an After-search) to his Charge; and desired that he might presently reply to the same.

Whereunto the Lieutenant answered, It was very strange, that after the Close of the Process; and when Matters were come to be scann'd, and examin'd by Proof, that any new Charge should be given in; yet, lest he should seem to decline the Maintenance of his own Innocency, and the just Defence of his Honour, he was most willing to hear them and have them alledged, provided that a convenient Time might be assigned him to make his Replies against them, as he had done to the other given in before.

But Master Pym excepted against this, and told him, that the House did conceive it to be dangerous to grant any farther Prorogation.

Upon this, the Lords of the Upper House (who did not think it fit as yet to voice any Particular in the Audience of the House of Commons) did retire themselves, and after a pretty time of Stay, they returned and declared, that they had found the Lieutenant's Suit to be equitable, in desiring of further Time for answering; yet seeing the Articles themselves, neither for Number nor Weight, seemed to be of that Importance, but that he might furnish out a present Answer, they thought it fitting to grant no delay.

The Lieutenant then (intreating them to pass by and pardon the Weaknesses of his extemporary Answers) desired to hear the Articles read, which were these:

First, *That he had within these two Years withdrawn Forty Thousand Pounds Sterling from the Exchequer in Ireland, and employed it to his own private Uses.*

Secondly, *That in the beginning of his Government, the Garrisons in Ireland had been maintained by the English Treasury.*

Thirdly, *That he had advanced Popish and Infamous Persons, as the Bishop of Waterford and others, to the prime Rooms in the Church of Ireland.*

To the first he answered, That Thirty Thousand Pounds were set apart for the King's late Service, at his own most special and most peremptory Commands; for which he produced the King's own Letter, already approved as his Acquittance at the Exchequer Board in Ireland.

To the second, That at the beginning of that Charge against him, as ever before his time, the Garrisons had been burdensome to the Kingdom of England; but that he had so improved it, and settled the King's Revenue there, that the like is not to be heard in all the times that are by-past: for which (if the best Endeavours of a Subject may justly expect any Reward from his King and Country) he craved leave to think that he rather deserved many Thanks, than the least Punishment.

To the third, He appealed to all the Clergy in Ireland, if ever he had taken upon him any particular meddling in advancing their Churchmen, or whether he had done any thing concerning such Affairs, but upon the special Advice and Desire of the best and wisest of their Number. For his part, when he befriended the Bishop of Waterford,

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he conceived of him as a Man of Integrity and Learning; fit for such an Employment; nor was there then the least Suspicion of those monstrous Impieties; wherewith he was afterwards charged; that he had now justly suffered for the same, and that he hoped they would not lay a Necessity upon him to prophesy and divine of the future Conditions and Deportments of Men. For others of the Church, suspected of Popery, he knew none such, but should answer to the Particulars so far as they concerned him, when they should happen to be alledged.

After this the House dissolved for that Night, the King's Majesty and the Prince having staid all the time; and the Lord-Lieutenant was appointed to come thither again on Wednesday Morning; at which time they are to proceed to the first Article, to give an Oath to the Witnesses, and to examine all the Proofs whereon the Process was builded.

It will be a very hard Matter for him to expect every Man's Testimony, and to give his Answers, either for full Satisfaction or Diminution of all Objections; which way of Proceeding will spend at least a Fortnight, if not a greater Space of time; yet it is thought the Lower House are impatient of Delays. The Expectations are exceeding various and different about the Event of this great Action: some think it will be impossible to escape the many and great Accusations laid to his Charge; others, and that the greater Number too, are of Opinion that he will be in no Hazard of his Life, and that it will not be possible to bring him into the Compass of Treason; (*quod tam misere cupio ut non credam.*) His adverse Party is so great, and so far interested both in Point of Safety and Honour against him, that *fletere si nequeunt Superos*, &c. nothing will be left unessay'd, that may accelerate his Ruin.

He hath all this time carried himself courageously, to the Admiration (and withal so moderately, that it is to the great Satisfaction) of his very Enemies; so that he seems neither dejected with Fear, nor to affect Boldness with Confidence, but to carry himself with that Constancy and Resolution, which his Innocency and brave Parts do promise.

The Irish Commissioners here, have hitherto abstained from giving in any Remonstrance against the Lieutenant, and do still plead to have an immediate Dependance from the King, and not from the Parliament of England. There was a Report that the Parliament of Ireland had sent a Protestation against the Act made the last Year, for the King's Supply in his Expedition against the Scots; as a thing which was violently in part, and in part surreptitiously obtained from them: but I have learned this to be an Untruth. I had almost forgotten one Passage of Mr. Pym, who in the Aggravation of the Lieutenant's Faults, had this Expression, That he was like the Whore in the Proverbs, *He wiped his Mouth, and with a brazen Face said he had done no Evil.*

To this the Noble Lord replied, That he wished his Innocence might not be taken for Impudence; that he hoped shortly to clear himself of all those foul Aspersions which his malicious Enemies had cast upon him; and he was very confident that he should give the Honourable Houses full Satisfaction concerning his Life hitherto, and thought of nothing more hereafter than to retire himself from all publick Employments.

Mr. Pym gave at this a great Shout, and desired the House to take notice what an Injury he had

done to the Honourable House of Commons, in calling them his malicious Enemies.

Whereupon the Lieutenant falling down upon his Knees, humbly besought them that they would not mistake him; and withal gave a large Panegyrick of their most just and moderate Proceedings, protesting that if he himself had been one of the House of Commons, (as he had the Honour once to be) he would not have advised them to have done otherwise against his dearest Friend: but withal told them, that he might justly say he had his own Un-friends, which he hoped in time to make known. Nor did he all this time speak one bitter Word against Mr. Pym, tho' justly incensed; which hath infinitely advanced his Reputation.

I have been a daily Hearer of these Proceedings against this great Personage now upon the Stage, therefore do presume I can give a reasonable Account thereof. The Book of his Charge is extant in Print, so it shall be needful for me only to name the Articles, as they were canvassed; and those designed by the House of Commons to be his Accusers, which were these that follow:

The Names of his Accusers.

Pym, Glyn, Maynard, Whitlock, Lord Digby, St. John, Palmers, Sir Walter Earle, Stroud, Sel-den, Hampden, &c.

One of these began the Speech; the rest, after their Colleague hath done, follow in their Turn: so that he hath all of them to wrestle against, and yet sufficiently able for them all; tho' by his Agitation his Spirits are much exhausted.

Mr. Glyn, after a large Flourish, on *Wednesday*, told the Lords, That the Lord *Strafford* was impeached, not with simple, but accumulative Treason: For tho' in each particular Article, such a monstrous Crime could not be deprehended, yet when all was conceived in the Mass, and under one View, he should be undoubtedly found the most wicked and exorbitant Traytor that ever was arraigned at the Bar. He added, That his Charge was for intending to subvert and change the Fundamental Laws, Liberties, and Privileges of both the Kingdoms, and to introduce an Arbitrary and Tyrannical Form of Government. This, he said, could not appear but by the Fruits, which were either in Expression or Action. The Expressions were four:

First, That before several Witnesses he had said at *York*, *That the King's Little-finger should be heavier to them than the Loins of the Law.*

To this the Lieutenant replied, That having spoken sufficiently before to his Justification in general; he would moreover add these few Words, by their Favours: That it did strike them to the Heart to be attached of such a wicked Crime, by such honourable Persons; yea, that it wounded him deeper, in regard that such Persons who were the Companions of his Youth, and with whom he had spent the best of his Days, should now rise up in Judgment against him: yet he thanked God for it, it was not Guilt, but Grief, that so much troubled him. He added, That it was a Wonder how he had gotten Strength sufficient in such Infirmary of Body, and such Anguish of Mind, to collect his Thoughts, and say any thing at all for himself; but the Almighty God, who knows him to be innocent, had furnished him with some Abilities to give Testimony to the Truth, and to a good Con-

science: He therefore intreated, that if either in Judgment or in Memory he should at any time fail, it might be imputed to his great Weakness. And altho' the Gentlemen his Accusers should seem more ready in their Accusations, than him self in his Defence, yet that might not prejudice his Cause; who, in very unequal Terms, had to do with learned and eloquent Lawyers, bred up a long time and inured to such judiciary Pleadings, and whose Rhetorick, he doubted not, might present many things to their View in a Multiplying-Glass. He told them farther, That for these many Years he had been weary of publick Service, and that now it was his Resolution, after he had vindicated his Honour, to retire himself, and enjoy his much long'd-for Privacy: and yet he could not but tell them so much, that it had been his hearty Wish and Desire, rather voluntarily to have resigned his Places of Honour, like a ripe Fruit fallen from the Tree, than to be violently pulled from thence, as a fruitless and unprofitable withered Branch.

To the Charge of Treason, he said, That under Favour he conceived that altho' all the Articles contained in his Impeachment were verified against him, yet they would not all amount to Treason; neither simple nor accumulative: For (said he) I do not understand by what Interpretation of Law, the Diversion of Justice can be called a Subversion of the same; or the exceeding of a Commission, the Usurpation of a new Power. To the Particular he replied, That his Words were clearly inverted, for that his Expression was, *That the Little-finger of the Law (if not supported by the Regal Power, in granting Pardons for Penalties of the same) was heavier than the King's Loins.* That this was his Expression, he verified:

First, By the Occasion: for he spake the Words a long time since, to some Men who had lain imprisoned at *York*, and were then by the King's Favour set at Liberty; whom he incited to Thankfulness (by this Expression) towards his Majesty.

Secondly, By Witnesses produced by him. In the Examination of their Witnesses he convinced one of them of Untruth, by interrogating him where he was when the Speech was heard, and how far distant from him: when the Man replied, that he was twelve Yards from him; he answered, that it was impossible for him to hear a Man three Yards off, by reason of a Deafness that had held him fourteen Years: which being found true, the Witness was rejected.

Another Witness (Sir *David Foulis*) was brought against him; against whom he excepted, as his known and professed Enemy: 'twas told him, that he himself did not use to admit of Exceptions against Witnesses, and therefore was to expect the same Measure.

He replied, That Master *Pym* might one Day perhaps be attached, for persuading the House of Commons to commit the same Crime that was laid upon him as a Charge of Treason. But for all this, the Witness was received, because in Matter of Treason a Man's Enemy may witness against him *pro Domino nostro Rege*: tho', I suppose, the King's Advice was never asked for the present. This was all that was done for that time.

On *Thursday* he was charged with the second Expression; *That he said Ireland was a conquered Kingdom, and that the King might prescribe them what Law he pleased.*

This

This they aggravated as a prime Note of his Tyrannical Will and Affection, that would permit no Law to bound the Subject, but what himself, and such as he, might draw up by finistrous Informations, from a gracious and well-meaning Prince: and if this were admitted, the whole Power and Liberty of the Republick would be utterly lost.

To this he replied, That neither was the Expression in those words, nor in that sense spoken or meant by him. The first part of it (said he) cannot be denied: to the second, that he had said only, *That the King was the Law-giver*, which he hoped none could deny without incurring the Crime of Treason; and that *the King's Sentence was a Law in matters not determined by Acts of Parliament*, which all but disloyal Subjects would grant. And that it had ever been his endeavour to have the Liberty of the Subject and the Royal Prerogative follow both in one Channel; if either of them crossed other, we could expect nothing but a Subversion of the Commonwealth, either by Tyranny or Rebellion: That the Prerogative was like the first, the Liberty of the Subject like the second Table; either both or neither can be preserved. That in his Duty he stood obliged first to the King, as God's Anointed; then in the second place to his Country, if it did not cross the Regal Power. And therefore hoped, that what he had spoken was so far from being Treason, that he thought a thousand such Expressions would not make up one Felony.

March 26. On Friday the two other Expressions were followed; That he said, *He would not suffer his Ordinances to be disputed by Lawyers, before inferior Judicatories, and that he would make an Act of State equivalent to an Act of Parliament.*

To the first he said, That he had often said (more than once) that he would not suffer his Ordinance to be contemned; because, in him, his Master's Honour was wounded.

To the second, He thought a proportionable Obedience was due to Acts of State, as well as to Acts of Parliament; otherwise they were made in vain, if that both did not bind in one kind.

The Lord *Cork* (tho' his mortal Enemy) was now examined, and admitted as a Witness; whom in his Deposition he convinced of two shameful Oversights: for *Cork* had declared upon his Oath, that the Lieutenant had caused to be interlined an Ordinance against himself, and had caused some words to be scraped out; which words were notwithstanding still found to be in the Sentence, by an authentick Copy under the hand of Sir *Paul Davison*, Clerk to the Council-Board of Ireland.

Then *Cork* alledged, That he had advanced a Groom of his to be a Preacher; who by a Testimony from the University of *Dublin* he verified to have been a Master of Arts ten or twelve years before his Advancement: adding withal, that my Lord of *Cork* was an excellent Scholar, who was able to breed such Grooms.

Upon Saturday, having done with his Expressions, they canvassed the first Article about his Actions:

Against the Lives of the King's Subjects, both in the Case of the Lord *Mountnorris*, and also of another of the King's Subjects, both of whom he had sentenced to death by Martial Law, contrary to all Law, and to the manifest Subversion of the Privileges of Subjects, *Magna Charta*, and the Petition of Right.

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To the Lord *Mountnorris's* Case, he replied,

1. That tho' that Sentence had been unjustly given and rigorously prosecuted against him, yet the greatest Crime that he could be charged withal; would but amount to Manslaughter, or Felony at the most.

2. That he hoped (tho' this were true) to obtain a Pardon from his gracious Master the King's Majesty, as well as *Conway* and Sir *Jacob Astley* had lately done, for exercising Martial Law in the Northern Army.

Then he replied to all the Parts of the Charge, which were four:

1. That he had exercised Martial Law in time of Peace.

To this he answered,

(1.) That all Armies have been, and must be, governed ever by Martial Law.

(2.) That there is a standing Army in Ireland, and therefore the Case is all one in time of Peace or War; and that the Army might be undone, if they should not use Martial Law, but were to expect Remedy for the settling of a Mutiny, or Assurance of Obedience, from the Common Law.

(3.) That it had ever been the Practice of the Deputies, particularly of *Wilmot*, *Falkland*, *Chichester*, yea *Cork* himself; and therefore was no new thing brought in by him. This he proved, both by the Production of the military Ordinances, and by divers Witnesses who knew Sentences given in that kind by them.

(4.) That he had a particular Warrant in his Commission for this Power.

(5.) That in the Lord *Mountnorris's* Case, he was commanded to exercise the same, by the King's particular Letter: both which he caused to be read.

The second Charge was, That he was both Party and Judge in the Lord *Mountnorris's* Cause.

To this he replied, That he had sitten in Judgment, because he was one *sine quo non*, the Judgment could not proceed without him: but that he was not Judge, but Party, appeared,

1. Because he sat uncovered all the time.

2. Because he refused to give his own Opinion.

3. Because he did not give his Suffrage one way or other.

4. Because he removed his Brother Sir *George* from having a hand in the Process, in regard of Interest of Blood.

The third Charge was, That he proceeded summarily in the matter of the Lord *Mountnorris*.

He replied, First, That he was not Judge in it, and that the Council of War was to be answerable in the Justification of their own Proceedings.

Secondly, That after a long Reasoning he had heard them say, that no delay could safely be granted in Martial Courts.

The fourth Charge was, That he had not heard the Exceptions made by *Mountnorris* against his Witnesses.

To this he answered, as before, That he was not Judge in the Case, and that he remembers no Exceptions made against any Witnesses. To which he added, That as he had been regulated in his Proceedings, so he had been moderate in the Execution of that Sentence: for tho' the Lord *Mountnorris* justly deserved to die, yet he had obtained him the King's Pardon, for the saving of his Life; and protested, that he intended nothing by that Sentence, but in some measure to repair his own

5 B 2

Honour,

Honour, and to give *Mountnorris* fair reproof, who was known to be of an exorbitant and licentious Tongue and Spirit. Adding, that if the House of Commons would go on the same way with him, and assure him that the Issue of his Charge should be nothing else but to admonish him for the time to come, he would thank them heartily for it, and study Amendment in all pretended Oversight. And whereas *Mountnorris* complained that he had jeeringly told him, when the Sentence was passed and pronounced against him, That ere he lost his Head, himself would lose his Hand; he answered, That he had been thought to be very insolent and haughty, yet he was never so impertinent to use this Expression: If any fault were, it was for undervaluing himself, in saying, That ere a Hair of *Mountnorris's* should perish, he would lose his Hand. And truly (said he) if *Mountnorris* would say so to me now, even in the worst sense that can be conceived, That ere I died he would lose his Hand, I would take it very kindly from him.

For the other Man, he avouched that he himself had voiced to hang him, both because he was an errant Thief, and also had fled from his Colours, which by the Common Law (and to this effect he cited a Statute 20 Hen. 6. and 7 Hen. 7.) is Felony. He concluded, That seeing he was not necessary to the Sentence against *Mountnorris*, had not sat there as Judge, had a power to keep Martial Courts by his Commission, had not exercised the same till a new Command came from his Majesty, had done no more than ever was practised in *Ireland* before his time, and had at last obtained *Mountnorris's* Pardon; he hoped there was nothing accusable in him, but his too remiss and too moderate Proceedings.

Master *Glyn* bitterly replied, That he knew the time when the Earl of *Strafford* was no less active and stirring to enlarge the Liberty of the Subject, and advance the Petition of Right, than now he is for extending his own Arbitrary and Tyrannical Government.

To this he replied, without the least Semblance of Passion, That if at any time he had done the least Service to the House of Commons, he thought his whole Life well spent; nor could they ever so graciously reward him, as to give Commission to that Gentleman to express so much before that Honourable Assembly: But withal, if ever any such thing was done by him, he intreated it might now be remembered, and might now serve to overbalance some slight and mean Oversight committed by him; which he hoped should never make him guilty of Treason, unless it were Treason for a Man to have no more Wit and Prudence than God and Nature had bestowed upon him. And so much for *Saturday*.

March 29. Upon Monday he was charged with the sixth Article; That he had used a Tyrannical Government, not only over the Lives (as appeared by the last) but also over the Lands and Goods of the King's Subjects, as appeared by this Article; wherein he was charged to have dispossessed the Lord *Mountnorris* of a Tenure of Lands, by a Summary Process before himself, contrary to all Law: and therefore had failed,

1. Against the Act 7 Hen. 6. which provides all Matters to be determined by the ordinary Judges.

2. Against the Cautions sent to *Ireland* by King *James*, expressly forbidding such Power hereafter to be exercised.

3. Against the King's late Proclamation.

4. Against the Practice of all Deputies before that time.

Withal they added, That it was a Tyranny that could not be expressed, to exercise this Power over the Persons of the Peers of the Land, and their Goods.

To this he replied, That for his part, in matter of Justice (under favour he spake it) he thought there was no distinction to be made betwixt a Peer of the Land and one of the Commons, except they did think that either Fear or Faction should do something, which had no Place in him.

To the Particulars:

1. That the Act of Hen. 6. answered itself sufficiently, both because it excepted the Court of Requests (and that his Proceedings were nothing else in *Ireland*) and also makes an express Reservation of the King's Prerogative; which he said was his Strength, because he derived his Commission from the King, and that the Act was the most express Warrant in the World for him.

2. That he had not failed against the Cautions given by King *James*.

(1.) Because they were not charged upon him.

(2.) Because they were never observed, nor could be by the Deputies to whom they were given; which he proved both by Witnesses and Writings.

(3.) Because the Caution made rather for him than against him, in that it contained the Word *hereafter*, which manifestly implied that the Power had been sometimes before exercised in *Ireland*, and not only by himself; and therefore thanked them for that Testimony and Hint.

(4.) That tho' the Cautions had been given to him, yet he had received an express Command from the King his Master to put that Power in use: causing the King's Letter, for that purpose, to be read; and professing withal, That he was tender to exercise that Power, till the King (induced by the humble Remonstrance of the meaner sort of People) had most peremptorily, and upon most just Reasons, commanded him.

3. That he could not obey the King's Proclamation five Years before it came out; and that he wished from his heart, that they would but respect the King's Commands and Commissions with that Tenderness of Affection and Obedience, as he did his Proclamations.

4. He proved it to be the constant Practice of all Deputies that went before him.

It was objected, That other Deputies had indeed upon Suits of Equity determined themselves, as to Matters of Debt, but never of Land.

He replied, First, That the same Authority reacheth as well to the one as to the other. Secondly, That neither he nor they had ever given Sentence, or determined any thing concerning Matters of Inheritance; but only concerning violent Intrusion, which fell directly within a Suit of Equity. To which he added,

First, the Equity of that Court; that it proceeds upon the same Grounds and Evidences as that of the Common-Pleas, and that he had the Assistance of two of the learned Judges in deciding the Controversy.

Secondly,

Secondly, The Profit of that Court, which dispatcheth the Poor in a Day or two; whereas the Common Law would keep them so many Years; which they are not able to sustain.

Thirdly, The Necessity of that Court in that Kingdom, which ever hath been governed by that way, and therefore impossible to debar the Natives from it, without great inconvenience; for it would utterly undo them, and none is prejudiced by it but the Lawyers. And therefore seeing that he had done nothing but what was customary, necessary, and equitable, being commanded to it, and the Sentence just; he hoped rather for Thanks from the State, than a Charge for his ill Deportment. Withal, he shewed with what Extortion and Violence the Lord Mountnorris had taken seizure of that piece of Land, and made the playing of his Game to be very foul. And at last he added, That he had done no more in Ireland, than the Court of Request in England usually doth, and that the Chancery Court in Ireland doth the same daily; and the last Chancellor was never charged (said he) for such Proceedings, tho' this his Power and Authority was less than mine: but the difference of the Person, and his Authority (it seemeth) differeth the matter. And this was the Business on Monday.

On Tuesday they passed by the 7th Article, and the two first Parts of the 8th, and insisted on that Part about the Lady Hibbot's Land; That he had violently thrust her from her Possession by this summary way of Justice, and afterwards purchased the Land to his own use, by borrowing the Name of Sir Robert Meredith.

In this Probation, the Testimony of the Gentlewoman's own Son was used, of the Lord Cork, and the Lord Mountnorris, all his Back-friends, or professed Enemies: And yet they prove very little, but what they took upon Hear-says. Their prime Allegation was,

First, That tho' the major part of the Council-Board had voted for the Lady, yet the Lord-Lieutenant had given Decrees against her.

Secondly, That all was done to his own behoof.

To the First, He produced the Sentence under the Hand of the Clerk of the Council-Board, subscribed by the major part.

To the Second, He attested that he had no Under-dealing with Meredith; for the Lady had got her own Lands back from the said Sir Robert Meredith. He also declared, at length, with what Fraud and Deceit the Lady had come to her Lands, and upon what Reasons they were restored.

After this Article they fell upon the 9th, about the giving of Commission to the Bishop of Downe and Connor, for apprehending all such Persons, and presenting them before the Council-Board, as contemned the Ecclesiastical Ordinances. This was aggravated as a Point mainly against the Liberty of the Subject. To this he replied:

First, He produced the Primate of Ireland's Testimony under his Hand, (he being himself sick) that the same Course had been used in Ireland before; and that Bishop Montgomery, his Predecessor in the Bishoprick of Meath, had had the same.

Secondly, He shewed the Equity that such Assistance should be given to Churchmen, who otherwise, because of Papists and Schismatics, either to God or the King, would have no Respect or Obedience given them in that Kingdom.

Thirdly, He proved by two Witnesses that such Warrants were in use before his time.

Fourthly, He said, he had never granted any but that one, and had presently, within some few Months, called the same in again. What (said he) was the Bishop of Downe's Carriage in it, he had no reason to answer for: But he presumed the Bishop could give a satisfactory Answer for himself, when he should be called in question. And so he concluded, that a Matter so just, so necessary, so customary and practical before, he hoped should not be charged upon him as an Introduction of a new and tyrannical Form of Government; and therefore submitted himself to the Mercy of God, and the Equity of his Peers in his Trial. And this was the Work on Tuesday.

The Ability of this brave Gentleman ravished his Hearers with Admiration, tho' he be infinitely spent both in Body and Mind by the continued and almost uninterrupted Agitation.

After the 9th Article was passed against the Commission issued in favour of the Bishop of Downe and Connor; upon Wednesday Mr. Glyn proceeded to the 10th Article. The Charge was, That the Earl of Strafford having established an arbitrary and tyrannical Government over the Lives, Lands, and Liberties of the King's Subjects, his next Desire was to make Intrusion upon the Crown itself, that by applying to his own use the publick Revenues, he might be the more enabled to accomplish his disloyal and traitorous Intentions. To which end, having by a new Book of Rates enhanced the Customs, he had gotten by Advantage of his Lease above Twenty-six thousand Pound yearly. This (they added) was a Crime of a higher nature than those contained in the preceding Articles, because in those there was some Colour or Pretext of Justice, here none; those in particulars, this in general; those against the Subject only, this against the King himself.

For the Proof of the Charge, they produced the Lease of the Duke of Buckingham.

Which was read and compared with that Lease to the Dutchess of Buckingham, (which the Lieutenant hath now by Assignment) and some Differences shewn, arising to the Sum of Two thousand Pounds in the Duke's Lease; only the Moiety of concealed and forfeited Goods were due to him, but the whole Goods to the Dutchess in her Lease. Again, the King's Ships of Prizes did not pay Custom in the Duke's Lease; in the Dutchess's they did. Again, the Impost of the Wines (then belonging to the Earl of Carlisle) was not in the Duke's Lease; in the Dutchess's it was. Lastly, Whereas the Earl of Strafford paid but Fourteen thousand Pounds *per Annum* for the Custom; it was worth to him, as was apparent by the Books of the Exchequer, Forty thousand Pounds.

Witnesses were examined.

First, Sir James Hay, who deposed, That the Earl of Carlisle had an Advantage of One thousand six hundred Pounds *per Ann.* by his Lease of Wines.

Secondly, The Lord Ranelagh, who deposed, That by the Inspection of the Books of Accompts, he had found the Customs to be Anno 1636 Thirty-six thousand Pounds, Anno 1637 Thirty-nine thousand Pounds, Anno 1638 Fifty-four thousand Pounds, Anno 1639 Fifty-nine thousand Pounds.

With the Proof they concluded the Charge, That notwithstanding the Lord Strafford pretended a great Measure of Zeal and Honesty in his Majesty's Service

vice, yet it is evident he had abused the Trust put upon him; and by withdrawing so great Sums of Money from the Crown, had weaken'd the King, prejudiced the Subjects of the Protection they were to expect from him, and had been the Cause that the extraordinary way of Impost and Monopolies had been undertaken for supplying of the Royal Necessity. And that this Act therefore ought to be enough to make the Charge and Impeachment of High-Treason laid against him.

The Lieutenant's Reply was, That he conceived he had given full Satisfaction to all hitherto brought against him about that pretended arbitrary Government; nor would he spend Time in vain Repetitions: For the present Article, tho' in all its Parts it were granted to be true, yet he could not perceive by what Interpretation of Law it could imply the least Act of Treason; and when it should be directly charged upon him as a point of Misdemeanour, Oppression, or Felony, he made no doubt but he should be very able to clear himself abundantly in that Point also; yet, lest any Prejudice might stick to his Honour by these bold Assertions, he was content to step so far out of the way, as to give answer:

First, That it concerned him nothing what Particulars in the Lease had pass'd betwixt the King and the Dutches of *Buckingham*, or whether she had obtained a more easy Condition than the Duke her Husband, especially seeing that same was granted some Years before his coming to that Government: yet thus much he could say, That the Dutches had paid Thirty thousand Pound Fine; and therefore no marvel her yearly Rent was the less.

Secondly, For the Book of Rates (wherein the chief Matter of Oppression and Grievance seemed to rest) the same was there established by the Deputy *Falkland*, Anno 1628, three Years before his going into *Ireland*; and therefore it was exceeding strange in his Apprehension, how that could rise up in Judgment against him.

Thirdly, That he had his Interests in the Customs by Assignment of a Lease from the Dutches, which was given her before his Government: Nor did he ever hear it alledged as a Crime of Treason, for a Man to make a good Bargain for himself.

Fourthly, That not of his own Accord, but at the King's special Command, he had undergone that Charge, in hopes, that upon the Enquiry into the Worth thereof, the Customs might be improved for the Benefit of the Crown, and the true Value thereof discovered. This he proved by the Lord *Cottington* and Sir *Arthur Ingram*.

Fifthly, That when a new Book of Rates was recommended to him by the Council-Board of *England*, in the time of his Lease, he so far preferred a Fear he had that the Trade of *Ireland* might thereby be discouraged before his own Commodity, as he presumed, in all humility, to refuse the said Book of Rates, and tendered his Reasons thereof to the Kingdom and Council-Board of *England*.

Sixthly, That he never understood that the Customs could arise to those great Sums alledged: But tho' they should, yet his Advantage was but small. For first dividing the Fourteen thousand Pounds he paid to the King; then five parts of eight, which was yearly given in upon Oath (and that procured first by himself) at the *Exchequer*-Board; the other three parts divided amongst four of them which were equal Sharers in the Lease, would not amount

to any great Sum of Money. And therefore, except it were Treason for him to have improved the King's Revenue, encouraged the Trade, and refused the new Book of Rates, he could, in his own weak Judgment, discern none there; nor could he think it a Crime for him to take an Assignment of a Lease granted before his time, and to insist on the Book of Rates used before his coming over. And therefore was confident the Lords would rather take his Accusation as an exercise of Rhetorick in the Gentlemen his Adversaries, than as a Thing spoken in good earnest by them.

The same Day the 11th Article, concerning Tobacco, was charged on him by the same Man, Mr. *Glyn*, after this manner; That for the farther Advancement of his tyrannical and avaritious Designs, he had of himself established a Monopoly for the Restraint of Tobacco in that Kingdom: where they offered five Particulars to the Proof;

1st, That he had restrained the Importation of Tobacco.

2dly, That in the mean time he had brought in a great Quantity himself, and sold the same at exorbitant Prices.

3dly, That of Tobacco already imported, he had forbidden any to be sold but what was first sealed by his Officers.

4thly, That upon a pretended Disobedience he had punished a great Number of People by Seizures, Imprisonments, Fining, Whipping, Pillory, and such like cruel and inhuman Usages.

5thly, That by these Means he had gained One hundred thousand Pounds yearly.

For Proof hereof.

First, The Proclamation for restraining Tobacco was read.

Secondly, The Proclamation about the sealing of the same.

Thirdly, Some Witnesses, who declared that Ships had been restrained from landing Tobacco.

Fourthly, Others, who had known some Tobacco seized on as forfeited.

Fifthly, The Remonstrance of the House of Commons in *Ireland*, declaring that the Earl had sold 500 Tun of Tobacco, which, sold at 2 s. 6 d. per Pound, amounts to 100000 l.

They concluded the Charge, That he had sucked up the Blood, and eaten up the King's liege People; and had, by this one Point of Oppression, raised greater Sums to himself, than all the King's Revenue in that Kingdom extended unto. And therefore was liable to the Crime of Treason, for troubling the Peace, and bereaving the People of their Goods, who were intrusted to his Care and Government.

The Lieutenant's Reply was,

That his most secret Thoughts were conscious of nothing but a sincere Intention and Endeavour to promote and advance the Welfare of that Kingdom: And withal, he conceived (by their leaves) that nothing in that Charge could have the least reference to Treason; yet, as he said before, for removing of all Prejudice, he was contented to answer:

First, That long before his coming to *Ireland* the same Restraint had been of Tobacco, and the same Impost of Eighteen-pence per Pound enjoined by King *James*.

Secondly, That at that time the Tradersmen for this Commodity paid but Twenty Pounds a Year to the Crown for the Impost, but now 400 l.

Thirdly,

Thirdly, That the Parliament in *Ireland*, 1628, had petitioned to have this Impost settled by an Act of State for ever afterwards, as a part of the Revenue of the Crown.

Fourthly, that he had express Command from the King for issuing those Proclamations; and therefore could not imagine more danger in them, than in others for Monopolies in *England*, in the worst Sense.

Fifthly, that the Proclamations were not put forth by himself alone, but by the whole Council-Board of *Ireland*.

Sixthly, That for the Contract of Tobacco, he was so tender of it, that it was sent over hither, and seen and approved of by the Council-Board of *England* before it was condescended to in *Ireland*.

For the Proclamations, he told them it was his own Opinion, (and if he failed in it, he humbly craved Pardon, and hoped that it should not be Treason to have no more Judgment than God had bestowed on him,) that the King was endued by God with a Power to make temporary Laws, and cause the same to be promulgated for the Good of his People, upon sudden emergent Occasions; to which Laws Obedience is due, till they be abrogated by ensuing Parliaments. That he restrained no Man from importing Tobacco, who was willing to pay the appointed Impost. That for his part, he had never traffick'd in all his time in that kind, nor had any part with the Contractors: And if any Tobacco was seized on, it was upon contempt of the Proclamations. And if any Person were censured to the Pillory or Whipping, it was for known Perjury, the ordinary and usual Punishment in such a case. Concerning the Tobacco imported, (he said) no Consideration was taken of the Prices given for the Tobacco beyond Seas, of the King's Revenue of four thousand Pound, of the Merchants Pains and Danger in bringing the same home. For his part, if any Advantage were made, surely it was not his; nor could he annual every Contract or Lease made by the King. And therefore, seeing his Interest was none, he had done nothing but at the King's Directions, and at the Advice of the Council-Board; seeing the same Impost was in King *James's* Time, and petitioned for by themselves in *Ireland*; he hoped his Carriage in the Business should be so far from a Crime of Treason, that it should rather be thought no Crime at all. So much for *Wednesday*.

April 1. Upon *Thursday* he was charged with the 12th Article, concerning Flax, by Master *Meynard*, on this manner; That the Flax, being the native and principal Commodity of that Kingdom, was by him (the Lieutenant) restrained, and the Subjects put to that which was unknown, yea, impossible for the *Irish* to make the same into Yarn. Here they complain'd of three Things:

First, That by Proclamation he had restrained selling of Flax.

Secondly, That he had ordered the making of Yarn of such and such Lengths and Numbers of Threads.

Thirdly, That the native *Irish* being unacquainted with such Customs, upon pretended Disobedience, had all their Flax and Yarn seized on to his use; whereby a great many Families were reduced to such Penury, that they died by great Numbers in the Fields for want of Food.

For proof hereof, they brought;

First, The Proclamation about the Restraint.

Secondly, The Warrant for seizing the forfeited Goods.

Thirdly, The Execution of the Warrant proved by Sir *John Clotworthy*, and Lord *Ranelagh*.

Fourthly, The Remonstrance from the House of Commons in *Ireland*, That upon the rigorous Course and Execution of this Warrant many Persons died for want of Food. They concluded the Charge therefore, Tho' the Article did not individually imply Treason, yet it did make very much for the Accumulation of Treason.

The Lieutenant's Reply was,

That, as before, he would, and must ever repeat it, that nothing was in the Charge that contained Treason. To the Matter itself he answered,

First, That the Proclamations issued forth were grounded not only upon Convenience, but upon Necessity; because that, except some way had been taken for ordering of Yarn, the Merchants had absolutely given over the Linen-Trade in that Kingdom.

Secondly, That the Council-Board was as liable to the Charge as himself, amongst whom were at that time the Primate of *Ireland*, the Archbishop of *Dublin*, Chancellor *Loftus*, and the Lord *Mountrorris*, all Subscribers to the Proclamation, Men to them of known Integrity and Judgment.

Thirdly, That nothing was more common than for the Council-Board of *Ireland* to give Orders for reducing the Natives to the *English* Customs, and to fine them for drawing their Horses by the Tails, during their Corn, and such like; and he conceived that to be a thing of the same nature.

Fourthly, That the special Thing inducing him to it was, because he perceived the Trade of Wool to increase much in that Kingdom. He dissuaded by all means the making of Woollen-Cloth, because of the infinite Detriment that might happen thereby to the Kingdom of *England*; and therefore thought this the best way to encourage the wear of Linen-Cloth. For the Warrant to seize upon the Goods he affirmed the same to be necessary, because there should be no Contempt to Proclamations: But that any part thereof did accrue to him, he flatly denied. If any Rigour was used in the Execution, he said, not he, but his Officers were to answer for it; for this might happen in the most just and necessary Commands; nor was there ever any Complaint presented to him of any such matter. For his part, he had lost three thousand Pound in the Manufacture, established by himself for the Encouragement of others.

To that, that Persons died by that means, he replied, That it was more then ever he heard, or could think possible; yea, that he was cleared by the Allegation itself, which saith, that the same happened since his coming from *Ireland*.

To the Remonstrance of *Ireland*, he conceived, That a Charge was but a slender Proof of a Charge; and that especially upon Interrogatories, not upon Oath, seeing that Privilege was not due to the House of Commons neither here nor there; that he might say it in Truth and Modesty, he deserved much better of that People, and might take up that in the Gospel, *For which of all my good Deeds, &c.* yet he hoped to be better understood shortly both here and there. And for his part tho' his Pursuit had been very hot, yet God was his Witness he never intended to take the least Impression of Revenge for those Discontents and Affronts which had been eagerly put upon him; or to carry any thing hence with him from that Bar, where so many foul Aspersions had been unjustly thrown upon him, but only *gratuitas cicatrices*.

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The same Day a fresh Man (*Master Palmer*) enter'd the Lists against him; who having pass'd by, for want of Proof, the thirteenth, fourteenth, and part of the fifteenth Articles, insisted only upon the second Part, for giving Warrant to Serjeant *Savil* for seizing and laying Soldiers upon the Subjects. He charged thus; That the Lord *Strafford*, having by a tyrannical Power inverted the ordinary Course of Justice, and giving immediate Sentence upon the Lands and Goods of the King's Subjects, under pretence of Disobedience, had used a military Way for redressing of the Contempt, and laid Soldiers upon the Lands and Goods of the King's Subjects, to their utter Ruin. This Article (he said) of itself did contain an individual Treason; so that if there were no more than this, it were more than sufficient to convince him of his Impeachment.

Here he offered two Things;

First, The Proof of the Point.

Secondly, By what Statute this Act of Tyranny directly, and by itself, implied Treason. For the first, Serjeant *Savil* was called, who produced the Copy of the Warrant upon which he had settled the Soldiers.

At this the Lieutenant rose, and humbly intreated the Lords no Evidence should be received against him upon an Article of such Importance, but what might be thought authentick; and such a one, under favour, he conceived that Copy not to be:

First, Because no Transcript, but the Original only, can make Faith before the King's-Bench in a Matter of Debt; therefore far be it from them to receive a most slender Testimony in Matter of Life and Death, before the supreme Judicatory of the Kingdom.

Secondly, If Copies be at any time received, they are such as are given in upon Oath, to have been compared with the Originals, which are upon Record: such an one was not that Copy.

It was replied by *Master Glyn*, (for all of them spake as occasion served) That the House had but the Day before admitted Copies as Evidences, much more should they do this, when it was produced by the Officer himself, who best knew it, having executed the same.

To this the Lieutenant answered, That all other Copies ought to be received upon Oath, to have been compared with the Original, as right Reason requireth; but that this was not so: and for the Officer himself producing it, that was the best Argument he could use, why it should not be admitted. For (said he) *Master Savil* may be charged with Treason, for cessing Men of War upon the King's Subjects; he hath nothing for his Defence, but a pretended Warrant from me. Now what he swears to my Prejudice, is to his own Advantage; nor can a Man, by any Equity in the World, be admitted to testify against another, *in suam justificationem*.

The Point seemed exceeding weighty, and in Effect was the Ground-work of the whole Article; which not proved, nothing could evince him to have been accessory to the Consequence. The Upper House therefore adjourned themselves, and went up to their own Court; and after a very hot Contestation between the Factions, and above an Hour's Stay, they returned, and declared that the Lords, after mature Deliberation, had resolved that the Copy should not be admitted; and desired them to proceed to other Proofs: which after a little Pause they did.

First, the Lord *Ranelagh* affirms, that he heard of a such a Warrant, and knew sometimes three, sometimes five Soldiers billeted by it.

Secondly, *Master Clare* declares the very same.

Thirdly, Another deposes he hath seen such a Warrant under the Deputy's Hand and Seal. And so much for the Proof.

For the Statute, they alledged one of *Edward 3.* 6. That whosoever should carry about with them *English* Enemies, *Irish* Rebels, or Hooded-Men, and cess them upon the Subject, should be punished as a Traytor. Another of *Hen. 6.* 7. That whosoever should cess Men of War in his Majesty's Dominions, should be thought to make War against the King, and punished as a Traytor. They concluded, It was evident the Lord *Strafford* had incurred the Penalty and Breach of both the Statutes, and therefore desired the Lords should give out Judgment against him as a Traytor.

The Lord Lieutenant's Reply was, That in all the Course of his Life he had intended nothing more than the Preservation of their Lives, Goods, and Welfare of the King's Subjects; and that he dared profess, that under no Deputy, more than under himself, had there been a more free and uninterrupted Course of Justice.

To the Charge he answered, First, That the Customs of *Ireland* differed exceedingly from the Customs of *England*, as was clear by *Cook's* Book; and therefore thought cessing of Men might seem strange here, yet not so there.

Secondly, That even in *England* he had known Soldiers pressed upon Men by the Presidents of *York* and *Wales*, in case of known and open Contempts; and that both in Point of Outlawry and Rebellion, and also even for Sums of Debt between Party and Party, there is nothing more ordinary than these Cessings to this Day in *Scotland*, whereby the chief House of the Owner is seized upon.

Thirdly, That to this Day there hath been nothing more ordinary in *Ireland*, than for the Governors to appoint Soldiers to put all manner of Sentences in Execution; which he proved plainly to have been done frequently, and familiarly exercised in *Grandison's*, *Falkland's*, *Chichester's*, *Wilmot's*, *Cork's*, *Evers's*, and all preceding Deputies times; and had even for Outlawries, for the King's Debts in the *Exchequer*, of Collection, of Contribution-Money, (and which comes home to the Point) for petit Sums of Money between Party and Party: so that he marvelled, *qua fronte*, or with what Boldness it could be called an Arbitrary Government lately brought in by him.

To this the Lord *Dillon*, Sir *Adam Loftus*, and Sir *Arthur Teringham* deposed; the last of whom told, that in *Falkland's* time he knew twenty Soldiers cess'd upon a Man for refusing to pay sixteen Shillings *Sterling*.

Fourthly, That in his Instructions for executing his Commissions, he hath express Warrant for the same, as were in the Instructions to the Lord *Falkland* before him, both of which were produced and read.

Fifthly, That although these Precedents were not, yet it were not possible to govern the Kingdom of *Ireland* otherwise, which had been from all times accustomed to such summary Proceedings.

Sixthly, That no Testimony brought against him can prove that ever he gave warrant to that Effect; and for the Deeds of the Serjeant at Arms, he did not conceive himself to be answerable for it.

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As for the Acts of Parliament, he had reserved them to the Dispute of his Lawyers; but was content to say thus much for the present:

First, That it is a Ground in the Civil Law, that where the King is not mentioned, there he cannot be included: But (with all Deference to his sacred Person be it spoken) he conceived himself to be in his Master the King's Place (for so his Commission did run) in that Kingdom of *Ireland*.

Secondly, The Words of the Statute are not applicable to him; for God knows, he never went about in Person to lay Soldiers upon any of the King's Subjects.

Thirdly, That the King's own Soldiers, requiring in a customary Way Obedience to his Orders, could in no Construction be called *Irish Rebels*, *English Enemies*, or Hooded-Men.

Fourthly, That the Use and Custom of the Law was the best Interpreter thereof; and for that he had already spoken enough.

Fifthly, That it favoured more of Prejudice than Equity, to start out such an old Statute against him, and none others, though culpable of the same Fact, to the Overthrow and Ruin of him and his Posterity.

Sixthly, That (under Favour he conceived) for any *Irish* Custom, or upon any *Irish* Statute, he was to be judged by the Peers of *Ireland*.

Seventhly, That Statute, of what Force soever, was repealed;

1st, By the tenth of *Henry VII.* where it is expressly declared, nothing shall be reputed Treason hereafter, but what is so declared by the present Statute: now not a Word there of any such Treason.

2dly, By the eleventh of *Queen Elizabeth*, where expressly Power is given to the Deputy of *Ireland* to cels and lay Soldiers, although the same be reputed Treason in any other.

To the Statute of *Henry VI.* he replied, That a slender Answer might serve: He hoped that no Man would think him so inconsiderate, to war against the King of *Britain* and *Ireland*, by the celsing of five Soldiers; that he had been charged by many for taking Arms for the King, but to that time never for taking Arms against him; and that he heartily wished, that no Man in all his Majesty's Dominions had more Practices with Rebels and rebellious Designs against the King than himself. So much for *Thursday*.

At the Close he desired the Intermission of a Day, that he might recollect his Spirits and Strength against the next Quarrel; and with some Difficulty obtained Rest till *Saturday*.

April 3. Upon *Saturday* Mr. Palmer proceeded to the sixteenth Article, and charged thus; That the Lord *Strafford* having established a Tyrannical and Independent Authority, by giving summary Decrees and Sentences, had deprived the Subject of all just Remedy; for in that Kingdom there was none supreme to himself, to whom they might appeal: and lest their just Grievances might be made known to his Majesty, he had obtained a Restraint, that no Complaint should be made of Injustice or Oppression done there, till the first Address had been made to himself, and that no Person should come out of that Kingdom but upon Licence obtained from himself.

For Proof of this, First, The Instructions were read, whereby that Restraint was permitted.

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Secondly, The Proclamation, That all Noblemen, Gentlemen, Undertakers, Officers, or other Subjects that should resort into that Kingdom, should not come from thence without a Licence from him.

Thirdly, That he had restrained the Earl of *Desmond*, because of a Suit in Law depending between the Earl and himself, till Publication of the same was passed.

Fourthly, That the Lord *Rock* being informed against before the Star-Chamber, he would not licence him to come into this Kingdom, till the Sentence was passed against him.

Fifthly, That one *Marchatee* having pretended a Mind to travel, was denied a Licence.

Sixthly, That the whole Committee for the Parliament was restrained this last Year by Deputy *Wansford*, which they said might be interpreted to be his Fact, both because they had such Intelligence the one from the other, as also by the Proclamation issued by him before.

Seventhly, That one *Parry*, Servant to Chancellor *Loftus*, was fined Five Hundred Pounds at his Return, for departing *Ireland* without Licence.

Eighthly, That the *Irish* Remonstrance complained of this, as the greatest Innovation and Thralldom put upon them since the time of the Conquest.

They concluded the Charge, That by this Means having taken off that Intelligence which should be between the King and his People, and having deprived them of that Remedy which in Reason they might expect from so just and so gracious a Prince, he had taken upon him a Royal and Independent Power, and had faulted highly both against King and State.

The Lieutenant's Reply was, That he hoped to make it clear, that he had done nothing in that Particular, but what was usual, necessary, and just; and that he should be very well able (by the Grace of God) not only of that, but of all other his publick Actions, to give a reasonable Account, though not free from much Weakness, yet certainly from all Malice and Treason.

To the Particulars:

First, For Instructions laid upon him, he was not so much chargeable as those of the Council of *England*, whereof there was a great many present who could witness their Commands; but lest any thing should seem unjustly enjoined by them, or embraced by him, he desired that the Reasons of their Instructions might be read: which were, *That it were Injustice to complain of Injuries, of Oppression done in that Kingdom, till first the Deputy's Judgment was informed, and trial made of his Integrity; That it would much discourage the Ministers of State there, and expend the Monies of that Kingdom, if upon every trifling Business Complaints should be admitted in England; and that if Justice were there denied by the Deputy, it should be lawful for any Man to come over.*

Secondly, For the Proclamation, that the same was builded upon the Statute of that Kingdom, the 25th *Hen. 6.* which contained the same Restraint *verbatim*.

Thirdly, That *Anno 1628*, the Agents for the *Irish* Nation had petitioned for the same from the King.

Fourthly, That the Deputy *Falkland* had set forth the same Proclamation.

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Fifthly,

Fifthly, That he had the King's exprefs Warrant for it, *Anno* 1634, which was read.

Sixthly, That he had received the Warrant in *January*, yet the Proclamation iflued not out till *September* after.

Seventhly, That the whole Council-Board of *Ireland* had not only condescended, but alfo prefled him to it.

Eighthly, The Neceffity of the Kingdom required the fame; for if the Gentlemen had the Ports open to go to *Spain*, and their Scholars to *Doway*, *Rheims*, or *St. Omers*, it were likely that at their return they would put fire both in Church and State, and produce very bad Events, by practifing to diftemper both.

Ninthly, He conceived that the King, as great Mafter of the Family, might refrain whom he pleafed from departing his Kingdom without his privity: and here it was not lawful for any to go from *England* without Licence; how much more neceffary was this from *Ireland*?

To the Proofs he answered, Firft, For *Defmond*, he granted he was reftained indeed, but not for any Suit of Law betwixt them, but becaufe at that time he flood charged with Treafon before the Council in *Ireland*, for practifing againft the Life of one *Sir Valentine Cooke*.

Secondly, For the Lord *Roch*, he had oftentimes marvelled with what reason the Man at that time could feek a Licence, feeing he was a Prifoner for Debt in the Cattle of *Dublin*; and if he had granted a Licence to him then, it had been a far more juft Charge of Treafon than now.

Thirdly, For *Marchatee*, he was afraid of his going to *Spain*; and if he had intended to go for *England*, and complain of himfelf, he would not have refufed him Liberty, as he never did to any.

Fourthly, That the Committee of *Iriſh* was not reftained by him, and therefore did not concern him at all.

Fifthly, That for *Parry*, he was fined indeed, but that it is exprefly faid in his Sentence, that it was not for coming over without Licence, (as is fuggelted) but for fundry Contempts againft the Council-Board in *Ireland*.

Sixthly, That he had replied in the laft Article, a Remonſtrance was no Proof at all. He concluded, that he hoped the leaft Suspicion of Treafon could not accrue to him from the Article: For Oppreffion or Mifdemeanour, when it was laid to his Charge, he made no doubt but he ſhould be able to answer it.

The ſame Day a new Man was hurried out againft him, (Mr. *Whitlock*) who having paſſ'd over the 17th and 18th Articles, reſteth on the 19th, about the Oath adminiſtered to the *Scots* in *Ireland*, and charged thus:

That it was the Height of his Tyranny, not only to domineer over the Bodies, but alfo over the Conſciences of Men; to which purpoſe, he had enjoined an Oath to the *Scots* in *Ireland*: and becauſe ſome out of Tenderneſs of Conſcience did refuſe to take the ſame, he had fined them in great Sums of Money, baniſhed a great number from that Kingdom, called all that Nation Traytors and Rebels; and ſaid, if ever he returned home from *England*, he would root them out both Stock and Branch.

For Proof of this, Firſt, *Sir Jammy Mountgomery* was produced; who declared at large how that Oath was contrived.

Secondly, *Sir Robert Maxwell* of *Orchiardon*, who ſpake to the ſame purpoſe.

Thirdly, *Sir John Clotworthy*, who declared, that a great number had fled the Kingdom for fear of that Oath.

Fourthly, One Mr. *Samuel*, who depoſed, that upon the 10th of *October*, 1638, he heard the Deputy ſay theſe Words, *That if he returned, he would root them out Stock and Branch*.

They concluded, That this was a Point of the moſt Tyrannical and Arbitrary Government, that before this time was ever heard of, not only to lord it over the Fortunes, but alfo over the Souls of Men: and that it reſted only in the Parliament, which hath the Legiſlative Power, to enjoin Oaths. And that therefore this was one of the chief Points he had done againſt the Privileges and Liberty of the Subject.

The Lieutenant replied, That every new Article acquainted him with a new Treason; that if he had done any thing in all his Life acceptable to the King and Country, he conceived it to be this.

To theſe Particulars; Firſt, He deſired the Lords would call to mind the Condition of thoſe Times; no Man (pointing to my Lord Steward) knows better than your Lordſhip, who had then the chiefſt Place in his Maſteſty's Service. I would be very ſorry to rub (ſaid he) old Sores, eſpecially ſeeing I hope things are in a fair way to a firm Peace, and I wiſh that I may not be deceived, that is, that it may be ſo; only thus much I may ſay, we had then greater Fears and Apprehenſions in *Ireland*, leſt the *Scots* in the Kingdom (who were above One hundred thouſand Souls) might have joined with their Countrymen at home, for the diſturbance of our Peace: mean time we detected a Treafon of betraying of the Caſtle of *Knockfergus* to a great Man in that Kingdom, (whole Name I now ſpare) by one *Freeman*, who upon the diſcovery was executed.

The Council-Board therefore in *Ireland* reſolved to preſcribe the *Scots* an Oath, whereby they might declare their Diſcontent at their Countrymen's Proceedings, and oblige themſelves to the King's Service: but while we were about this, they of their own accord came to *Dublin* to petition for it, and took it with a wonderful Alacrity and Heartineſs; ſo that it is a marvellous Falſhood for any Man to ſay it was invented, or violently enjoined by me.

Secondly, About the ſame time the ſame Oath, *verbum verbo*, was by the Council of *England* preſcribed to the *Scots* at *London*, and elſewhere; which was no ſmall Encouragement to us in *Ireland*.

Thirdly, I had, (ſaid he) which I never ſhewed, becauſe I had no need before this time, a ſpecial Warrant from the King, all written with his own Hand, to that effect: and when the King commands a matter not contrary to Law, truly I (ſaid he) do conceive it both contrary to Law and Conſcience not to yield him all due Obedience. For the Proof brought againſt him, there was nothing ſeemed to be of any moment but the Words.

For the firſt Words, *That he had called all the Nation Rebels and Traytors*, he ſaid there was no Proof at all, nor indeed could there be any: for if I had ſaid it, (quoth he) I had been perfectly out of my wits; and, he thanked God, ſuch irrational Speeches uſed not to eſcape him. He honoured that Kingdom very much, becauſe it was the native Soil of our dread Sovereign, his gracious Maſter;

Master; and because he knew a part, yea (he hoped) the greatest part of them, had been, and ever will be, as loyal and dutiful to the King as any other of his Subjects: and of those too who had subscribed that unhappy Combination, he knew a great many had done it against their Hearts and Wills, and would be ever ready upon occasion to remonstrate the same, by adhering to the King's Service. So that this Accusation was nothing but a wresting and perverting his Words and Meaning, of purpose to make him odious, and irritate a whole Nation against him.

For the other words, they were proved only by one Witness, which could make no sufficient Faith; and that Witness too he would evince, if not of Perjury, yet of a notable Mistake: for he had sworn positively that he had spoken these words the tenth of October, whereas he was come out of Ireland into England the twelfth of September before, and was at London the one and twentieth.

For those that had fled the Kingdom because of that Oath, he knew none such; and if they did, they fled into Scotland, which might sufficiently argue their Intentions and Resolutions. For his part, if they were not willing to give that Testimony of their Loyalty to their Prince, although he had known of their Departure, he would have been very loth to have kept them against their wills, but should have been gladly rid of them, and have made them a Bridge to be gone, rather than stay.

April 5. Upon Monday, Master Whitlock proceeded to the 20th Article, and told him, That because the Matter was intervenient, & *confimilis naturæ*, they had resolved to join the five next Articles together, because all of them tended to one Point or Period; that is, to shew what bad Design he had, to have subdued the Kingdoms both of England and Scotland by Force of Arms, and to reduce them to that Arbitrary Government he had lately introduced into Ireland.

The Lieutenant intreated that they would proceed according to the Order prescribed by the House, which was Article by Article: he said, five Articles were many, the Matter weighty, his Memory treacherous, his Judgment weak.

It was bitterly replied by Master Glyn, That it did not become the Prisoner at the Bar to prescribe them in what way they should give in their Evidences.

The Lieutenant modestly answered, That if he stood in his place, he would perhaps crave the like Favour, unless his Abilities did furnish him with more Strength than he could find in himself: for his part he was contented they should proceed any way, always provided they would grant him a competent time for replying.

Then Whitlock went on, and told the Lords, That something in those Articles concerned the Scottish, something the English Nation. That which concerned the Scottish, he reduced to five Heads:

First, That the Deputy had said at the Council-Board, *That the Scots Demands contained sufficient Matter to persuade to an offensive War.*

Secondly, *That the same Demands did strike at the Root and Life of Monarchical Government, and were only to be answered by the Sword.*

Thirdly, That he caused some Scottish Goods and Ships to be seized on in Ireland.

Fourthly, that he had engaged the Irish Parliament, by their Declaration, in that War against the Scots.

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Fifthly, That by all possible means he had put bad Thoughts and Suspicions into his Majesty against his Scottish Subjects, and laboured to make a National Quarrel between them and England; which, if the King's Piety, and the Prudence of better-affected Statesmen had not prevented, could not have been fodder'd up again without much Blood.

Concerning England, his Speeches were either before or after the Parliament.

First, Before his Creature and Bosom-Friend Sir George Ratcliff, he had said to Sir Robert King, when he was doubting how the King might have Monies to pay his Armies, *That the King had Four Hundred Thousand Pounds in his Purse, Thirty Thousand Men in the Field, and his Sword by his side; and if he wanted Money afterwards, who will pity him?*

Secondly, That his Brother Sir George Wentworth had said to Sir Robert Barington, upon the Dissolution of the last Parliament, *That seeing the English would not grant Supply to the King, it seems they were weary of their Peace, and desired to be conquered a second time.*

Thirdly, That he himself, upon a Discourse with the Primate of Ireland, had said, *That he was much of the mind of those English Divines, who maintained it lawful for a King, having tried the Affection and Benevolence of his People, and then denied their Help, upon an inevitable Necessity and present Danger of the Kingdom, that he might use his Prerogative for his own Supply, and the Defence of his Subjects.*

Fourthly, To the Lord Conway, in a Discourse, he had said, *That if the Parliament (meaning the last Parliament) should not grant a competent Supply, that then the King was acquitted before God and Man, and might use the Authority put into his hands.*

Fifthly, That he did say at the Council-Board, *If the Parliament should deny to help the King, he would take any other way he could for his Majesty's Service and Assistance.*

His Expressions after the Parliament were two:

First, *That the Parliament had forsaken the King, and that the King should not suffer himself to be overmastered by the Frowardness, Obstinacy, and Stubbornness of his People.*

Secondly, *That if his Majesty pleased to employ Forces, he had some in Ireland that might serve to reduce this Kingdom.*

The Proofs for the Scots Particulars, were these:

First, The Lord Traquair, who was indeed very favourable to the Lord-Lieutenant, and spake nothing to his disadvantage but what was skrewed from him: with much difficulty he told them, That when he gave in the Demands, he heard him say, *That it was high time for the King to put himself into a posture of War;* but that first all the Council of England said the same as well as he. adly, That it was a double Supposition: 1. That the Demands were truly given in. 2. That there was no other Remedy left but Arms, to reduce them.

Secondly, The Earl of Morton's Testimony (being sick himself) was produced, and it was one and the same with the Article.

Thirdly, Sir Henry Vane was examined, who declared, That he had heard the Lieutenant to advise the King to an Offensive War, when his own Judgment was for a Defensive.

Fourthly, The Testimony of the Earl of Northumberland was produced, which was the very same with Sir Henry Vane's.

Fifthly, The Treasurer of *England* depofed the fame with *Traquair*.

Sixthly, One *Beane* from *Ireland*, told, That he had known Ships feized on there; but by whose Procurement or Warrant, he knew not.

To the Articles about *England*:

First, Sir *Robert King* and the Lord *Ranelagh* depofed the fame, That Sir *Robert King* and the Lord *Ranelagh* had heard Sir *George Ratcliff* fpeak thofe words in the Article.

Secondly, Sir *Robert Barington*, of Sir *George Wentworth*.

Thirdly, The Primate's Testimony (who is fick) was the fame with the Article.

Fourthly, the Lord *Conway* depofed the fame with the Article.

Fifthly, Sir *Henry Vane* depofed, he had heard thofe words fspoken at the Council-Board.

For the Words fspoken after the Parliament:

To the first, Sir *Tho. Jermyn*, Lord *Newburg*, Earl of *Bristol*, Earl of *Holland*, were examined. *Bristol* did mince the matter, but *Holland's* Testimony was exprefs, becaufe of the exceeding great Love he carried to the Man.

For the laft, which were the moft dangerous Speeches, (about reducing of this Kingdom) there was only Sir *Henry Vane's* Testimony; who declared only thus, That he had heard either thofe words, or the like.

Here fome of the Lieutenant's Friends fhewed themselves:

1. The Lord *Savil*, who defired of Sir *Henry Vane* to know whether he faid *their*, or *this*, or *that Kingdom*; and withal faid, It was very hard to condemn a Man for Treafon upon fuch petit Circumftances.

2. The Earl of *Southampton* defired to know, whether Sir *Henry Vane* would fwear thofe words pofitively or not. Sir *Henry Vane* faid, pofitively either them or the like. The Earl replied, That under favour *thofe or the like* could not be pofitive.

3. The Earl of *Clare* defired to know what could be meant by *this Kingdom*; for his part (he faid) he thought it meant of the Kingdom of *Scotland*, to which the Word *this* might very well be relative, that Kingdom being only mentioned in the preceding Difcourfe: And that he was the more ready to be of that Opinion, becaufe he could not fee by what Grammatical Conftitution it could be gathered from his Words, that he meant to reduce *England*, which neither then was, neither is now (God be thanked) out of the way of Obedience, nor upon rebellious Courfes.

They at laft concluded the Charge, That the Words were fo monftrous, that to aggravate them, was to allay them; and therefore they would fimplly leave them to the Judgment of the Lords.

The Lieutenant's Reply was;

That tho' the heaping up of thofe Articles had put him to a great Confufion, yet he would endeavour to bring his Answer into the beft Method he could; and firft he would reply to the Proof, then add fomething in general for himfelf, in what a hard Taking and lamentable Condition he was, to have his private Difcourfes, his moft intimate and Bosom-Friends fearch'd and sifted to the leaft Circumftance, that he might feem guilty of that which, by God's Affiftance, he fhould never be.

To the Lord *Traquair's*, and the Deputy's Depofitions, he thought their Proofs did not much

ftick upon him. For upon the Suppofitions, *First*, That the Demands were true; *Secondly*, That they were not juftifiable; *Thirdly*, That no other Courfe could prevail: He could not fee what other Advice he could poffibly give the King, than to put himfelf into a Pofture of War, efpecially feeing then there were frequent Reports of the *Scots* invading or entring into *England*; nor was he of any other Mind than all the reft of the Council-Board.

For that of *Morton's*, he doth not pofitively remember the Words, but if the Demands were read, perhaps they would imply nothing lefs; and if fo, how otherwife to be answered but by the Sword, and other Means being firft effayed, which is ever to be fuppofed?

For Sir *Henry Vane's* and *Northumberland's* Testimony, about perfuading of an Offensive War, he faid, He remembered it very well, and thought it as free for him to give his Opinion for an Offensive, as they for a Defensive War: Opinions, faid he, if they be attended with Obftinacy or Pertinacy, may make an Heretick, but that they ever made a Traitor, he never heard it till now; nor (under favour) fhould I be an Heretick either, (faid he) for as I was then, fo am I now, moft willing to acknowledge my Weaknefs, and correct my Errors, whereof no Man hath more, or is more fenfible of them, than I myfelf; yet if that Opinion of mine had been followed, it might perhaps have fpared us fome Money (faid he) and fome Reputation too, of which we have been prodigal enough.

For the laft, about the Ships, it proves nothing: but he would willingly confefs, that fome Ships were there detained, and that by himfelf, and his own Direction, as Vice-Admiral of *Connaught*, but it was at the Command of the Lord Admiral the Earl of *Northumberland*; and produced his Letter to that purpofe.

To the *English* Proof: He marvelled much how Sir *George Ratcliff's* Words could be put upon him; Sir *George* (tho' alledged to be his Bosom-Friend, yet) had Thoughts of his own, and he (the Earl) might have other Thoughts in his Bosom, and ufe other Expreflions than Sir *George Ratcliff*: No Man (faid he) can commit Treafon by his Attorney; and fhould I, by my Friend Sir *George*, as by a Proxy?

For his Brother; he never knew him before fo rafh; but that was nothing to him, except they could prove a nearer Identity than Nature had instituted, and that his Brother's Words and his were all one: yet withal he conceived, that his Brother's Words might be very well underftood of the *Scots* conquering *England*, but not at all of the *Irish*; and fo he wifhed with all his Heart, that he had not fpoken fomething which is like a Prophecy.

To the Primate's Testimony (with all Reverence to his Integrity be it fspoken) he is but one Witnefs, and in Law can prove nothing: Add to this, (faid he) that it was a private Difcourfe between him and me, and perhaps fspoken by me *tentandi gratia*; and how far this fhould be laid to a Man's Charge, let your Lordships judge.

Yea, this feems to me againft Humanity itfelf, and will make the Society of Men fo dangerous and loathfome to us, that our Dwelling-houfes will be turned to Cells, and our Towns to Defarts: That which God and Nature (our Tongues) have beftowed upon us (for the greater Comfort of venting our own Conceptions, or craving the Advice

of wiser and learned Men) should become Snares and Burdens to us, by a curious and needless Fear; yet if my Words be taken, said he, with all that went before and followed after, I see no danger in it.

To the Lord *Conway* I may reply the same, with this Addition, That it is a very natural Motion for a Man to preserve himself; every Creature hath this Privilege, and shall we deny it to Monarchy, provided this be done in a lawful, tho' in an extraordinary way? This Grain of Salt must be added to season all my Discourse.

To that of Sir *Henry Vane*, of offering my Service to the King, I thank him for the Testimony, and think he hath done me much Honour thereby; but if he or any body else do suspect that his Majesty will employ me in unlawful Enterprizes, I shall think them more liable to the Charge of Treason than myself.

To the subsequent Testimonies, I shall not need to wrestle about them much, only the last of Sir *Henry Vane's* pinches, and lies sore upon me; but to that which the Earl of *Clare* (and I thank him for it) hath said already, give me leave to add this, That the Testimony of one Man is not a sufficient Witness, nor can a Man be accused, much less condemned, of Treason, upon this; and for that read the Stat. *Hen. 7. 12.* and of *Edw. 6. 5.*

Now, my Lords, (said he) to give you further Satisfaction, I shall desire all the Lords of the Council, which were then present (only to the Number of Eight) may be examined whether they heard these Words or not; for the Archbishop and Sir *Francis Windebank* they cannot be had: Sir *Henry Vane* gives the Testimony, I deny it; four only remain.

First, The Earl of *Northumberland's* Testimony, which was read, had declared expressly, that he had never heard those Words, nor any like them, from the Lord *Strafford*, but he spake with great Honour and Regard to the Kingdom of *England*.

Secondly, The Marquis *Hamilton*, who declared upon his Oath, that he had never heard such Words, but that he had heard the Lieutenant often say, that the King was to rule his Royal Power *candide & caste*; that it would never be well for this Kingdom, till the Prerogative of the Crown, and the Privilege of the Subject, went in one pace together; and that Parliaments were the happiest way to keep a Correspondence between the King and People.

The very same was delivered by the Lord Treasurer, and the Lord *Cottington*.

Now, my Lords, you may marvel how these Words rested only on the Ears of Sir *Henry Vane*: but, my Lords, (said he) that I may remove all Scruple from you, I will make it evident, that there was not the least Intention that the *Irish* Army should set a Foot in *England*; and then, I hope, you will conceive that I had no Meaning to reduce this Kingdom.

This he made clear by the Testimony of *Northumberland*, the Oaths of Marquis *Hamilton*, Lord *Cottington*, Lord Treasurer, Sir *Thomas Lucas*, who only were privy to that Matter.

For other of my Words, my Lords, (said he) I desire you would not take them by halves; if so, who should be free from Treason? Certainly, if such a Precedent take footing, *Westminster-Hall* shall be more troubled with Treason than with Common-Law; look therefore to the Antecedents and Consequents of my Speeches, and you shall find the State of the Question clearly altered: the

Antecedents were upon an absolute or inevitable Necessity, upon a present Invasion, when the Remedy of a Parliament cannot be expected; the Consequents, for the Defence of the Kingdom, which accompts afterward to the Parliament. The Qualifications too in a lawful, convenient, and ordinary Way, so far as the present Necessity can permit. Add but these, and which of you are not of my Mind? Is the King endowed with no Power from the Lord? Is he not *publicus Inspector Regni*? Stands it not him in hand to do something on present Necessities?

And that these were his Words, he often proved, over and over again, by the Marquis, by the Lord Treasurer, *Cottington*, Sir *Tho. Jermyn*.

My Lords, what I have kept to the last (said he) is this, and I would intreat you seriously to think of it: If a Man's Table, his Bed, his House, his Brother, his Friends (and that too after they have given an Oath of Secrecy) are to be rack'd to find out Treason against him, who never knew what it meant, what earthly Man shall pass free from Treason? Let my Misfortune, my Lords, be your Advertisement: your wise Ancestors were glad to put Bands and Limits to this Lion, Treason; if you give him the large Scope of Words to range into, he will at last pull you or yours all to pieces.

But, my Lords, I did never think till now, that Matter of Opinion should be objected as Matter of Treason.

For, *First*, Opinions are free, and Men may argue both *Pro* and *Con*, in all Faculties, without any Stain of Reputation, otherwise all Consultations would be vain.

Secondly, I may be of another Judgment than I declare myself to be, of Opinion, perhaps, to gain better Arguments for the Maintenance of my own Grounds.

Thirdly, Many, and myself oftentimes, have propounded my Opinion; yet, upon hearing better Judgments, have presently changed it.

Fourthly, We use to strain our Opinions too high sometimes, that we may meet in a just Moderation with those whom we conceive in the other Extremity to be too low.

Fifthly, It is expressly commanded by the Stat. *Hen. 6. 9.* That tho' a Man should say, the King is not lawful Heir to the Crown, and may be deposed, yet he is not to be charged with Treason, but only with Felony; and I hope, my Lords, those Words are of a more transcendent and superlative nature, than any alledged by me to be spoken. But, my Lords (said he) lay it to your Hearts, it must come to you, you and your Posterity are they whom God and Nature, Birth and Education have fitted to beautify the Royal Throne, and to sustain the weighty Affairs of the Kingdom; if to give your Opinions in Political Agitations should be accounted Treason, who will be willing to serve the King, or what a Dilemma are you in? If, being sworn Counsellors, you speak not your Minds freely, you are convict of Perjury; if you do, perhaps of Treason. What Detriment, what Incommodity shall fall to King and Kingdom, if this be permitted? Which of you hereafter will adventure, yea dare adventure so much as to help by your Advice, unless you be weary of your Lives, your Estates, your Posterity, yea your very Honour? Let me never live longer than to see this Confusion; yea, I may say it, this Inhumanity in *England*. For my part (my Lords) I here confess my self, I ever have, and ever shall speak my Opinion

pinion freely in any thing that may concern the Honour and Safety, either of my gracious King, or my dear Country, tho' the Sword be two-edged; fearing rather him that killeth the Soul, than him whose Power reaches only to the Body.

Nor do I see how I am culpable of Treason, unless it be Treason for not being infallible; and if it be so, my Lords, you have this Rag of Mortality before you, loaden with many Infirmities; tho' you pull this into Shreds, yet there is no great Loss; yea, there may be a great Gain, if by the same I may seem to have dared too far, to give a Testimony to the World of an innocent Conscience towards God, and a resolute Loyalty towards my Prince, [which have ever been my only Pole-Stars in the whole Course of my Life:] and if by spilling of mine, there be not a Way found how to trace out the Blood of the Nobility (which I hope your Lordships will look to) there is no Disadvantage at all suffer'd by the Loss of me. (You have his very Words as near as I could recollect.)

Tuesday was a Day of Rest.

April 7. Upon *Wednesday* Whitlock charged thus; That the preceding Articles were of so high a Consequence, and of so transcendent a Nature, that nothing wanted to make up the perfect Measure of the most horrid Treason, and monstrous Attempt that ever, by a Native was intended against his King and Country, by putting these designed Projects into execution; which had undoubtedly happened to the Ruin and Subversion both of Church and State, had not the Clemency and Goodness of the Prince, and the Piety and Carefulness of the well-affected Peers timously foreseen and prevented the same: That still the Principles of Tyranny and Oppression had lodged within his Bosom, and therefore had burst forth into these Expressions and Advices contained in the following Articles; where first, in the twenty-fifth they charged him with three things.

First, That he had advised the King to a rigorous and unlawful Exaction of Ship-Money.

Secondly, That he had given Counsel, That if the Sheriffs should deny their best Endeavours and Assurances to that Effect, they should be sent for, and be fined and imprison'd by the Star-Chamber.

Thirdly, That when the Aldermen of *London* had in all Humility represented the Causes why the Ship-Money could not be collected amongst them, and had given in the Reasons why they refused to give in a List of their Names, within their City, who were able to afford the Loan-Money; he in a contemptuous and tyrannical manner, in the face of the Council-Board, had said to the King: *Sir, these Men, because of their Obstinacy and Frowardness, deserved very well to be fined, ransomed, and laid by the Heels; and it will never go well with your Service, until some of them be hanged up for Examples to others.*

The Proofs were these.

First, The Bishop of *London*, Lord Treasurer, who declared, That he remembered the Words very well, that the Lord-Lieutenant had advised the King to cause the Ship-Money to be gathered in; but he remembered withal, that both himself and all the Council had done the like; and that it was upon a present Necessity, and Defect of Money for entertaining the Army, which (the

Condition of the Times considered) they all conceived, was by any means to be kept on foot.

Secondly, Alderman *Wiseman* declared, that upon an humble Remonstrance made to the Council-Board, the City would take it ill, if a Tax-Roll should be delivered of their Estates, who were thought able for the Loan-Money; the Lord *Strafford* said, They ought to be fined, ransomed, and laid by the heels: but for Words of hanging them up, he heard not at all.

Thirdly, The Earl of *Berkshire* declared that the Lord *Strafford* had said, That upon the Refusal of such a Service enjoined by the Kings peremptory Command, it was his Opinion they might be fined.

Fourthly, Alderman *Garway* attested the preceding Words; and withal added, that the Lord Lieutenant, to his best Remembrance, had said, *It were well for the King's Service if some of them were hanged up.*

They closed the Charge, That by such undutiful Expressions he had injured the Propriety of the Subject and had put such Discontent upon the City, that they were the less willing upon any occasion to concur for the Advantage of the King's Service.

The Lieutenant replied,

First, That tho' all the Charge were in the most strict and rigid way or sense verified against him, yet he could not conceive by what Interpretation of Law it could be reach'd home to High-Treason: and to that common Objection, [That the Treason was not individual, but accumulative,] he replied, That under favour, he thought, talking in that manner, were as much as to say, no Treason at all. Because,

1st, That neither in Statute Law, Common Law, nor Practice, there was ever, till this Time, heard of such a matter as accumulative Treason, or a Treason by way of Consequence; but that it is a Word newly coined to attend a Charge newly invented, such an one as never was before.

2^{dly}, That Treason was a Thing of a simple and specific nature, and therefore could not be so by Accumulation; but either must be so in some or either of the Articles, or else could not be so at all.

3^{dly}, He did conceive that it was against the first Principles of Nature, and false, That an Heap or Accumulation should be, and not be, of homogeneous Things; and therefore that which in its first Being is not treasonable, can never confer to make up an accumulative Treason. *Cumulus*, an Heap of Grain, so called, because every, or at least some of the Individuals, are Grain; if otherways, an Heap it may be, but not an Heap of Grain. Just so, perhaps, these Articles may make up an Heap of Felonies, Oppressions, Errors, Misdemeanours, and such like, (and to the Thing itself I shall give an Answer, when under that Name they shall be charged against me;) but they can no ways confer to the making up of Treason, unless some at the least, be Treason in the Individual.

Secondly, That the Testimonies brought against him were all of them single, not two one way; and therefore could not make Faith in matter of Debt, much less in matter of Life and Death; yea, that it was against the Statute expressly, to impeach a Man of High-Treason under the Evidence of two famous Witnesses, much less to adjudge and convince him upon Attestation of one.

Thirdly,

Thirdly, To the Lord Treasurer's Testimony, he did with all his Heart condescend unto it; but upon these Grounds only, That there was a present Necessity of Money; that all the Council-Board had so voiced with him, yea, before himself, and he always thought it Presumption in a Man not to follow the wiser and more judicious: and that there was then a Sentence of the Star-Chamber for the Right of paying Ship-Money. For his part, he would never be more prudent than his Teachers, nor give Judgment against the Judges. And therefore he thought it not far amiss to advise the King for the collecting of that, which by Law was his own, in such a present and urgent Necessity. And altho' his Opinion (and it was no more) had been amiss, he hoped that tho' in case of Religion, being attended with Stubbornness and Pertinacy, it might come home to Heresy, yet in his case Opinion could not reach so far as Treason; unless it be Treason for a Man to speak his Judgment freely, when he is upon his Oath to do the same.

Fourthly, For the Words about fining, he had already acknowledged them in his general Answers to be true; but with these Qualifications, That it was his Opinion only; that it was upon the Refusal (as he conceived) of a just Service that he had spoken them, by no means to prejudice the Citizens, but to make them the more quick and active in the King's Service; that no ill Consequence happen'd upon them; that they were Words might have been spared indeed, but innocently, tho' suddenly spoken, which he hoped might proceed from a Man of such a hasty and incircumspect Humour as himself, (made so both by Nature and his much Infirmary of Body) without any mind at all to Treason; and that if all cholerick Expressions of that nature should be accounted treasonable, there would be more Suits of that kind fly up and down *Westminster-Hall* than Common-Law.

Fifthly, To those Words attested by the Alderman, he positively denied them; and hoped they should never rise up against him in Judgment, because the Testimony was single, and not positive, but only to his best Remembrance; and that it was exceeding strange that no Man, neither of the Council or other Aldermen, were so quick to observe them, but only Alderman *Garway*; which he thought sufficient to nullify that single Testimony, except he could demonstrate himself to have some rare and singular Faculty of hearing.

In the close, he desired the Lords, from his Misfortune, to provide for their own Safety, and seriously to consider what a Way was chalked out to ruin them both in their Lives and Estates, if for every Opinion given in Council, or Words suddenly or hastily spoken, they (who are born to wield the great affairs of the Kingdom) should be arraigned and sentenced as Traytors.

Then they went to the 26th Article, and charged thus:

That the Lord *Strafford*, having by his wicked Advices exhausted the King's Treasury, did also counsel him,

First, To imbase the Coin by an Allay of Copper-Money.

Secondly, To seize upon all the Bullion in the Mint.

Thirdly, That in Discourse with some of the Aldermen about that Business, he had said, The City was more ready to countenance and relieve the Rebels than the King; and that the King of

France did use to manage such Businesses, not by Treaties or Requests, but by sending forth his Commissaries to take account of Mens Estates, accompanied with Troops of Horses.

The Proofs were;

First, Sir *Thomas Edwards*, who declared, That in Discourse with the Lord *Strafford*, having remonstrated unto him that their Goods were seized on beyond Seas, because of the Money taken out of the Mint, he told him, *That if the Londoners suffered it, it was deservedly, because they had refused the King a small Loan of Money upon good Security; and that he thought them more ready to help the Rebels than the King.*

Secondly, Mr. *Palmer* declared that he spake something about the King of *France*; but whether with relation to *England*, or not, he did not remember.

Thirdly, Sir *William Parkin* attested in the same Words; and withal, that the Lord *Cottington* was then present, and could declare the whole Business.

Fourthly, Sir *Ralph Freeman* declared that in a Discourse with the Lord *Strafford* he had said that the Servants in the Mint-House would refuse to work the Copper-Money; and he replied, *That then it were well to send those Servants to the House of Correction.*

They closed the Charge, That by such undutiful Counsel and Words, he had given more than sufficient Proof of his Design and Purpose to subdue this Kingdom, and subvert the fundamental Law and Privileges of the same.

The Lieutenant's Reply:

First, That he expected some proofs about the two first Particulars, but did hear of none; and that it was no small Disadvantage to him to be charged with a great many odious Crimes by a Book, printed and flying from hand to hand thro' the whole Kingdom, yet when they came to prove, there should be no such thing laid against him.

Secondly, About the Speeches: He ingenuously confessed, that some such thing might perhaps have escaped the Door of his Lips, when he saw their Backwardness to his Majesty's Service; and as the Times were then conditioned, he did not think it much amiss to call that Faction by the Name of Rebels; but yet he thought he had abundantly satisfied for that Oversight (if it was any) at *York*: For having understood there, that the City of *London* were willing to make a Loan of Money, he there, before the great Council of the Peers, expressed himself to this Sense, *That the Londoners had sufficiently made up all their Delays hitherto by their Aids: that the King was obliged to their Forwardness; and that he himself should be as ready to serve them as any poor Gentleman in England.* About the other Words, he said, That being in conference with some of the *Londoners*, there came at that time to his hands a Letter from the Earl of *Leicester*, then at *Paris*, wherein were the *Gazettes* inclosed, reporting that the Cardinal had given some such Order, as to levy Money by Forces. This, he said, he only told the Lord *Cottington*, standing by, without the least Application or Intention concerning the *English* Affairs. *Cottington*, being examined upon this, declared the same in the same manner.

Thirdly, To Sir *Ralph Freeman*, he said, That his Testimony did not concern the Charge at all; nor did he think any thing amiss in it, tho' he had said it: If the Servants of the Mint refused to work according

according to Directions, they did deserve the House of Correction; nor was it treasonable to say, the King might use that House for the Correction of his Servants, as well as any Man in the City for theirs.

Fourthly, He said that there was no great Likelihood that he had committed real Acts of Treason, when his adverse Party was content to trifle away so much Time about Words; neither was there any Treason in them, tho' they had been fully verified: and therefore in that (as in all other Articles) he reserved a Power for his Counsel to dispute in Matter of Law.

They went to the 27th Article, and charged thus; That immediately after his Appointment to be Lord-Lieutenant of the Army here in *England*, he shewed what Principles of Arbitrary Government lurked within his Bosom; for by his own immediate Authority, without and against Law, he had laid an Impost of Money upon the King's Subjects. Where they mention three Particulars:

First, That he had imposed 8*d.* *per diem* upon the County of *York*, for entertaining the Trained-Bands there one whole Month.

Secondly, That he had sent out Warrants for collecting the same, and threatened to imprison such as should refuse to pay.

Thirdly, That he said, *That it was a Crime nigh to the Crime of High-Treason, not to pay the same.*

Fourthly, They added, That in his general Replies he had brought two Things for his Defence: 1st, That this Money was freely and voluntarily offered by those in *Yorkshire*. 2dly, That the great Council of the Peers had notice of the same.

To the first they answered, That a Petition was indeed preferred by the *Yorkshire* Men, and a Month's Pay offered; but that the Lord *Strafford* had refused to present the same upon this Exception only, because in the same they had petitioned for a Parliament: Whereby he evidently declared what little Inclination he had to that way.

To the second, They appealed to all the Lords present, whether any such Order did pass before the Council of the Peers at *York*.

The Proofs were;

First, A Warrant issued by Colonel *Pennyman* for this Money, and another by Sir *Edward Osborne*.

Secondly, Sir *John Burrows*, who declared that he was Clerk to the great Council, but did remember of no Order; and withal added, that it might have passed at that time, when he attended at *Rippon*.

Thirdly, Mr. *Dunston*, who declared that he had known that Money levied by some Musqueteers.

Fourthly, By Sir *William Ingram* who declared that he had heard the Lieutenant say, *That to refuse the same, came nigh to the Crime of High-Treason.*

They concluded the Charge, That by these Particulars it was more than evident what unhappy Purpose and traitorous Designs he had to subdue this Kingdom, and subvert the Fundamental Laws and Privileges.

The Earl replied, First, To the Petition, That it was true, a Petition was drawn up by the *Yorkshire* Gentlemen; and as true, that he had refused to present the same, because of that Clause about the Parliament. But the Matter was thus: At his Majesty's coming to *York*, it was thought necessary for the Defence of that Country to keep the Trained-Bands on foot, because the Enemy was upon the Borders; and therefore the King directed him to

write to all the Freeholders in *Yorkshire*, to see what they would do for their own Defence.

The Time and Place were designed by the King; but the Night before the Meeting, a small Number convented, and in a private and factious Way did draw up that Petition. Upon the Morrow, at their appointed Dyet, in Presence of the whole Number, the Petition was presented to him; where he did advise them to leave out that Clause, and that because he knew the King out of his own gracious Disposition, had intended to call a Parliament, which he desired should rather be freely done, than upon the Constraint and Importunity of Petitions: Moreover, it would seem a mercenary Thing in them, at one and the same Time to offer a Benevolence, and withal to petition for his Favour. Upon this Remonstrance, they were all willing to recal the Petition, and directed him by Word of Mouth to offer unto the King the Month's Pay in their Names; which he did accordingly, in the Presence of Forty of them, to their no small Advantage.

This he proved by Sir *William Pennyman*, Sir *Paul Neale*, Sir *George Wentworth*, Sir *William Savile*, Sir *Thomas Danby*, who all of them declared as much in ample Terms; and withal added, That nothing was done upon better Grounds of Necessity and Obedience than the Offer of that Money, and that they never had heard any Man grudge against it to this time.

For the Second, about the Council of Peers, he alledged, that he never made mention of any Order of theirs; but he remembered very well it was twice propounded before them, that the King had approved it at that time a just and necessary Act, and none of the Council had contradicted it; which he conceived as a tacit Approbation, and an Order in Equivalence.

But tho' that had not been, yet there was nothing done in the Business, but at the special Desires of the Gentlemen themselves, and for their necessary Defence and Protection; yea, tho' he had done it by himself alone, yet he conceived he had so much Power by his Commission, (causing the Commission to that effect to be read) That albeit he should mistake his Commission, and do some inferior Act beyond it (because military Proceedings are not always warranted by the Common Law) yet it should not be imputed as an Act of Treason to him. (And to this Effect he read a Statute of the Seventh of *Henry the Second*.)

To the Proofs; First, Colonel *Pennyman's* Warrant, or Sir *Edward Osborne's*, it nothing concerned him; and he doubted not but these worthy Gentlemen could justify their own Act, and that he had enough to do to answer his own Misdemeanours.

Secondly, For Sir *John Burrows*, he was at *Rippon* when the Proposition was made.

Thirdly, That as the Warrant, so neither the Execution, troubled him at all.

Fourthly, For Sir *William Ingram*, he was but a single Testimony, and that such an one too, as he could produce an Evidence to testify he had mistaken himself in his Testimony upon Oath, if it were not to disadvantage the Gentleman.

He concluded, That he had done nothing in that Business but upon the Petition of that County, the King's special Command, the Connivance at least of the great Council, and upon a present Necessity, for the Defence and Safety of the County.

And so much for *Wednesday*.

Upon

Upon *Thursday* the Committee for the Charge declared that they had done with all the Articles, and were content to wave the last, for Reasons best known to themselves: only Sir *Walter Earles* added, That he had some Observations to bring forth upon the two and twentieth Article, which he conceived might do much to prove the Earl of *Strafford's* Designs for landing the *Irish* Forces in *England*.

And they were, first, That in his Commission he had Power to land them in *Wales*, or in any Part of *England*, or in *Scotland*; which were altogether superfluous, unless there had been some Purpose for the same.

Secondly, That within two Days before the Date of the Commission, Letters were sent to the Lord *Bridgewater* and *Pembroke* from Sir *Francis Winderbank*, to assist the Earl of *Worcester* in levying Forces for the King's Service; and these might be supposed to have intended a joining with the *Irish*.

Thirdly, That the Lord *Ranelagh*, at the raising of the *Irish* Army, did fear such a Design as this.

Fourthly, That the Town of *Ayre* in *Scotland*, where the Lord *Strafford* pretended he would land those Forces, was fortified with a Bulwark, a Garrison, and Block-house, which would prohibit landing there; and the Earl of *Argyle's* Bounds were divided thence by the Sea, and that the Bar or Entry into the Town was very dangerous and shallow.

The Proofs were only the Reading of the Commission granted to the Lord *Strafford*.

The Lieutenant replied, First, That his Commission was the same *verbatim* with *Northumberland's* for *England*, and that it was drawn up by the Council-Board here, and sent over unto him; so no more Design in him than in the Gentlemen of the *English* Army, nor no larger than that was put upon him.

Secondly, That this was the first time he heard of any such Letters, nor did they concern him more than any of the House.

Thirdly, That he was not bound to purge the Lord *Ranelagh* from all his Fears, and that he had his own Fears too, which God forbid should be Evidence of Treason against any Man whatsoever.

Fourthly, That it seemed the Gentleman had better Information from that Kingdom than himself; yet he would not be confident to say, at *Ayre* there was never such a thing as a Block-house or Garrison. But to remove all Scruples, (for indeed the Road or Landing-place is not there safe) he declared that it was his Intention to have landed some Miles above *Ayre*, and made only his Magazine of that Town.

To the Earl of *Argyle's* Bounds, he hoped the Gentleman knew they came not on foot out of *Ireland* but had Ships to waft and transport themselves, and that one of his prime Houses (*Rosneath*) was within some few Miles of the same Frith.

The Lord *Digby* finding Sir *Walter Earles* on Ground, did handsomely bring him off, and told the Lords, That all their Proofs for that Article were not yet ready, and that this was a Superfétation only of the Charge; and that in such a Business as the Plotting of Treason, they must be content sometimes with dark Probabilities.

Then Mr. *Glyn* desired the Lieutenant to resume his Defence, that they might give a Repetition of

their Charge, and so close the Process so far as concerned the Matter of Fact.

He replied, That in this Case all Slackness is Speed enough; the Matter touched him narrowly, even in his Life and Estate, yea, in that which he esteemed above them both, his Honour and Posterity; and therefore he confessed he had no Desire to ride Post in such a Business. That he knew the Gentlemen of the Bar, if they were in his Case, would think the time little enough, except their more able Judgments could sooner dispatch the Matter in Hand; and therefore he humbly intreated, that that Day might be granted to him for strengthening himself, and recollecting his Thoughts and Spirits, and To-morrow he would be ready with his last Replies for himself: which after a little Ceremony and Contestation, was condescended unto by the House of Commons.

Upon *Friday* Morning, about eight of the Clock, the Lieutenant of the *Tower*, and my Lord's Chamber-Groom came to the Hall, and gave Information to the House upon Oath, That the Lord *Strafford* was taken with an exceeding great Pain, and Fit of the Stone, and could not upon any Condition stir out of his Bed.

Mr. *Glyn* replied, That it was a Token of his Wilfulness, not his Weakness, that he had not sent a Doctor to testify the same.

The Lord Steward made answer, That a Doctor could not be had perhaps so soon in a Morning, nor was it possible for any Physician to give a certain Judgment concerning a Man's Disability by the Stone, because there is no outward Symptoms that appear.

Mr. *Glyn* excepted, That if he did not appear upon *Saturday* Morning, he should lose the Privilege to speak in his own Defence afterwards, and they permitted to proceed.

The Lord Steward replied, That the Lords had appointed four of their Number to go to the *Tower*, and learn the just Cause of his Stay; and if by any Means he were able, he should be obliged to come then; if not, Humanity and common Equity would excuse him.

In the Afternoon it was Reported that he was dead, of which there can be no better Reason given than the Humour and Genius of the Times, that dally with nothing oftner than Untruths and Calumnies: and certainly there are many Men of shallow Understandings and weak Affections, who either will not, or cannot understand the Gentleman's Worth; but out of fearful and needless Apprehensions are so desirous to hear of his Ruin any Way, that their busy Tongues will dare to anticipate the Stroke of Justice.

Mr. *Glyn* proffers new Proofs concerning the two and twentieth Article.

Upon *Saturday* Morning, *April* 10, he presented himself at the Bar, where he expected nothing but Repetitions of Charges and Defences; but mean while Mr. *Glyn* proffers some new Proofs concerning the two and twentieth Article, which the noble Lord refusing, alledging the Process was closed. Mr. *Glyn* answered, The Process is not closed, as long as the Business stands unrepealed; and that it did not become a Prisoner at the Bar to prescribe a Method of Proceeding to the House of Commons in *England*.

It was answered by the Lord-Lieutenant, That he thought it stood him in hand as nearly to maintain his Life, as it did any to pursue him for it; yet he was willing they should bring in new Proofs; provided that he might have time to make new Replies, and withal use some new Witnesses in some Articles that concern his Justification.

The Lord *Newark*, upon these Motions, desired the House might be adjourned: after two Hours Stay, and a hot Conflict among the Lords, they returned, and the Lord Steward commanded the Order to be read, which consisted of two Articles:

First, That as it was granted unto them to bring in Proofs concerning the two and twentieth Article: so it was to the Lord *Strafford* to make his Replies, and use his Witness concerning the same.

Secondly, That if they went to no more Articles, no more should the Lord *Strafford*; but if they did, that he might pitch upon any one Article as he pleased.

The House of Commons presently declined all other Articles, and conceived the Order expressly for them, restraining him from all other Articles, except that only.

He conceived the Order was for him, and said, That seeing they had pick'd out their Article, it was against all common Equity to tie up his Hands, and not admit of a common Rule for them both. They replied, That when the Article was canvassed they reserved Witnesses till another time. He answered, That he had done the same upon every Article. They replied, That the House had refused his Reservation. He answered, Nor had they passed an Order for theirs.

Upon this new Contestation the House rose again and was adjourned. It is supposed that the House of Commons had the better Ground, because they had particularly named their Witnesses in their Reservation, the Lord *Strafford* not so; they pressed but one Article, he many. But such was the Pleasure of the Lords, that tho' the Matter did not deserve to be much stood upon, yet after two Hours vehement Agitation of the Business in the Upper House, they returned, and the Order was in favour to this Effect:

First, That both of them should wave their new Proofs and go immediately to that which follows.

Secondly, If they would not do so, the Lords conceived themselves common Judges to both, and therefore would not deny *Strafford* the Liberty of pitching upon what Article he pleased, as they had done.

Thirdly, That both of them should name their Witnesses at the Bar instantly.

The Commons were much grieved at this, yet desired him to nominate his Witnesses, if he would make any Benefit of the Order. He answered, That he would nominate after them, because they were first in Order. They replied, That he knew their Article, they not his. He said, He was to bring Proofs about the second, fifth, thirteenth, and the fifteenth Articles, and did desire them that they would now proceed to Nomination.

But they told him, they could not embrace the Order without Advice of the whole House. Then on a Sudden a mighty Noise followed of the whole House, *Withdraw, Withdraw!* and was in so uncouth and tumultuous a Confusion, that it produceth both Admiration and Fear in the Beholders, wherein we might easily feel the Pulse of a distempered State. Both the Houses brake up, not ap-

pointing so much as the next Dyet; each Man's Countenance spake Anger and Discontent, and nothing founded in our Ears all *Sunday* but Terrors and Affrightments of a present Division and Breach between the two Houses: That the House of Commons would declare him a Traytor, and all such Lords too as were his Adherents; that he should be no more heard in publick, that (tho' Parties, and not his Peers) they would vote in his Sentence: That a Bill of Attainder should presently be drawn up against him, and that nothing should content them but present Execution.

Big Words flew up and down all *Monday, April 12*. That whole Day was spent in a Conference betwixt the Houses, without any meeting in the Hall; but the Lords (who had learned, as it seems, to foresee their own Ruin by his Misfortune, and now conceive that Monarchy and Nobility are of such Identity, that one and the same is the Diminution of both) kept fast to their Conclusion, and would not pass from their Order, notwithstanding all the many Dangers represented: so that the House of Commons were constrained at last to give way, and embrace the first Part of the Order, by waving Witnesses on both Sides.

This hath been no small Discouragement to his Enemies; for a more real Demonstration of his Party amongst the Lords could not have been shewn.

Upon *Monday*, some of the Lords went so high in their Heat, as to tell the House of Commons, That it was an unnatural Motion, for the Head to be govern'd by the Tail; That they hated Rebellion as bad as Treason; That the same Blood that ennobled their Ancestors, did move also in their Veins, and therefore they would never suffer themselves to be suppressed by a popular Faction.

After a great deal of Storm, all was (as well as might be) fodder'd up again, and *Tuesday* appointed to be the Day for the Lieutenant to resume his Defences, and they their Charge, without any more Proof to be used on either Side.

Upon *Tuesday, April 13*, the Lord Steward at the Entry told them, the Lords had order'd that both their Testimonies should be waved, that they should proceed immediately to what followed, so that that Day might put an End to what concerned the Matter of Fact.

The Lord-Lieutenant replied, That in all Humility and Obedience he would submit himself to that, or any other their Decrees whatsoever, tho' it should reach as far home unto him as his own Life; but withal humbly begged, That if hereafter he should be troubled (for they were to speak last) with new Matter, or with supplemental Proof, he might have leave to speak something in his own Defence.

The Lord Steward answered, It was all the Reason in the World.

The Lieutenant went on thus:

My Lords,

THIS Day I stand before you charged with High-Treason, the Burden is heavy, yet far the more, in that it hath borrowed the Patrociny of the House of Commons; if they were not interested, I might express a no less easy, than I do a safe Issue and good Success to the Business: But
let

let neither my Weakness plead my Innocence, nor their Power my Guilt. If your Lordships will conceive of my Defences, as they are in themselves, without reference to either, (and I shall endeavour so to present them) I hope to go away from hence as clearly justified, as I am now in the Testimony of a good Conscience by myself. My Lords, I have all along my Charge watched to see that poisoned Arrow of Treason, that some Men would fain have to be feathered in my Heart, and that deadly Cup of Wine, that hath so intoxicated some petty misalleged Errors, as to put them in the Elevation of High-Treason; but in truth it hath not been my Quickness to discern any such Monster yet within my Breast, though now, perhaps, by a sinister Information, sticking to my Clothes. They tell me of a twofold Treason, one against the Statute, another by the Common-Law; this direct, that consecutive; this individual, that accumulative; this in itself, that by way of construction.

For the first, I must, and do acknowledge, that if I had the least suspicion of my own Guilt, I would spare your Lordships the pains, cast the first Stone at myself: and pass Sentence of Condemnation against myself: and whether it be so or not, I refer myself to your Lordships Judgment and Declaration. You, and only you, (under the favour and protection of my gracious Master) are my Judges: under favour, none of the Commons are my Peers, nor can they be my Judges. I shall ever celebrate the Providence and Wisdom of your noble Ancestors, who have put the Keys of Life and Death (so far as concerns you and your Posterity) into your own hands, not into the hands of your Inferiours; none but your own selves know the Rate of your noble Blood, none but yourselves must hold the Ballance in dispensing the same.

I shall proceed in repeating my Defences, as they are reducible to these two main Points of Treason: and for Treason against the Statute, (which is the only Treason in effect) nothing is alleged for that, but the fifteenth, two and twentieth, and twenty-seventh Articles. [Here he brought the Sum of all his Replies made to these three Articles before, and almost in the same Words as before; only that Testimony of Sir Henry Vane's, because it seemed pressing, he stood upon it, and alleged five Reasons for the nullifying thereof.]

First, That it was but a single Testimony, and would not make Faith in a Matter of Debt, much less in a Matter of Life and Death; yea, that it was expressly against the Statute to impeach (much less to condemn) him upon High-Treason, under the Testimony of two famous Witnesses.

Secondly, That he was dubious in it, and expressed it with an *as I do remember*, and *such or such like Words*.

Thirdly, That all the Council of Eight, except himself, disclaim the Words; as if by a singular Providence they had taken hold of his Ears only.

Fourthly, That at the time the King had levied no Forces in *Ireland*, and therefore he could not be possibly so impudent as to say to the King, *That he had an Army there, which he might employ for the reducing this Kingdom*.

Fifthly, That he had proved by Witnesses beyond all Exceptions (Marquis Hamilton, the Lord Treasurer, the Earl of Northumberland, Lord Cottingham, Sir William Pennyman, and Sir Arthur Ter-

ringham) that there was never the least Intention to land those Forces in *England*.

[He went on:]

So much for the Articles that concern Individual Treason.

To make up the Constructive Treason, or Treason by way of Accumulation, many Articles are brought against me, as if in a heap of Felonies or Misdemeanours (for in their conceit they reach no higher) some prolific Seed, apt to produce what is treasonable, could lurk. Here I am charged to have designed the Ruin and Overthrow both of Religion and State. The first seemeth rather to have been used to make me odious than guilty, for there is not the least Proof alleged concerning my Confederacy with the Popish Faction, nor could there be any indeed; never a Servant in Authority beneath the King my Master was ever more hated and maligned by those Men than myself, and that for an impartial and strict executing of the Laws against them.

Here your Lordships may observe, that the greater number of the Witnesses used against me, either from *Ireland* or from *Yorkshire*, were Men of that Religion: But for my own Resolution (I thank God) I am ready every Hour of the Day to seal my Dissatisfaction to the Church of *Rome* with my dearest Blood.

But, my Lords, give me leave here to pour forth the Grief of my Soul before you: these Proceedings against me seem to be exceeding rigorous, and to have more of Prejudice than Equity, that upon a supposed Charge of my Hypocrisy or Errors in Religion, I should be made so monstrously odious to three Kingdoms; a great many thousand Eyes have seen my Accusations, whose Ears shall never hear, that when it came to the upshot I was never accused of them. Is this fair dealing amongst Christians? But I have lost nothing by that: Popular Applause was ever nothing in my conceit; the Uprightness and Integrity of a good Conscience was, and ever shall be, my continual Feast; and if I can be justified in your Lordships Judgments from this grand Imputation, (as I hope I now am, seeing these Gentlemen have thrown down the Bucklers) I shall account myself justified by the whole Kingdom, because by you, who are the Epitome, the better Part, yea the very Soul and Life of the Kingdom,

As for my Design against the State, I dare plead as much Innocency here, as in Matter of my Religion: I have ever admired the Wisdom of our Ancestors, who have so fixed the Pillars of this Monarchy, that each of them keep a due Proportion and Measure with the other, and have so handsomely tyed up the Nerves and Sinews of the State, that the straining of any one may bring danger and sorrow to the whole Economy. The Prerogative of the Crown, and the Propriety of the Subject, have such mutual Relations, this takes Protection from that, that Foundation and Nourishment from this: And as on the Lute if any one String be too high or too lowly wound up, you have lost the Harmony; so here the Excess of a Prerogative is Oppression; of pretended Liberty in the Subject, Disorder and Anarchy. The Prerogative must be used as God doth his Omnipotency, upon extraordinary Occasions; the Laws (answerable to that *Potentialigata in Creaturis*) must have place at other times. And yet there must be a Prerogative, if there must be extraordinary Occasions;

sions; the Propriety of the Subjects is ever to be maintained, if it go in equal pace with this: They are Fellows and Companions, that are and ever must be inseparable in a well-governed Kingdom; and no way so fitting, so natural to nourish and entertain both, as the frequent Use of Parliaments; by those a Commerce and Acquaintance is kept betwixt the King and Subject. These Thoughts have gone along with me these fourteen Years of my publick Employments, and shall, God willing, to my Grave: God, his Majesty, and my own Conscience, yea, and all those who have been most necessary to my inward Thoughts and Opinions, can bear me witness that I ever did inculcate this, That the Happiness of a Kingdom consists in a just Poize of the King's Prerogative and the Subject's Liberty; and that Things would never go well, till they went hand in hand together.

I thank God for it, by my Master's Favour, and the Providence of my Ancestors, I have an Estate, which so interesteth me in the Common-wealth, that I have no great mind to be a Slave, but a Subject; nor could I wish the Cards to be shuffled over again, upon hopes to fall upon a better Set: nor did I ever nourish such base mercenary Thoughts, as to become a Pander to the Tyranny and Ambition of the greatest Man living. No, I have, and ever shall aim at a fair, but a bounded Liberty; remembering always that I am a Freeman, yet a Subject; that I have a Right, but under a Monarch. But it hath been my Misfortune now, when I am grey-headed, to be charged by the Mistakers of the Times, who are now so highly bent, that all appears to them to be in the extreme for Monarchy, which is not for themselves. Hence it is, that Designs, Words, yea Intentions, are brought out for real Demonstrations of my Misdemeanours: such a Multiplying-Glass is a prejudicate Opinion.

The Articles contain Expressions and Actions; my Expressions either in *Ireland* or *England*, my Actions either before or after these late Stirs.

[In this Order he went thro' the whole Charge, from the first Article to the last, in an excellent Method, and repeated all the Sums and Heads of what was spoken by him before; only added in the twenty-eighth Article, If that one Article had been proved against him, it contained more weighty Matter than all the Charge besides: and it had not only been Treason in him, but also Villany, to have betrayed the Trust of his Majesty's Army. Yet because the Gentlemen had been sparing (by reason of the Times) to insist upon that Article, tho' it might concern him much, he resolved to keep the same Method, and not utter the least Expression that might seem to disturb the happy Agreement intended, tho' he wished the same might deceive his Expectation: Only thus much he admired, how himself, being an Incendiary against the *Scots* in the twenty-third Article, is now become their Confederate in the twenty-eighth Article; or how he could be charged for betraying *Newcastle*, and for fighting with the *Scots* at *Newborne* too, seeing fighting with them was no possible Means for betraying the Town, but to hinder their Passage thither.

That he never advised War farther, than (in his poor Judgment) concerned the very Life of the King's Authority, and the Safety and Honour of his Kingdoms: Nor saw he what Advantage could be made by a War in *Scotland*, where nothing

could be gained but many hard Blows. For his part, he honoured the Nation, but he wished they might be ever under their own Climate, and had no desire they should be too well acquainted with the better Soil of *England*: But he thought that Article had been added in jest, or as a Supernumerary; and he very little suspected to be reckoned a Confederate with the *Scots*, and wished (as he hoped it was) that every *Englishman* were as free from that Imputation as himself: closing his Defence with this Speech.]

My Lords, You see what may be alledged for this Constructive, rather Destructive Treason. For my part, I have not the Judgment to conceive that such a Treason is agreeable either with the fundamental Grounds of Reason or Law: not of Reason, for how can that be Treason in the Lump or Mass, which is not so in any of the Parts? Or how can that make a Thing treasonable, which in itself is not so? Not of Law, since neither Statute, Common-Law, nor Practice, hath from the beginning of this Government ever mentioned such a Thing; and where, my Lords, hath this Fire, without the least appearance of any Smoke, lien hid so many hundred Years, and now breaks forth into a violent Flame to destroy me and my Posterity from the Earth? My Lords, do we not live by Laws, and must we be punished by Laws before they be made? Far better were it to live by no Laws at all, but to be governed by those Characters of Discretion and Virtue, that Nature hath stamped in us, than to put this Necessity of Divination upon a Man, and to accuse him of the Breach of Law, before it be a Law at all. If a Waterman upon the *Thames* split his Boat by grating upon an Anchor, and the same have a Buoy appending to it, he is to charge his own Inobservance; but if it hath none, the Owner of the Anchor is to pay the Loss.

My Lords, If this Crime, which they call Arbitrary Treason, had been marked by any Discerner of the Law, the Ignorance thereof should be no Excuse for me; but if it be no Law at all, how can it in rigour or strictness itself condemn me? Beware you do not awake these sleeping Lions, by the searching out some neglected Motheaten Records, they may one Day tear you and your Posterity in pieces: It was your Ancestors Care to chain them up within the Barricadoes of Statutes; be not you ambitious to be more skilful and curious than your Forefathers in the Art of killing.

My Lords, It is my present Misfortune, for ever yours; and it is not the smallest part of my Grief, that not the Crime of Treason, but my other Sins, (which are exceeding many) have presented me before this Bar; and except your Lordships Wisdoms provide for it, it may be, the shedding of my Blood may make way for the tracing of yours: you, your Estates, your Posterities, lie at the stake. If such learned Gentlemen as these, whose Tongues are well acquainted with such Proceedings, shall be started out against you; if your Friends, your Counsel denied Access unto you; if your professed Enemies admitted to witness against you; if every Word, Intention, or Circumstance of yours, be sifted and alledged as treasonable; not because of a Statute, but because of a Consequence, or Construction of Lawyers pieced up in a high Rhetorical Strain, and a number of supposed Probabilities; I leave it to your Lordships

Lordships Consideration, to foresee what may be the Issue of such dangerous and recent Precedents.

These Gentlemen tell me they speak in defence of the Commonwealth, against my Arbitrary Laws; give me leave to say it, I speak in defence of the Commonwealth, against their Arbitrary Treason: for if this Latitude be admitted, what Prejudice shall follow to King and Country, if you and your Posterity be by the same disabled from the greatest Affairs of the Kingdom? For my poor self, were it not for your Lordships Interest, and the Interest of a Saint in Heaven, who hath left me here two Pledges on Earth, [*At this his Breath stopp'd, and he shed Tears abundantly in mentioning his Wife, which moved his very Enemies to Compassion*] I should never take the pains to keep up this ruinous Cottage of mine; it is loaden with such Infirmities, that in truth I have no great pleasure to carry it about with me any longer: nor could I ever leave it in a better time than this, when I hope the better part of the World would perhaps think, that by this my Misfortune I had given a Testimony of my Integrity to God, my King, and Country. I thank God, I count not the Afflictions of this present Life comparable to that Glory, which is to be revealed in the time to come.

My Lords! my Lords! my Lords! Something more I had to say, but my Voice and Spirits fail me: only I do in all humility and submission cast myself down before your Lordships Feet, and desire that I might be a *Pharos* to keep you from Shipwreck; do not put such Rocks in your own Way, which no Prudence, no Circumspection, can eschew or satisfy, but by your utter Ruin. And whether your Judgments in my Case (I wish it were not the Case of you all) be either for Life or Death, it shall be righteous in my Eyes, and received with a *Te Deum laudamus*: (and then he lifted up his Eyes, and said) *In te, Domine, confido, ne confundar in aeternum.*

This he spake with an inimitable Life and Grace. You have his very Words as near as I can remember, only with so much loss and detriment as hath perished by transcribing the Copy from his own Mouth. But you desire Impartiality, and indeed you have it, and with some Grains too of Allowance; for I was so afraid of my own Affection to the Gentleman, that I rather bowed to the other Extremity, and therefore have set down his Defences rather to his Disadvantage by my rude Pen, than in the native Colour, to his eternal Glory, and the Confusion of his Enemies.

The Repetition of the Charge did not spend much time; they proceeded orderly Article by Article, in the very same Words and Matter as before: only there was some remarkable Flashes that passed from Mr. *Glyn* (who was the Man) in the time of their handling.

He told them, That he should represent the Lord *Strafford* as cunning in his Replies, as he had been crafty in his Actions; that he waved all that was material, and insisted only upon the secondary Proofs; that it was more than evident throughout all his Charge, how he had endeavoured to bring in an Arbitrary and Tyrannical Form of Government over the Lives, Lands and Liberties of the King's Subjects; yea, had exercised a Tyranny over their Consciences too, by the Oath administred in *Ireland*: And tho' his malicious Designs had taken

no effect, yet no Thanks to him, but to the Goodness of the King, and the Vigilancy of the Peers. Had they pleased, it had been too late to have punished him; for no Rule of Law had been left whereby to censure him, after the Death and Expiration of the Laws. And if the Intention of *Guido Faux* might be thought Treason, tho' the House was not blown up, then this Intention of his may admit the same Censure.

He closed; That throughout all his Defences he had pretended either Warrants from the King, or else the King's Prerogative: and what was this else but to draw up a Cloud, and exhale the Vapour for the eclipsing of the bright Sun, by the Jealousies or Repinings of his Subjects, if the strength of his Piety and Justice should not dispel all these Mists, and send them down to their Original? That the very standing and falling of these three Kingdoms stood upon this Process; all of which do conceive their Safety so far interested in his just Punishment, that no settling of their Peace or Quiet could be expected without this: That they hoped the Law should never protect him, who had gone about to subvert all Law; nor the Nobility (who had the same Blood moving in their Veins) by submitting themselves to his base Tyranny, lose that Privilege and Liberty, which their Ancestors had bought with their dearest Lives. Tho' there was no Statute for this Treason, was it the less monstrous? For there were none for many hundreds of Years that durst ever venture upon such Insolences, to occasion such a Statute. And were not the fundamental Grounds and Rules of Government sufficient to rise up in Judgment against him, without the making a particular Statute? This, he said, he left to the Dispute of the Law; and concluded, that seeing they had found out the *Jonah*, who these many Years had tossed and hazarded the Ship of the Commonwealth with continual Storms and Tempests, there could be no Calms expected, but by casting him out into the Seas; which, in all justice, they must, and do expect from their Hands, who are intrusted by the Body of the Kingdom to do the same. The Aggravation of the Offence, he said, he had left to Mr. *Pym*, who here spake that Speech which is now in Print.

It was a Sport to see how Mr. *Pym* in his Speech was fearfully out, and constrained to pull out his Papers, and read with a great deal of Confusion and Disorder, before he could recollect himself; which failing of his Memory was no small Advantage to the Lieutenant: because, by this means, the House perceived it was a premeditated Flash, not grounded upon the Lieutenant's last Answer, but resolved on before, whatsoever he should say for his own Justification. But the Lieutenant was not suffered to reply a Word, either to *Glyn* or *Pym*, because the last Word must be theirs. And so with *Tuesday* ended the Matter of Fact.

On *Thursday* the Dispute in Law is expected.

Upon *Wednesday, April 14*, we were big with Expectation for the Matter of Law, having done before with Matter of Fact; but it seems the House of Commons had perceived a great Defection of their Party, and a great Increase of the Lord *Strafford's* Friends in both the Houses, occasioned by his insinuating, honest, and witty Defences, and therefore resolved of no more hearing in publick: therefore it was thought upon by his Accusers to draw

draw up a Bill of Attainder, and present the same to the Lords; whereby, First, the Matter of Fact should be declared to have been sufficiently proved; and then in the Matter of Law, that he had incurred the Censure of Treason, for intending to subvert the fundamental Laws of the Kingdom: For tho' (said they) he cannot be charged by the Letter of the Statute of the Twenty-fifth of *Edward* the Third, yet he is within the Compass of the *Salvo*, whereby it is provided, That the King and Parliament hath power to determine what is treasonable, and what not; and that they were confident the Lords would ratify and approve of this Bill of theirs, and give Judgment accordingly.

The Motion was stoutly opposed by three great Lawyers, (all Members of the House) *Selden*, *Holborne* and *Bridgeman*, who made it manifest, that the *Salvo* of 25 *Edward* 3. was repealed, and that no Man could now be convicted of Treason, but by the Letter of that Statute: But being put to Voice, it was carried for the Bill, and a Committee appointed for to draw it up.

This gave occasion of much talk abroad, and they who were otherwise the Lord *Strafford's* Enemies, could not find Equity enough in the Bill of Attainder. Some could not conceive what difference imaginable was betwixt the Bill and the Charge presented before; for in the Charge he was accused of Treason, and the Bill (tho' they had not the Legislative Power) seemed nothing but an Affirmation of the same. Others (who would have the Bill understood of a definitive Sentence, because it was consecutive to the Proofs) were not satisfied, but that it was against all Practice, that the Commons should give Sentence upon the Death of a Peer; and that it was against common Equity too, that the Complainers should be admitted to be Judges, and that the Party accusant should give the Judgment. A third sort gave it out, That this was no Sentence against the Lord *Strafford*, but only a passing of a new Act of Parliament, about a Matter not hitherto declared treasonable: But yet these doubted, that by declaring the Matter of Fact to be approved, and applying the Censure to it, in reference to the Lord *Strafford*, it would ever be thought a Sentence against him, to blemish his own Fame, and the Blood of his Posterity. Moreover, that if they were about to make a new Act, it were strange to punish a Man for the Breach of such a Statute as was not yet extant in *rerum natura*; which should in reason refer only to future Obedience: And (what is more strange) tho' there were a new Statute, yet by what Authority can the Parliament declare any individual or accumulative Act to be treasonable, which was not so before; for it must be Treason by virtue of a Statute, or else no Treason at all. Now there is none can be brought, except the Twenty-fifth of *Edward* the Third, whereof the Letter of that Statute cannot, by their own Confession, nor was not so much as once alledged against the Lord *Strafford*: And for the *Salvo* or *Proviso* (which they mainly insisted on) the same stands repealed by two posterior Acts of Parliament.

You have the Mutterings of all sorts of People.

The Lords fearing the proceedings, as a beaten Path trodden out to the Ruin of their own Lives and Estates, told the House of Commons in their Conference upon *Thursday*, April 15, That they would go on the same way they did already; and, according to the Order of the House, give full Au-

dience to the Lord *Strafford's* Counsel in Matter of Law, and that they themselves, as competent Judges, would by themselves only give Sentence in the Cause; nor was there any other Course suitable to the Practice and Statutes of the Kingdom, the Safety of the Nobility, or to Equity or common Justice.

It was replied by them of the Lower House, That they were resolved to go on with their Bill, and if the same should be rejected by the Lords, they feared a Rupture and Division might follow, to the utter Ruin and Desolation of the whole Kingdom; that no Content would be given to the Subject, (and this was a strong argument indeed, yet better beseeming Partiality and Violence, than the pretended Justice and Piety of the Times) unless the Man who had so much intruded upon their Right, and discontented the People, might be punished as a Traytor; and for the Practice of the Kingdom, that no Man had ever found such a favourable Hearing; and that the Process against *Effex*, *Norfolk*, *Somerfet*, were all of them closed up in one Day.

Upon *Friday*, April 16, the Lords gave Answer, That they could expect nothing from the House of Commons, but what should tend to the Peace and Preservation of the Kingdom: nor was there a more forceable way than to preserve the Laws and Customs thereof, lest Innovation, so much complained of by them, might unhappily be found among themselves: That the Subjects should have all that Justice could afford, but that an Act of Injustice would never give Satisfaction to the World, nor Safety to themselves; the Eyes of all foreign States being fixed upon the Business now in agitation, and the Wisdom of our Nation either to be much advanced or depressed by their Judgments in this Case: That the Process against *Norfolk* and *Effex* (for *Somerfet* was convicted only of Felony, and had not so much Animadversion to save himself by his Book) were for direct and formal Treasons, comprised in one or two individual Acts; but this against the Lord *Strafford* only arbitrary and accumulative, to be pickt out of Twenty-eight Articles: And therefore that it was impossible to have a full examination of them all to give Sentence against him. And those Noblemen were charged with some actual Breach of Statutes, formerly made; but here a new Statute was to be made or else he to be found guiltless. They concluded, that they had given order for his Appearance on *Saturday* and that in the great Hall at *Westminster*, where the House of Commons might, if they pleased, be present.

After some Deliberation with the House, the Conferrers answered, That since the Lords had so resolved, they would not deny to be there present, and to hear what his Counsel could say for him, but to reply any more in publick they neither could nor would, because of the Bill already past: only if the Lords should take any scruple in the Matter of Law, they would be ready to give them Satisfaction by a private Conference. (So they willingly declined to do what indeed they could not possibly do, that is, to give publick Satisfaction in the Matter of Law.)

Upon *Saturday*, April 17, they convened in the great Hall, but they that were of the Committee for the great Charge, did not stand at the Bar, as before, but sat promiscuously with the rest of their Fellows: so that a Mouth was not opened in

in the behalf of the House of Commons all that Day. After they were sat, the Lord Steward told the Lieutenant, That the Lords had resolved to give him a fair Hearing in the Matter of Law, and therefore desired that the Counsel might keep that Distance, Moderation and Respect to the Judicatory that was fitting, and not at all to meddle with the Matter of Fact.

The Lieutenant replied, That in all Humility he did acknowledge that Favour from the Lords; and that it was such an one too, as he could not but expect from such honourable Peers and just Persons in whose Integrity and Goodness (under that which he had placed above) he had reposed his chiefest Confidence; for his Counsel, they knew much better than himself what concerned the Point of Discretion and Reverence; and that he doubted not but that they would give all Satisfaction and Obedience.

Then his Counsel were called to the Bar, Mr. Lane, the Prince's Attorney; Mr. Gardiner, Recorder of London; Mr. Loe, and Mr. Lightfoot. Mr. Lane spake, and much to this Sense and Purpose:

My Lords, there is a heavy Charge lieth on me and my Fellows, nothing less than to defend the Life, the Estate, the Reputation, yea the Posterity of this Honourable Person at the Bar; if therefore we shall be more pressing, we hope your Lordships will interpret this our Forwardness to be for Honour and Conscience-sake, in a Matter that concerneth both so nearly: But it shall be our Endeavour to carry ourselves with our best Respects to your Lordships, and with all Content and Satisfaction to the Honourable House of Commons. And because your Lordships mentioned the Matter of Fact, one thing I dare be bold to say, That all the Time of this Noble Lord's Defences, he did not so much as crave any one of our Opinions; yea, or acquainted us with any thing that tended that way. And for the Matter of Law, those Statutes cited by himself were none of our Stock, but taken up at his own adventure: nor do I speak this to derogate from the Pertinency of those Statutes (for they shall be the Subject of my Discourse) but that the Nobleman be not disappointed of your right Conceptions, and his own due Praise.

My Lords, it is your pleasure we meddle not with Matter of Fact, and indeed we need not meddle at all with it, because we hope it is already done, and that sufficiently to our hands; yet the Matter of Law doth so naturally rise out of the Matter of Fact, that of necessity (under your Lordships Favour) we must somewhat grate on this, if we speak on that; nor do I conceive it possible for us to speak advantageously enough for the Lord *Strafford's* just Defence, unless the whole Matter of Fact be determined, either as proved or not proved, or at least some states of Questions agreed upon, where we may fix and settle our Arguments. And therefore it is, my Lords, that I have chosen not at all to touch the Matter of Law (until your Lordships shall be pleased to chalk me out a way) unless it be to clear your Judgments in one Statute only, viz. 25 *Edw.* 3. Because when the same was alledged by the Lord *Strafford* in his own Defence, that not being convicted of the Letter thereof, he could not be convicted of Treason; I remember the *Salvo* of that Statute was much insisted upon by those from the House of Commons, as much conducing to their own ends. My Lords, I will first speak of the

Statute itself, and then of its *Salvo* or Provision. The Statute is, *That if any Man shall intend the Death of the King, his Queen, their Children; kill the Chancellor, or Judge upon the Bench; imbase the King's Coin, or counterfeit the Broad-Seal, &c. he shall be convicted and punished as a Traytor.* That the Lord *Strafford* comes within the Letter of this Statute, is not so much as once alledged, not indeed can it be with any reason: All that can be said, is, That by Relation, or by Argument *a minori ad majus*, he may be drawn thither; yet that this cannot be, I humbly offer these Considerations.

First, This is a Declarative Law; and such are not to be taken by way of Consequence, Equity, or Construction, but by the Letter only; otherwise they should imply a Contradiction to themselves, and be no more Declarative Laws but Laws of Construction, or Constitutive.

Secondly, This is a Penal Law, and such (if our Grounds, hitherto unquestioned, hold good) can admit of no Constructions or Inferences; for Penalties are to persuade the keeping of known Laws, not of Laws conjectural, ambiguous, and by consequence, which perhaps the most Learned may not in their Disputes question; much less the Subject (who is not obliged to interpret the Statute) doubt of in the Point of Obedience; yea rather without any Doubt, he is to obey the Letter of the Statute, and conceive (and that truly) that he is not liable to the Penalty.

Thirdly, We have a notable Law, 13 *Eliz. cap.* 2. whereby it is declared that the bringing in of Bulls from *Rome* to stir up the Subject to Mutiny and Rebellion shall be punished as Treason. Now if by Interpretation, or by Consequence, this Sense might have been thrust upon the preceding Statutes, the making of this had been superfluous; yea, the Persons then charged with that Crime, might have been impeached of Treason, even before the making of this Act.

Anno 21 Ed. III. We have a Statute declaring, That for a Servant to kill his Master, is an Act of Treason: And in the three and twentieth Year of the same King, a Process of Treason was framed against a Man for killing his Father, grounded upon the same Argument, *a minori ad majus*: But it was found (and the Sentence is yet in the Records) that altho' in the one and twentieth Year of *Edward* the Third, that Argument might have been admitted; yet in the twenty-seventh it could not, by reason of the Declarative Law intervening in the twenty-fifth Year: And this Case comes very home to the Point in Law.

My Lords, I will not demand what kind of Offence it may be, for a Man to subvert the Fundamental Laws of a Kingdom; the Crime doubtless is unnatural and monstrous, and the Punishment must keep the same Proportion: only I presume to offer these few Things to your Lordships Considerations.

First, that one or more Acts of Injustice, whether maliciously, or ignorantly done, can in no Sense of Law be called the Subversion of the Fundamental Laws; if so, as many Judges (perhaps) so many Traytors. It is very incident to Man's Nature to err; nor doth the Lord *Strafford* plead his Innocency in Over-sights, but in Treason.

Secondly, I do remember the Case of *John de la Pool*, Duke of *Suffolk*: This Man in the twenty-eighth of *Henry* the sixth, was charged by the House

House of Commons with Articles of Treason, and those too very like to these against my Lord *Strafford*.

1. That he had given the King bad Advices.
2. That he had embased his Coin.
3. That he had cessed Men of War.
4. That he had given out summary Decrees.
5. That he had imposed Taxes.
6. That he had corrupted the Fountain of Justice.

7 That he had persuaded the King to unnecessary War, and to the giving over of *Anjou* in *France*, *Ovum Ovo*.

And for all these, tho' he was charged with High-Treason, for wronging the Right of the Subject, and subverting the Fundamental Laws of the Kingdom; yet, after a long Agitation, the Matter was found by the Lords of Parliament, not to imply Treason, but only Felony. Add to this another, who in the Twenty-third of *Henry* the Eighth, was charged for subverting the *English* Laws, and yet no Treason charged upon him. Add to both the Charge of *Richard Larks*, pleaded at the *Common-Pleas*, who was charged with Treason for subverting the Law, but convicted only of Felony: By which you may see, my Lords, what to this time hath been subverting the Laws.

Thirdly, It is very considerable, that the Lord *Strafford* is not charged to have subverted, but only to have intended to subvert the Fundamental Laws: And this I conceive, if there were no more, might keep him free from that Statute of the twenty-fifth of *Edward* the Third. For although, as touching the King, his Queen and Children, Intention is Treasonable; yet in all other things there mentioned, there must be Action beside Intention: for it is not said, If a Man do intend to kill a Chancellor, it shall be Treason; but only, if he do kill him; and if he doth actually counterfeit the Broad-Seal. And although a Man should prepare a Furnace, make ready his Stamp, melt his Bullion, yet if he gives not the King's Impression upon the Coin, all his Intentions, yea, his Preparations will not serve to make up a Treason.

And this (under Favour) may serve to answer the Case of *Guido Faux*, lately objected; unless it be alledged, that the Lord *Strafford* had as real an Intention against the King's Life as *Faux* had: For tho' the Intention in that Case be Treason by the Statute, yet in all other things there is no Treason without the Action; so immense and vast a Difference both is, and ought to be, betwixt a Project against the Royal Blood, and all things else of a lower and under Nature.

You see therefore, my Lords, that the Body of the Statute cannot stick against the Lord *Strafford*, neither in Letter, nor in Consequence; this is not, that must not be: All that can be said, is, That this Fact may be Treason by the Common Law. For my Part I profess my Ignorance, who ever thought the Common Law might declare, but never make a Treason; that is, it might be presupposed that there is a Statute whereupon to build a Declaration; and therefore to say there is no Statute for it, is to say it is no Treason at all. The Statute ever makes the Treason; and to be declared to be Treason, either by Common Law, or by Parliament, are but two different Ways of Proceedings, and must both resolve into one Principle: yea, which comes home to the Point, in the one and twentieth of *Edward* the Third, to

kill a Man imployed in the King's War, was Treason; and the twenty-third, to kill the King's Messenger, was Treason by Declaration of the Common Law, but always by Reason of the Statute; yet none of these are now Treasons, but Felonies only, by Reason of the intervening Statute, the twenty-fifth of *Edward* the Third: such hath ever been thought the Force of its Letter and Declaration. and so I will leave it, and speak a Word or two of the *Salvo*, which is this; That because all Particulars could not be then defined, therefore what the Parliament should declare to be Treasonable in time to come, should be punished as Treason.

And according to this Reservation, in the eighth Year of *Richard* the Second, one who was charged before the *King's-Bench*, was afterwards referred to the Parliament; and there, though the Fact was not contained in the Body of the Statute, yet because of the *Proviso* afore-mentioned, it was adjudged Treason.

In the eleventh Year of the same King, the Duke of *Ireland*, and *Nevil* Archbishop of *York*, were impeached of High-Treason by *Gloucester*, *Arundel*, and *Warwick*; and notwithstanding the Statute, were convicted thereof by the *Salvo*. But in the one and twentieth of the same *Richard* the Second, the Tide turned, and the King had such a Hand with the Parliament, that the Sentence was recalled, and those three Noblemen themselves adjudged Traytors. Again, in the first of *Henry* the Fourth, his Successor, that Revocation of the one and twentieth of *Richard* the Second was repealed, and the Sentence of the eleventh of his Reign established. Such were the Tossings to and fro of Treason, and all because of that uncertain *Proviso*.

Therefore it was, that in the same Parliament, the first of *Henry* the Fourth, a Petition was preferred by the Nobility to have Treason limited with some Statute; because they knew not what to speak, or what to do, for fear thereof. And in the tenth Chapter an Act was made upon this Petition, that the *Salvo* should be holden repealed in all times to come, and nothing esteemed Treason but what was literally contained in the Statute of the twenty-fifth of *Edward* the Third: And therefore it is said in the Records, That there was great Joy at the making of this Act, in that the drawn Sword hanging over every Man's Head, by this slender Thread of a Consequence, or Illation, was moved by that Act. Add to this, That in the first of *Queen Mary*, the first Chapter, the same is repeated, *That no Man shall be punished in Life or Estate as a Traytor, but for the Crime contained in the Statute 25 Edw. 3.* without the least mention of a pretended *Salvo*.

The Earl of *Northumberland's* Case comes nigh to the Point; he was charged with Treason, the first of *Henry* the Fourth, and if the Statute of the fifth of *Henry* the Fourth, the first Chapter, whereby this *Proviso* is repealed, had not intervened, no doubt he had been condemned of Treason: but he was only convicted of Felony, and that because he could not be drawn within the Letter of the Statute of the twenty-fifth of *Edward* the Third. And I dare confidently say it, That since that Act was made, the first of *Henry* the Fourth, the first Chapter, whereby the *Proviso* is repealed, no Man hath ever been declared a Traytor, either by King or Parliament, except it were upon that, or some other

other Statute, literally and declaratively taken. These two things I do offer to your Lordships Considerations; That the Lord *Strafford* cannot be impeached of Treason by the Statute of the twenty-fifth of *Edward* the Third, and that the *Salvo* contained in the same stands repealed almost two hundred Years ago: And this is all I conceive to be necessary for that Statute which was alledged by the Lord *Strafford* in his Defence for Matter of Fact.

Then the Recorder spake some few Words to this Purpose; That what was spoken upon the Statute, was because it seemed inseparable from the Matter of Fact, that they could proceed no farther, till a State were afforded them; that to do otherwise, they conceived, might be very prejudicial unto my Lord *Strafford*:

First, In that they should suppose that to be done, which is not proved to be.

Secondly, That the Matter of Law ariseth so naturally from the Matter of Fact, that it will be impossible to separate one from the other.

Thirdly, That it is the Course of all Judicatories, first to settle the Verdict, and upon that to fix the Arguments, otherwise he could conceive no possible Way of Proceeding; and therefore, in the Lord *Strafford's* Name, he most humbly intreated, that the Lords would either wholly determine the Matter of Fact (not whether it was Treason or no, for then all other Proceedings in the Law were unnecessary, but whether done or not done) or else to give them some States of the Question whereunto they might confine themselves.

Upon this Motion the House was adjourned for that Day, nor hath it met since; for the House of Commons are returned to their old Biass, and will hear of nothing but the Bill of Attainder; but the Lords seem to be more resolute than before, because they find that they have no Authority to declare a Treason in a Fact already past, the *Salvo* of the twenty-fifth of *Edward* the Third being repealed; withal, that if the Bill of Attainder should proceed, the King hath as great Power to hinder that at the last Blow, as any other Statute: but I hope the Lords will disburden him of that Envy.

All they which stand obliged to the Lord *Strafford*, in Blood, Affection or Deserving; and all who have been interested with him in the King's Service, and many too, who both hate his Person, and dislike his Proceedings; will doubtless look upon it, and tender their own Safety, all of them in Likelihood being subject to the Charge of Treason, if ever they chance to be called to do the King Service in any Place of Importance.

I cannot express how much the Voice of the Multitude is now altered from what it was lately, nothing now talked of what should be done, but only of what must be done: So that if the Lord *Strafford* dies, his very Enemies will confess, that it is done more for Necessity, than for Justice; and rather for the Satisfaction of rancorous Apprehensions, than for any Guiltiness in the Cause.

Thursday last, viz. *April* 29, was designed for the Agitation of the long intermitted Business concerning the Lieutenant; and the Way was this:

The Lords did meet at the great Hall at *Westminster* about Nine of the Clock, not in their Robes, nor did the Lord Steward sit upon his Sack, but with the rest promiscuously; nor did the Committee for the House of Commons stand at the Bar,

but sat with the rest of their Fellows; and the Earl of *Strafford* sat behind the Place where he used to sit before; the Reason of these Changes was, because the Dyet was appointed not for a Meeting, but for a Conference: so curious are we (and that's all) about Formalities. The King, Queen, and Prince were there, according to their Custom: not a Man spake a Word in the House all the time, but only Mr. *St. John*, the King's Solicitor, one of the Committee; whose Drift and Purpose was to furnish the Lords with Reasons, why the House of Commons had proceeded with a Bill of Attainder: and withal, to reply to what the Lord *Strafford* had spoken, either by himself or his Council, in Matter of Law. The Speech is in Print.

Upon the Close of Mr. *St. John's* Speech, the House dissolved; nor was there a Word spoken but by Mr. *St. John*: only the Lord-Lieutenant used the last Part of his Rhetorick, and by a dumb Eloquence, *manibus ad sydera tensis*, all along Mr. *St. John's* Speech, made his Replies with a deep Silence.

Upon *Friday*, *April* 30, he petitioned the Lords to be heard again, and that because his Lawyers had not fully spoken at their last Meeting; but this was denied him, because the House were to have the last Speech, nor were they content to speak again.

Upon this Information, or what else is not known, the King (it seems, fearing the Inconstancy of the Lords) came to the House on *Saturday*, *May* 1, at Ten of the Clock, and having called for the House of Commons, spake much to this Effect.

The King's Speech to the House of Commons.

‘ **T**HAT he had sincerely, without Affection or Partiality, endeavoured to inform himself concerning the Lieutenant's Charge; and had, at length, seriously pondered with himself, both concerning the Matter of Fact, and the Matter of Law: and now it stood him in hand to clear their Judgments, than to exonerate his own Conscience. For them, he had two things to declare:

‘ *First*, That there was never such a Project; nor had the Lord *Strafford* ever offered such Advice, for the transporting of the *Irish* Army into *England*; so that in nothing the Lieutenant had been more misunderstood than in that: which Imputation did in no small Measure reflect on himself (*the King*) as if he had intended to make War upon his own Subjects; which Thought (*he said*) was far enough from his Breast, nor could any Man in Probability think so unworthily of him, who had perceived how graciously he had dealt with his Subjects elsewhere, that had deserved a great deal worse.

‘ *Secondly*, That the Lieutenant had never advised him to establish an Arbitrary Government; nor, if he had, should he have escaped condign Punishment: nor would any of his good Subjects ever think otherwise, unless they conceived him either to be a Fool or a Tyrant; that he either could not, or would not discern such Wickedness. He was well content (*he said*) with that Authority and Power which God had put into his Hands; nor should he ever think it his Pre-

* negative, to intrude upon the Propriety of the Subject.

* For himself, and his own Conscience, (he said) he was now to declare, That, in his own Judgment, there was nothing in the Process against the Lieutenant that deserved the Censure of Treason. Oversight and Misdemeanours there were, in such a measure, that he confessed the Lord Strafford was never worthy hereafter to bear any Office in his Kingdoms, no, not so much as of a Constable; but was to be answerable for all his Errors, when they were to be charged upon him; and to this none of them should concur with greater Alacrity than himself. That he hoped none of them would deny to give him the Privilege of the first Voice, which was, That he would never, in Heart nor Hand, concur with them to punish this Man as a Traytor; and desired therefore, that they would think of some other way how the Business might be composed: Nor should it ever be less dear to him (tho' with the Loss of his dearest Blood) to protect the Innocent, than to punish the Guilty.

Upon Saturday, May 8, the Bill against the Lord Strafford pass'd the Lords; there were Forty-five present, of which Nineteen voiced for him, and Twenty-six against him. The greatest part of his Friends absented themselves, upon Pretence (whether true or supposititious) that they feared the Multitude; otherwise his Suffrages had more than counterpoised the Voters for his Death.

Sunday all the Day the King was resolute never to give way to the Bill against the Lord Strafford, telling them withal, That it seemed strange to him that the Man could not die, unless he, and he only, by giving Sentence the King's legislative way, should condemn him.

The same Day the King received the following Letter from the Earl *.

IT hath been my greatest Grief in all my Troubles, to be taken as a Person that should endeavour to present, and set Things amiss between your Majesty and your People, and to have given Counsel tending to the Disquiet of your Majesty and your three Kingdoms.

Most true it is, that such an Attempt (my private Condition consider'd) had been a great Madness, seeing, thro' your gracious Favour, I was so provided, as I could not expect in any kind to mend my Fortune, or to please my Mind, more than by resting where your bounteous Hand had placed me; nay, the Business is most mightily mistaken; for unto your Majesty it is well known, that my poor and humble Advices concluded still in this, That your Majesty should never be happy, till there were a right Understanding procured betwixt you and them: No other Means to effect and settle this Happiness, but by the Counsel and Assent of the Parliament; and no way to prevent the growing Evils of this State, but by putting yourself intirely upon the Loyalty and good Affection of your Subjects.

Yet (such is my Misfortune) the Truth finds little Credit, the contrary (it seems) generally believed, and myself reputed the Cause of this great Separation betwixt you and your People: Under a heavier Censure than this, I am persuaded no Gentleman can suffer; and now I understand, that the Minds of Men are the more incensed against me, notwithstanding your Majesty hath declared, That in

your Princely Opinion I am not guilty of Treason, nor are you satisfied in Conscience to pass the Bill. This brings me into a great Streight. Here is before me the Ruin of my Children and Family, hitherto untouch'd in all the Branches of it with any foul Crime. Here are before me the many Evils which may befall your sacred Person, and the whole Kingdom, should yourself and the Parliament be less satisfied the one with the other than is necessary for the King and People. Here are before me the Things most valued, most feared by mortal Men, Life and Death: To say, Sir, there hath not been a Conflict within me about these Things, were to make myself less Man than (God knows) my Infirmities will give me leave; and to call a Destruction upon myself and my young Children, where the Intentions (at least) of my Heart have been innocent of this great Offence, (may be believed) would find no easy Consent from Flesh and Blood.

But, out of much Sadness, I am come to a Resolution of that which I take to be best becoming me, that is, To look upon that which is principally to be consider'd in itself, and that is, doubtless, the Prosperity of your sacred Person and the Commonwealth, infinitely to be preferred before any Man's private Interest: And therefore, in few Words, as I have put myself wholly upon the Honour and Justice of my Peers, and so clearly as I wish your Majesty had been pleas'd to have spared that Declaration of yours on Saturday last, and to have left me intirely to their Lordships; so now, (to set your Majesty's Conscience at liberty) I do most humbly beseech you, for the preventing of such Mischiefs as may happen by your Refusal to pass the Bill, by this Means to remove (praised be God I cannot say this accursed, but I confess) this unfortunate Thing forth of the Way towards that blessed Agreement, which God, I trust, shall for ever establish betwixt you and your Subjects. Sir, my Consent herein shall acquit you more to God than all the World can do beside. To a willing Man there is no Injury done; and, as by God's Grace, I forgive all the World, with a Calmness and Meekness of infinite Contentment to my dislodging Soul, so, Sir, I can give the Life of this World with all Chearfulness imaginable, in the just Acknowledgments of your exceeding Favours, and only beg, that in your Goodness you would vouchsafe to cast your gracious Regard upon my poor Son and his three Sisters, less or more, and no otherwise, than their unfortunate Father shall appear more or less guilty of this Death. God preserve your Majesty,

Your Majesty's most Humble,

And Faithful Subject and Servant,

Tower, May 9,
1641.

STRAFFORD.

Upon the Receipt whereof, and after they had wrestled him breathless, at last *victus dedit manus*; being overcome with such incessant Importunities, he yielded. And about nine of the Clock at Night the King promised to sign both the Bills the next Morning; which was accordingly done, and a Commission drawn up for his Execution, which was on the Wednesday following.

HAVING mounted the Scaffold, he made his Obeisances, and began to take his last Farewell of his Friends, who appear'd much more concern'd than himself: and observing his Brother, Sir

Sir *George Wentworth*, to weep excessively, Brother, (said he, with a chearful Briskness) What do you see in me to deserve these Tears? Doth any indecent Fear betray in me a Guilt, or my innocent Boldness any Atheism? Think now that you are accompanying me the third time to my Marriage-bed: Never did I throw off my Clothes with greater Freedom and Content than in this Preparation to my Grave: That Stock [pointing to the Block] must be my Pillow; here shall I rest from all my Labours: No Thoughts of Envy, no Dreams of Treason, Jealousies or Cares for the King, the State, or myself, shall interrupt this easy Sleep; therefore, Brother, with me, pity those who, besides their Intention, have made me happy; rejoice in my Happiness, rejoice in my Innocence.

Then kneeling down, he made this Protestation: I hope, Gentlemen, you do not think that either the Fear of Loss, or Love of Reputation, will suffer me to bely God and my own Conscience at this time. I am now in the very Door going out, and my next Step must be from Time to Eternity, either of Peace or Pain: To clear myself before you all, I do here solemnly call God to witness, I am not guilty, so far as I can understand, of the great Crime laid to my Charge, nor have ever had the least Inclination or Intention to damnify or prejudice the King, the State, the Laws, or the Religion of this Kingdom; but with my best Endeavours to serve all, and to support all: *So may God be merciful to my Soul.*

Then rising up, he said, he desir'd to speak something to the People, but was afraid he should be heard by few, in regard of the Noise: but having first fitted himself to the Block, and rising again, he thus address'd himself to the Spectators.

MY Lord Primate of *Ireland*, and my Lords, and the rest of these noble Gentlemen, It is a great Comfort to me to have your Lordships by me this Day, because I have been known to you a long time, and I now desire to be heard a few Words. I come here, by the good Will and Pleasure of Almighty God, to pay that last Debt I owe to Sin, which is Death; and by the Blessing of that God, to rise again thro' the Merits of Jesus Christ to Righteousness, and Life eternal. [Here he was a little interrupted.]

My Lords, I am come hither to submit to that Judgment which hath passed against me, I do it with a very quiet and contented Mind; I thank God I do freely forgive all the World; a Forgiveness that is not spoken from the Teeth outward, (as they say) but from the very Heart: I speak it in the Presence of Almighty God, before whom I stand, that there is not a displeasing Thought arising in me towards any Man living. I thank God I can say it, and truly too, my Conscience bearing me witness, that in all my Employments, since I had the Honour to serve his Majesty, I never had any thing in the Purpose of my Heart, but what tended to the joint and individual Prosperity of King and People, altho' it hath been my ill Fortune to be misconstrued.

I am not the first that hath suffered in this kind; it is the common Portion of us all, while we are in this Life, to err; righteous Judgment we must wait for in another Place, for here we are very subject to be misjudged one of another. There is one Thing that I desire to free myself of, and I am

very confident [speaking it now with much Chearfulness] that I shall obtain your Christian Charity in the Belief of it. I was so far from being against Parliaments, that I did always think the Parliaments of *England* were the most happy Constitutions that any Kingdom or Nation lived under, and the best Means, under God, to make the King People happy.

For my Death I here acquit all the World, and beseech the God of Heaven heartily to forgive them that contrived it, tho' in the Intentions and Purposes of my Heart I am not guilty of what I die for: And, my Lord Primate, it is a great Comfort for me, that his Majesty conceives me not meriting so severe and heavy a Punishment, as is the utmost Execution of this Sentence. I do infinitely rejoice in this Mercy of his, and I beseech God to return it into his own Bosom, that he may find Mercy when he stands most in need of it.

I wish this Kingdom all the Prosperity and Happiness in the World; I did it living, and now dying, it is my Wish. I do most humbly recommend this to every one who hears me, and desire they would lay their Hands upon their Hearts, and consider seriously, whether the Beginning of the Happiness and Reformation of a Kingdom should be written in Letters of Blood; consider this when you are at your Homes, and let me be never so unhappy, as that the least Drop of my Blood should rise up in Judgment against any one of you: But I fear you are in a wrong Way.

My Lords, I have but one Word more, and with that I shall end. I profess that I die a true and obedient Son to the Church of *England*, wherein I was born, and in which I was bred. Peace and Prosperity be ever to it.

It hath been objected (if it were an Objection worth the answering) that I have been inclined to Popery; but I say truly from my Heart, that from the time that I was One and twenty Years of Age, to this present, going now upon Forty-nine, I never had in my Heart to doubt of this Religion of the Church of *England*, nor ever had any Man the Boldness to suggest any such thing to me, to the best of my Remembrance. And so being reconciled by the Merits of Jesus Christ my Saviour, into whose Bosom I hope I shall shortly be gathered, to those eternal Happinesses which shall never have end; I desire heartily the Forgiveness of every Man for any rash or unadvised Words, or any thing done amiss. And so, my Lords and Gentlemen, farewell; farewell all Things of this World.

I desire that you would be silent, and join with me in Prayer, and I trust in God we shall all meet and live eternally in Heaven, there to receive the Accomplishment of all Happiness; where every Tear shall be wiped away from our Eyes, and every sad Thought from our Hearts: And so God bless this Kingdom, and Jesus have Mercy on my Soul.

Then turning himself about, he saluted all the Noblemen, and took a solemn Leave of all considerable Persons upon the Scaffold, giving them his Hand.

After that, he said, Gentlemen, I would say my Prayers, and intreat you all to pray with me, and for me; then his Chaplain laid the Book of *Common-Prayer* upon the Chair before him as he kneeled down, on which he prayed almost a Quarter of an Hour, and then as long, or longer,

without the Book, and concluded with the *Lord's Prayer*.

Standing up, he spies his Brother, Sir *George Wentworth*, and calls him to him, saying, Brother, we must part; remember me to my Sister, and to my Wife, and carry my Blessing to my Son, and charge him that he fear God, and continue an obedient Son to the Church of *England*, and warn him that he bear no private Grudge, or Revenge, toward any Man concerning me; and bid him beware that he meddle not with Church-Livings, for that will prove a Moth and Canker to him in his Estate; and with him to content himself to be a Servant to his Country, not aiming at higher Preferments.

‘*Aliter.*] To his Son, Mr. *Wentworth*, he commends himself, and gives him charge to serve his God, to submit to his King with all Faith and Allegiance in Things temporal, to the Church in Things spiritual; chargeth him again and again, as he will answer it to him in Heaven, never to meddle with the Patrimony of the Church; for if he did, it would be a Canker to eat up the rest of his Estate.’

Carry my Blessing also to my Daughters, *Anne* and *Arabella*, charge them to serve and fear God, and he will bless them; not forgetting my little Infant, who yet knows neither Good nor Evil, and cannot speak for itself; God speak for it and bless it. Now, said he, I have nigh done; one Stroke will make my Wife husbandless, my dear Children fatherless, and my poor Servants masterless, and will separate me from my dear Brother, and all my Friends; but let God be to you and them all in all.

After this, going to take off his Doublet, and to make himself unready, he said, I thank God I am not afraid of Death, nor daunted with any Discouragement rising from any Fears, but do as chearfully put off my Doublet at this time, as ever I did when I went to Bed: Then he put off his Doublet, wound up his Hair with his Hands, and put on a white Cap.

Then he called, Where is the Man that is to do this last Office? [meaning the Executioner] call him to me; when he came and ask'd him Forgiveness, he told him, he forgave him and all the World. Then kneeling down by the Block, he went to Prayer again himself, the Primate of *Ireland* kneeling on the one side, and the Minister on the other: To the which Minister, after Prayer, he turned himself, and spake some few Words softly, having his Hands lifted up, and closed with the Minister's Hands.

Then bowing himself to lay his Head upon the Block, he told the Executioner, That he would first lay down his Head to try the Fitness of the Block, and take it up again before he would lay it down for good and all; and so he did: And before he laid it down again, he told the Executioner, that he would give him Warning when to strike by stretching forth his Hands; and presently laying down his Neck upon the Block, and stretching forth his Hands, the Executioner struck off his Head at one Blow; and taking it up in his Hand, shewed it to all the People, and said, *God save the King*.

His Body was afterwards embalmed, and appointed to be carried into *Yorkshire*, there to be buried amongst his Ancestors.

An Act for Reversing the Earl of Strafford's Attainder.

WHEREAS *Thomas* late Earl of *Strafford* was impeached of High-Treason, upon pretence of endeavouring to subvert the Fundamental Laws, and called to a publick and solemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected against him; insomuch that the turbulent Party then seeing no hopes to effect their unjust Designs, by any ordinary Way and Method of Proceedings, did at last resolve to attempt the Destruction and Attainder of the said Earl, by an Act of Parliament, to be therefore purposely made, to condemn him upon *Accumulative Treason*, none of the pretended Crimes being Treason apart, and so could not be in the whole, if they had been proved, as they were not: and also judged him guilty of *Constructive Treason*, (that is, of levying War against the King) tho' it was only the commanding an Order of the Council-Board in *Ireland*, to be executed by a Serjeant at Arms and three or four Soldiers, which was the constant Practice of the Deputies there for a long time. To the which end, they having first presented a Bill for this Intent to the House of Commons, and finding there more Opposition than they expected, they caused a Multitude of tumultuous Persons to come down to *Westminster*, armed with Swords and Staves, and to fill both the *Palace-Yards*, and all the Approaches to both Houses of Parliament, with Fury and Clamour, and to require Justice, speedy Justice, against the Earl of *Strafford*; and having by those and other undue Practices obtained that Bill to pass the House of Commons, they caused the Names of those resolute Gentlemen, who in a Case of innocent Blood had freely discharged their Consciences, being Fifty-nine, to be posted up in several Places about the Cities of *London* and *Westminster*, and stiled them *Straffordians*, and Enemies to their Country; hoping thereby to deliver them up to the Fury of the People, whom they had endeavoured to incense against them. And then procured the said Bill to be sent up to the House of Peers, where it having some time rested under greater Deliberation; at last, in a time when a great part of the Peers were absent by reason of the Tumults, and many of those who were present protested against it, the said Bill passed the House of Peers: and at length his Majesty, the late King *Charles I.* of glorious Memory, granted a Commission for giving his Royal Assent thereunto; which nevertheless was done by his said Majesty with exceeding great Sorrow then, and ever remembered by him with unexpressible Grief of Heart; and out of his Majesty's great Piety, he did publickly express it, when his own Sacred Life was taken away, by the most detestable Traytors that ever were.

For all which Causes, be it declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lord's Spiritual and Temporal, and Commons in this present Parliament assembled, That the Act, intituled *An Act for the Attainder of Thomas Earl of Strafford of High-Treason*, and all and every Clause and Article, and Thing therein contained, being obtained

obtained as aforesaid, is now hereby repealed, revoked, and reversed.

And to the end that Right be done to the Memory of the deceased Earl of *Strafford* aforesaid, be it farther enacted, That all Records and Proceedings of Parliament, relating to the said *Attainder*, be wholly cancelled and taken off the File, or otherwise defaced and obliterated; to the intent the same may not be visible in After-Ages, or brought into example, to the Prejudice of any Person whatsoever.

Provided, That this Act shall not extend to the future questioning of any Person or Persons, however concerned in this Business; or who had any hand in the Tumults, or disorderly procuring the Act aforesaid; any thing herein contained to the contrary thereof notwithstanding.

A Copy of the Paper posted up at the Corner of the Wall of Sir William Brunkard's House, in the Old Palace-yard in Westminster, Monday May 3. 1641.

The Names of the *Straffordians* posted.

1. Lord Digby.
2. Lord Compton.
3. Lord Buckhurst.
4. Sir Robert Hatton.
5. Sir Thomas Fanshawe.
6. Sir Edward Alford.
7. Sir Nicolas Slanning.
8. Sir Thomas Danby.
9. Sir George Wentworth.
10. Sir Peter Wentworth.
11. Sir Frederick Cornwallis.
12. Sir William Carnaby.
13. Sir Richard Winn.

14. Sir *Jarvis Clifton*.
15. Sir *William Withrington*.
16. Sir *William Pennyman*.
17. Sir *Patrick Curwent*.
18. Sir *Richard Lee*.
19. Sir *Henry Slingsby*.
20. Sir *William Portman*.
21. Mr. *Jarvis Hollis*.
22. Mr. *Sydney Godolphin*.
23. Mr. *Cooke*.
24. Mr. *Coventry*.
25. Mr. *Benjamin Weston*.
26. Mr. *William Weston*.
27. Mr. *Selden*.
28. Mr. *Alford*.
29. Mr. *Lloyd*.
30. Mr. *Herbert*.
31. Captain *Digby*.
32. Serjeant *Hyde*.
33. Mr. *Taylor*.
34. Mr. *Griffith*.
35. Mr. *Scawen*.
36. Mr. *Bridgeman*.
37. Mr. *Fettiplace*.
38. Dr. *Turner*.
39. Captain *Charles Price*.
40. Dr. *Parry*, Civilian.
41. Mr. *Arundel*.
42. Mr. *Newport*.
43. Mr. *Holborne*.
44. Mr. *Noel*.
45. Mr. *Kirton*.
46. Mr. *Pollard*.
47. Mr. *Price*.
48. Mr. *Trevanian*.
49. Mr. *Jane*.
50. Mr. *Edgecombe*.
51. Mr. *Chicheley*.
52. Mr. *Mallery*.
53. Mr. *Porter*.
54. Mr. *White*, Secret. E. D.
55. Mr. *Warwick*.





XL. *The Trial of Colonel Nathanael Fiennes*, before a Council of War at St. Albans, for cowardly surrendring the City and Castle of Bristol, the 14th of December 1643. 19 Car. I. Taken out of the Account given thereof by Mr. Prynn and Mr. Walker.*

COLONEL *Fiennes* having been taxed with a cowardly Surrender of *Bristol*, thought proper to justify himself by a set Speech in the House of Commons, and also by a printed Relation of the Fact, in both which he desired that the Affair might be examined in a Council of War, for which Purpose he obtained an Order of the House.

To this Relation Mr. *Walker* published an Answer, and Mr. *Prynn*, in a Book intitled *Rome's Masterpiece*, styles this Action, *the most cowardly and unworthy Surrender of Bristol*.

Hereupon Mr. *Prynn* and Mr. *Walker* were summoned to the Council of War, to make good what they had alledged against Colonel *Fiennes*. Mr. *Prynn* and Mr. *Walker* being thus made Parties, petitioned his Excellency the Lord General† to appoint a proper Time and Place within *London* or *Westminster* for the Trial and Examination of this Affair: They also drew up Articles of Impeachment against Col. *Fiennes*, and presented them, together with a Petition, to the House of Commons, who upon reading the Petition came to the following Resolutions.

Die Mercurii 15 Novembris 1643.

THE humble Petition of Clement Walker and William Prynn Esquires, concerning Mr. Nathanael Fiennes, and the Surrender of Bristol, was this Day read in the House of Commons; and Articles of Accusation of the said Mr. Fiennes touching the Surrender of the said City of Bristol, and Castle, were this Day likewise presented to the said House. A Letter from Mr. Prynn to Mr. Nathanael Fiennes was likewise read.

Ordered by the House of Commons, that as they shall be careful that there shall be a fair and equal Trial of Mr. Nathanael Fiennes, so they will take the Petition of the Petitioners, and the Articles, after the Trial, into Consideration, inasmuch as it shall concern my Lord General and the Council of War, and as it shall concern the Privilege of Parliament.

Resolved, &c.

That the Articles, entituled, *Articles of Accusation and Impeachment against Colonel Nathanael Fiennes, late Governor of the City and Castle of Bristol, touching the dishonourable Surrender thereof to the Enemy, contrary to his Trust and Duty, by Clement Walker, and William Prynn Esquires, shall be now read. The said Articles and Impeachment were accordingly read.*

The Petition and Articles were signed Clement Walker, and William Prynn; and they were both called in, and at the Bar being demanded, whether the Names subscribed were of their own Hand-writing, did avow the Names to be of their own Hand-writing, and did avow the said Petition and Articles.

Ordered that a Copy of these Articles, attested under the Clerk's Hand, be forthwith sent to my Lord General.

H. Elfynge, Cler. Parl. D. Com.

Soon after these Resolutions, viz. on Thursday December 14, came on the Trial before the Council of War at *St. Albans*.

The Council being assembled in a Room adjoining to the Town-Hall, Mr. *Prynn* and Mr. *Walker* appeared there, when Dr. *Doriflaus*, Judge-Advocate of the Army, there demanded of them, whether they had any Articles of Impeachment drawn against Colonel *Fiennes*? To which Mr. *Prynn* replied, that he being a Member of the House of Commons, they had exhibited their Articles to that House, who by Order had sent a Copy of them to his Excellency, upon which they were to proceed. Which the Advocate thereupon acknowledging, my Lord *Roberts*, President of the Council of War, commanded him to read the said Order, and Articles sent together with it. As soon as the Order was read, Mr. *Prynn* tendred a Copy of the Articles of Impeachment under Mr. *Walker's* and his own Hands, agreeing with those deliver'd to the House, which he averred they were there ready to make good in each Particular; desiring the Council to proceed upon them, because the other was but a Copy which they had not subscribed, but this they now tendered an Original; which was assented to.

Upon this Dr. *Doriflaus* the Judge-Advocate was commanded to read the Articles; but Mr. *Prynn* then perceiving the Doors kept close, contrary to Expectation, and all Persons, Auditors, but themselves alone, excluded; and fearing that by this Means a Door would be opened to misreport the Proceedings of this Trial, before the Reading of the Articles made this Request to the Council, that this Hearing might be as publick as the Cause itself, and as that Place could afford, the Door set open, and none excluded; the rather, because himself and Mr. *Walker* (being no Challengers, but challenged) were engaged in this Prosecution, not in their own particular Interests but the Republick's, and that by special Order of Parliament (the representative

* Rush. Col. Vol. 3. p. 153, 284. Clar. Hist. Vol. 2. p. 315.

† The Earl of Essex.

representative Body of the Kingdom) which had ordered a *fair and equal Trial*, which they humbly conceived to be a free and open one, agreeable to the Proceedings of Parliament, and all other Courts of Justice in the Realm; which stand open to all, and from whence no Auditors are, or ought to be excluded.

Colonel *Fiennes* opposing this Motion, alledged, That we suspected the Integrity of that Court, as appeared by this Request for an open Trial, and our Endeavours to appeal therefrom by several Petitions to the Parliament, for a Trial before the House in *London* or *Westminster*; whereas he had cast himself freely and clearly upon their Justice, (which he no ways suspected) to whom the Cognizance of such Causes properly belonged; and therefore desired the Hearing might be private, according to the Proceedings used in such Courts. Upon which Dr. *Dorilaus*, Judge-Advocate, intervening, told the Prosecutors and Council that it was against the *Stile and Course of a Court Martial* to be publick and open: therefore it might not be admitted upon any Terms.

To which Mr. *Prynn* replied, That he no ways distrusted the Justice or Integrity of this Honourable Council, for then he would not have appeared before them at this Place and Time to crave Justice from them: That he was a Common Lawyer, and by his Profession, his late Protestation, and solemn Covenant, bound to maintain the fundamental Laws of the Kingdom and Liberty of the Subject: That the Members of this Honourable Council, as well as himself, had not only taken the like solemn Protestation and Covenant, but also put themselves in Arms, to maintain and defend the said Laws and Liberties of the Subject to the uttermost: That by the Laws and Statutes of the Realm, all Courts of Justice ever have been, are, and ought to be held openly and publickly, not close like a Cabinet-Council; witness all Courts of Justice at *Westminster*, and elsewhere, yea, all our Assizes and Sessions, wherein Men, tho' indicted but for a private Felony, Murder, or Trespas, (which nothing near concerns the Republick so highly as this dishonourable Surrender of *Bristol*) have always open Trials: And if such petty Causes, then much more this of most general Concernment to the whole Realm, recommended to a *fair Trial* by the Parliament itself, ought to be as open and publick as possible, to satisfy both the Parliament and People: That not only in Courts of Common Law, but in the Admiralty itself, and all other Courts, proceeding by the Rules either of the Civil or Canon Law, the Proceedings have ever been publick, the Courts open. And even in late Proceedings by martial Law before a Council of War, the Trials of Delinquents in *England* have been publick, as appears by the Trials of *Yeomans* and *Butcher* at *Bristol*, before Colonel *Fiennes* himself, which were publick; and by the Trial of Mr. *Tomkins*, *Challoner*, and others since, before a Council of War at the *Guild-Hall* of *London*, in presence of both Houses of Parliament and the whole City, no Comers being thence excluded. Wherefore this Case being of the same publick Nature, and as much or more concerning the Kingdom as theirs, ought to receive as publick a Trial as theirs did.

To which *Dorilaus* answered, That himself protested against the open Trial of *Tomkins* and *Challoner*, as a breach upon the Council of War's Privileges; but was over-ruled therein, to give the

Parliament and City Consent: adding, that all Councils of War in foreign Parts were ever private, and ours now used not to be guided by Common or Statute Laws, or the Courle of other Courts, but by their own Orders; and this being a Council, it was against the Nature and Constitution of it to be publick.

To which Mr. *Prynn* rejoined: First, That there was as great cause to give the Parliament, City, and Kingdom Satisfaction in this, as in the other fore-named Case, it being of as publick Concernment. Next, That we of *England* are not to be guided by foreign Laws or Precedents, but by our own domestick: That the Common Law, the Statutes of the Realm, and constant Practice of all our other Courts of Justice, ought to regulate the Proceedings of the Council of War, not the Council of War's to repeal and controul them; especially in an Army which hath taken up Arms, which are waged by the Parliament of purpose to defend the fundamental Laws and Subjects Liberties, not to thwart them: That it was both against the Laws and Subjects Liberty (as he humbly conceived) to deny any Prosecutor or Subject an open Trial, and thus to chamber up or restrain Justice *intra privatos parietes*, in any, much more in this publick Cause. That the Judge-Advocate could produce no one Precedent for such a close Trial within our Realm in any former Age; and therefore he should make no such new Precedent now. That all Cases of this nature, touching the cowardly surrendring of Towns and Castles, were, in former Times, tried only in full Parliament, as appears by the Cases of *Gomines*, *Weston*, the Bishop of *Norwich*, and others, and that upon very good reason; since Cases, which concern all, are fittest to be determined in that highest Court which represents all the Realm. That this Council of War had a double Capacity and Consideration; First, as a Council of War only, to deliberate of things necessary for the regulating and managing of military Affairs; and in this Regard it ought to be secret in all such Debates, and not communicate their Councils: But in this Capacity we were not new before it. Secondly, as a Court of Justice, to proceed criminally against Malefactors; and in this Respect it ought (as he believed) to be publick and open to all Comers. To put this out of doubt, he would instance only in one Example: The High Court of Parliament is both the *supremest great general Council* for Peace and War, and the *highest Court of Justice* in the Realm: as it is a Council to consult, debate, or deliberate of the military or civil Affairs of the Kingdom, so it is always private, none but the Members and Officers of either House being admitted to their Consultations or Debates. But as it is a Court of Justice to punish Malefactors, so the Proceedings of both or either House are always open and publick; as appears by the late Trial of the Earl of *Strafford* in *Westminster-Hall*, and infinite other Precedents of antient and present Times. If then this supremest Council of all others, as it is a Court of Justice, stands ever open unto all, and the Proceedings of it be always publick, without any Infringement of its Privileges as a supreme Council of War and Peace; then certainly this honourable Council of War (inferior to it both in Power and Jurisdiction) as it is now a Court of Justice, may and ought to hold their Proceedings and Sessions publickly in this common Cause, without any violation of its Privileges

as a Council. What therefore the Peers in Parliament once answered the Prelates in a Case of *Bastardy*, he hoped this honourable Council would

* *Stat. Merton*
20 H. 3, c. 9.

now answer the Advocate in this Case of our Impeachment, * *Nolumus leges Angliæ mutare, quæ hucusque usitate sunt & approbate*; and so allow us a publick Trial, to satisfy both the Parliament and People, whose Eyes are fixed on it; else, if it should be private, they would be apt to report, *it was buddled up in a Corner*: For which innocent Expression, as we intended it, (St. *Albans* and this Council, in respect of *London* and the Parliament, being but a *Corner*) so much Exception was taken in the House against our Petition. In fine, he alledged, that Colonel *Fiennes* himself, who had made such publick Professions of his Innocency, both before the House of Commons, his Excellency, and the World, in printed Speeches, Relations, and Letters, had most cause to desire, and least reason to decline an open Trial, *since Truth and Innocency seek no Corners*: And his Honour, his Honesty now openly charged, could not otherwise than openly be discharged; no Trial being publick enough for him who presumes his Innocency able to endure, and professeth a Desire to bring it to the touch, that it may be cleared. And if he should now decline an open Trial, after so many publick Bravadoes in *London* and elsewhere, it would draw upon him a just Suspicion of Guilt in most Mens Opinions, since no Man *fleeth the Light, but he whose Works are evil*.

Upon this, the Lord *Roberts* demanded of Mr. *Prynn*, what he meant by a publick Trial? whether only the reading of the Articles, Answers, producing of Witnesses, and managing the Evidence to make good the Articles; or else, the Council's private Debates of the Cause among themselves, after the Hearing? To which Mr. *Prynn* replied, That he meant only the former of these, the Judges Debates many times in Cases of difficulty being private after Hearings, till they come to deliver their Resolutions in publick. Hereupon all were commanded to withdraw; and then one of the Council, after a short Debate, was sent to his Excellency to know his Pleasure, whether the Trial should be publick, as the Prosecutors desired, or private? Who returned answer, that it should be private; with which Resolution the Prosecutors (being called in) were acquainted.

Mr. *Prynn* upon this Answer desired, that he might put in writing the Reasons he had suddenly offered to the Council for an open Trial, that so they might be presented to his Excellency; for that (as he conceived) he had not been made acquainted with them, who upon consideration of them, might happily alter his Resolution. Upon which Motion, the Council ordered the Judge-Advocate and Prosecutors to repair to his Excellency, to acquaint him with the former Reasons by word of mouth, which they did very briefly: But the Advocate informing his Excellency, that it was against the Privileges of the Council that the Trial should be open; he answered that he would not infringe the Privileges of the Council, whom he thought the Prosecutors seemed to distrust by demanding a publick Trial.

The manner of the Trial being thus settled, the Articles of Impeachment were first read, and then his Answer delivered in writing unto them.

I

Articles of Accusation and Impeachment against Colonel Nathanael Fiennes, late Governor of the City and Castle of Bristol, touching his dishonourable Surrender thereof to the Enemy, contrary to his Trust and Duty; exhibited by Clement Walker and William Prynn Esquires, in the behalf of the Commonwealth of England.

1. *Imprimis*, That he, the said Colonel *Nathanael Fiennes*, did suddenly apprehend, imprison, and remove Colonel *Thomas Effex*, late Governor of the said City and Castle, from his Government there, upon pretence that he intended to deliver up the same (not then fully fortified, or sufficiently provided to withstand any long Siege) into the Hands of the common Enemies of the Kingdom and Parliament, contrary to the Trust reposed in him; and that hereupon, he, the said Colonel *Fiennes*, obtained the Government of the said City and Castle for himself, and undertook to defend and keep the same, to the uttermost Extremity, against the said Enemy, for the use of the King and Parliament, and not to surrender the said City and Castle, or either of them to the said Enemies, or to any other Person whatsoever, without the previous Consent, and Order of the Parliament.

2. *Item*, That the said Colonel, soon after he became Governor of the said City and Castle, did, by martial Law, apprehend, condemn, and execute some chief Citizens thereof; namely, Mr. *Yeomans*, Mr. *Butcher*, and others, only for intending to deliver up the same to Prince *Rupert*, when he came first before *Bristol*, (not then fully fortified and stored) tho' they did not actually surrender the same.

3. *Item*, That he, the said Colonel, did put the Parliament, Kingdom, Country, and City to a vast Expence, in fortifying and furnishing it, and the Castle thereof, with Forts, Sconces, Cannons, Ammunition, Arms, Victuals, Provisions of all sorts, and with Garrisons sufficiently able to defend and maintain the same for three Months space or more, against all the Power of the Enemies, that might or did come against the same; and did likewise promise and undertake to divers Gentlemen and Inhabitants thereof, to defend the same for so long space or more, in case they should be besieged.

4. *Item*, That he, the said Colonel, notwithstanding the Premises, when the Enemy came before the said City and Castle, with no extraordinary Forces or Ammunition able to force the same, and besieged them not above three Days at the most, did, before ever the Enemy had taken any of the Out-Forts, or Sconces about the same, or had made so much as the least Battery or Assault upon the Walls of the said City or Castle, or any Mine or Breach into any of the Forts thereof, contrary to his former Trust, Promises, Duty, and the Honour of a Soldier, most dishonourably, cowardly, and traiterously delivered up the said City and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Arms, military Provisions,

sions, Magazines, Victuals therein, and the very Colours too, without and against the Consent of the Parliament, or his Excellency their General, into the Hands and Power of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament, to the extraordinary great Danger, Dishonour, Loss and Prejudice of the whole Kingdom and Parliament, the evil Example of other Governors and Towns, the Loss of most of the Western Parts of *England*, and great encouraging, enriching, and strengthening of the said Enemies, both by Land and Sea; and that upon very dishonourable Articles, to which he was no ways necessitated, and had no care to see them punctually performed by the Enemy, when Complaint thereof was made to him for Relief; to the great Prejudice and impoverishing of the Inhabitants and Garrison-Soldiers there.

5. *Item*, That the said Colonel, without the Privy or Consent of any general Council of War, did, of his own Head, send out for a Parley with the Enemy, when divers Officers and Soldiers advised and persuaded the contrary, and would have repulsed the Enemies, and defended the said City and Castle to the utmost: That the surrendering up of the same was principally occasioned by the earnest Persuasion, Advice, and Cowardice of the said Governor, contrary to his Trust and Duty to keep the same. And that the said Governor, when as the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the Town, unless they might march thence with half their Arms at least, and with their Colours; thereupon, after some private Conference with Colonel *Gerrard*, one of the Enemies Commissioners, in the Garden, without the Privy, and contrary to the Vote, of the said Council, did make and insert the last Article, That they should leave all their Cannon and Ammunition, with their Arms and Colours, behind them; and returning to them out of the Garden, told them plainly, that they must now deliver up all to the Enemy, but what was expressed in the Articles he then produced, and leave their Arms and Colours behind them, to the said Council's and Soldiers great Discontent. And whereas by those very Articles, the said Town and Castle were not to be delivered up till Nine of the Clock the next Morning, nor the Enemies to enter them till the Soldiers, and other Gentlemen were marched out; the said Governor was so over-hasty to surrender up the same, that he delivered them up to the Enemy above one Hour or more before the Hour agreed on; and suffered the Enemies to enter and possess them before the Soldiers were marched out: whereby many of the Soldiers were pillaged in the Castle and Town, and divers of the Inhabitants best affected to the Parliament, were plundered before the Hour of Surrender came, to their great Loss and Undoing.

6. *Item*, That he the said Colonel, during the three Days Siege of the said City and Castle, did not give any such Encouragement to the Soldiers and Officers (who bravely defended the same, and slew near one Thousand of the Enemies best Men, by his own printed Relation, with the Loss only of eight Persons) as his Duty and Place required, and they expected, which much discouraged them: And that when a small Number of the Enemies, not two Hundred (who gave themselves for lost)

had entred the Line of Communication at the weakest Place, which was worst guarded, on *Wednesday* Morning the 26th of *July* last, (being bravely repulsed by the Soldiers with great Loss in all Places else;) he the said Colonel, for two Hours Space or more (during which time no more Enemies entred or approached the said Breach) both neglected and refused to command or encourage the Officers and Soldiers who offered to beat them out in due time, as he was advised and pressed to do by Captain *Bagnall*, Lieutenant-Colonel *Davison*, and divers others, who would have undertaken that Service; and instead of encountering the said Enemies (against whom the very Women offered to go on with their Children to dead the Cannon, if the Soldiers were afraid, rather than the City and Castle should be yielded) called off the Soldiers and Officers from the Line and Out-works (that the Enemies might the better enter them without Resistance) upon pain of Death, much against their Wills, who should and would have hindered and repulsed the Enemies; and discouraged and hindered such as were forwards to have cut them off, founding a Parley when the Enemies were so beaten, that they threw down their Arms and cried for Quarter: insomuch that divers of the Soldiers and Inhabitants cried out they were betrayed, and some of the Soldiers brake their Arms in discontent, swearing they would serve the Parliament no more.

7. *Item*, That the said Governor, notwithstanding his Promises to defend the said City and Castle, and dispute it to the last, had yet a real Intention to deliver up the same to the Enemies before ever they were besieged by them, and no thought at all to defend them to the uttermost, or till they might be relieved by his Excellency; as appears by the premised Articles, by the said Governor's refusal to send the Prisoners, formerly taken, out of the said Castle, before the Enemy approached, when moved to it by Sir *William Waller*; saying to him and others, that he would detain those Prisoners still there, to make his own Conditions, and Composition the better with the Enemies, if they came before it; by his commanding Mr. *Hassard*, the Master-Gunner there, to lay aside a Reserve of thirty Barrels of Powder, with Match and Bullet answerable, to which when he was reduced he would then treat with the Enemy; (which he did long before he was reduced to this large Reserve) by other Speeches to the like Effect; and by his moving Sir *William Waller* to depart from *Bristol* before it was besieged, who otherwise would have adventured his Life in its Defence.

8. *Item*, That he the said Governor, when he surrendered the said Castle to the Enemy, had at least sixty Barrels of Powder therein, (besides what was in the City and Forts) being above twenty more than were in *Gloucester* when it was first besieged, five hundred Cannon-shot, fifty great Grana- does, fourteen hundred Weight of Match or more, great Store of Musket-Bullets, and Tin to make more; a Match-maker, a Bullet-maker, with Materials to make Match and Bullets; and all manner of Provisions and Victuals, sufficient to maintain one thousand Men for three or four Months Space at least; eleven Cannons therein mounted; (besides forty-four Cannons mounted in the City and Forts) all which were surrendered to the Enemy before any Battery or Assault made

against the said Castle (tho' he had Men more than enough by his own Relation to defend it) contrary to his Promise made to divers Inhabitants of the said City, best affected to the Parliament, to defend the same to the uttermost, and dispute every Foot thereof with the Enemy, and to keep it, or to lay his Bones therein; who thereupon sent their Estates with Provisions for them and their Families, for three Months space or more, into the said Castle, where the said Colonel promised to secure and defend the same, most of which their Estates were there seized on by the Enemy to their undoing; by reason the said Colonel admitted the Enemy into the said Castle, and deliver'd up the Keys thereof unto them, before the Hour agreed on in the Articles, such was his extraordinary haste to quit the same.

9. *Item*, That the said Colonel, to aggravate this his dishonourable Action, hath pretended to justify the same; not only before the honourable House of Commons, by word of mouth, but likewise before the whole Kingdom and World, in printed Relations and Letters, wherein he hath laid an extraordinary great Blemish both upon the honourable Houses of Parliament, and his Excellency the Earl of *Essex*, their Lieut. General, by publishing in print, that had he manfully held out the said City and Castle to the last, yet he could not have expected any Relief from them in six or eight Weeks space at the least; when as *Glocester*, since besieged with far greater Force than *Bristol*, was yet relieved by them in less than half the time (as *Bristol* doubtless might and would have been) and held out a full Month's Siege or more as *Bristol*, might have done: tho' he the said Colonel, to add to his former Offence, and hinder or anticipate the Relief of *Glocester*, that it might be lost as *Bristol* was, gave out in Speeches to some Members of the House of Commons and others, and namely to Master *Samuel Browne*, and Master *John Sedgwick*, that he would lose his Head, or be hanged, if *Glocester* could or would hold out three days Siege, if the Enemy once came before it, or Words to the like effect.

10. *Item*, That the said City and Castle were so cowardly and unworthily deliver'd up to the Enemies, that they have since published in Print, and given out in Speeches, *That the said Colonel Fiennes did bestow the same upon his Majesty; that they were deliver'd up to them beyond their expectation, and that they could not have taken the same had it been defended by the Governor; who eventually at least, if not intentionally, did but strongly fortify, and plentifully store the same with all manner of Provisions to make it tenable, at the Kingdom's and the Country's extraordinary expence, to render up the same to the Enemies with greater Advantage to them, and far more Prejudice and Damage to the Commonwealth, as soon as it was made defensible.*

*Clement Walker.
William Prynn.*

The Answer of Col. Nathanael Fiennes, to the Articles exhibited by *Clement Walker*, and *William Prynn*.

1. **T**O the first Article, Colonel *Fiennes* denieth, that he did suddenly apprehend, imprison, and remove from the Government of the City and Castle of *Bristol*, Col. *Thomas Essex*,

the Governor thereof, upon pretence that he intended to deliver up the same into the Hands of the common Enemies of the Kingdom and Parliament; or upon any pretended Cause whatsoever, or that Col. *Thomas Essex* was ever Governor of the said City or Castle; but doth acknowledge that soon after his coming to *Bristol*, by an express Order from his Excellency, written all with his own Hand, he did send unto him Col. *Thomas Essex*, who at that Time commanded a Regiment in that City: and as he is well assured that his Excellency had very good Cause to send that Order to him, altho' he knew nothing before it came unto him; so he did not put it in Execution, but upon mature deliberation and advice with most of the wisest and best affected Gentlemen to the Parliament, and of the best Quality in the Town and Country, and upon good cause appearing unto him; and that for the Security and Preservation of that City, which in all probability could not otherwise at that time have been secured. And he doth further deny, that thereupon or at any Time after, he did seek or desire the Government of that City for himself: But on the contrary, that he did seek and endeavour to be freed from that Employment, and that not in compliment, but really, earnestly, and frequently, as he is ready to make good by Proof. And lastly, he doth deny, *That ever he undertook to the Parliament, or my Lord General, to make good that City or Castle; or that ever he had any Charge of the Castle as a Fort, or otherwise than he had of any Church or House in the City: But on the contrary, That he did from time to time declare, that he could not keep the City in the Condition it was, and that it would certainly fall into the Hands of the Enemy, unless better provision were made for it; and that he would not be answerable for it, unless certain propositions which he sent to the Parliament, or something equivalent thereunto might be granted unto him, which he could never obtain.* And further he affirmeth, *That he never did undertake not to surrender the said City or Castle, both or either of them, without the previous Consent and Order of the Parliament, or that the Parliament ever did, or in reason and justice could require any such Undertaking of him, or that he ever did or would have undertaken it.* All which he is ready to make good by proof.

2. To the second Article, Col. *Fiennes* doth acknowledge, that not many days after his sending away Col. *Essex*, by the Blessing of God upon his Care and Vigilance, he discovered and defeated a wicked Conspiracy, plotted between divers Inhabitants of the City of *Bristol* and some of the Officers of Col. *Essex* his Regiment, for the delivering up of the City into the Hands of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament; and thereupon apprehending and imprisoning divers of the Conspirators, and thereby disappointing the design of the Enemy, he was a means, under God, at that Time of preserving that City, for which he received publick thanks by a Letter from both Houses of Parliament, which he hath to shew: and after, by virtue of a Commission from his Excellency, by Order of both Houses of Parliament, he called a Council of War, whereof himself was appointed President by the said Commission, and by that Council of War divers of the Conspirators, after due Trial were condemned, and the Sentence of Death passed upon them, which Sentence Col. *Fiennes* did forbear to put in Execution till such time as he had acquainted

acquainted the House of Parliament, and his Excellency therewith, and the Grounds thereof; and then by his Excellency's Command, according to a Vote of the House of Commons, he did execute two of the principal Conspirators, (*viz.* M. Yeomans and M. Butcher) notwithstanding the Importunity and most earnest Intercession of the Mayor and Aldermen, and divers of the City to the contrary, and the *Threats and desperate Speeches given out by the Malignants*, altho' it so happened at that time, that a *considerable Strength was drawn forth of that Town to the Assistance of Sir William Waller*; insomuch that some ill-affected Persons in the Town conceiving us so weak that the *Malignants were able to master us*, had procured his Majesty to send a Trumpeter with a Letter from himself to the City, to stir them up, and command them to rise and rescue the said Conspirators, and to kill and slay all those that should oppose them therein: yet for all this Col. Fiennes, in Obedience to the Parliament and his Excellency, did put the Sentence in Execution, and that at mid-day, and in the middle of the Town; in all which he conceiveth that he discharged his duty faithfully, temperately, and resolutely.

3. To the third Article, he answereth, that notwithstanding, that without any, or very little Help at all, by his own proper Industry, and incessant Travel and Pains, he endeavoured to fortify and furnish that Place in such sort that it might be in posture of Defence, *and that without troubling the Parliament at all*; he had well nigh brought a Line or Rampart of Earth round about the Town; whereupon there were some small Works or Redoubts, which in this Charge are called Forts and Sconces; and that he had procured some proportion of Powder, Artillery, Guns, Granadoes, and other Provisions, whereof he found the Town very much destitute: yet he denies that there ever was, or that he ever did, or could raise a sufficient Garrison to defend and maintain that City against all the Power of the Enemy, that might or did come against it, *for the space of three Months or more, or for three Days*; or that he did undertake or promise to any Gentlemen or Inhabitants of the same, to keep it for so long Space, in Case that they should be Besieged.

4. To the fourth, He denieth, that he did deliver up the City or Castle of Bristol, with all the Arms therein; or that he did deliver the same up, with all the Prisoners, Cannons, Ammunition, &c. against the Consent of the Parliament, or his Excellency their General; or that he did deliver them up Traitorously, Cowardly, or Dishonourably, or contrary to any former Promise of his, or contrary to his Trust or Duty, to the extraordinary great Danger, Dishonour, Loss, or Prejudice of the whole Kingdom and Parliament; and the evil Example of other Governors, and Towns, upon dishonourable Articles, to which he was no ways necessitated; or, that he had no care to see the Articles agreed upon, punctually performed by the Enemy, when Complaint was made to him for Relief, to the great Prejudice and Impoverishment of the Inhabitants and Garrison-Soldiers there: But on the contrary, is ready to justify, that over and above his former good Services, in sending away Col. Essex without Disorder or Blood-shed, in discovering and preventing that wicked Conspiracy, and preserving the City thereby, notwithstanding a Proclamation set forth of Purpose by

the King, wherein he offered Pardon to all, both Soldiers, Citizens, and others (except himself) within the City of Bristol, at that Time, in case they would peaceably yield up the said City: And over and above, his great Pains and Care to put the City in as good a Posture of Defence as possibly he could; *and notwithstanding, he never undertook to make good the City or Castle, or either of them, declaring that he could not, nor would not undertake it*; and that also he could never obtain a sufficient Garrison for the Defence of that Place for any considerable Time, or Monies to maintain it, or Means to raise it; *Yet he did defend that Town and Castle to the utmost Point, not only of Duty, but also of Honour, that any Soldier could, or ought to have maintained the same: And that he surrendered them upon good and honourable Conditions, in respect to the State he was in*: And that he did take all the Care that any Governor could or ought to do, that they might be punctually performed; and that the breaking of them was not any Fault of his, but principally by the failing and unfaithfulness of the Enemy, and partly by the disobedience and disorder of some of his Soldiers; all which he is ready to justify in every Particular. *Notwithstanding that after the Line or principal Rampart of the Town was entered, and the Enemy lodged within it, he did surrender the Town and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Military-Provisions, Magazines, Victuals, and part of the Arms therein, before the Enemy had taken any of the Out-Forts about the same, or had made the least Assault or Battery upon the Walls of the City, (which had none at all on that Part against which the Enemy then lay, nor at all defensible in any Part on that Side the Town) or upon the Walls of the Castle, or any Mine or Breach into any the Forts thereof*: All which (nor the Castle) could not prevent the Enemy being lodged in the Suburbs by Froome-Gate, from immediately entering the Town by force. *And neither could, nor ought to have been kept in the Condition that Things then stood, to the prejudice of the City and Garrison, and the Surrender thereof upon Terms of Composition, but ought to have been surrendered together with it, as they were by the constant Practice and Policy of War in all Places, the Principles of Justice and Honesty, and the Rules of Wisdom and Discretion, for the Honour, Profit, and best Advantage of the Kingdom and Parliament.*

5. To the fifth Article, he answereth, that he did not of his own Head, without the privy of any Council of War, send out for a Parley with the Enemy, when the Officers and Soldiers advised and dissuaded the contrary, and would have repulsed the Enemy, and defended the City to the uttermost: And that the surrendering of the Town was not principally, or not at all could possibly be, by his earnest Persuasion or Advice, nor that it was by his Advice or Cowardice, contrary to his Trust and Duty to keep the same: But on the contrary, he was advised to the Treaty by the far major part, if not by the unanimous Consent of his whole Council of War, and of the Gentlemen there present, unless it were Mr. Strode (who also, to the remembrance of many present, was not heard to give any Dissent when the Question was put; and all that he said, tended only to a deferring, rather than a denial of the Treaty, without any good Reason, that he either then did, or yet can give for his Opinion; and that by many Expressions and

other clear Evidences, it did, *at the time of the first Proposition of the Treaty appear, that Col. Fiennes had for his principal Aim therein, the Honour and Advantage of those by whom he was intrusted.* And he doth deny that when the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the Town, unless they might march thence with half their Arms at least, and their Colours, he did thereupon offer some private Conference with Col. Gerrard, one of the Enemies Commissioners, in the Garden; at which, without the Privy, and contrary to the Vote of the said Council, he did make and insert the said Article, that they should leave all their Cannons, and Ammunition, with their Arms and Colours behind them, and returning to them out of the Garden, told them plainly, that they should now deliver up all to the Enemy, or that it was expressed in the Articles he then produced, that they should leave their Arms and Colours behind them, to the said Council's and Soldiers great Discontent: But on the contrary, he doth affirm, and will justify, that he bid the Soldiers make Conditions for themselves, the Gentlemen of the Country for themselves, and the Citizens for themselves, which was done accordingly: And after, when upon the Treaty the Gentlemen of the Country, and Citizens were satisfied with their Demands; Colonel *Fiennes* was the first and the chief, if not the only Man that took exception at the Condition for the Soldiers; the Commissioners of the Enemy standing upon it, that they would allow only the Officers their Horses and Arms; and he on the other Side standing as peremptorily for all their Horses and Arms, and Colours: whereupon he was about to break off the Parley, and the Commissioners of the Enemy ready to return to the Army, but by the earnest Persuasion of the Mayor and Citizens, the Commissioners of the Enemy were persuaded to walk into the Garden, and to leave us at the Council of War to debate amongst ourselves concerning that point of the Arms and Colours: Whereupon Col. *Fiennes* stood very stiffly, till at length he was persuaded by the Council of War to rest satisfied with half Arms, and our Colours, if we could obtain them; whereunto Col. *Fiennes* expressed a great deal of Resolution to adhere, and he had done it to the End, had the Soldiers upon their Guards done their Parts as well as he did; but returning into the Garden with this Resolution, many of his Officers following him, and it being free for any to enter, openly and before the Mayor and divers of his Officers, he began to insist upon his former Propositions for all his Arms and Colours; whereupon they yielded that our Troopers should have their Horses and Swords, and then Col. *Fiennes* descended to the Propositions of half Arms and our Colours, but being not able to obtain it, he yielded so far to the Intreaty of the Mayor and Citizens, that he would not break upon that point of his own Head without the Advice of his Officers; and thereupon withdrawing into a Room, with all his Officers that there were present, he debated the Matter a good while with them, and could not be brought to yield thereunto, till six or seven of his Officers came out of the Town, and told him, that they could not get six Men a-piece of their Companies together, they ran so fast over the Key to the Enemy: Whereupon, altho' with much reluctancy, he was content to yield to that Condition, for fear of putting ourselves

into a far worse Condition; and after calling in the Commissioners of the Enemy, we fell to set down all the Articles in Writing, there being Liberty to any Man to take his Exceptions upon the Penning of them: At which time Captain *Birch* coming in, and desiring a more clear Expression for the Citizens and Inhabitants to have Liberty to carry away their Estates, which Col. *Gerrard* boggling at, Col. *Fiennes* rose up, and with great earnestness protested, *That he would rather die than not provide for his Friends and their Estates, as well Citizens as Soldiers;* whereupon Col. *Gerrard* consented to it: and it was further expressed, that they should have three Days Liberty, to resolve whether they would stay or depart with their Goods; and the last Article was no new Article inserted at the latter End, but only a clear Expression of what was before agreed upon, and fully contained in the first Article, as by the Article itself doth appear. And lastly, Col. *Fiennes* doth deny, that he was so over-hasty to surrender up the Town and Castle, that he delivered them up to the Enemy one Hour or more before the Time agreed, or that he suffered the Enemy to enter and possess them before the Soldiers were marched out. But on the contrary, that he gave Order to all his Officers that came to him for Orders, to keep their Soldiers upon their Guards, until one Hour before we were to march out of the Town: at which Time having given Order to his Captain Lieutenant *Stokes* with his Company to stay in the Castle, and to keep it till Prince *Rupert* sent to demand it, and then to deliver it up unto him according to the Articles, he gave Order to the rest of his Officers to draw their Men into the Marth, whither he did repair unto them, and about nine of the Clock marched out with the greatest Part of them to the Gate which leadeth to *Warminster*, where he stayed within the Town for an Hour or two after: *But the Enemy did enter the Town, contrary to their Faith, and the Articles agreed upon, an Hour or more before nine of the Clock, about the Time that we were drawing off to a Rendezvous, and fell upon our Men, disarming, dismounting and pillaging them, by means whereof, and by no Fault of Col. Fiennes, many, both Soldiers and Citizens, were Pillaged and Plundered.*

6. To the sixth, he acknowledgeth and owneth the Clause mentioned to be in his printed Relation, and that the Enemy having entred in one Place on *Wednesday* Morning the 26th of *July*, were valiantly repulsed in all Places else with great Loss; but doth deny, that to his Knowledge any Women made any such Offers as in the Articles is expressed, or that he should have thought it a fit means to dead the Cannon-bullets, or that any such Speeches were given out, or any such Actions done by any Inhabitants or Soldiers to his Knowledge, as that they brake their Arms, and said they were betrayed; or that he would have suffer'd them unpunished, if he had heard or known any such thing: and for the rest of the Articles he denieth it in the whole, and in every part thereof; and on the contrary affirmeth, and is ready to prove, that during the whole Siege, he did both by his Words and Actions encourage the Soldiers and Officers to do their Duty, thanking some, praising others, stirring up others, sending them Bread, Wine, Victuals, and giving them Monies, and promising them further Rewards, but especially by his own Example, going constantly the round

round at all hours of the Night, sometimes in the beginning of the Night, and sometimes in the latter end thereof, and repairing upon all occasions to the places of most Danger, and standing most usually with his Troop, in the Place of greatest danger, and by all other ways and means that could be expected from any Governor. And he further affirmeth, that the place where the Enemy entred, was not a likely place for the Enemy to enter by, was weakliest assaulted; could not have been better guarded without drawing Forces from other places, which were in more apparent danger and more strongly assaulted, was more strongly guarded than some other places that were more strongly assaulted, and yet the Enemy repulsed, and that the Enemy might have been in all probability repulsed there also, had the Guards of Foot or Horse that were to second them done their duty, as well as they did elsewhere, or had Colonel *Stephens* or his Major sent down some Foot together with the Governor's Troop when they went to charge the Enemy, out of the Men that were under their Command upon the next adjoining Guards, which they might and ought to have done, and could only well do it. And he further affirms, that when the Enemy first enter'd they were at the least two hundred; that soon after they dug down the Rampart of Earth all flat for their Horse and Foot to enter, and that then immediately they possessed themselves of Walls, Houses, *Essex-Fort*, and other places of advantage; that within one hour's space at the farthest, after the entry of the first, there entred at least 300 Foot more, and a Regiment of Horse with Ordnance, and after both Horse and Foot entred as fast as they could; that Col. *Fiennes*, so soon as he had notice of the entry of the Enemy at that place, made all the haste he could to repair thither, but that before he got thither, his Men were come off the Lines for half a Mile together, and his own Troop (unto which he was going up) beaten off also: that afterwards both by his Commands and his own Person, he used the best, the safest, the speediest, and the most effectual means that any then could, or yet can shew for the securing of the City, the safeguard of his Soldiers, and for the repulsing of the Enemy, but divers of his Soldiers did disobey, and other of the Soldiers and Commanders did refuse to yield ready Obedience to his Commands, especially Major *Lewes*, to whom he was constrained to send an Order upon pain of death to yield obedience before he would do it; and by his and others Diobedience, the Service was hindred and retarded, that a Sally could not be made so seasonably as otherwise it might have been, and with better Success than it was, altho' when it was made, it was performed with such Resolution, that it gave a stop to the Enemy, who otherwise had, in all probability, entred the rest of the Town by force, being already possessed of two of the greatest Works thereof; and Col. *Fiennes* did not cause any Parley to be sounded till such time as his Men were beaten back again with fresh Regiments of Foot and Horse brought down upon them, but was still ready to have seconded them with his own Company, had there been any hopes to have beaten them off, and till such time as going round the Town with his Lieutenant Colonel, he speak with great earnestness to all his Officers that he could meet to get their Men to their Colours again; commanding them to repair to the Marsh, and that there should be Victuals, and Twelvepence a Man given them, which accordingly was

given to as many as came together, but could never get together, or to their Guards, two hundred, of ten or twelve hundred of the Men that were on that side the Town: whereupon by the Advice of his Council of War, he sent forth a Parley; all which he is ready to prove.

To the seventh, he answereth, that notwithstanding he declared that he could not keep the Town with the Force he had in it, yet he denieth that he had a real Intention to deliver up the same to the Enemy before ever it was besieged by them, or that he had no thought at all to defend it to the uttermost, or till it might be relieved by his Excellency, or that he refused to send the Prisoners, formerly taken, out of the Castle before the Enemy approached, or that he commanded Mr. *Hazard* the Master-Gunner, to lay aside a Reserve of thirty Barrels of Powder, with a purpose to treat when he was reduced thereunto; or that he moved Sir *William Waller* to depart from *Bristol*; or that Sir *William Waller* would otherwise have adventured his Life in its Defence; or that it doth appear by any of the premised Articles, or any Speeches of his concerning the Prisoners, or a Reserve of Powder, of Sir *William Waller's* Departure from *Bristol*, or any other Speeches of his, that he had not a real Intention to keep the Town and Castle to the uttermost, that in Honour, Wisdom, and Faithfulness, unto those by whom he was intrusted, he ought to have done: but that the contrary doth appear by very many Deeds and Speeches of his, and by those very Particulars instanced in, so far, and in such a manner as they were spoken and done by him. And he further affirmeth, that he did often move Sir *William Waller* to free him from the care and danger of so many Prisoners, but could never obtain it; but when he thought neither Town nor Castle safe enough to keep them, he spoke to him to send them away to a Place of more safety, but neither shewed him the means how to do it, nor offer'd to take any of the most considerable with him, altho' he had an absolute Command over them at all times, whensoever he pleased to signify his Pleasure concerning the Discharge or Disposal of them, as he did discharge Major-General *Bret*, and divers others (whereof some led on those that assaulted us at *Bristol*.) That Colonel *Fiennes* spoke to Sir *Arthur Haslerigge*, when he took leave of him, to take some of the Prisoners away with him in the Ship, but he refused it: that he spake to Captain *Birch* (who seemed forward to undertake such a matter) to see if he could find means to send them away speedily and safely by Sea, and that he would contribute his best Assistance thereunto, but he also gave it over: That he commanded *Hazard* the Master-Gunner, when the Enemy was approaching the Town, to lay apart a Reserve of thirty Barrels of Powder, and to keep it private, that every Man might be careful to husband that which appeared, and to make no waste thereof; and that in case he was forced to retreat into the Castle before he came to Treaty, he might have wherewith to defend himself: but Mr. *Hazard* did so over-do his Command, that tho' afterward at several times he commanded him to give a perfect Account of all his Ammunition to his Brother Colonel *John Fiennes*, who was to have the chief care thereof over him, yet he did conceal from him this Reserve; insomuch that when Col. *John Fiennes*, was required to declare at the Council of War, what store of Ammunition was left, he informed us that he had taken a particular

cular Account thereof, and that there was not above three or four hundred weight of Match, and between twenty and thirty Barrels of Powder (as indeed he knew of no more;) and that they were spending of that too: whereby (as by like Speeches of the Master-Gunner to the like purpose) Col. Fiennes did believe he had broken up his Reserve, and that he was spending of that also, and that there was not above twenty Barrels of Powder left; and did not certainly know the contrary, till such time as he was come to London, and had particularly informed himself by Mr. Hassard of the truth: and that the Enemy knew not of more Powder in the Castle than twenty Barrels, for divers Weeks after the surrender of the Town, he is able to prove. And lastly, he doth affirm, that Sir William Waller was so far from needing to be stirred up to depart the Town, that on Friday, the Day after he came to Bristol, commanding some of his Officers to draw forth some of their Men into the Marsh, and they conceiving that it would not be possible to do it till the next Morning, he replied, that then it might be too late: and the next Day drawing them out upon Durdam Down, where Col. Fiennes there asked, in case the Enemy should advance towards Bristol, how he would dispose of himself and his Horse, he answer'd, that he must retreat. And it is evident in many respects, that it was necessary for him to draw out of the Town; for it is most likely, that had he not done it, the Town would have been left sooner than it was, and the Dishonour and Loss of the State been greater; and that if he had, when he first came to Bristol, followed the Advice given him by Col. Fiennes and his Officers, or done according as he promised Col. Fiennes, when he took his leave of him, he would have done better Service, both for the preservation of that City, and the rest of England, than by the course he took: all which he is ready to prove and justify.

8. To the eighth Article, he doth deny that there were sixty Barrels of Powder in the Castle when it was surrendered, or that he did promise to any Inhabitant of the City to defend the same, but in case he was forced to retreat into it; nor any longer than he thought fit, for the honour and best advantage of them by whom he was intrusted; or that there was in it all manner of Provision and Victuals sufficient to maintain One thousand Men for three Months space; or that he deliver'd up the Keys of the Castle before the Hour agreed on in the Articles; or that by reason thereof many Inhabitants of the City, or any other Person whatsoever, had their Estates which they brought into the Castle seized upon: But on the contrary he affirmeth, *That there were but fifty Barrels in the Castle when it was surrendered, and that was thirty more than either he or his Council of War knew of before they came to London; and that therewith he was less able to defend the Town four Days, or the Castle fourteen Days, then Gloucester might with the like proportion be defended twenty-four Days: That there were about eleven Cannons mounted in and about the Castle, and that there was need of more, to supply the many defects and universal weakness thereof; but that there was never any one amongst them all, or in the Town, fit for Battery, or to hinder the approach of the Enemy in any effectual way; but he had sent to London for three to that purpose, and that they were at hand, but not yet come to him: that altho' he had no Charge of the Castle, more than of any House in the Town, nor was obliged to hold it further than he judged it for the good of the Publick, yet he did resolve to*

make use of it for the advantage of the State, and of their Friends and Soldiers; as also he did, by making the Terms of Composition the better by the Countenance thereof, which was the best use he could make of it in that Condition he was in, and would have been as ready to have done it by the Defence thereof, if he had been forced thereunto, or that it had been fit in Wisdom and Justice to have taken this Course, as if Succours had been at hand, and in some other Cases it might have been. And for this, and divers other Reasons, he did take some pains, and was at some cost, for the strengthening of it, and furnishing of it with great and small Shot, and Granadoes, and Provision of Victuals, and other Necessaries, whereof what was the quantity of each Sort he is uncertain; but is certain, that none was employed but where there was occasion, nor should have been spared, if there had been occasion to use them: but doth affirm, that he never gave order to the Commissary of Victuals, to make provision of Victuals for more than One thousand Men for a Month, wherein he aimed at a double Proportion to what he thought he should have need of; or that he ever hoped to keep the Castle for more than a Fortnight, or three Weeks at the farthest: That he was content, for divers good Reasons, to suffer the best affected Persons to carry into the Castle some of their principal Goods, but was very angry when he saw them offer to carry in their Lumber, and straitly forbade it. That a special Article was made for them that carried in their Goods, that they might have free Liberty to carry them out at leisure: That the Citizens themselves, being divers of them upon the Guard in the Castle, that had their Goods there, made such haste to get them out on Thursday Morning, that leaving their Guards, and Major Wood, and others that had charge of the Soldiers in the Castle, suffering their Soldiers to go from their Guards without and against order, the Passage into the Castle was so thronged, that none could pass in nor out, and by that means some of the Prisoners got loose in the Castle, and grew disorderly, and some of the Enemies got in before the time; but Col. Fiennes coming thither, and seeing this Disorder, with his Sword in his Hand beat back the People that thronged the Draw-Bridge, drew up the Bridge, and got some of his Soldiers to their Guards again, put their Arms into their Hands, and had drawn all his Soldiers into it, had he not received News while he was doing this, that the Enemy was broken into the Town, contrary to the Articles, and were dismounting, disarming, and pillaging our Men: Whereupon he gave order unto his Captain-Lieutenant Stokes, to keep the Castle with his Company, and to deliver it up to Prince Rupert when he sent to demand it; and was forced himself to go into the Marsh with Captain Teringham, one of the Enemies Hostages, with him, for the Safeguard of his Soldiers, both Horse and Foot, and of his Friends in the Town, as is expressed in answer to the fifth Article. And lastly, he doth affirm, and will justify, That the Castle was in no sort tenable, neither in respect of the Strength thereof, or of the Provision wherewith it was furnished, for one quarter of the space, wherein possibly he could have had Succours; nor for half the quarter of the time, where, in possibility, he could have expected them: And that if it had been tenable, yet neither by the constant Practice or Maxims of War in all Places, nor by the Rules of Honesty or Christianity, that he ought to have held the same; or that it had been for the Honour and Advantage of those by whom he was intrusted so to have

have done; and therefore ought to surrender it together with the Town, without disputing it at all, as he did.

9. To the ninth, he denieth that he hath done any dishonourable Action, or that he hath said or done any thing amiss, or unduly, or untruly, in the Justification which he made of the Surrender of the City and Castle of *Bristol* in the honourable House of Commons, or any other ways. And the rest of the Article he denieth in the whole, and in every part thereof; and doth affirm, and doubteth not but to make appear to any that are vers'd in military Affairs, that without detracting any thing from the worthy Governor, who did as much as the Enemy put him to, and as honourably as any Man could do, that he had a harder Task to hold *Bristol* in the condition it was in, and in the manner that it was assaulted four Days, than Col. *Massy* had to defend *Gloucester* four Weeks: and that he was so far from declaring that *Gloucester* would not hold out three Days, that he often declared, that if they had Ammunition enough, they might do well enough, and hold out till relief came to them; but oft he feared they might be strained therein, as having good cause to know it: for had he not supplied them with ten Barrels of Powder; and had they not had two or three more out of *Berkley* Castle, which he sent thither but a Week or two before, the Town had been lost for want of Powder. And, in this respect, he desired those whom it concerned to relieve them, not to be too confident of their holding out, and to hasten relief unto them; so far was he from desiring to hinder relief to be sent unto them, that it might be lost as *Bristol* was.

10. To the tenth he answereth, that it is an Article without a Charge, an Argument without a Proof; for that the Testimony of the Enemy can make nothing against him, it being their Parts to dishonour and disgrace their Enemies as much as they can; but the Testimony of an Enemy, tho' it be of no Validity against him, yet it is strong for him: and as he doth deny, that those that are Soldiers on the Enemies Side have any such sense of the Action, so he doth affirm that they had, and have expressed the contrary.

The first Day's Hearing upon the three first Articles.

THE Articles and this Answer to them being read, the Prosecutors proceeded presently to the Proof of their Articles: And whereas they conceived the Defendant would have granted the three first Articles, being but introductive to the Impeachment, yet he put the Prosecutors to their Proofs;

First, That Colonel *Essex* was ever Governor of *Bristol*.

Secondly, That he ever removed or sent Colonel *Essex* thence.

Thirdly, That himself was ever Governor of *Bristol*.

And then bid Mr. *Prynn* prove these Particulars ere he proceeded farther.

Mr. *Prynn* thereupon replied, that he much admired how a Man of his Birth and Breeding should so much forget himself, as to deny that in private before the Council, which himself had not only confessed, but professed before the House of Com-

mons, (the representative Body of the Realm) the City of *Bristol*, and published in print to all the World in publick: But since he denied these Particulars, he would easily make them good against him.

(1.) For the first it is clear, that Colonel *Essex* was both acknowledged and styled Governor of *Bristol*, by the Parliament, his Excellency, the Committees of *Somersetshire*, *Gloucestershire*, *Wiltshire*, the Citizens and Garrison of *Bristol*, and all the Gentlemen of those Parts, and by Col. *Fiennes* himself at his first coming to *Bristol*, who gave him the Title of Governor.

(2.) That he made out his Warrants, Commands, and ordered all Things for the City's Defence and Fortification, as Governor, having the Command in chief of the City, Castle, and Forces there, as absolutely as any Governor whatsoever.

(3.) That in the Book, intituled, *A full Declaration of Colonel Fiennes's March to, and Proceedings at Bristol*, compiled and published by himself, or his Major *Langrish* with his Approbation, pag. 3, 4, 10, 12 to 16. Colonel *Essex* is both acknowledged and styled Governor of *Bristol*, and that by himself, in his own printed Letter to his Father to justify his Removal; and the Depositions which he took and published against him, attest him to be the Governor. Therefore he must even blush to deny all these pregnant Evidences, and to put us thus to prove that only now, which he ever confessed before.

Whereupon Colonel *Fiennes* said, *I confess he was a Governor de facto, but not de jure.*

To which Mr. *Prynn* replied; First, that he was sent thither, and placed there, by his Excellency's special Command, and the Parliament's Approbation; therefore he was as much Governor *de jure* as himself or any other. Secondly, that he was obeyed as a rightful Governor till he sent him thence, and so esteemed by the Parliament, his Excellency, the Garrison, City, and Committee. Thirdly, if he was not Governor *de jure*, then all his Commands and Acts there done, during his Government, were injurious, unwarrantable, which he presumed the Defendant durst not affirm.

Then he replied, that Colonel *Essex* had no Commission, and therefore was no rightful Governor.

To which Mr. *Prynn* rejoined, First, that for ought he knew he had a Commission. Secondly, that his Excellency's sending of him thither, to take in command the City, and his confirming him there as Governor, with the Parliament's Consent, was a Commission sufficient to make him Governor *de jure*. Thirdly, that if his Excellency commanded an Officer by Word of Mouth alone, without a Commission under Seal, to lead any Brigade out upon Service, or to take in any Town or Castle, (as he had lately commanded Major *Skippon* to take in and fortify *Newport-Pannel*) this was warrant enough to make him Governor both of the Brigade, Town and Fort; and if he should betray, or basely deliver up that Brigade, Town, or Fort, when taken in, he should be condemned for it by martial Law as a Traitor, and the want of a Commission would be no excuse to acquit him from being a Governor, and betraying his Trust.

Secondly, That he removed and sent away Colonel *Essex* from *Bristol*.

(1.) Mr. Prynn proved it, first by his own printed Letter, and the Depositions published by his Direction, in a full Relation, &c. pag. 4, 6, 10, 11, 12. where he useth these Expressions: Colonel Fiennes (writes his Major Langrish) who communicated unto me an Order that he had received from his Excellency, whereby he was enjoined to send Colonel Essex to Windsor, or the Parliament, in case he saw cause for it; and having given me Reason to see and know that there was cause so to do, he asked me, whether I would assist him in the Execution of it or no? The which, seeing cause for, I promised to do. But it will be necessary here to annex the Reasons which caused Colonel Fiennes to put in Execution the Order given him by my Lord General, to send up Colonel Essex from Bristol; not as an Accusation against Colonel Essex in this Place, (let that be followed by those to whom it appertains) but by way of Vindication of Colonel Fiennes, that he had done nothing herein, but what the Trust reposed in him, and the Safety of that important Place did require him; and that the rather, because it begins so far to reflect upon Colonel Fiennes, as if he had done him Injury, and there had been no Plot at all, but a Plot to put himself in the Governor's Place. The Malignants in the Town taking up this, and spreading it, and adding Strength to it by Colonel Essex's own Speeches and Carriages, it will be a great Injustice to him, who hath done his Duty, and therein no inconsiderable Services, to be requited with Calumny, &c. Besides, Colonel Fiennes writes thus in a printed Letter to his Father: My Lord, &c. I have sent a Letter long enough, and full enough of Particulars, concerning Colonel Essex, and which I think were sufficient to satisfy any Man, that it was necessary he should be removed from hence, before the Town could be put in any Possibility of Security, altho' he had not been touched in the Point of his Fidelity: His being here, I found inconsistent with the Good and Safety of this City; and tho' there were no apparent Proof of his Falshood, which I never affirmed, yet there were shrewd Grounds of Jealousy, as may appear by the Depositions, whereof I have sent your Lordship a Copy, together with this Letter. For my part, so my Lord General and the World be satisfied, that I had good Reason to send him away from hence, according to his Direction, I would not have things prosecuted too hard against him, altho' I am very much deceived, if many a Governor of a Town hath not been called to an Account, in Point of his Fidelity, upon weaker Grounds than those which I have sent.

(2.) By his own express Confession, in the latter end of his Answer to the second Article, tho' he denies it in the Beginning, that he did it not upon any pretended Cause.

To the third, That himself was never Governor of Bristol, Mr. Prynn answered, That it seemed he had carried himself so dishonourably in that Government, that he was now ashamed or afraid to confess himself Governor, for fear he should suffer for it, else he could not have the Impudence to deny it. But since he thus denied himself Governor, he would quickly prove him so;

First, by his own Warrants, during his Government, wherein he stiled himself Governor of Bristol. Secondly, by his Acceptance of that Title from his Officers, Soldiers, the Committee, and all others. Thirdly, by the Parliament's, his Excellency's, and own Father's intitling of him Governor of Bristol, in their Lettets and Directions to him. Fourthly, by his exercising all the Authority, and receiving the Pay of a Governor.

Fifthly, by the full Declaration concerning his March to Bristol, set forth by his Major Langrish; who, in his Letter from Bristol, March 6, 1643. pag. 3, 4, 6. stiles Colonel Fiennes our Governor, and now Governor of Bristol, three several Times, long before he had a Commission to be Governor there. Sixthly, by his own Draught of an Ordinance presented to the House of Commons by the Lord Say, for the settling of a sufficient Garrison at Bristol; printed by himself, in his Relation made to the House of Commons concerning the Surrender of the City of Bristol, pag. 17 to 22, in which we find this Gentleman no less than eight several times expressly stiled, Colonel Fiennes Governor of Bristol. And are you not ashamed so confidently to deny that here in the Presence of this honourable Council, which yourself have so lately published to all the World? Oportet mendacem esse memorem. Seventhly, in the very Articles of the Surrender of the City and Castle of Bristol to the Enemy he intitled himself Governor, witness the Title of them: Articles agreed on at the City of Bristol, between Colonel Nathanael Fiennes Governor of the said City on the one Party, and Colonel Charles Gerard and Captain William Teringham, for and on the Behalf of Prince Rupert, on the other Party, July 26, 1643. And Article 1. That the Governor Colonel Nathanael Fiennes, &c. Certainly if he were not Governor before to keep, yet these very Articles prove he was then Governor to surrender it. And now, Sir, take your Choice; If you were not Governor, then you had no Power to treat or surrender the City or Castle, and so must be condemned (by your own Confession) as a Betrayer of them: If you were Governor of them, then you shew yourself most unworthy your Birth and Breeding in denying it now; especially since you have given an Account in a printed Relation, of your Proceedings and Surrender of Bristol, which is in Law a Confession of this Trust. To conclude: His Excellency's own Proclamation, posted up at Westminster by the Defendant's Procurement, and summoning us to give Information against him, doth no less than three several times together stile him, Colonel Nathanael Fiennes, late Governor of Bristol; and therefore eternally concludes him to deny it.

The Colonel confessed at last, that he was Governor of Bristol; but he next denied, in the fourth Place, That he was ever Governor of the Castle of Bristol, tho' he was of the Town.

And Fifthly, That he had ever any Commission to be Governor of Bristol.

To the first whereof Mr. Prynn replied; First, That he had the chief Command of the Castle, and none else. Secondly, That he placed his own Brother, Colonel John Fiennes, as Commander in Chief, and all other Officers under him, in the Castle. Thirdly, That he only gave Order for the fortifying, victualing, and garrisoning of it. Fourthly, That he laid up the Stores and Magazines of the City there, disposed of all the Lodgings in it, intending to make it the Place of his last Retreat: therefore certainly he was Governor of it. Fifthly, That tho' Bristol Castle and the City were divided heretofore, the Castle lying in Gloucestershire, and being no part of the City, yet since Queen Anne's Entertainment at Bristol, King James at her Request gave and united the Castle to the City, making it part thereof, and so it continueth to this Day: Wherefore since he confesseth he was Governor of the City, he must necessarily be

be Governor of the Castle too, it being no parcel of the City, and having no other Governor that had charge of it in chief but himself alone, and his Brother under him.

To this the Defendant, in the sixth Place, replied, That he had no Charge of it as a Fort, no more of any one House in the City.

To which Mr. Prynne rejoined, First, That the Castle was never reputed a House, but always a Fort, a Castle, and a very strong one too; therefore he must needs have the Government of it as a Fort, not as a House. Secondly, Himself esteemed it the strongest Fort in and about the City, bestowed much Cost in fortifying it, laid up his Magazines in it, kept a special Garrison there, made it the Place of his last Retreat, promised to hold it out till the last, if the City were taken, and to lay his own Bones there rather than yield it up; therefore certainly he took charge of it as a Fort, and must answer for surrendering it as a Fort.

Upon this Colonel Fiennes replied, That the Castle was not mentioned in his Commission, and so he was not chargeable with it as a Fort.

Which Mr. Prynne presently laying hold of, rejoined: First, my Lords, We have now a clear Confession that Col. Fiennes had a Commission to be Governor of Bristol, the fifth Thing he even now denied. Secondly, Tho' the Castle be not particularly named as a Fort in his Commission, yet this will not help him, for it is therein included as part of Bristol. This I shall undeniably evidence by a Case or two: Colonel Fiennes, by Virtue of his Commission, hath built several Forts and Sconces about Bristol, without, not within the City-Limits, tho' adjoining to it, as we have done the like about London; these Forts are properly no part of the City, as the Castle is, nor are they mentioned or included within his Commission, being built for the most part since the Commission was granted; yet no Man will doubt but if Col. Fiennes, or any other Officer, had treacherously or cowardly delivered up any of these Out-Forts to the Enemy, tho' no part of the City, it had been Treason in him, and he should have suffered for it: So had he in like manner yielded up or betrayed any one House in the City or Castle, were it fortified or not fortified, to the Loss or Hazard of the City, it had been Treason by the Laws of War; many Cities and Castles having been lost, by the loss or yielding of one House or Postern; much more then must he suffer for surrendering such a considerable Fort as Bristol Castle to the Enemy, without any Battery, Assault, or Necessity, tho' he found it not specified in his Commission, which extends to the whole City, and so to every House, Fort, and Parcel of it, tho' not particularly mentioned in it.

The Colonel then said, That he had no Commission to be Governor of Bristol, and by Consequence was not Governor of it.

To which Mr. Prynne replied: First, That since he undertook the Charge of the Town and Castle, as Governor, it mattered not much whether he had a Commission or not; for he writ, and carried himself as Governor, even from the sending away of Colonel Essex, till the Surrender of the Town and Castle, which he surrendered as Governor.

Secondly, That himself had formerly unawares confessed, That he had a Commission to be Governor, and that he was stiled Governor by Lan-

grish, and others, even in Print, before he had his Commission to the Governor.

Thirdly, he should prove hereafter, That himself sent one Captain Bagnall twice up to London to procure not only a Commission, but an independent Commission, from his Excellency, that so he and his Garrison might not be subject to Sir William Waller's Commands, (which Captain Bagnall afterwards attested upon Oath, and that he spent sixteen Pounds in these two Journeys, to obtain this Commission, which the Colonel out of his Liberality never yet paid him) and the Colonel himself confessed afterwards to the Council upon Bagnall's Testimony, he sent for and received an independent Commission; that so he and his Garrison-Soldiers might not be liable to Sir William Waller's Commands, as they formerly were.

The Colonel hereupon told the Council, That he sent for this Commission, not to guard the City against the Enemy, as Governor of it, but only to keep his Soldiers in Order, who when they were commanded on any Service, grew Mutinous, and would still be calling on him to see his Commission: for which he gave an Instance in Col. Popham's Regiment; who disobeyed him when they returned from the taking of Sherborne: And this made him to send for a Commission, only to order his Soldiers, and keep them in Obedience; but he never had nor sent for any Commission to keep the Town or Castle.

To which Mr. Prynne replied, That this was the most absurd, irrational, if not unsoldierly Distinction, that ever was heard of in the World, and that he might be ashamed to propound it before Soldiers, in such an honourable Council of War as this: for what need was there either of a Garrison or Governor of Bristol, or of such a Commission to keep his Soldiers there in Obedience and Order, but only to preserve the City? This was the only End why he and his Garrison were there placed, maintained by the Parliament and his Excellency to keep the City, which else would have as well or better kept itself without them.

Secondly, That he was confident his Excellency never granted any such Commission to any Governor (nor any other Prince or General in the World) only to keep his Garrison in Order, but not to defend the garrisoned Place, whereof he was Governor: such an absurd Commission was never yet heard of, nor such a nonsense Distinction made by any Soldier. And thereupon he desired the Commission might be produced, to the End it might appear whether it warranted this Distinction, That it was only to discipline his Soldiers, but not to hold the Town against the Enemy.

Thirdly, That their Lordships now saw the true Reason why Colonel Fiennes so soon delivered up Bristol to the Enemy: he pleads, he had (or would have) no Commission to keep it, therefore it was he thus Surrendered it up to the Enemies almost as soon as they came before it: who doubtless would keep it better, defend it longer than he, tho' they wanted a Commission for it.

Fourthly, That this pretended Disobedience of Col. Popham's Regiment was long after his Commission received, and that upon this Occasion: Col. Fiennes, and his Major Langrish, would have taken from Col. Popham's Regiment that little Plunder they had gained at Sherborne, with the Hazard of their Lives, at the Country's Charge, without any Direction from Fiennes, who sent them not on that Service; which injurious, avaritious Act of his

they justly opposed by standing on their guard, and so kept that Booty he would have carry'd from them into *Bristol* Castle. This occasion then being subsequent to his Commission, could not be the Ground of its procuring, but rather that which himself unawares confessed; his desire of Independency and Exemption from Sir *William Waller's* Commands.

The Colonel then insisted: First, *That he received his Commission only upon this Condition, and with this Intention, to keep his Soldiers in order, but not to make good the Town and Castle: therefore he could be no further chargeable by it than as he received it.*

To which Mr. *Prynn* replied: (1.) That every Governour must receive his Commission at his Peril, as it is granted and intended by him that granted it, (as Tenants do their Leases, and Donces in tail their Lands) and hath no Power to annex any Conditions thereunto: his Commission then being absolute, to keep the Town for the Parliament, that being the sole use and end thereof, his conditional accepting of it being repugnant to it, was void and idle.

(2.) That the * Common and Martial Law of the Realm annex this Condition to every Governour and Officer of Trust, that he ought to discharge his Trust and Government, and keep that safe which is committed to his Custody to his utmost Power, tho' it be not expressed in his Commission; and therefore this pretended conditional Acceptance, directly against his Trust and Government, was most ridiculous.

Secondly, he alledged, *That he never sought after the Governorship of Bristol*, but really desired not to accept it, and to be acquitted from it: to which end he produced and read divers Letters of his own to the Lord *Say* his Father, and one or two to his Excellency, which took up near two hours time in reading. In the reading of these Letters, the Colonel casually desired the Council to observe, that many of them were written before he had his Commission for *Bristol*, which was not till the first of *May* 1643.

This Mr. *Prynn* taken present hold of, desired their Lordships in the first place, to observe his voluntary Confession of that Commission which at first he so obstinately denied.

To these Letters read, Mr. *Prynn* gave these short Answers:

First, That all these Letters were either his own or his Father's, and not above two or three of them proved true Copies, and that by Mr. *Sprig* the Lord *Say's* Secretary; therefore no Evidence at all to justify or excuse him, himself and his own Letters being no competent Witnesses in his own Cause; and his Father but *Testis Domesticus* at the best, if present.

Secondly, That the substance of the chief Letter to his Excellency, was only a modest excuse of his own insufficiency for that Charge; a common Compliment in every ingenuous Man's Mouth, that is preferr'd to any great Place of trust; who in words at least pretends Insufficiency for that Place which he perchance desires: just like our Bishops usual Answer, *Nolo, nolo, to vis Episcopari?* now used as a Formality, for fashion sake only, even when they come to be consecrated; when in truth they make all the Friends and Means they can to compass that Bishoprick, which (for fashion sake, out of a dissembling Modesty) they pretend, and twice together answer solemnly (when demanded openly

before the Congregation) that they desire by no means to accept of. Therefore this Letter of his can be no proof, that he was unwilling to undertake this Government, since his subsequent Acceptance and Actions disprove this pretended Refusal.

Thirdly, He observ'd, that in one of his Letters dated the 4th of *April*, he writ earnestly to his Father, to procure and send him his Commission: Therefore he was so far from refusing, that he sought the Government, and sent Captain *Bagnall* twice to his Excellency to procure his Commission: as was after attested upon Oath.

Fourthly, That by divers of his Letters then read, it clearly appeared, himself was the chief Informer against Col. *Effex*, and the chief Actor in his Removal, to intrude himself into his Place; for that we had now his own Hand against his Words and Answer.

Fifthly, That the Scope of all his Letters was only to complain and cry out to the Parliament for more Monies from *London*, or to get more Authority to raise Monies in the Country, to pay the Garrison, without which Monies, he writ, he could not long hold the Town; but there is not one Clause in all the Letters, that he wanted Arms, Ammunition, Powder, Men, Provision, or that the Town or Castle was not tenable. If then he complained only of Default of Monies, with which if he were furnished, he made no doubt of keeping the Town; and it is clear he lost not the Town for want of Money, (for he hath not hitherto either in his printed Relation, Letters, or Answer, affirmed, that he surrender'd the City or Castle for want of Money) then by his own Confession, he must surrender them either out of Treachery or Cowardice, they being tenable, and furnish'd with all other Necessaries for a Siege but Money.

Sixthly, He observ'd that Col. *Fiennes* did never refuse the Place of Governor, as he should have done had he been unwilling or unable to discharge it: that his Importunity to quit it, in case he could get no Monies, was with no intent to leave the Place, but only to hasten the supply of Monies; it being the Argument and Rhetorick of most other Commanders in their Letters to the Parliament, to cry out for Monies, else all would soon be lost, and they must disband.

Seventhly, That he took on him the Power and Place of a Governor long before he had a Commission; that he drew and sent up Ordinances to pass the House to enlarge his Power and Territories for twenty Miles space round *Bristol*, and to settle himself in an absolute Government there. That he both earnestly writ and sent up twice to his Excellency for a Commission by a special Agent, that so he might be Independent; that he accepted of the Commission when it came; yet never acquainted the City or Committee of Parliament with it, doing all things in a high imperious manner for the most part, of his own Head, without their Privy or Advice; that he held his Commission without surrendering it till he surrender'd the Town and Castle to the Enemy, so unwilling was he to depart with his Governorship. From all which he concluded, it was apparent he was so far from refusing, that he did ambitiously affect, if not injuriously usurp, this Government, for his own private Lucre, to the Prejudice of the former Governor, and irreparable Damage of the whole Realm.

In fine, Col. *Fiennes* desired Mr. *Prynn* to prove. First, *That he ever undertook to his Excellency or the Parliament*

* *Littleton*. Sect. 378, 379. See *Coke's Institutes* on it, fol. 232, 233, 234.

Parliament to make good the City or Castle, and not to surrender the same to the Enemy without their Consents.

To which Mr. Prynne answer'd, That the very Law itself and common Reason informs us, that every Governor of a Town, or Fort is to make them good, and not to surrender them to the Enemy without the consent of those who committed their Custody to them, else every Governor might betray his Trust at pleasure. This therefore being a Condition in Law annexed to all Governors and Officers, and he confessing himself to be Governor, (and that by a Commission which no doubt enjoyned him to make good and keep the Place in manner aforesaid) needs no other Proof at all; the Law resolves it, and therefore none must doubt or contradict it.

With this Debate the Proof of the first Article was concluded.

Article 2. The second Article was proved by his own printed Proceedings mentioned in *A full Declaration, &c.* p. 5, 6, 7, 8, 15. by his Answer to the Article, and Relation to the House of Commons, p. 15. And Mr. Prynne informing the Council, that he did not charge it criminally, being a lawful Action done by direction of Parliament, but only by way of introduction and aggravation of the subsequent Articles, and Crime in surrendering the Town so treacherously and cowardly, after this his Sentence against, and Execution of those Conspirators, it was passed over without further Pressing.

Article 3. The third Article being likewise introductive, to aggravate his Offence in the fourth, fifth, sixth and eighth Articles, was briefly proved by his own printed Relation, p. 4, 5, 6, 23. by his printed Letter to his Excellency, confessed in part in his Answer, and to be further proved in the Proof of the ensuing Articles, was thereupon briefly run over: and so the first day's Hearing ended.

The second Day's Hearing, together with the third, fourth, fifth, sixth and seventh, spent wholly in the Proof and Defence of the fourth Article, to which most of the others in the Reply and Rejoynder were reduced.

THE three first introductive Articles being run over the first Day, the Prosecutors, the next Session, proceeded to the fourth, where the criminal and capital charge of the Impeachment began: The Defendant first demurred to the Depositions taken upon Oath against him, both before the Judge-Advocate himself, and by Sir William Waller and Col. Carre, by Commission from his Excellency; alledging,

First, That no Paper-Deposition ought to be allowed by the Law, in Cases of Life and Death, but the Witnesses ought to be all present and testify *viva Voce*, else the Testimony ought not to be received.

Secondly, That Sir William Waller was his Enemy, and by Confederacy with the Prosecutors, had been the chiefest Instrument of prosecuting this Impeachment against him; to which end he produced one Major Dowet a Frenchman (whom Sir William Waller had displaced, and so disgusted) to attest, *That Master Walker's Reply to Col. Fiennes's Rela-*

tion, was shewed to Sir William and his Lady before it was printed, and that Sir William had spoken to his Officers to acquaint Mr. Walker with all such Passages as they knew concerning Col. Fiennes, touching the Siege and Surrender of Bristol: therefore he was neither a fit Commissioner nor Witness in this Cause, nor yet any of his Officers under him.

Thirdly, That he had not joyned with the Prosecutors in Commission, neither had he notice thereof, that so he might cross-examine the Witnesses. Therefore for these Reasons, he desired, that all the Paper-Depositions might be suppressed, and not given in evidence against him.

To the first of these Objections Mr. Prynne returned this Answer: First, that himself had formerly used this kind of Proceeding in the Case of Col. Essex, against whom he had not only taken, but printed divers Paper-Testimonies, in things which might have proved Capital if the Proof had been full. That himself in this very Case had sued forth a Commission to examine Witnesses on his behalf, without our Privy, before we took forth any Commission, who did but imitate him therein, and that by the Judge-Advocate's own advice, who directed us to this Course, which he affirmed to be both legal and usual: That in the Civil Law (especially in Courts Martial) Trials were as usual *Testimoniis*, as *Testibus viva voce*: That in the Admiralty, (a Civil Law Court) as likewise in the Chancery, Star-Chamber and English Courts, formed after the Civil Law, they proceed usually by way of Deposition: That even at the Common Law in some cases, Depositions taken before the Coroner, and Examinations upon Oath before the Chief Justice, or other Justices, are usually given in evidence even in capital Crimes: That the high Court of Parliament hath upon just occasion allowed of Paper-Depositions in such cases: That in all Courts Martial, both in England and elsewhere, they have been constantly allowed, and particularly in the late famous Case of Tomkins, Challoner, and other London Conspirators, whose Examinations were read, and given in as evidence one against the other, upon which they were condemned and executed. Besides, there was both very great reason and necessity that such Depositions should be admitted in this Case, and in all martial Proceedings of this nature, because divers of our material Witnesses, being Officers or Soldiers now in actual Service, and dispersed upon several occasions into divers Brigades, and parts of the Kingdom remote from St. Albans, could not without great danger, disservice to the State, inconvenience to themselves, and excessive Costs, be drawn together personally to attend this Trial, which had been so frequently adjourned, not only from Week to Week, but Place to Place: That we several times petitioned both the Commons House and his Excellency, that the Council appointed for this Trial might be held at a certain Day and Place, within London or Westminster, before our Witnesses were dispersed, and where we could with less trouble and expence to ourselves and them, have produced all or most of them *viva voce*; but yet we could not (thru' the Defendant's Procurement, as we conceive) obtain this reasonable request: Therefore himself being both the Cause and Precedent of these our Depositions, and of removing the Trial to this Place, for our greater Incommodation and Expence, ought not to take advantage of his own Wrong, against a Maxim of Law, the constant Practice of the

Court-martial, and his own leading Example, which we did but imitate. Which Point the Council did upon solemn Debate among themselves clearly over-rule against the Defendant, upon the premised Reasons.

To the second Exception, concerning Sir William Waller, Mr. Prynne most solemnly protested for himself to the Council, that it was a most false and malicious Slander; that neither Sir William Waller, nor his Lady, nor any other in their behalf, did ever directly or indirectly excite, advise, or encourage him in this Prosecution; that the Delinquent himself was the only Man who unadvisedly put himself upon this Trial, as appears most evidently to all the World by the Close of his printed Relation in the Parliament House, where pag. 13. *He desires the House of Commons, that they would be pleased to let the Truth of what he had then affirmed to them (concerning the Surrender of Bristol) be examined at a Council of War, that so he might be cleared or condemned, as they should find the Truth or Falshood of what he had delivered*: by his, and his Officers Petition to his Excellency, and his Excellency's Proclamation upon their Petition, posted up at Westminster and the Exchange, wherein he summoned Mr. Walker and Mr. Prynne by Name, in the most publick manner that might be, and after that by private Notes, and sundry other publick Adjournments, to be his Prosecutors: Which thankless Office he was not altogether unwilling to undertake, when thus openly engaged by the Defendant; not out of any private Malice to the Delinquent, whom he formerly honour'd, and to whom he never bore any particular Spleen, having never received the least Injury from him; much less out of any degenerate Respects, instrumentally to wreck the private Malice or Revenge of any others upon him, (it being below his Spirit, and most averse to his Genius, his Conscience, to be subservient or instrumental to any Man's Malice or Revenge whatsoever) but merely out of a real desire to do his Country faithful Service, and vindicate the Truth of this unworthy State-ruining Action, under which the whole Kingdom now lay languishing, from those false Disguises which the Defendant in sundry printed Papers had obtruded on the World, to save his own irreparable Dishonour. The Prosecution therefore proceeding thus merely from himself, as all the Premises infallibly demonstrate, he had laid a most scandalous Imputation upon Sir William Waller (a noble well-deserving Gentleman then absent,) and on himself, in the fore-mentioned Exception, for which he demanded Justice against him from that honourable Council, unless he could make good this Calumny, for which he was most certain the Defendant had not the least shadow of Proof; the Testimony of Dowet (the ground of this Aspersion) not referring to him, but only to Mr. Walker's Relation, published long before any Impeachment of, or Prosecution against the Defendant: which Charge Mr. Walker himself there present was ready to answer, as to that Particular.

Hereupon Mr. Walker informed the Council, that he acknowledged in the *Epistle to his Answer to the Defendant's Relation*, that it was but a Collection out of the several Reports of divers Gentlemen and Commanders in that Service, before and when Bristol was besieged: which when he had drawn up, having occasion to go to Southampton, he left in the Hand of a Friend, desiring him to shew it to whomsoever he should think fit, (and especially to those Gentlemen out of whose Mouths he compiled it)

to see if he had hit their Sense aright; and that this Party (as he was since informed) shewed it to Sir William Waller. He said further, that the written Copy was shewed to the Defendant himself, and therefore he doth not wonder if it were shewed to Sir William Waller: and that Sir William's speaking to his Officers, *only to declare what they knew touching that Business, with reference simply to his Answer*, could not be intended either Malice, or Combination, or Prosecution of this Impeachment, not then so much as thought of, nor any Prejudice to the Truth, since no Man can know a Falshood, because it is a *Non-entity*, and can be no Object of Man's Knowledge: That therefore this could be no just Exception to Sir William as a Commissioner, the rather because Col. Carre (a Man indifferent) was joined with him; much less any legal Exception to any Officers or Soldiers Testimony then under his Command, who did but testify what they knew for Truth. Besides, Mr. Prynne added, that Col. Fiennes himself had examined divers of Sir William Waller's Officers by Commission, before we examined any of them, and some of those whom we examined; and why we should be deprived of the Benefit of their Examinations for the Kingdom's Advantage, when himself had examined them only for his private Defence, there could be neither Reason nor Equity alledged, it being a mere Artifice, to deprive us of our most material Witnesses, and to suffocate the Truth.

To the third, of his wanting notice to join in Commission, and cross-examine the Witnesses on the other side, Mr. Prynne answered:

First, That himself had begun the Precedent, in taking forth several Commissions to Sir William Waller's, and the Earl of Manchester's Army, to examine Witnesses there, without our Privy or Consent, who neither had any the least notice of the Commissions to join in them, nor of any the Witnesses Names, till the Hearing, nor had not, nor could not cross-examine them, nor ever yet saw their Depositions: And why our Depositions, being Prosecutors, should not be admitted as well as his, being not taken so publickly before the Judge-Advocate, as most of ours were, he saw no reason.

Secondly, That we could not enforce Colonel Fiennes to cross-examine any Witnesses, or to join with us in their Examination; therefore if he neglected to do it, or went before us in his Commissions, as he did, by virtue of which he might have examined all our Witnesses if he would, before we had taken their Testimonies against him, the Default was his not ours.

That we left all our Depositions, and the Witnesses Names, with the Judge-Advocate, to whom he oft repaired, and from whom he might have received the Catalogue of them, to cross-examine them, if he pleased; which since he neglected to do, after so many Adjournments, and taking no Exceptions till now he came before the Council, of purpose to evade his Trial, and to elude both them, us, the Parliament, and People, whose Eyes are on the Issue of this Business, there was no reason to allow these frivolous Exceptions. All which the Council, upon short Debate, over-ruled against the Defendant, resolving, that the Testimonies ought to be used, unless some particular just Exception could be alledged against any of them.

These Obstacles being removed, Mr. Prynne then proceeded to prove the fourth Article; which he did,

First,

First, By the Defendant's own Answer thereunto, wherein he doth confess the whole Article in substance; yea, more than it chargeth him withal, as namely,

First, *That he never undertook to make good the City or Castle, or either of them, against the Enemy; declaring that he would not, nor could not undertake it:* Which is in plain English as much as to confess, that he had never any Thought or Resolution to hold them out to the utmost Extremity, as he ought to have done in Honour and Duty; but a professed Purpose to surrender them to the Enemies, traitorously or cowardly, as soon almost as they came before it.

Secondly, *That soon after the Enemy entred the Line* (with a very inconsiderable Number, not above a hundred and fifty at first, and three or four hundred in all at last, as the Witnesses attest) *he did surrender the Town and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Military Provisions, Magazines, Victuals, and part of the Arms, (all but the Horsemen's Swords, most of which were likewise taken from them ere they departed the Town) before the Enemy had taken any of the Out-Forts about the same, or had made the least Assault or Battery upon the Walls of the City, or of the Castle, or any Mine or Breach into the chief Fort thereof, (and that before the Town had been three whole Days besieged, which he denieth not, and therefore granteth by his Answer:)* Which whether it were not a most clear Confession and Demonstration of a treacherous and cowardly Surrender, in the superlative degree, he humbly submitted to the honourable Council's Judgment, and the Determination of all Men endued with common Reason; and yet the Defendant hath the Confidence, in the same Branch of his Answer, to deny *that he did deliver them up traitorously, cowardly, or dishonourably, or contrary to his former Promises,* (which were to dispute every Inch of the Town, from the Line to the City Gates, and from thence to the Castle-walls, which he would defend to the utmost, and there lay his Bones if he could not keep it, and make his Flag of Truce his Winding-sheet, as is proved by *divers Witnesses,) *or contrary to his Trust and Duty;* and the Impudence to affirm, *that he did defend the Town and Castle to the utmost Point, not only of Duty, but also of Honour, that any Soldier could or might have maintained the same.* Which whether it were not the greatest Paradox and Contradiction, that any Military Man in his right Senses durst ever affirm before a Council of experienced, valiant Commanders, he referred to the Resolution of all there present.

Thirdly, He confesseth, that *tho' neither any of the Out-works were taken, nor the Town Walls once battered or assaulted, when the Enemy entred the Line, yet as Things then stood, neither the Forts nor Castle ought to have been kept, to the Prejudice of the City and Garrison, but ought to have been surrendered together with the City, as they were, by the constant Practice and Policy of War in all Places, the Principles of Justice and Honesty, and the Rules of Wisdom and Discretion.* And he further adds in the Clause of his Answer to the eighth Article, *That he doth affirm and will justify, that if the Castle had been tenable, yet neither by the constant Practice and Maxims of War in all Places, nor by the Rules of Honesty and Christianity, he ought to have held the same.* A Riddle which Mr. Prynne professeth transcended the Limits of his Understanding to enucleate, if not

of all Mens else, but the Defendant's; and a Passage which carried *Treachery and Cowardice* engraven with Capitals in its very Front, proclaiming openly to all Men, that had the Out-Forts and Castle been never so strong and tenable against the Enemy, yet he was so far from resolving to keep them for the Kingdom's and Parliament's Security, that he professeth, *he ought not to have held the same, neither by the constant Practice and Policy of War, nor Rules of Piety or Christianity, but ought to have surrendered the same with the Town.* Certainly this Gentleman was either resolved to lose his Head when he penned this Answer, or else was intoxicated with the panick Fear that surprized him at Bristol, (which hath made his Pen and Brains to stagger ever since) else he durst not put in such an Answer in Writing to this Impeachment.

Fourthly, He saith, *that this Surrender of the City, Castle, Forts, with all the Ammunition, Cannon, Magazines, Arms, (but Troopers Swords) Prisoners, Ships, and his very Colours, before any Out-fort taken, or Battery made against City or Castle, was upon good and honourable Conditions, in respect to the Estate he was in.* I think he means himself was in an ill Condition, should the King's Forces have forcibly taken him Prisoner, for that the King had excepted him out of the Pardon mentioned in his Answer to the third Article: And therefore out of base Fear and Self-respects he would rather redeem his Head, and buy his Peace with the voluntary Surrender of a Place of such Consequence to his Majesty, than hazard his Life in defending it to the utmost. And withal he adds, *that this Surrender was for the Honour, Profit, and best Advantage of the Kingdom, and Parliament, by whom he was intrusted:* which when he shall be able to demonstrate, or make the Parliament and Kingdom believe, I shall profess this honourable Council may in Justice acquit him; till then (I hope) you cannot but condemn him, even out of these several Passages of his own Answer.

Secondly, From his Answer I shall descend to our Proofs, which extend to all the ensuing Articles as well as this: by which it appears,

First, That the Defendant wanted neither Men nor Ammunition, nor any manner of Provision, to defend the City and Castle against the Enemy: Not Men, for he had near 2000 Foot, and 300 Horse, beside Volunteers, to defend the Town; and he might have raised at least 6 or 8000 able Men more in the City, if he had wanted Men, which were as many, or more, as besieged it. Proved by the Depositions of Colonel Stevens, Anthony Gale, Arthur Williams, Able Kelly, James Powel, and others.

Secondly, That they wanted not Ammunition, for we proved there were 60 (nay 70 double) Barrels of Powder in the Castle, with Match and Bullet proportionable, besides what was in the City and Forts, and might have been made weekly in the Town, if held out against the Enemy; and that by the Depositions of Mr. Edward Bainton, Arthur Williams, Joan Batten, Major Wood, and others: Besides, himself confesseth in his Relation 50 Barrels in the Castle only, when surrendered; Mr. Hassard deposes 50 at least.

Thirdly, That they had all manner of Provision both in the City and Castle, for three Months space or more; the Particulars whereof will appear in the Deposition of Nicholas Cowling, Able Kelly, James Powel, Dorothy Hassard, Mary Smith, and

others:

* Mr. Powel, Col. Ströde, Col. Stephens, Mr. Hassard, Capt. Bagnal.

others: That himself and * others deemed the City and Castle strong and tenable; that he promised to hold the same to the utmost; to dispute every Inch of Ground with the Enemy; to retire into the Castle when he could hold the City no longer; to lay his Bones there rather than yield it, and make his Flag of Truce his Winding-sheet. If then the Place were so strong and tenable, and he wanted neither Men, nor Ammunition, nor Viſuals, to defend the City and Castle, his Surrender of them muſt of Neceſſity be adjudged *Traitorly*; or *Cowardly* at least, if not both: for what elſe but *Treachery*, or *Cowardice*, or both conjoyned, could move him to this Surrender, in leſs than three Days Siege, before the utmoſt extremity, contrary to the Laws and Ordinances of War, whenas he wanted nothing neceſſary for a brave Defence?

Secondly, We have proved that the Town and Castle were not beſieged three whole Days; for the Siege it ſelf began but the *Monday* Morning, and the Articles of Surrender were agreed on before *Wednesday* Night, and the Surrender executed before 9 of the Clock the *Thursday* Morning: as Col. *Stephens*, Col. *Strode*, *Able Kelly*, and others teſtify.

Thirdly, That the Enemies were generally repulſed on all quarters of the City, with extraordinary great loſs of Men, near 700 of them being ſlain, and as many wounded, with the loſs only of fix or eight of our Men: and that but 150 of them, or 200 at moſt, entered the Line the *Wednesday* Morning before Sun-riſing (near three of the Clock) and were ſo afraid of being cut off, that they gave themſelves all for dead Men, and might have eaſily been cut off, none of their own Party knowing of their entry till two Hours after they entred, nor ſending them any Relief. Atteſted by *Arthur Williams*, *Joſeph Proud*, *James Coles*, *Mary Smith*, *Serjeant William Hill*, *Stephen Radford*, *Michael Sparks*, and others.

Fourthly, That Major *Langriſh* and his Horſe-Troops, which had the Guard of that Place, and two other Captains of Horſe under him, never once offered to charge the Enemy, whom they might eaſily have cut off, but retired into the City without charging them: That *Langriſh* (very intimate with the Defendant) had been formerly complained of to him, by Lieutenant *Clifton*, Col. *Stephens*, and others, for his extraordinary Cowardice and Negligence, who deſired he might be caſhied to walk the Street, as unfit for any Charge; yet the Defendant continued him in his Place, and ſet him to guard that very weak Place, where the Enemy, was likelielt to enter. Proved by *Joan Battin*, Col. *Popham*, Col. *Stephens*, and Captain *Nevil*, Lieutenant *Clifton*, Captain *Hufbands*, and Captain *Vaughan*, (*Fiennes's* own Witneſſes) upon Croſs-Examinations before the Council.

Fifthly, That the day before the Enemy entred, one *Thomas Munday*, a Soldier under Captain *Henry Lloyd* (as both their Depoſitions witneſs) pointing with his Finger to the very Place where the Enemy entred the next Morning, told Major *Langriſh* in the hearing of Colonel *Fiennes*; Captain, *Yonder is a very ſuſpicious Place not fully fortified, and it is very doubtful; unleſs you ſet an hundred Muſketeers more there, it being weakly manned, the Enemies will there make their firſt Breach.* Whereupon Co-

lonel *Fiennes* for this his good Advice, in an angry manner aſked him, *What, doth he prate?* and called him *Saucy Knave*. And *Langriſh* having the Guard thereof, ſuffered the Enemy the very next Morning to enter that Line at the ſame Place, from which he retired with his Horſe without any Charge or Reſiſtance; whenas he might eaſily have repulſed and beat them off. Yet the Defendant never queſtioned nor complained againſt *Langriſh* for this his Cowardice and Treachery, which was the only real Occaſion of Surrendring the City, but countenanced and juſtified him all he could, affirming in Print, that he was acquitted by a Council of War of Cowardice, (which was falſe;) and endeavoured to lay the Blame of not Charging upon one Lieutenant *Rouſſwell*, who was ſo far from being guilty of this Fact, that ſeeing *Langriſh* with his Troop quit the Breach without Charging, he called him Coward, and with three or four Muſketeers only marched up to the Enemy, and made good the Breach for a Time, till he received ſo many Wounds (whereof he after died) as forced him to retreat for want of Seconding; he affirming, that if he had been ſeconded by the Horſe, or with 20 Muſketeers more, he could eaſily have repulſed the Enemy, and made good the Breach. Yet this dead Man muſt be thus traduced to ſave *Langriſh's* Credit, tho' Captain *Hufbands* (one of the Defendant's own Witneſſes) confeſſed, that *Langriſh's* Cowardice, in not Charging, was the Loſs of *Briſtol*, and that he told him ſo openly to his Face, at a meeting in *London*, ſince the Surrender.

Sixthly, That for two or three Hours ſpace at leaſt, the few Enemies who firſt entred had no Relief nor Supplies ſent to them, neither indeed could have, the Enemy being bravely repulſed with great loſs in all other Places, ſo as they retired in diſorder to their Quarters; and one whole Regiment of their Horſe retreated as far as *White-Church*, four Miles from *Briſtol*, with a Reſolution never to come on again, had not the Meſſage of the unexpected Parley, and Hopes of the City's Surrender thereupon, drawn them back to their Quarters: And that divers of the Enemies confeſſed, if they had then been repulſed or beaten out of this Breach, they had raiſed their Siege, and never come on again. *Serjeant Hill*, Major *Wood*, *James Coles*, depoſe all this, and the Defendant's Witneſſes confeſſed it.

Seventhly, That from three in the Morning, when the Enemy entred, till about 10 or 11 a-Clock at leaſt, there was no Charge at all made, except only with *Rouſſwell*, and after by Capt. *Nevill*, who charged them down-hill only with twenty Horſe, an Hour or more after their entry, and could have then beaten them out, as he verily believed, and atteſted upon Oath, had he been ſeconded with 30 or 40 Horſe or Muſketeers. A very ſtrange neglect, to ſuffer the Enemy to lodge ſo long within the Line, ere they were encountered.

Eighthly, That upon the Enemies Entry Col. *Fiennes*, inſtead of commanding the next Guards and Companies then at the Out-works, to fall upon and beat them out, as he was preſſed to do by Lieutenant *Daviſon*, Major *Wood*, Capt. *Bagnal*, Mr. *Deane*, *Serjeant Hill*, and others, commanded upon pain of Death by his Lieutenant *Clifton*, to draw off the Line and Works on that Side of the City the Enemy entred, and to retire into the City with

* Col. *Strode*, Col. *Stephens*, Captain *Bagnal*, Mr. *Powel*, Mr. *Cowling*, Major *Wood*, Richard *Lindon*, Edward *Watlin*, Mr. *Haffard*.

with all Speed to the Market-place, full fore against their Wills: whereat divers of the Soldiers^a were very much discontented and discouraged, and many of them said, *They were betrayed*. Whereupon they retreated from the Line and Out-works in great Disorder, many of them leaving not only their Swords, Muskets, Powder, Bullets, but their very Cannons behind them, which might have been easily drawn off, being down the Hill, and many Colliers Horses ready at Hand for that Service; at which the Gunners were so discontented, that some of them spiked and nailed up their Touch-holes, to make their Cannons unserviceable to the Enemy, and the City-Garrison too, in case they had returned to the Works and Line; which by this strange Soldiery, were left naked of all Defence near two Miles Space together, so as the Enemy might have entered the Line where they pleased, in fundry Places of greater Advantage, nearer to the City, Castle, and Suburbs, by much, than where they had made their first Entry. Which strange Device and unmilitary Policy, if it favoured not of apparent Treachery, yet at least it cannot be excused from extreme Folly, and want of Skill in Martial Affairs; which made Major Lewis, and other of the best experienced Soldiers (who advised not to draw off the Line into the City, but to fall presently on the Enemy from the Line itself, which was the nearer, best, and speediest Way) exceedingly discontented.

Ninthly, That when the Soldiers were thus hastily and confusedly called from the Line into the Market-place, they there stood idle, looking one upon another, without any Command to make a Sally, or do any other Service to secure the City^b; whereupon, for want of Command and Imployment, divers of the Soldiers who had been upon Duty at the Line four or five Days and Nights together, departed from their Colours, some to the Tavern, some to the Ale-House to drink, others to their Beds to sleep, so as their Companies were broken, and not half full: Whereas if they had marched orderly from the Line, against the Enemies, when they first entered it, which was far the best and shortest Way; or made a Sally as soon as they retreated from the Line, these Inconveniences had been prevented, the Soldiers kept in Heart, the Enemies cut off, or beaten out, the Breach made up, and the City preserved.

Tenthly, That when the Sally was made^c, not before, but much about eleven of the Clock, it consisted not of above 200 Men, and that of those called off the Line, the fresh Men at the main Guard, and Captain Stokes's Company purposely kept for a Reserve, with the Garrison Soldiers in the Castle, (who were not in the Fight at the Line, and might have made a present Sally, without calling any from the Line) being not employed on this Service.

Eleventhly, That when the Enemies upon the Sally, tho' late, were driven from House to House, and so beaten that they let fall their Arms, and cried for Quarter; and when the Women were so courageous, that they proffered to go with their Children unto the Cannons Mouth, to dead the Bullets, in case the Soldiers were afraid, rather

than the City should be yielded, and thereupon encouraged both the Gunners and Soldiers to fight, working in the very Face of the Enemy, and stopping up *Froom-Gate* with a very thick Work (made with Earth and Wool-Sacks) where the Enemy should have entered the City; yet such was the Defendant's extraordinary Cowardice, that he even then sent twice out to the Enemy for a Parley, whereas the Soldiers generally desired and offered to fight it out to the utmost^d: which so much discontented divers Soldiers, that they said they were betrayed, and in very anger brake their Muskets, Swords, Pikes, lest the Enemy should gain them, swearing that they should never serve the Parliament more, and taxing the Governor for his Parley and Cowardice.

Twelfthly, That the Castle was surrendered, the Prisoners released^e, the Enemy admitted into the Town, long before the Hour agreed on, thro' the Defendant's Hastiness; yea the Soldiers, and Townsmen pillaged before his Face: yet he took no Care to see them righted, but left them to the Spoil, neglecting to take Hostages to see the Articles performed; which (contrary to the Rules of War) were not made between Prince Rupert, the King's General^f, and the Governor, but between him and the Prince's Commissioners only: and that he made such Hastie to quit the Town, that he left Captain Blake, and Captain Husbands, in *Brandon-Hill* and *Prior-Hill* Forts behind him, never giving them notice of the Articles, nor any Warrant under his Hand to surrender them to the Enemy, to the endangering of their Lives and Liberties.

Thirteenthly, That Col. *Fiennes* being moved to send away the Prisoners before the Siege, refused, saying, *He would keep them there to make his own Conditions the better*; thinking of nothing beforehand, but to surrender the City, to save himself: That he told^g Mr. *Tolboies*, that he should not be in *Bristol* for ought he knew at *Saint James-Tide* then next ensuing; and used such Expressions to him, as made him believe he meant to surrender the Town by that Time, (as he did the very next Day after *Saint James's Feast*) who thereupon left the City, as intended to be surrendered by the Governor. That he commanded Mr. *Haffard* to lay by a Reserve of 30 Barrels of Powder, with Match and Bullets proportionable, to which when he was reduced he would treat^h: That there were about 140 Granadoes in the Castle, and one new Mortar-piece, and that *John Warden* one of the Gunners of the Castle did often importune the Defendant to give him leave to make a Shot at the Enemy out the said Mortar-piece, but the Defendant commanded him under Pain of Death not to make any Shot at them: whereat the said Gunner was so grieved, that he oft complained the Town was betrayed. All which Granadoes with the Mortar-piece were surrendered to the Enemies, and not one of them shot against them, tho' they shot many Granadoes at the Town and Garrison.

Fourteenthly, That the Castle and Forts were very strong and tenable, if not the Town; that the Defendant himself, theⁱ Townsmen and Soldiers reputed them so; that they might have been held divers Months, yea to this very Time, had not they been

^a Joan Battin, William Whitehorn, Serjeant Gale, Captain Bagnal, Thomas Munday. ^b Captain Bagnal ^c Major Wood, William Whitehorn. ^d Serjeant Gale, Joan Battin, Mrs. Haffard, Thomas Munday. ^e Major Wood, Colonel Strode, and others. ^f Richard Winitone, Captain Husbands, and others. ^g Mr. Talboy's Deposition. ^h Richard Butler's Testimony. ⁱ Colonel Stephens, Colonel Strode, Mr. Powel, Major Wood, Captain Bagnal, Thomas Munday, Richard Lindon, Edward Watlin, Nicholas Cowling, Joan Battin, Nicholas Coles, Mary Smith, Ethelred Hardy, Michael Sparks, and others, attest this.

been surrendred; that the Enemy could not have taken them by force, even by their own Confessions, nor all the Devils in Hell have taken the Castle, had not the Defendant, beyond their Expectation, surrendred them basely into their Hands, and bestowed them upon him; for which Surrender the very Enemy called him a *base Coward*, and said he deserved to be hanged for delivering up such a Town and Castle as that to them so easily, for which they might thank *Fiennes*, else they could not have won them by Force, had not he bestowed them on them beyond their Hopes. From all which Particulars (fully proved) we conclude, *That the Town, Castle, Ammunition, Cannons, Arms, &c. were most Dishonourably, Cowardly, and Treacherously delivered up to the Enemy, and that without and against the Parliament's or his Excellency's previous Consents, who abhorred the Fact, and never gave the least way thereunto, being executed before they had any Thought or Tidings of it, and before the City and Castle was reduced to any Extremity.* And thus was concluded the second Day's Work.

The Sum of the Defendant's tedious Defence, consisted of the ensuing Particulars, to every of which, for Brevity and Perspicuity sake, we shall subjoin the distinct Replies then given, not in a continued Speech, as they were uttered, but in Parcels, as each part of the *Reply, Rejoinder, and Surrejoinder* was applied to each Part of the Defence.

First, The Defendant denied, *That all the Arms were surrendred to the Enemy; for it appeareth, by the first Article of the Surrender, that all the Officers of Horse and Foot, were to march out with their full Arms, and the Troopers with their Swords.*

To which Mr. *Prynn* answered, *That by the first and tenth Articles of Surrender, all the common Foot-Soldiers were to march out without Arms, and the Troopers only with their Swords, leaving their other Arms, together with all their Cannons, Ammunition, and Colours, behind them; therefore since all the Arms of the Foot, all the Troopers Arms but their Swords, (which were not many nor considerable) with all the Cannons, Ammunition, Colours, were thus surrendred, the Words of the Article of Impeachment, that all the Cannons, Ammunition, Arms, &c. were surrendred, were sufficiently and literally proved.*

2. That all, both in Scripture, Law, and common Parlace, is frequently taken for the *greatest part*, or *well nigh all*: as *Mat. 2. Herod was troubled and all Hierusalem with him. Mat. 21. 10. All the City was moved, saying, Who is this? All Men think so, All affirm it; They have taken all their Arms, Baggage, and the like: where all is taken for the greatest part, or all in effect.* And in this Sense the Article is true, since the Officers Arms, and Troopers Swords, in respect of all the other Arms there left, were not considerable.

3. Most of all the Officers Arms, and Troopers Swords were taken from them by the Enemy, as the Defendant confesseth in his Answer, and we have proved; and if any escaped with their Arms by chance, yet all their Arms were quite lost as to the State, which had no Benefit by, nor Account of them: therefore in this Regard the Article is most true.

Secondly, He denied *he surrendred the City and Castle against the Parliament's and his Excellency's Consents*, tho' it is true *he did it without their previous Consents.*

To which Mr. *Prynn* replied, That this was a very frivolous Distinction: For 1. Christ himself by this Speech, *He that is not with me is against me*, resolves, that what is done without the Parliament's and his Excellency's Consents (especially if they dislike and disavow it afterwards) is done *against their Consents*, and that in strict Propriety of Speech: Hence, if a Man's Servant, Cattle, without his Privy or Approbation, commit a Trespass, in his Neighbour's Ground, or if one casually tread upon another's Toe, he usually saith in these and such like Cases, *It was against my Will, or against my Liking and Consent.* *Bristol* therefore being undoubtedly surrendred not only beyond, but contrary to the Parliament's and his Excellency's Expectations and Desires, was certainly surrendred against their Wills and Consents, as well as without them.

2. The Parliament's and his Excellency's express Will and Intention was, that *Bristol* should be kept to the utmost Extremity, and not surrendred to the Enemy, this being the end wherefore they placed a Governor and Garrison there, and made Works about it: the Surrendring therefore of it, contrary to both their express Wills and Directions, must needs be not only without, but against their Wills and Consents. This all the World knows, unless the Defendant can shew their express Consents thereto.

3. The House's and his Excellency's former Opinions of, and calling him to an Account heretofore, and now into Judgment for this Surrender, as directly contrary to his Trust, and their Directions, is a sufficient Proof it was not only besides, but against their Consents: and to think or speak otherwise, is but to lay a grand Imputation on the Parliament and his Excellency, in making them Accessaries to this dishonourable, traitorly Action, which hath almost lost the Kingdom.

Thirdly, He alledged that four Days before the Siege he sent one *Scouten* with a Letter to his Excellency, to acquaint him with the Weakness of the Garrison, that he had not above 900 Men besides Citizens, as likewise to see the Estate of his Army, and crave speedy Succours from him: That he found his Excellency had but 4000 Foot able to march, many of his Men being then sick, and not in a marching Condition to relieve him; *that it was clear, they could not expect, nor have had any Relief in six or eight Weeks time.* And to justify this Despair of timely Succours, he produced a Letter written by his Excellency to the Lord *Say*, his Father, to this effect; *That he was sorry Bristol was in so much Danger, as by Col. Fiennes's Letter to him it seemed to be; and that himself at that present was not in a fitting Posture to relieve it, which troubled him the more, for that his Lordship's Son was engaged there:* (which Letter being read, Mr. *Prynn* inquiring the Date thereof, found it dated the 28 of *July*, two Days after the Surrender of *Bristol*, which was on the 26 of that *July*.) From all which the Defendant inferred the Necessity of surrendring the Town and Castle, for want of Succours: which had they been near, he could have made a shift to have held out three or four Days longer, and would have done it; but being hopeless of Relief, he could not in point of Soldiery or Policy have held it longer than he did.

To which Mr. *Prynn* replied, 1. That he did but his Duty in sending thus to his Excellency, and that this would no more excuse his Treachery and Cowardice

Cowardice in Surrendring the Town, than *Weston*, *Gemineys*, and the *Bishop of Norwich*, their sending to the Governor of *Calais*, and the *Lords of the Council* for timely Relief, did excuse them.

2. That in this Message and Letter to my Lord General, but four Days before the Siege, he complained neither of want of Ammunition, Victuals, Monies, nor of the Weakness or Intenability of the Works, Town, Castle, (which doubtless he would have done had there been real Cause) but of the Smallness of the Garrison, which he said were then but 900, besides Citizens. But our * Witnesses prove expressly, that at the Time of the Siege he had at least 2000 Foot and 300 Horse, besides Voluntiers, which were near 200 more: and Major *Allen* attested, that he brought near 200 Men well armed from *Malsbury*, but a Day or two before the Siege; so as his 900 were increased to 2500 Men, or more: and he might have raised (as Mr. *Powel*, his own Witness attested) at least six or eight thousand able Men more, to bear Arms in the City, had he wanted Men: Therefore the want of Men was but a Pretence. Besides, had he needed only Men, why did he advise Sir *William Waller* to march out with at least 500 Horsemen, lest they should have helped to have spent the Provision of *Bristol*? as he confesseth in this Relation, Page 12. Certainly, either he thought the Town tenable with the Men he had, till all the Provisions in it were spent, and so the Garrison strong enough to defend it whilst they had Victuals, or else he desired rather to spare the Victuals for the Enemy, (to whom they were surrendered) than for Sir *William Waller's* Men who (had they staid in the City) would have made up his Garrison 800 Horse, besides 2000 Foot, and in all Probability have preserved the City, which was partly lost (as himself confesseth) by the Cowardice of the Horse, who refused to charge the Enemy when they entered, whom they might easily have cut off, had they but charged them, as they might and should have done. In brief, the Defendant's own Relation and Letter to his Excellency inform us, that his Garrison consisted of at least 2000 Foot, and 300 Horse, and was so strong and sufficient, that when the Enemy stormed the Town on every Side with all their Forces, they were valiantly repulsed, with the Loss of near a Thousand of their best Men, besides 700 wounded; whereas he lost not above six or eight Men at most, and had very few or none wounded. If then the Garrison were thus sufficiently strong to repulse the Enemy with so great Loss, when their Army was strongest and best in Heart, much more must it be sufficient to repulse them, and keep the Town, when near a Thousand of their best Men were slain, and 700 more wounded, with the Loss of six or eight only of the Garrison, the Assailants being much weakened, and Defendants as strong or stronger, and more courageous, by Reason of their good Success, than they were at first.

3. To his Despair of Succours in six or eight Weeks time, by Reason of the Weakness or Sickness of the Army, it was answered, (1.) That as Hope is the last Thing that forsakes a valiant Man, so it is the first that deserts a Coward, who placeth his Confidence any where rather than at home in his own Bosom.

(2.) That no Man, much less a Christian and Soldier too, ought to despair of God's Providence and Protection in a just Cause, even where he can

see no human Probability of Succours; but ought to wait and trust on God to the utmost Extremity, who many times sends Relief, exceeding abundantly, beyond all Men can ask or think, as he did to *Jerusalem*, *Samaria* of old, and to *Rachael* of late. *Audaces fortuna juvat*, was the Heathen Observation: *Fortes Deus adjuvat*, the Christians. His causeless Despair then of timely Relief from God or Man, the Parliament or his Excellency, argued not only want of Courage, but Faith too, both in God and Man.

(3.) Valiant *Massey* (if this Plea might be admitted) had far more Cause to despair of timely Relief than the Defendant: for both *Fiennes* and *Clifton* his Lieutenant professed openly, after the Surrender of *Bristol*, that they would be hanged if *Glocester* could hold out two Days, if the Enemy came before it: and Colonel *Pury* and Captain *Parry* deposed, that the Walls and Works about it were weaker than *Bristol's*, their Garrison not above 1500, Club-Men and all, their Powder not above 32 single Barrells, besides what they made during the Siege, their Provisions not so plentiful as *Bristol's*, their Cannon but seven or eight; whereas *Bristol* had 55 Cannon, besides Sir *Francis Popham's* Pieces; the Enemies before *Glocester* almost 10,000 more than those that besieged *Bristol*, and likewise accompanied with the King's personal Presence. Besides, his Excellency's Army, by Reason of Sickness, was now far weaker, and more unable to relieve *Glocester*, than it was when it should have marched for *Bristol's* Relief; yet notwithstanding all these Discouragements, and the great Damage and Discouragement the sudden unexpected Loss of *Bristol* struck into all Mens Spirits, *Massey* and *Glocester* Men did not basely yield up the Town to the Enemy, as soon almost as they came before it; but relying on God's Providence, and the Parliament's Care to the uttermost, received timely Relief from both, in less than three Weeks after they sent for Succours; as *Bristol* doubtless would have done, had Colonel *Fiennes* had so much true Faith and Valour as *Massey* had. Now that *Bristol* would have been relieved far sooner than *Glocester*, Mr. *Prynne* proved by these Arguments.

1. Because my Lord General's Army was in a far better Condition almost by half to march when *Bristol* was besieged, than it was at the Siege of *Glocester*, the Number of it being much decreased by Sickness in the Interim, and their Courage and Spirits much daunted by *Bristol's* unexpected Surrender in so short a Time, upon such dishonourable Terms, which he doubted not all the whole Council present could experimentally attest.

2. The Parliament, his Excellency, *London*, and the whole Kingdom, looked upon *Bristol* as a Place of the greatest Consequence of any in *England*, next to *London*, as the *Metropolis*, Key, Magazine of the West, which would be all endangered, and the Kingdom too by its Loss: as a Town of infinite more Consequence than *Glocester*; by the gaining whereof the Enemy would be furnished with all manner of Provisions and Ammunition by Land, with a Navy and all Merchandize by Sea, and enabled to bring in the Strength of *Wales* and *Ireland* for their Assistance: Therefore being of so great Concernment, the Parliament, his Excellency, *London*, and the Kingdom, would have been far more careful to relieve it in due Time, than they were or would have been to relieve *Glocester*, of which they had yet a special Care.

* Col. Stevens, Arthur Williams, Able Kelly, Major Wood, and others.

3. *Bristol* was a Town of far greater Commerce with *London* than *Glocester*, many *Londoners* having a great part of their Trading and Estates too in it: Therefore this particular Interest would have made the *Londoners* more forward to march to relieve *Bristol* than *Glocester*.

4. Colonel *Fiennes* and the Citizens of *Bristol* had more powerful active Friends in both Houses, and about his Excellency, (as his Letter to the Lord *Say* imports) to solicit and expedite their Relief, than *Massey* or *Glocester* had; therefore tho' the Parliament and his Excellency were very ready to have sent timely Relief to both, yet, in all probability, *Bristol*, in these Respects, had been sooner relieved (had it held out) than *Glocester* was or could have been; the rather, because the Loss of *Bristol* made many Men fall off from the Parliament, more to stand as Neuters, and damped the Activity and Spirits of most Men.

(4.) It was answer'd, that the Defendant produced no Proof of his Despair, but only his Excellency's Letter, written and sent to the Lord *Say*, not to him, and dated two Days after the Surrender made. This therefore could be no Ground, no Cause at all of the Surrender, which so long preceded it.

To supply this Oversight and Defect, Colonel *Fiennes* next Day produced a Witness, to prove, that the Day before the Surrender there came one into *Bristol*, who reported that the Lord General's Army was very weak, and in no posture to march. But who it was, or whence he came, or how he came in thither, the Town being beleaguered, or whether the Governor ever had any certain Information of this Report, there was not the least shadow of Proof.

(5.) It was reply'd, That if a Governor's groundless Surmise of an Improbability of timely Supplies, might be a good Excuse to surrender a Town, the strongest, best furnish'd Towns and Forts in the Kingdom might be betray'd, surrendered to the Enemy in a Moment under this Pretence. Col. *Massey* might then upon far better Grounds have surrendered *Glocester* to the King the first Day; the Earl of *Stamford*, *Exeter*; and Col. *Warnlow*, *Plsmouth*, the second Day they were besieged; than the Defendant *Bristol* on the third Day, since there was a far greater Improbability of relieving any of these in time, than of *Bristol*. And by this reason, had Col. *Fiennes* been furnished with Men, Ammunition, Victuals, to have kept the Town five or seven Weeks longer, yet, by this way of arguing, he would certainly have surrender'd it when he did, (in less than three Day's space) and not have kept it to the fifth or seventh Week's end; because he conceived an improbability of Relief in eight Weeks time, out of a panick Fear, or out of a mere Design to colour his Surrender. He should have therefore held it to the uttermost Extremity, and God, or our vigilant Parliament (no doubt) by that time would have sent Relief, as they did to *Glocester*; or if none had come, he had then discharged his Duty, and been excused: But since he kept it not to the last, but prejudged God's, the Parliament's, and his Excellency's care to relieve him in due Season, his Fault is inexcusable and capital.

Fourthly, He alledged, That he did not surrender the City, Castle, Arms, &c. traiterously, and that no Treachery was proved against him.

To which Mr. *Prynn* answer'd: 1. That tho' there were no direct Proof of any Correspondency or Intelligence with the Enemy; yet if they were surrender'd before uttermost Extremity, the very Law itself, and the Letter of the Ordinances for War, resolve this to be Treason. And being thus Treason, even in point of Law, he needed no other Proof that it was traiterously surrender'd, but the Law and Fact itself: And we ought to charge it in the Impeachment, that it was traiterously surrender'd, as the Law resolves it to be, else the Impeachment was not good in Law, neither could Judgment be given on it. Hence, by the Rules of the Common Law, if a Man be indicted of any Crime which is Treason, Felony, or Burglary by the Law, the Indictment must run, that he committed the Crime, *Proditorie, Felonice, or Burglariter*, else the Indictment is vicious and defective. Therefore, by like reason, the Surrendering of any Fort, before utmost Extremity, being Treason, it ought to be charged in the Articles, That it was treasonably surrender'd, and for this end was inserted the Word *Treasonably* in the Articles.

2. It was answer'd, That Fear and Cowardice were the most traitorly Passions of all others: These have caused many to betray their own Reason, Senses, Liberties, Laws, Estates, Trusts, Friends, Countries, Kingdoms, Souls; whence we find the Fearful, marshalled in the very Front of those, *Who shall have their part in the Lake that shall burn with Fire and Brimstone*; and quite exploded out of God's temporal and spiritual Militia. Therefore if he surrender'd them out of Fear or Cowardice only, tho' without any traitorly Compact with the Enemy, the Surrender is properly styled *Traiterous*, as well as *Cowardly*, even in Reality and Law.

3. It was answer'd, That tho' there were no direct Treachery charged or proved in the fourth Article, yet there were vehement Presumptions, Suspensions of it (which oft-times cast and condemn Persons, Murderers, Traytors, as Experience manifests, as well as positive Proofs) directly charged, and should be proved against him in the seventh; which we would here make use of and bundle up together. First then, his own frequent Confessions in his Answers, That he never undertook to keep or not deliver the City or Castle to the Enemy without the Parliament's and his Excellency's previous Consents: That they neither in Honour nor Justice could expect such a Promise from him: That he ought not to have kept the Castle when the Enemy had enter'd the Line, but ought to have surrender'd the same (altho' tenable) to the Enemy, together with the City, by the Principles of Honesty and Justice, the Rules of Wisdom and Discretion, &c. coupled with his wilful Misinforming of the Council of War, when they met about a Parley, that there were not above twenty Barrels of Powder left in the Castle (whenas they were seventy French Barrels, besides what was in the Forts and City) and not above three or four hundred weight of Match; and commanding Mr. *Hassard* the Storekeeper to say there was no more (as he confessed to Capt. *Birch*) whenas Mr. *Hassard* deposed there were fifty Barrels of Powder, and at least fourteen hundred Weight of Match, besides as much more as four Horses could draw, brought into the Castle that Morning (as *Arthur Williams* and *Joan Batten* deposed) and a hundred and forty Bundles, as Capt. *Bushe* affirmed, of purpose to draw the Council

to a present Parley and Surrender, were vehement Presumptions, and circumstantial Proofs of Treachery and indirect Dealing: All which being compared with the Depositions of Capt. *Lloyd* and *Thomas Munday*, That the Defendant called *Munday* saucy Knave, when he informed him and *Langrish* of the Danger and Weakness of the very Place where the Enemy the next Morning entred, refusing to strengthen the Guards there as he was advised by him, and appointing Major *Langrish* (a noted Coward, formerly complained of to him for his Cowardice and Negligence) to guard this weakest Place, who never once offered to charge the Enemy, but gave them leave to enter, and yet he never questioned him for this Treachery, but countenanced him by his Favour, justified him in print, and produced him before the Council as a competent Witness: With his refusing to send away the Prisoners in the Castle before the Siege, upon Sir *William Waller's* Advice; saying, *That he would detain them there to make his Conditions the better if the Enemy came before Bristol* (attested by Sir *William*, Col. *Cook*, and confessed by himself) with his Speeches to Mr. *Talboyes* (who moved him to respite a Delinquent's Payment of a Sum of Money till *St. James-tide* then ensuing;) *That he knew not whether he should be at Bristol at St. James-tide*, &c. which made Mr. *Talboyes* then presently conceive he intended to surrender the City about that time, (as he did the next Day after *St. James's* Day, viz. July 26, 1643.) whereupon Mr. *Talboyes* presently removed and left the City; with his prohibiting *John Warden* the Gunner, (as *Richard Butler* deposeth) under pain of death, to shoot any *Granadoes* at the Enemy, when he pressed him that he might do it, which made him say they were betrayed. All these Particulars laid together, and coupled with Capt. *Roper's* Deposition, that the Lady *Newport* told this as a special Secret to the Countess of *Desmond*, at her being in *Oxford*, a little before *Bristol* was besieged, that this City would be surrender'd to the King as soon as his Forces came before it; (which Capt. *Roper* further attested from the Mouth of the Right honourable the Earl of *Denbigh*, that there were divers Wagers laid at *Oxford*, and offer'd to be laid in and near *London*, as soon as the Siege of *Bristol* was spoken of, that this Town would be surrender'd the 26th of *July*, the very Day it was afterwards yielded up;) the calling his Men off the Line under pain of death, and not suffering them to fall on the Enemy, which made many then say, they were betrayed, with his late and slender Salley. All these particular Circumstances annexed to the Premises, and subsequent Matters seriously ponder'd, are sufficient to make a vehement Suspicion, if not a punctual Evidence, that *Bristol* was not only cowardly, but traiterously deliver'd, as well in a proper as a legal Sense, notwithstanding the Defendant's Flourishes to the contrary, till Time shall discover the obscured Secrets of this Mystery more apparently to the World.

His Fifth Allegation was, *That the Town and Castle were not cowardly surrendered.*

Before he came to make this good by Proofs and Arguments, he first excepted against our Witnesses to prove the Surrender cowardly, because some of them were Women, others Enemies, who were not competent Witnesses, and were ready to slander their Opposites.

To which Mr. *Prynn* reply'd, 1. That some of the Witnesses only were Women, and those seconded by Men. 2. That they declared not their own weak Opinions, but the Judgments of Men; yea of the Enemies own Commanders, in private serious Conference among themselves, as well as in open Discourse to others. 3. That these Women-Witnesses, and other Females in the City, shewed more true Courage and Undauntedness than the Defendant and some of his Officers, working boldly in the Face of the Enemy, where they durst not appear; opposing a Parley when he sent out twice for it, and offering to go in Person with their Children into the very Mouth of the Cannon to dead the Bullets, if the Soldiers were afraid, rather than the City should be surrendred: Being then such masculine Females as these, he thought them meet Witnesses to prove the Surrender cowardly. 4. To the Testimonies of the Enemies he answer'd, that it was in this case the best and strongest of any other, it being the natural Disposition of every Soldier that takes any strong Fort or City, to extol the Enemies Valour, and Difficulties of winning it as much as possible, the more to advance their own Prowess. It's no great Honour in any Man's Judgment to conquer a Coward, or Place not tenable; therefore those who detract from their Enemies Valour or Strength, derogate most from their own Honour, Conquest, Prowess, and as much disparage themselves as their Enemies thereby. Since then the Enemies, both in private Discourses among themselves, and in Conference with others, so frequently censured this Surrender as cowardly, taxed the Defendant for a Coward, and confessed they could not have taken the Town, nor all the Devils in Hell the Castle, had the Defendant held them valiantly out against them, and not cowardly surrendred them beyond their Expectation; their Testimonies back'd with the Premises*, must be a most convincing Evidence in this Particular.

Secondly, he objected, that Mr. *Prynn* had been tampering with some Witnesses, and urging them to testify against him; for which he produced two Instances: The first was, that Mr. *Prynn* urged Mr. *Hassard*, who kept the Stores in *Bristol* Castle, to attest there were no more than fifty Barrels of Powder therein when it was surrendred; inasmuch that Mr. *Hassard* told him, he would not go against his Conscience. Secondly, that he meeting with Lieutenant Colonel *Davison* in the Street, offer'd him a Quart of Wine, pressing him to go to a Tavern, and to set down what he could attest touching his advising Col. *Fiennes* to fall out upon the Enemy as soon as they entred, and his Dislike of drawing his Men from the Line, and his refusing to follow this Advice: which he denying to do, Mr. *Prynn* told him that he was engaged to give in his Testimony, because Colonel *Fiennes* had given him the Lye in Print, in his Reply to Mr. *Walker*. And for Proof hereof he produced two Witnesses, that *Davison* told him this Story in his Chamber in *Arundel* House, in the Presence of the Lord *Say* his Father.

To which unexpected false Calumny, Mr. *Prynn* returned this Answer, which he was ready to attest on his Oath: First, That being summoned by the Defendant himself to appear before a Council of War, to make good what he had written concerning the Surrender of *Bristol*, he did thereupon repair

* Mary Smith, Ethelred Huddy, Joan Battin, Joseph Proud, Mich. Sparkes, Nich. Collins.

pair to Mr. *Hassard*, and other Witnesses present at the Siege, to desire them to witness the Truth only of what they knew touching that Action, which he might lawfully do: and because Mr. *Hassard* kept the Magazine, he desired him to inform him how many Barrels of Powder there were in the Castle when it was surrendred; who thereupon answer'd, there were fifty: upon which he demanded, whether there were no more than fifty? for he had sundry Witnesses to prove that he confessed to Capt. *Birch* and *Arthur Williams*, that there were sixty; and to Major *Wood*, that there were seventy Barrels left when it was surrendred; and Capt. *Busbel* (then Prisoner) affirmed he found no less than seventy Barrels there: if then there were no more than fifty, he should do well to declare the utmost Number which he certainly knew to be there. To which he answer'd, he did think there were more than fifty Barrels, but how many more he could not certainly depose; and therefore he would rather testify less than there were, in setting down fifty generally, without adding this Negative to it, and no more, which he durst not swear, for then he was sure not to wrong his Conscience. To which Master *Prynn* reply'd, that he desir'd him by no means to wrong his Conscience in testifying more than the Truth, but to keep a good Conscience in witnessing the full Truth, and not concealing any thing to smother Truth. At last *Hassard* said, that he was not willing to appear against Col. *Fiennes*, for he had lost most of his Estate in *Bristol*, and that there were Arrears of Pay due unto him, for Payment whereof the Colonel had lately given him a Bill under his Hand, and if he should lose his Arrears, it would go hard with him. Whereupon Master *Prynn* then answered, he would not press him to any thing to his Prejudice, and so left him, he promising to give in his Deposition in Writing to the Advocate, which he never did. And whether this were tampering with Witnesses, or who had tampered most with *Hassard*, he or the Defendant, against whom he was unwilling to testify the Truth, or all the Truth, he humbly submitted to their honourable Judgments.

Secondly, For Lieut. *Davison*, Mr. *Prynn* protested, he never saw the Man till he came voluntarily to him in *Westminster-Hall*, and told him freely, without any Inducement on his Part, that he was in the Siege of *Bristol* under Col. *Fiennes*, and after that in the Siege of *Glocester*; from whence coming lately to *London*, he met with a printed Book writ by Col. *Fiennes* in Disgrace of Mr. *Walker*, wherein he had given him the Lye, and a base Lye in the Margin, to his Dishonour; whereupon being sensible of this open Injury, he repaired to Col. *Fiennes* to *Arundel House*, and there, in the Lord *Say's* Presence, challenged him for giving him the Lye in Print without cause, desiring him to give him publick Satisfaction, or else he would take Satisfaction himself, for he would not take the Lye from any Man in *England*: and withal told him to his Face, that he did advise him not to draw the Soldiers from the Line, but to fall upon the Enemies presently, and cut them off, as they might have done with ease; but he rejecting his Advice, called off the Men, and so not making a timely Salley, lost the Town. Whereupon the Lord *Say* answer'd, Son, you must take heed how you wrong any Gentleman of Quality, especially in Print; and if you have wronged this Gentleman, you may do well to right him: Upon

which Col. *Fiennes* confessed before his Father, he did give him such Advice, and that he had done him wrong in putting the Lye over against his Name: but it was much against his Will, thro' his Boy's Negligence; for after he had sent the Copy of his Reply to the Press, wherein the Lye was written in the Margin against his Name, he remembering this Mistake, sent his Boy purposely to the Printer to charge him to blot it out and not print it, which it seems his Boy then neglected; but he would see it put out in the next Edition. Whereupon I seeing his Freeness with me, and thinking his Testimony material, told him that the Surrender of *Bristol* was now brought into question before a Council of War by Mr. *Fiennes* himself, whom I and Mr. *Walker* were summoned to prosecute; and therefore we should desire his Presence as a Witness there, and so we parted then. Soon after the Council of War was adjourned; and then meeting with Lieut. *Davison* (who made the same Relation to above Twenty more in *Westminster-Hall*, as he had done to me) he told me he was going suddenly out of Town to *Glocester*: I desired him to testify his Knowledge touching the Premises before the Advocate ere he departed; whereupon he told me, that the Lord *Say* was his very good Friend, and had promised to help him to his Arrears, and therefore he was loth to appear in the Business, there being other Witnesses sufficient. To which I answer'd, I would have the Judge-Advocate's Warrant to bring him in as a Witness, and then no Exceptions could be taken; which Warrant when I had procured, I coming from the Advocate's, casually met *Davison* on Horseback above *Ludgate*, near the Advocate's Lodging in *Paul's Church-yard*, where asking of him how long he stayed in Town, he answer'd, that he was to depart to *Glocester* the next Morning: Whereupon I told him, I had a Warrant to bring him in as a Witness from the Advocate, who was then in his Lodging, which was close by; and therefore since he was to depart so soon, I desir'd him to go with me then to the Advocate to set down his Testimony upon Oath; which he excused, saying, he had promised to meet some Friends to drink a Quart or two of Wine with them before his Departure, and so we parted without more Discourse. And was this a tampering, only to desire a Witness to set down what he voluntarily informed me, before the Advocate, when I had a Warrant to examine him? As for offering him a Quart of Wine, or inviting him to a Tavern to drink, I protest I never did it; and am so averse from such a Courtesy, that, to my remembrance, I have never these eighteen Years space, gone into any one Tavern in *London*, or elsewhere, to give or receive one Quart of Wine, but only to eat a Breakfast or Dinner; and therefore it is very improbable I should proffer this Courtesy unto him, who, as I discovered then by his Discourse, had drank sufficiently before, and was going (as he told me) to drink more. But admit I proffered him a Quart of Wine, and that in the open Street, was a Quart of Wine, think you, so considerable a Thing as to tempt or corrupt a Witness of that Quality? or the open Street a fit Place for such a Purpose, where so many saw and over-heard us? Certainly if this Gentleman were so ignoble as to be corrupted with so poor a Courtesy as a Quart of Wine in the open Street, I am certain his Arrears of Pay, in Col. *Fiennes's* own private Chamber in *Arundel House*, where he had fair Promises

Promises to receive them, are far more prevalent Temptations to corrupt, and keep him back from appearing here in Person, whither the Defendant might have brought him to testify my tampering with him, had he pleased, he being still in *London*, and under his Command, tho' he will not appear upon our Summons to testify the Truth. But if he be such a one as Col. *Fiennes* would intimate him, (tho' I have a better Opinion of the Gentleman's Honesty) that a Quart of Wine will bias him more than Truth, I should rather want his Testimony, than put him to his Oath, were he now present: But being neither examined by us, nor yet intended to be, this impertinent Cavil sounds more of Calumny than Judgment.

But because Colonel *Fiennes* hath now given me this just Occasion, I shall in the third Place (which otherwise I should have concealed, but that his Aspersions have provoked me to alledge it by way of just Defence) truly inform your Lordships: First, What Advantages, Obligations, and Engagements he hath upon his own Witnesses, which may probably sway them to over-much Partiality in their Testimonies, of which we are wholly destitute in respect of ours. Secondly, How the Colonel and his Agents have tamper'd with, affronted, threatned and abused our Witnesses. 1. Most of the material Witnesses in this Cause were the Defendant's own Officers and Soldiers, from whom they expect not only future Preferments, but their Arrears of Pay, which they were in danger to lose if they should either appear against him, or he miscarry in this Case. Upon this Ground not only Mr. *Haffard*, as you heard, was unwilling, and *Davison* refused to give in his Testimony, but one Capt. *Oland* (as appears by Capt. *Harrington's* Deposition) with sundry other material Witnesses, denied to speak what they knew: and some of his Officers, since they came hither to witness for him, have said, that if the Cause went with him, (as they made little question but it would) they should have all their Arrears paid, else they should lose them. Now whether the Promise of Arrears be not a tampering with, and the Loss of them a threatening or terrifying of Witnesses, we leave your Lordships to resolve. Besides, Mr. *Sprig* (Secretary to the Lord *Say*) went to a noble Knight's Lodging at *St. Albans*, produced as a Witness by the Defendant, that same Morning he was to give in his Testimony, with this strange Prologue to an Evidence, that Col. *Fiennes* presented his Respects to him, and desired him to come that Morning to the Council of War to give in his Testimony for him; and that his Lord likewise desired to be remembered to him, and to let him know that two hundred Pounds (of the five hundred) due unto him, was ready for him at *London* upon his return, and the rest of the Money should be ready for him as soon as it could be provided, which Capt. *Harrington*, then present in the Knight's Chamber, heard and deposed; nor could, nor did *Sprig* deny he deliver'd such a Message, but said he had no ill Intentions in it. To which I reply'd, that whatever his Intentions were, the Words spoken at that Season, and upon that Occasion, tended more to corrupt a Witness, than my offering a Quart of Wine in the open Street did (had I offer'd it, as I did not) which was so much insisted on. And tho' I knew the Knight so well, that no Offers whatever could corrupt him; yet how such Speeches might work on other Witnesses who expected Debts and Arrears from the Colonel, I could not divine;

and those who durst use such tempting Speeches so openly in *St. Albans* during the Trial, would probably make use of the like, or worse Temptations in private to Witnesses, to corrupt or take off their Testimony. However the Court by this might clearly discern, which Side was most guilty of tampering with Witnesses. 2. That some of our Witnesses sent for thither by the Defendant, had been openly abused, affronted, quarrelled with by the Defendant and his Witnesses, even in the Council's Presence, and elsewhere: as namely Captain *Bagnal*, who, tho' an extraordinary Friend to the Defendant, (for whom he took two Journeys to *London* for a Commission at his own Charge, and raised a Company to defend the Town) yet merely for testifying the Truth impartially, was strangely questioned and affronted by the Defendant himself, abused with ill Language, taxed with Perjury, quarrelled with by *Scotten*, (who gave him the Lye in the Council-Chamber, before your Honours were departed thence) challenged, scorned, reviled, threatned to be mischieved, (for all which Affronts we crave your Justice.) And if our Witnesses be thus affronted, menaced, abused in your very Presence, how think you were others dealt with behind your Honours and our Backs, to strangle Truth? A vehement Argument all hath not been rightly carried on that Side.

I shall next consider the great Difficulties on our Parts to procure, and the Impossibility to suborn the Witnesses we produce. First, All our Witnesses, for the most part, are Strangers to us, all of them better known and more obliged to the Defendant than to us: they are Persons disinterested, disengaged, who neither gain nor lose by the Trial, however the Sentence go; they were never under our Service, Power, or Commands, most of them were such who served the State *gratis*, and were no Mercenaries in that Service. We are no ways ally'd to them, have no Command over them, no Arrears or Debts to pay them, no Rewards or Preferments to bestow upon them, no Engagement to allure or enforce them; whereas, on the contrary, the Defendant hath all the Advantages and Bonds that can be, tending to Partiality over his Witnesses. Many of them are *testes domestici*, as his Brother, Kinsmen, Servants, Footboys; most of the rest his Officers and Soldiers, against whom we excepted as incompetent. First, Because they were Parties in this Case, joining with the Defendant in a Petition to his Excellency for this Trial, which was granted at their Request, as the Proclamation of his Excellency attests. Secondly, Because they were Confederates, and equally guilty with him in this Treason of surrendring *Bristol*, most of them being of his Council of War, and consenting to this Act; which if it prove Capital and Criminal in him, will likewise be so in them: in swearing therefore to acquit him of this Treason in which themselves are involved, they do in verity swear to acquit themselves, and one to justify and excuse the other, which ought not to be admitted; for then the foulest Treachery that is might and would be excused, yea, the greatest Traytors acquitted, if one might testify for the other in that particular Crime whereof they all stand guilty.

3. Because they all depose, as for their own Lives and Safeties, so likewise for their own Honour, Reputation and Reparation; some of them in their Speeches now, and most of them in their Petition to his Excellency, demanding Reparation in their Honour from us by this very Trial: and so

so are both Parties and Witnesses in this respect; very unequal to be admitted.

4. Some of them have carried themselves as passionately in this Case as Parties, in menacing and abusing our Witnesses, and ourselves too, threatening no less than Hanging to us for questioning this Surrender; if the Defendant be acquitted; and can such be competent Witnesses?

5. He hath very strong Obligations upon most of them, the Bond of Consanguinity and Alliance; they are his Kinsmen: of Superiority and Command; they were his Officers, Soldiers, Servants, advanced by him at first, and preferred or promised Preferment by him since: the Bond of sundry Debts and Arrears due to them from him, which they are promised to receive if he be acquitted, and expect to lose if once condemned. And what strong Engagements, what great Advantages all these are to tempt or corrupt Witnesses on his part, and silence them from testifying ought against him on our part; and how far forth such Witnesses, who appear thus to be Parties, shall be allowed of in this Case, especially such as are *Participes criminis* (adjudged incompetent by all Laws) and guilty of the same Surrender, we shall humbly refer to your just Considerations.

3dly. The Defendant answer'd to an Objection made by Mr. Prynne; To wit, that it must needs be cowardly surrendered, because the Enemies that very Morning were valiantly repulsed in all Places (but that one, where only an hundred and fifty of them entred) with the loss of 700 Mens Lives, and as many more wounded, whereas the Garrison then lost not above 3 or 4, and had scarce any one Man dangerously hurt in the Assault; so as the Enemy by this great Loss was far weaker, the Garrison much stronger, and more courageous than before: Whereunto he briefly answered, that the Slaying of 700, and Wounding 700 more, was not so great a Loss and Discouragement to the Enemy, as the Entry of the Line was an Encouragement.

To which Mr. Prynne replied, First, That those who entred the Line, by their own Confessions, were so far from receiving Encouragement by it, that they gave themselves all for dead Men, and had no other hopes but to be quite cut off. Secondly, Their Companions discouraged with the general Repulse in all other Places, knew not of their Entry in two full Hours Space, during which Time their Powder was quite spent, that they might have been all cut in Pieces, had the Defendant done his Duty. Thirdly, A whole Regiment of their Horse retreated four Miles off, with a Resolution never to come on again. Therefore the Entry of so small a Party, compared with their great Loss, could be but a very poor Encouragement, since they might have been so easily repulsed at the first, and sent back by weeping-crois unto their retreated Companies.

After this he descended to his Arguments, to prove the Surrender not cowardly.

His first Argument was this, That he was no Coward, as appeared; First, by his Apprehending and sending away Col. Essex: Secondly, By his Apprehending and Executing the Conspirators at Bristol in the midst of the City, even at Noon-Day: Thirdly, By quelling the Malignants, and disarming the Train-Bands of the City: Fourthly, By his valiant Behaviour at Worcester, where he and his Brother, when the Forces were there routed,

were some of the last Officers that came off the Field: Fifthly, By his charging at Keinton Battle, one of the next to Sir William Balfour, up to the Cannon of the Enemy, when the Horse killed the Cannoneers, as they lay under the Carriages; and by other following Particulars: *Ergo*, he did not cowardly surrender Bristol.

To which Argument, Mr. Prynne replied: 1. In general, That they did not charge him in the Articles, to be a Coward, which was not now in issue; nor yet, that he had shewed himself cowardly in all Actions since he was Governor of Bristol; but only, *That he had cowardly surrendered Bristol*: And, *in hoc individuo* he did and might deal cowardly, tho' he might be valiant in other Particulars.

2. That the Argument was a gross *Non sequitur*; for as a very Coward may now and then do valiantly upon occasion, and yet be no valiant Man; (as sometimes *desperatio timidos fortes facit*, an experimental Proof whereof we find in *timorous Stags*, who run away at the Barking of the smallest Cur, yet will encounter both Dogs, Horses, and Men in Extremity, when they are at a Bay, and can run no farther;) so a valiant Man may sometimes commit a cowardly Action, and yet be no habitual Coward. To put this out of question, We have a memorable Example in the Apostle Peter, who tho' he were of a bold resolute Spirit, and no doubt the stoutest of the Apostles; as appears by his adventuring (as Christ's Command) *to walk out of the Ship upon the Sea itself in the midst of a Storm*; his resolute telling our Saviour, *That tho' all else should be offended and forsake him, yet he would not*; and *tho' he should die with him, yet he would not deny him*, (which all the other Apostles likewise protested, each for himself;) by his resolute drawing out his Sword to rescue Christ when he was apprehended by the High-Priest's Servants, his cutting off Malchus's Ear therewith, his not putting up his Sword, nor giving over fighting till Christ commanded him; and by his following our Saviour into the very High-Priest's Hall, when the other Disciples forsook him and fled: (all Acts and Arguments of extraordinary Courage) yet after he saw Christ brought into question for his Life, he suddenly degenerates so far from his former Magnanimity, thro' a pusillanimous Fear then seizing on him, that at the very Voice of a silly Maid, and a High Priest's Servant, he no less than thrice denied the Knowledge of his Master Christ, and that with bitter Oaths and Execrations: Should Peter in this Case argue;

I was valiant when I walked on the Sea, in the Chamber when I told Christ I would rather die than deny him, in the Garden where I fought for him, and in following him into the High-Priest's Hall, whither the other Disciples durst not accompany me: Ergo, I did not cowardly nor unworthily, in thus denying him thrice with Oaths and Curses in the High-Priest's Hall?

Certainly, this were a most irrational, false Argument; because Courage in some Actions, is no Negation or Extenuation of Cowardice in others, almost in the self-same nick of Time. Yet this is Col. Fiennes's objected Argument; I have shewed myself courageous, (as well as Peter) in some Actions; in removing Col. Essex, executing the Delinquents, disarming the Malignants of Bristol, in the Fights at Worcester and Edgehill; yea, altogether as valiant as Peter, in my vaunting Words and Promises, * *That I would dispute every Foot of Ground with the Enemy to the utmost, who should win*

* See the Depositions of Col. Strode, Ja. Powel, Captain Bagnal, Mr. Hassard, and others.

win it from me by Inches; that my Flag of Truce should be my Winding-sheet: that I would keep the City, or it should keep me, or I would lay my Bones therein? (O brave vaunting Peter!) yea, I was pretty full of Courage during the Siege, till the Enemy entred the Line, and then I was just like Peter entering the High-Priest's Hall; I followed the Enemy a far off, and fell from fighting to parling; from defending to surrendering the City and Castle; before any Out-Fort taken, or one Shot or Assault made against City or Castle: Ergo, I did not cowardly or unworthily surrender them now, having shewed myself so valiant in Deeds before.

But since Peter's pristine valorous Acts, and Speeches, did no ways mitigate nor extenuate, but aggravate his subsequent cowardly denials of Christ, so will the Defendant's his Surrender.

3. His forementioned valorous Exploits have no relation at all to the Surrender of Bristol, being of a different Nature from them; his Prowess therefore in the one, can never expiate, nor disaffirm his Cowardice in the other, the only thing we now charge and prove, these other objected Actions not being here in Question.

4. He gave this Answer to the objected Particulars; so far forth only as they were applied to Bristol's Surrender, (1.) That the sudden Surprizal of Col. Essex, being done at a private House out of Bristol, when the Defendant had his Troops about him, and Col. Essex only three or four Servants near him; was a greater Act of Prudence than Courage, and a Man not really valiant would have done as much: (2.) That when he apprehended the Conspirators, he had the absolute Command of the City and Castle, a strong Garrison in both, and the major Part of the City and Country siding with him: It was therefore no great Argument of extraordinary Valour, to apprehend them being but few in Number, weak in Power, and suddenly surprized at unawares. And when he executed them, all the Malignants were disarmed, the whole City, and Country generally incensed against them for their horrid Treachery, and their Party unable to make the least resistance, so as a Child might have put them to death as securely as the Defendant. Therefore this could be no convincing Evidence of his Courage. (3.) That the Malignants were quelled by the Discovery of the Plot; and the disarming of the Train-Bands, to arm his own Soldiers and best affected Citizens, was by the general Consent of the Mayor, Sheriffs, and most part of the Citizens, after the Conspiracy detected without any the least Resistance; Ergo, no Act of Courage, but rather of Discretion or Distrust. (4.) That at Worcester, all the Horse were routed and fled, and his own and Brother's Troops among the rest, is no great Argument of their Valours, which received some Blemish by that Action: and that he and his Brother were some of the last Officers of Horse, who there came off the Field, it might be, as well because they were in the rear of all the Horse and so could not possibly fly out of the Field before the rest, as by Reason of any extraordinary Valour in them more than others, and so no convincing Proof of Valour in them. (5.) That his valiant Charging in Sir William Balfour's Regiment at Edgehill where every Man did valiantly, and none turned their Backs in all that Brigade, can be no special Proof of his Courage, since every Coward will charge in Company where no Man

turneth his Back, and where there is greater Danger in flying than charging: However admit it were good Evidence, yet this is a very ill Sequel, if put into a logical Form.

Col. Fiennes charged valiantly with Sir William Balfour at Edgehill: Ergo, he did not cowardly surrender Bristol.

His second Argument to prove the Surrender not cowardly, was his not quitting Bristol immediately upon Sir William Waller's Defeat at the Devises, and his raising of Men, Arms, and perfecting the Works even after that to defend it, when many of the Country-Gentlemen left the Town, and marched to London with Sir William Waller.

To which Mr. Prynne answered: 1. That he did but his Duty in all this, which was rather an Argument of his Diligence than Courage.

2. That it had been the greatest Treachery and Cowardice in the World upon Sir William's bare Defeat, to quit a City of so great Consequence, which he was charged to keep by his Commission, and in fortifying whereof he had spent so great Costs, before the Enemy came before it: who might probably, as things then stood, have no real Intention presently to besiege it, upon that Defeat.

3. Extraordinary Diligence in fortifying, is the greatest Argument of Fear and Cowardice, if not seconded with answerable Prowess in defending what is fortified. A Coward will sooner provide Armour of Proof, than a truly valiant Man; since therefore the City was no longer defended, fortified and manned, this Reason will rather convict than acquit him of Cowardice.

4. The true Reason why so many Gentlemen then deserted the City, was (as themselves have confessed) not for that they deemed it untenable; but because they feared and discerned, the Defendant intended not to keep it to the last, but to surrender it to the Enemy's Hand; which he hath clearly enough confessed in his Answer.

5. This Argument in verity, is no more in Effect, but a Governor provides Arms, Soldiers, Cannons, Ammunition, to defend a Town of Importance, or to encounter the Enemy, and then surrenders (as he hath done) in less than three Days Siege; or runs away after he hath stood a Charge or two; Ergo, he did not Cowardly herein; because he provided Men and Arms, whose valiant Use, not diligent Preparation, is the only proof of Valour.

His third Argument was, No Man could have expected less Safety of Conditions than himself, he only being excepted out of the general Pardon offered to the Soldiers and Citizens; Ergo, he surrender'd it not cowardly.

To which was answer'd: 1. That it is probable his speedy, unexpected Surrender of the Town and Castle, before Extremity, proceeded either from a Fear to lose his Life in holding them out till the last, or a Desire to purchase his Peace and Pardon out of which he was formerly excepted from the King, with so rich a Prize of Consequence as Bristol was, which would most certainly procure it, with infinite Advantage to the King, and greatest Prejudice to the Parliament. 2. That if he could have expected less Safety of Conditions than any other, for the Reason alledged, this should have rather engaged him to hazard his Life in defend-
ing

ing it to the utmost Extremity, than to yield it upon any Terms prejudicial to his own Security, which is first provided for in the Articles.

His fourth was, That he could never have undergone more Danger in the Castle had he held it, than he did in the Guards, which he diligently visited; *Ergo*, he surrender'd it not cowardly.

To which was answered, he received no hurt at the Guards, and lost but six or eight Men at most in the Siege. *Ergo*, if he might with as little Danger and Loss have held out the Castle, his Crime and Cowardice was the greater in Surrendering it so dishonourably without Stroke, or once retiring to it.

His fifth was, from his Carriage when the Enemies entred, to prevent whose taking the City, he had only two Means left. The first was, to fire the Suburbs, for which he issued out a Warrant, which Warrant was not executed, but revoked for want of Men to fire them: The second was, to fire the City behind them, and so to retreat into the Castle; which he could not possibly do without the Death of many Innocents, Men, Women, Children, and ruining of many Men's Estates: A Fact so horrid, that his Conscience would no ways permit its Execution, he being loth to begin so ill a Precedent, which would have infinitely redounded to the Parliament's Dishonour. Besides, the Castle being not large enough to contain half his Horse and Foot, and the Streets very narrow, he could not have retired into it, without great Difficulty and Danger of being cut off by the Enemy, and those Horse and Foot which could not be received would have been utterly lost, and exposed to the Enemy's Cruelty. Upon which Considerations only, not out of any Cowardice, he did by *Clifton's* Advice call a Council of War, and propound a Parley, whereupon the Surrender ensued: Therefore it was not cowardly.

To which Mr. *Prynn* replied, 1. That it is apparent by this Argument, that if the Suburbs had been fired, the City and Castle, might have been saved, and the Enemies beaten out when lodged in the Suburbs; therefore he ought in this Case, both by the Common and Martial Law, to have fired the Suburbs to preserve the City, and Castle, and must answer his Negligence in not doing it; his want of Men to fire the Suburbs being a frivolous Excuse, since he had at least two thousand three hundred Garrison Soldiers; and Mr. *Hassard* the Gunner (as he acknowledged to divers) and Major *Wood*, with others, offer'd to beat, or fire them out of the Suburbs, but could not be permitted, tho' it might have been done with ease, the Houses being combustible, most of them built with Timber, and that Part of the Suburbs not very large.

2. That between that Part of the Suburbs and Body of the City, there was a Key on the West-side of *Froom-bridge*, unfordable by Horse or Foot every Tide, by Reason of the Waters, and at low Water too, thro' the Deepness of the Mud, being so deep in most Places, that Men must stick fast in it (as some of the Conspirators did upon the Discovery of the Conspiracy, who were taken sticking in the * Mud:) That there is no marching over the Key in File or Rank, but only one by one, in confused Order. That on the Key-side next the City, there is a Wall of Stone near eight or nine Foot high above the Mud, which no Horse can enter, nor no Foot scale, unless at a Slip or two, which

are but narrow, and stand four or five Foot above the Water: That there are Houses all along the Key, which commanded the College-side, where the Enemy entred in such sort, that none of them could offer to wade over the Key, but they might be cut off with ease; that two or three Pieces of Ordnance planted at the head and lower-end of the Key, would so scour all that Passage, that none could have passed over without loss of Life, and the Passage there would have been so difficult, that one hundred Men would easily have kept out ten thousand, all which was attested by Col. *Popham*, Lieut. Col. *Paleologus*, Major *Wood*, Lieut. Col. *Andrews*, Capt. *Bagnal*, and some of his own Witnesses upon cross Examinations; therefore there was no Danger of the Enemies Entry there. For *Froom-gate* itself, it had a new *Portcullis*, and after the Enemies entering the Line, and late Salley on them, the very Maids and Women, in the Face of the Enemy, made a Barricado and Bulwark against it fifteen or sixteen Foot thick, with Earth and Sacks of Wool, to keep them from entering there, being their only Passage into the City from that Suburbs; that above the Gate was the River *Froom* (which runs under it) with a Wall and Houses between the City and it, so as the Enemy might easily have been kept from entering the Body of the Town, and could not have entred it without infinite Loss and Disadvantage.

3. That had they gotten over the Key, or *Froom* River into the Body of the City, yet the Streets were so narrow and disadvantageous to the Enemy, that their Passage might have easily been hinder'd, the Streets block'd up with Casks, Carts, Sleids, Stools, and a Piece of Ordnance or two placed at the Head of every Street, and the Houses lined with Musketeers would have scoured and secured it, that the Enemy must have sustained extraordinary Loss, at least fifty or an hundred Men for one of ours, as they lost before in the Storming. Besides, they must have all marched up the Hill, in paved Streets, which are so slippery that the Foot could have hardly stood to charge, and the Horse would certainly have slipt and fallen: in regard of which Disadvantages, our Men having the Hill, Flankers, the Shelter of Houses, and charging downwards, must needs have repulsed them with extraordinary Loss had they forcibly entred, and made a most safe Retreat into the Castle at any time when they saw just Cause, without any such Difficulty or Danger as was suggested.

4. Admit they had taken the Body of the Town beyond the Key, adjoining to the Castle, which they could not have done without excessive Loss and great Difficulty; yet all that part of the Town being commanded either by the Castle, or other Forts and Outworks all in our Possession (as *Clifton* himself with other of the Defendant's Witnesses confessed, and Major *Wood* proved) they could not possibly have held it long, and would have been in worse Condition within it than before, and so no absolute Necessity of Firing it, had not his Courage and Conscience served him to do it.

5. For his Horse and Foot, Incontainability in the Castle, in case he had been forced to retire into it, there were sundry other Places to bestow them in besides the Castle: As, (1.) The Body of the City adjoining to the Castle, which would have billeted them all till the Enemy had forced it. (2.) That part of the Suburbs, under the Command of the Castle next to *Lawford's* Gate, distinct

* Attested by Col. Popham, and others.

ting from the Body of the City if taken, and very defensible, the Castle and Outworks then remaining ours. (3.) The Out-Forts, where the Guards might have been doubled or trebled as there was Cause, especially now when he had an Overplus of Men that he knew not how to bestow. (4.) That part of the City beyond the Bridge in Somersetshire Side, which was very capacious, able to contain all his supernumerary Foot and Horse, tho' the other Suburbs and Body had been taken; which part (the Bridge being broken down or defended) had been inaccessible, strong, and tenable for a long Time against all his Majesty's Forces, we having then all the Out-Forts in Possession which commanded other Parts of the Town, and Ratcliff Church, Tower-Harris, and the Castle (three extraordinary strong Forts) commanding and securing that Part beyond the Bridge; which being fenced with extraordinary strong Outworks, and deep watery Dikes, Tower-Harris and Ratcliff Church on the one Side, with the River and Castle on the other Side, and strongly garrison'd with the Soldiers retir'd from other Parts, had been almost impregnable, and might have held the Enemies Play for sundry Months, had the Defendant resolved to hold it to the utmost. Having therefore so many several safe Retreats and Receptacles for his Horse, Foot, and not making use of any of them, tho' he promised to dispute every Inch of Ground with the Enemy (as he might have done with Honour and great Advantage) his Pretence is false, his Surrender cowardly beyond all Excuse.

6. He hath oft inculcated this to your Honours, that the Citizens were generally very malignant, and disaffected to the Parliament; and we have proved, that the most of the best affected, had carried their Estates and three Months Provision into the Castle, where their Persons and Goods were by the Defendant promised to be secured. His forbearing therefore to fire the City in case he had been necessitated to it, proceeded not from any publick Care he had of the Parliament's Friends or Kingdom's Safety, but from his private Respects to the Persons and Estates of Malignants, which he would rather carefully preserve, to enrich, encourage, and strengthen the Enemies, than fire or endanger to preserve the Parliament and Kingdom. Mercy and Compassion are doubtless commendable Virtues in a Governor, who should not use Cauteries or Firing till the utmost Extremity: But when such an Exigency happens, that a City must be fired, or both it and the Kingdom lost or hazarded, it is foolish Cruelty, not Christian Mercy, to be over-pitiful in such a Case. It is a cruel destructive Mercy to save a City (especially a malignant one, as this is averred then to have been) to destroy a Kingdom, yea, our Religion, Laws, and Liberties with it: Better the greatest Part of the City had been turned into Ashes to preserve the Castle and other Parts of it to the Parliament, and secure the Realm, than to surrender the whole so cowardly, so unexpectedly, to the Loss of the West, and Kingdom in all Probability.

7. The Defendant well knew of what extraordinary Concernment the Loss of Bristol would be to the Kingdom, of what infinite Advantage to the Enemy, as is evident by his own Letter to my Lord Say (dated March 20, 1643, before it was fortified or fully garrison'd) published in his printed Relation, Page 13, where thus he writes:

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May it please your Lordship to understand first the Importance of this City of Bristol, &c. The Enemy hath lately cast his Eye upon it, prompted by the witty Malice of our Malignants, to espy his Advantage: If he possesseth this City, he will reap these Benefits by our Loss. 1. He will get much Money, Arms, and Ammunition in a more cheap and less hazardous way, than he can have them out of the Low Countries; all which he will pay for with Monopolies, and Engrossments of Trade, Things with which the great ones of this Town have been well acquainted, and are therefore Malignant. 2. If he gain this Town, he will soon subdue Gloucester, and become Master of all the Traſt between Shrewsbury and the Lyzards-Point in Cornwall, a Quarter so plentiful as his plundering Army yet never saw. 3. He will become Master of all the Traffick of that Inland Sea the Severn, and make all the Shipping both of the Welsh and English Coast his own. 4. His Neighbourhood to Wales will from time to time supply him with a Body of Foot. 5. We shall lose a great Port-Town very Important for the Service of Ireland, and fit to give Landing to the Rebels of that Place, or any other Enemy. Since therefore he knew this City to be of so great Importance to the Kingdom, and the Loss of it so extraordinarily advantageous to the Enemy, he should in this Respect have held it out to the utmost Extremity, and rather hazarded the Firing of it by the Enemy, which would not have done it, (especially being Malignant) or by himself, than quitted both it and the Castle too, with all the Ammunition, Cannon, Arms, Provisions, Colours, Ships, Merchandize, Wealth therein, upon such poor dishonourable Terms, before any Out-Fort taken, or one Shot made against the City or Castle Walls, he wanted nothing but Courage to defend them, the Enemy having lost so many, and himself so few in the former Stormings.

His sixth Argument was, that he stood in Places of greatest Danger with his Troop, near Alderman Jones's House, where a Granado falling into the midst of his Troop, and hurting no Man, he thereupon encouraged his Soldiers, saying, *That God did protect them.*

To which was answered, 1. That not one of his Troop (for ought appears) was ever hurt in that or any other Place where he stood with them; therefore the Danger was not very great. 2. That this Place under Alderman Jones's House, was more than Cannon-Proof, and most secure against the Enemies Shot, which the House and Garden-Walls guarded off being between the Enemy and his Troop; therefore no Place of Danger but Security. 3. That this Granado's falling in among the Troop at that time, was merely casual, and hurt not any, tho' it frightened many, and made the Defendant and his Troop presently to remove from thence, as his own Witnesses deposed. 4. Himself never charged the Enemy in Person with his Troop after their Entry within the Line; his standing therefore with them in this secure Place before the Entry, was no great Proof of his Valour, much less that the Surrender was not cowardly.

His seventh Argument, to prove the Surrender not cowardly, was, That the Parley and Surrender were both agreed on by the Council of War; Ergo not cowardly.

To which was answered, 1. That himself was both the first Mover, Persuader of this Parley, this Surrender, and the principal Man that advanced it, drawing on the rest to consent to it, and not making the least Opposition against it. 2.

That the Council of War wherein the Parley was first propounded, was not general, as it ought to have been, but private, few of his Officers or the Gentlemen there, having notice of it, till a Parley was concluded, and a Drummer dispatc'd twice to the Enemy before they would take notice of it.

At this Council no Country Gentlemen were present, but Sir *John Horner*, who gave no Vote, and Col. *Strode* who voted against it, and not above six or seven Officers, of which Lieut. Col. *Davison*, and Major *Holmes*, were two who oppos'd the Parley; as for Mr. *Edward Stephens* (whom Col. *Fiennes* averred in Print to be present as it) he denies upon Oath, that he had ever any Notice of it, and so doth Col. *Stephens* too. Being therefore such a private Conventicle and no general Council, and these thus voting against the Parley, it is a greater Evidence than Disproof of a cowardly Surrender. 3. The Defendant, and his Brother *John*, to circumvent the Council, and draw them on both to a Parley and Surrender, misinformed them that there were but twenty Barrels of Powder, and four hundred Weight of Match left; as he confesseth in his Answer to the eighth Article, commanding Mr. *Hassard* (who kept the Stores) to affirm there was no more, when as you have heard it proved there was above three times as much more then in the Castle. His Misinformation therefore being the chief Motive to sway the Council to this Parley and Surrender, their Consents will not excuse but aggravate his Cowardice and Treachery in seducing them. 4. If the Town and Castle were tenable, sufficiently provided with all Necessaries for a Defence, and not reduced to Extremity, as we have proved, the Surrender by a Council of War will not make the Cowardliness and Treachery less but greater, and subject the whole Council to Censure, as appears by the Cases of *Weston*, *Gomineys*, and others adjudged in Parliament: Otherwise, if this Plea should be admitted for a Justification, a Governor and his Officers might safely without Danger betray any Fort or Place thro' Cowardice or Treachery, by voting it in a Council first, and then putting it in execution.

His eighth Argument was, That when he sent to the Enemy for a Parley, and their Hostages came to *Froom-Gate*, which was barricadoed up, they swore, *God damn us we will come in at Froom-Gate* (which was the nearest way) *or have no Parley at all*: whereupon he sent them this resolute Answer, *That they should not come in there, but at Newgate*, which they were enforced to do after much Contest: Ergo the Surrender was not cowardly.

To which Mr. *Prynn* answer'd; 1. That at that time *Froom-Gate* was barricadoed up with a Bulwark of Earth and Wool-Sacks fifteen or sixteen Foot thick to keep out the Enemy, made by the very Women and Maids, with the Help of a few Men in a short Space; and when the Hostages came to that Gate, the Work was raised so high, that Capt. *Taylor*, the Defendant's own Witness, confessed, *He could not see nor confer with them over it, but was enforced to go to speak with them thro' a Window, when he received their God-damn-me Message, that they would come in at that Gate, or else return*; from which Window likewise he return'd the Governor's Answer to them. Now to demolish such a Barricadoe as this, to let in these peremptory Hostages, and the Enemy too, who might

then have clear Passage into the City, had been such an indiscreet and cowardly Act, as was not only below the Spirit of a Governor, or Soldier, but of a sucking Child; and would have argued the Defendant (if condescended to) a Man utterly destitute, not only of Courage but common Discretion. 2. This braving unreasonable Request argues plainly, that the Enemies had a very mean Conceit of the Defendant's Valour, else they would never have presumed to send him such a disdainful Message, which an heroic Spirit would have so far refuted, as not to brook a Parley upon any Terms; and his not yielding to it, is no greater Evidence that the Surrender following was not cowardly, than that the Building of *Tinterton Steeple* was the Cause of the Encrease of *Goodwin Sands*.

His ninth Argument, was his Courage and Speeches at the Parley, wherein he confessed, 1. That the Motion of the Parley proceeded merely from himself. 2. That the Parley was concluded on before ever the Mayor repaired to the Council. 3. He said, *The Mayor was extraordinary fearful, and pressed earnestly for an Agreement with the Enemy*. 4. That when the Enemy's Commissioners at the Parley, upon the Motion of Capt. *Birch*, that the Citizens might have Liberty to carry away their Estates if they pleased, stuck at this Demand, he thereupon rose up, and with great Earnestness protested, that he would break off the Parley, and rather lose his Life, and hold and put it to the utmost Extremity, than not provide for the Security of the Citizens Estates: which Speeches he proved by the Testimonies of Capt. *Birch*, and Mr. *Prickman*. Ergo he did not cowardly surrender the Town and Castle.

To which Mr. *Prynn* reply'd, 1. That the Motion of the Parley proceeding originally from himself before any Solicitation from the Mayor or Citizens, argued that himself was more fearful than the Mayor, tho' thus extraordinary timorous; and that both the Parley and Surrender proceeded from his excessive Fear. 2. That we had here *confitemur*, that he held not the Town till utmost Extremity, as his Duty bound him: For he told the Commissioners, if they would not yield to secure the Citizens Goods (whom he frequently brands for desparate Malignants) he would then venture his Life, and put and hold it to the utmost Extremity; therefore he held it not by his own Confession till such Extremity: and so by the very Articles of War, and Construction of Law, is guilty of a cowardly and traitorly Surrender, for which he ought to die. And here observe the strange Temper and Guilt of the Defendant: My Lords, he was constituted Governor of *Bristol*, not by the Mayor and Citizens, but his Excellency and the Parliament, to preserve it from the Enemy's Hands, rather for the Kingdom's Safety, than Security of the malignant Citizens Goods. He had formerly oft protested to the best affected *Soldiers and Citizens, that *he would dispute every Inch of Ground with the Enemy, from the Out-works to the Gates, from thence to the Castle, whither he would make his last Retreat, and there lay his Bones, making his Winding-sheet his Flag of Truce*, and the like, for the common Good and Security of them and the Realm. But now alas, as soon as the Enemy entred the Line, *Heu quantum mutatus ab illo*? he became a quite other Man; and forgetting all former

* James Powell, Col. Strode, Capt. Bagnal, Abel Kelly.

mer valiant Promises, heroick Resolutions for the Republick, he presently sent for a Parley, and disputes not so much as one Inch of Ground with the Enemy near the Gates or Body of the City, retires not one Foot towards the Castle; and instead of adventuring his Life to preserve the City for the Parliament's and Kingdom's Safety against the *Irish* Rebels, and *Welsh* Malignants Incurfions, he hath not so much as one Word or Thought tending that way: but all publick Engagements set aside, he now only looks after the Security of his own Person, and of the malignant Citizens Persons and Estates, for the Enemies future Advantage, and rather than these shall not be saved, he now protests he will lose his Life, and put all to utmost Extremity. Had he really intended to make good this his Protestation for the Citizens Benefit and Safety, in case the Enemies had deny'd his Demand in their behalf, (which I much doubt of since notwithstanding his foresaid Protestations, he would not do it for the Publick;) I humbly conceive he ought much more in point of Honour and Duty to have executed it for the whole Kingdom's Preservation and Utility; which since he did not really perform nor intend to do it, you have here *confitemur* an Evidence dropping from his own Mouth sufficient to condemn him: And therefore my humble Motion to your Honours is, that his Person may presently be secured as by Law it ought. The rather, because it plainly appears by all the Carriages of the Defendant, from the Enemy's first Entry till his Return to *London*, that this Surrender proceeded merely from Timidity and Cowardice at the best, as I shall evidence by these Particulars.

1st. By his ^a calling the Soldiers from the Line under pain of Death, and not permitting them presently to encounter the Enemy, as he was importuned by divers; and bringing them off in such Confusion, that many of them left their Arms, Ammunition, and Ordnance behind them, which might have been easily drawn off, there being so many Colliers Horses in the City for that Purpose.

2^{dly}. By giving no Order nor Direction to the Soldiers drawn off, for any present Service or Salley in divers Hours, by Means whereof, many of them deserted their Colours ^b.

3^{dly}. By not imploying his Reserve under Capt. Stokes, nor his Main-Guard, nor Soldiers in the Castle (consisting of at least five hundred Men) who were fresh and had been upon no Service, to make a present Salley on the Enemy, who might with ease have been cut off by them without calling any from the Line ^c.

4^{thly}. By his contradictory Commands, and pale Looks, attested by *William Deane*, *Mary Smith*, *Capt. Busbel*, *Thomas Thomas*, and generally taken notice of by the Soldiers.

5^{thly}. By his Hastiness to propound and send for a Parley to the Enemy, even before the Salley made, as *Col. Strode* deposeth, contrary to his Advice; and then again presently after the Salley.

6^{thly}. By the Forgetfulness of all his former Promises, and of the very Castle itself, formerly accounted by him the strongest Rampart and last Retreat, where he would lay his Bones ^d; which was not now so much as thought on, altho' the Magazine, Ammunition, and Provisions lay there-

in, whereby he betrayed, cheated, and undid the best affected Citizens.

7^{thly}. By his own Confession in his *Relation*, p. 10, he writes, *That all the Conditions they desired were yielded to*; yet had he not then so much Heart or Brain left within him, as to demand or make more honourable Conditions, than to deliver up the Town and Castle, with all Artillery, Arms, Ammunition, Cannon, Victuals, Prisoners, and Colours too (which was all that could be lost or given away from the State) or to demand convenient Time or Carriages to convey away their Goods from thence.

8^{thly}. By accepting Articles in the Commissioners Names, when as they should have been in *Prince Rupert's* then present, who else was not obliged to observe them; and not exacting an Oath or due sufficient Caution for performing them, after so many Experiences of their Treachery and Truce-breaking.

9^{thly}. By suffering one of the Enemy's Hostages to depart the Town as soon as the Articles were concluded, and giving Liberty to the other to do the like; but that *Major Allen* coming casually into the Room withstood it; by Means whereof they had all been wholly exposed to the Enemies Mercy and sudden Assaults, having no Security for himself, his Soldiers or the City; whereas both his Hostages continued still in the Enemies Hands ^e.

10^{thly}. By his not publishing the Articles after they were concluded, till *Capt. Busbel* (a Prisoner of the Enemy's Party) put him in mind thereof and published them at his Request ^f.

11^{thly}. By suffering his Men to fall off their Guards, the Prisoners to get loose, the Enemies to enter the Town and Castle before the time appointed for the Surrender ^g, *Whereby many Rapines and Violences were committed both on the Soldiers and Townsmen in the very Streets and Castle, which the Enemy could not prevent, and the Colonel, never endeavoured to see righted*; which caused *Col. Gerrard* (foreseeing some Complaints would be made) to desire *Major Wood* (who in these Disorders suffer'd three days Imprisonment there) to carry a Letter from him to *Nath. Fiennes* (which he shewed to *Major Wood*) to this Purpose: *That whereas many Outrages had been committed contrary to the Tenor of the Articles, which might haply be imputed to the King's Grace, he gave him to understand that the Fault was in himself, who had most unsoldierly neglected to look to the Performance of them upon his Party: and if this Declaration did not give him Satisfaction, he should be ready for further clearing of himself to wait upon him with his Sword in his Hand.*

Your Friend whom you call Cavalier,

Charles Gerrard.

Which Letter *Major Wood* deliver'd.

12^{thly}. By his leaving *Capt. Blake*, and *Capt. Husbands* with their Soldiers in *Windmill-Hill* and *Brandon-Hill* Forts ^h, when he marched out of *Bristol*, and given them no Notice of the Articles of Surrender, no Warrant under his Hand to deliver up these Forts according to the Articles; the first Notice they had both of the Articles and the Defendants leaving the Town, being given them by the Enemy, who demanded the Forts which they held after the Governor's Departure, from whom they received no Order to quit them, which might have endanger'd their Lives.

^a *Capt. Bignal*, *William Deane*, *William Whithorn*.

^b *James Powel*, *Mr. Haffra*, *Capt. Bignal*, *Col. Strode*.

^c *Mr. Powel*, *Captain Bignal*.

^d *Vol. I.*

^e *Captain Husbands*, *Richard Winston*.

^f *Capt. Bignal*.

^g *Major Allen*.

^h *Major Wood*, *William Whithorn*.

ⁱ *Mr. Baynton*.

^j *Major Wood*.

13thly. By his taking no * care to march away with his Men in a Body (which they could not well do because their Colours and Drummers were surrender'd by Agreement) whereby they might have been kept together for the Service of the Parliament: And yet the *Preservation of his Men and Horse in a Body for their present Service*, is the best and only Reason he gives for the Surrender of the City and Castle, both in his *Relation, Letter, and Answer to the Articles*.

14thly. By his cowardly and unadvised Speeches concerning the Intenability of *Glocester* for three Day's Space, if the King's Forces came before it, and his Discourse to Mr. † Pury after its Relief; his Fear transporting him into such an uncharitable Opinion, as to judge brave Col. Massey as pusillanimous and cowardly as himself.

15thly. By his very printed *Relation, Letter, Replies, and Answer to the Articles*; in all which the intelligent Reader may palpably discern a Spirit of Trepidation and Cowardice to have seized both on his Brain and Pen, which made him invent so many unworthy Shifts, untrue Surmises, (as of close deck'd Boats prepar'd by the Enemy, a Resolution to storm the Castle, and to take it in two Days at most, &c.) And utter so many strange Paradoxes, yea Contradictions, unworthy a Man of Honour; and deny, not only Colonel Essex, but himself to be Governor of *Bristol*, or of the Castle there; of which before. If all these Evidences may be credited against his bare proofless Allegation, the Surrender must needs be cowardly and unworthy at the best.

Upon this Col. Fiennes affirmed, that the Report that *Bristol* was cowardly and unworthily surrendered, was first raised by Mr. Prynne, the Prosecutor, in his Book intituled *Rome's Master-Piece*, Pag. 35. published the first of August 1643. within five Days after the Surrender of *Bristol*; and that before the publishing of this Book, it was not so reported, nor reputed by any.

To which Mr. Prynne reply'd: That this was a most false Calumny without the least Shadow of Truth; for first, tho' the Title of his *Rome's Master-Piece* was written and licensed for the Press by a Committee of the Commons House (who earnestly desired him to translate and publish the Letters and Plot therein comprized, with such Observations as he thought meet, and they should approve) on August 1, 1643. yet the Book itself was not compiled, nor fully printed off till the end of August or after, the Publication being near a Month's Space after the License; before which time, not only *Mercurius Aulicus* had informed the World in Print, That *Nathanael Fiennes* (by name, whom I named not) had bestowed *Bristol* on the King, &c. (which Words were read out of *Aulicus*;) but likewise many *London Mercuries* (and namely, that from Monday the 31st of July, till Aug. 7. p. 17.) had divulged in Print, That *Bristol* was cowardly deliver'd to the Enemy; that if Col. Massey had been Governor in his Place it had not been surrender'd at all, but held out still, &c. And, in truth, the Surrender thereof to the Enemy in so short a Space, was so far beyond all Mens Thoughts or Apprehension, that the very first Tidings of it made most Men openly aver in every Place, it was most cowardly and unworthily at least, if not treacherously surrendered to the Enemies. This was not only *Vox*

Populi in *London, Westminster*, and elsewhere, but *Vox Parliamenti*, the Opinion of the Commons House (if not the Lords too) who were much dejected at the News; which the Defendant himself took notice of upon his very first Entry into the House, after his return from his noble Exploit; where every one look'd strangely on him with a discontented Aspect, and few or none of his dearest Friends once moved their Hats unto him, (as they usually do to all other Members upon their Arrival from any publick Service after some time of Absence;) and some of them minded him of *Gominey's* and *Weston's* Case. Whereupon he, conscious to himself of the Commons general ill Opinion of this Action, to avoid their Examination and Censure, was enforced to make his Apology for it openly in the House, August 5, 1643. in the Close whereof (containing his bare Relation, no ways satisfactory) he desired, That what he had affirmed might be examined at a Council of War, that so he might be cleared or condemned according as they should find the Truth or Falshood of what he had declared. Which Passage of his, published in Print long before *Rome's Master-Piece*, is a pregnant Evidence and Acknowledgment, that the very House of Commons conceived this Surrender proceeded either from his Cowardice or Treachery; else there had been no need of any long Apology, or such a Reference as this to a Council of War. And indeed, his own printed Relation is so full of palpable Shifts, and Expressions of a timorous Spirit, that the very reading of it confirmed me and others in this Opinion, that the Surrender was cowardly or treacherous; and my Passage in *Rome's Master-Piece* concerning the Inconveniencies of *Bristol's* Surrender, with reference to the *Welsh* and *Irish* Rebels, were taken verbatim out of his own printed Relation, p. 13. where thus he writes, *If the Enemy possessed Bristol, his Neighbourhood of Wales will from time to time supply him with a Body of Foot. We shall lose a Port-Town very important for the Service of Ireland, and fit to give Landing to the Rebels of that Place, or any other.* By all which it is clear, that I was not the first Raiser of the Report of its cowardly Surrender, but that himself, and others then in Print, had raised this Report, before I published any thing to this purpose. Secondly, to put this out of question; 1st. It evidently appears by the Deposition of Mr. *Edward Stephens*, *Thomas Monday*, *William Deane*, *John Battin*, *Abel Kelley*, *Arthur Williams*, *Mrs. Hassard*, *Richard Butler*, *Mary Smith*, *Ethelred Huddy*, *Joseph Proud*, *Jeremy Hokway*, *Anthony Gale*, and others, that both the Soldiers and Citizens of *Bristol* were much discontented with the Governor's Parley and Surrender, when it was but in Agitation, and openly said they were betrayed; and that not they only, but the very Enemies, concluded the Surrender to be cowardly, before we had any Tidings of it. 2dly, Sir *John Horner* (his own Witnesses) depose, that in their coming up to *London*, before we had any Notice of it, (they being the first who came thence and brought Tidings of it) two or three Ministers spake against it, as cowardly and unworthy. 3dly, Major *Allen* attesteth, that he and some other Officers present in the Siege, concluded it so in their private Discourse, as they retreated from *Bristol* before they came to *London*. 4thly. It was generally reported cowardly or traitorly both in *Lon-*
don

* Major Wood.

† Mr. Brown, Mr. Pury.

don and Westminster upon the first notice of it; and some Women in the Streets openly called the Defendant a Coward, for this unworthy Action; which his own Lady-Mother condemned, and would not believe at first (affirming, that her Son was of a more valorous Spirit, and honourable Extraction, than to deliver up a Place of such Consequence as Bristol in so short a time, where he had promised to spend his Life, and lay his Bones, rather than quit it;) and all this before I took any special Notice of it. Whereupon having some relation to Bristol, in and near which I had divers Friends, I made a more particular Enquiry into this Action, from such Soldiers and Citizens present in the Siege, who could give me the best Information; and upon due Examination of what was alledged on either Part, I found the Surrender such as I published it to be in *Rome's Master-Piece*, by Approbation of a Committee of the Commons House; who both authorized the Book, and concurred with me in this Opinion. From all which it will appear, that I was not the Raifer, nor first Inventor of this Bruit, *That Bristol was cowardly and unworthily surrendered*, it being published in Print by divers, and the common received Opinion of all Men in City and Country, before I gave my Censure of it, which I have here made good.

His tenth Argument was, That both the City and Castle were untenable against the Enemy; Therefore the Surrender not cowardly, nor unworthy. Their Intenability he endeavoured to prove.

First, From the Weakness and Insufficiency of the Line, Outworks, Walls, Fortifications both of the City and Castle.

Secondly, From the want of a sufficient Garrison to defend the Town; to manifest which, he alledged, that he had not above two thousand Foot and Horse to guard the Place, which were not half enough, the Works being near five Miles in compass, and divided by a River, so as his Men stood very thin upon the Line, and had no Reserves at all, unless for some particular Places; by means whereof his Soldiers, in most Places, continued four or five Days and Nights together upon Duty without Relief. And to prove the Garrison insufficient, he insisted, (1.) On the Letter printed in his Relation, *Pag. 14.* complaining of the weakness of the Garrison of Bristol, and desiring an Augmentation of it. (2.) On his Excellency's Opinion, *ibid Pag. 16.* who thought it necessary this Garrison should consist of three Regiments of Foot, two Troops of Horse, and one Company of Dragoons. (3.) On a draught of an Ordinance presented to the House of Commons by the Lord Say; for the settling of a sufficient Garrison at Bristol (*ibid. Pag. 17.*) wherein he propounded, that the Garrison might consist of three Regiments of Foot, the first consisting of 1200, the second of 1000, the third of 800 Men, and of two Troops of Horse, and one Company of Dragoons; with less than which he could not possibly (as he said) maintain the City against the Enemies Forces that came then against it, who had few less than seventy Colours of Foot (Lieutenant Clifton affirmed, who told them) on Gloucestershire Side, which Captain Husbands, telling them with his Prospective-Glass, multiplied the Colours to one hundred.

Thirdly, From his want of Powder and Ammunition, he having no Match at all, and but fifty Barrels of Powder left, which would not have served them above two Days; which he endeavoured to

prove by the Proportion of Powder they spent in two Days before, and by a Letter from Colonel Warnloe from Plymouth (attested by Master Nichols) who writ, that they spent forty Barrels of Powder there in one Day, when they beat the Enemy out of their Works.

The City and Castle being therefore untenable in all these Respects; and no Succours near to relieve them in due Season, his Surrender could not be deemed cowardly, but discreet and honourable to preserve the Citizens Goods, and the Garrison (consisting of above 1500 Foot, and Horse) to serve the Parliament (which then wanted Men) in other Places of Advantage.

To which Particulars Mr. Prym gave these ensuing Answers, First, That the Works about the City and Castle were very strong, defensible, tenable, against all the Enemies Power, which he proved; 1. By the Judgment and Opinion of the Defendant himself, who never once complained of the Weakness or Insufficiency of the Works of Castle till the Surrender, but oft affirmed the Works to be very strong, sufficient, and tenable, before the Siege, and that he doubted not to make them good against all the Enemy's Power, as Col. Stephens, Col. Strade, Capt. Bagnal, Master Powell, with others depose. And he publickly confesseth in his printed Relation, *Pag. 10.* that himself (and some others too) had a great Opinion of the Strength of the Castle, before it was surrendered; tho' now upon a sudden, he would make your Honours believe, and endeavours to prove it, the weakest most untenable Piece in the World, having spent one whole Day's time in demonstrating its several Weaknesses, or rather in them his own, who, notwithstanding all these Imbecilities, had so great an Opinion of its Strength: And indeed did not the Defendant deem the Works sufficient, the City and Castle strong, he must discover himself Guilty, either of extraordinary Folly, in putting the Parliament, County, City, to so great Costs to fortify, garrison, furnish the City and Castle with all Necessaries to hold out a Siege, if it were not really tenable, and of no considerable Strength at all in the upshot; or else of extraordinary Treachery, if he knew it not tenable, and yet gave it out to be very defensible, on purpose to induce the Gentry and Country in those Parts to bring their Money, Plate, Estates, Provisions thither, as to Places of Strength and Security, as we know they did, upon his Promises to defend them to the last, that so they might become a Prey to the Enemies, who had all the Ammunition, Provisions, Arms of those Parts delivered into their Hands at once, which they could have never gained, had not the Defendant fortified the Town and Castle, and affirmed them to be strong and tenable. Besides, his own many liberal Promises to defend the Castle to the utmost, in case he was forced to retreat into it, and there to secure the best affected Citizens and their Goods, argues its Tenability in his own Apprehension. 2. As the Town, but Castle especially, was tenable in his own Judgment, so likewise in the Opinion of others. (1.) Of the Gentry and Country who repaired thither, as to a most secure Sanctuary against the Enemy, towards whose Fortification and Defence they liberally contributed. (2.) Of the Citizens, who all deemed the Town, but the Castle especially (to which they carried their Estates, and above three Months Provisions) to be defensible against all the Enemies Power, as appears by the Depositions of James Powell,

Able-Kelly, William Deane, Mistress Hassard, and others, and by the Tragedy of Bristol, lately published by Capt. Birch, Mr. Powel and other Citizens of it; who writ thus of the Castle, Pag. 5. The Castle being strongly fortified and victualled, as being the last Place, to retreat unto, if the Town should be taken; being assured we should be able to keep it (till Relief came) as a Sanctuary for the Persons and Estates of such as were most active for the Parliament; divers of us accordingly brought in our Goods, with Provisions for ourselves, and to help victual the Soldiers that were to be entertained in it, &c. (3.) By the Opinion of divers Soldiers of our own Party, as Col. Stephens, Col. Strode, Lieutenant Cols. Paleologus and Andrews, Major Wood, Major Allen, Captain Bagnal, Nicholas Cowling, Mr. Hassard, Richard Linden, Edmund Warthorne, Thomas Munday, and Richard Butler attest. (4.) By the Speech of the Enemy's own Commanders, who viewing the Works of the said Castle soon after its Surrender, swore, God damn them, all the Devils in Hell could not have taken the Castle, it was so fortified; had not the Governor cowardly surrender'd it; that they might thank Fiennes for it; and that they could not have taken the Castle, had it not been yielded up to them beyond Expectation: as Mary Smith, Ethelred Huddy, Joan Battin, Thomas Thomas, and Michael Spark senior, witness.

And whereas he alledged, that Sir William Waller, and Sir Arthur Haslerig, deemed Bristol not tenable, which he endeavoured to prove by this Passage in their Letter to him, dated July 1. 1643. —(attested by Mr. John Ash, and printed in his Relation, Pag. 27.) *We think the Enemy will fall on this Night, if not, to morrow Morning; and if so, what good will this Regiment do Bristol if we perish? It is a wonder to us, to see our Friends delay Help where there is Safety, &c.*

Mr. Prynn answered, 1. That this Letter declares not their Opinion concerning the Intenability of Bristol, but their Importunity to have speedy Supplies from thence. 2. It expresseth that Bristol's greatest Security consisted in their Army's Success, there being no Danger of a Siege as long as their Army were Masters of the Field. 3. It proves nothing, that either the City or Castle might not have held out till Relief should arrive from his Excellency, or that it could not hold out above three Days longer. 4. The Defendant confesseth that had Col. Popham's Regiment continued in the Town, it had not been lost, and that his sending of them to Sir William Waller, was the Loss of the Town: therefore the Castle and Town in respect of the Fortifications were both tenable, and had no want at all but of Col. Popham's Men, which he supplied by his new-raised Regiments before the Siege.

2. Whereas he alledged, that divers Gentlemen left the Town, and went away with Sir William Waller, and Sir Arthur Haslerig, because they deemed it not tenable:

It was answered, That the Reason of their Departure (as themselves have confessed) was, the Fear and Assurance they had, the Defendant would not hold it out to the last; whereas Col. Strode, Col. Stephens, and others, who had his Promise to hold it out to the utmost, continued with him still.

Fourthly, It was answered, That the objected Weaknesses and Defects of the Works and Castle, were mere Inventions of the Defendant since the Surrender, not thought or spoken of before, nor once propounded at the Council of War when the

Parley was in Agitation; where the Debate of this Particular of the Tenability of the Town and Castle was never disputed, for if it had, the Town would have been held some four Days longer, while this point had been debated, which hath taken up four Days here. As for the Castle, the Defendant himself confesseth, and his Lieutenant Clifton with Major Holmes depose, that in the whole Debate of the Parley and Surrender, the Castle was never mentioned nor thought on: therefore the weakness and Untenability of it was no Ground of its Surrender, as is now pretended. Finally, the Defendant in his printed Relation, Pag. 9, 10. and in his Answer, affirms; that the Cause why the Castle was not tenable against the Enemy, was for want of Match and Powder, not in regard of its inconvenient Situation and weak Fortification, the only Causes now insisted on; therefore this is but a mere Pretence invented since the Surrender.

To the second Pretence of wanting a sufficient Garrison to hold it; Master Prynn answered, 1. That the Defendant had two thousand Foot, besides two hundred Voluntiers, and three hundred Horse and Dragoons at least; which were sufficient to defend the Town against all the Enemy's Power, as is infallibly evident by the Repulses every where given to the Enemies when they stormed it, and the great slaughter of hundreds of their Men, with the loss but of three or four of ours, attested by his own Witness, and published in his own Relation and Letter to his Excellency. And if the Garrison were sufficient thus to repulse the Enemy in his greatest Strength and Assault at the very Outworks, then certainly they were abundantly able to defend the Town and Castle after the Slaughter and wounding of above 1700 of the Enemies, had they been discreetly and courageously commanded by him; but doubtless they were more than enough to have defended the Castle, the Body of the City, and that Part beyond the Bridge, after the Suburbs entred, and the Line wholly quitted on Gloucestershire Side. 2. If the Garrison had been too weak, he might have raised six or eight thousand able Men more in the City, or retained five hundred of Sir William Waller's Soldiers, whom he sent out of the Town to save the Expence of Provisions. 3. The Garrison Soldiers that were in it, would have fought, and held the City and Castle out against the Enemy, thinking themselves strong enough to do so, but the Defendant would not permit them, as sundry Witnesses attest; the want therefore of a sufficient Garrison is but a mere Pretence. 4. A Garrison must be judged to be sufficient or insufficient to defend a Place, only in regard of the Enemy's Strength that comes before it; that Garrison being sufficient to defend a Town against seven or eight thousand Besiegers, which perchance is insufficient to guard it against twenty Thousand. Now we confidently affirm, that the Garrison then in it, was sufficient to guard it against all the Power then before it, as appears by the Enemy's several general Repulses with extraordinary Loss to them and none to the Garrison; by the Enemy's Paucity, not being above seven or eight thousand at most, (most of them Horse) and their Quarters divided with an unfordable River, so as they could not come to rescue or relieve one the other. And whereas he pretended the Enemy was near fourteen thousand strong, because they had about seventy or one hundred Foot Colours only upon Durham Down; this is a most fallacious Argument: because every puny Soldier knows

knows it is a common Policy in Wars, to carry and display a Multitude of Colours more than there are Companies, afar off, at a distance, of purpose to amaze or terrify the Opposites, and make themselves appear more numerous than in truth they are; which Policy was now used. And whereas Captain *Husbands* affirmed, that he told one hundred Foot Colours on *Durdham Down*; he saith, that it was but with his Prospective Glafs (an uncertain Instrument to tell Colours with) which multiplied the Colours more than they were, Lieutenant *Clifton* telling not seventy at most. And how full these Companies under those Colours were, we shall produce only the Testimony of Mr. *Savidge*, a late Soldier in *Ireland*, who deposed *viva voce*, *That he was in Bristol within two Days after its Surrender, when there was a general Muster of Prince Rupert's Foot in the Marsh there, at which both Prince Rupert and Maurice were present, where he told (to his best remembrance) fifty-two, but for certain above forty-two, of the Enemies Colours, which had not above 1400 Soldiers at the most belonging to them, for he particularly told, and took special Notice of them: Whereupon he demanded of one of the Officers on the Place, why they had so many Colours, and so few Men? who answered, that they had many of their Men slain and wounded in the Siege.* So as by this Account, they had more Foot in the City, by seven or eight hundred, when it was surrendered, than Prince *Rupert* had without it, whose Forces were most Horse; and therefore a sufficient Garrison to defend it against so small a Force. Besides, it appears by the Relation of *Glocester Siege*, Pag. 1. (attested by Mr. *Pury* to be true) that there were about nine thousand Men more before *Glocester* than there were at *Bristol Siege*. If then *Glocester* Garrison, consisting at the most but of 1500 Men, were sufficient to guard it against 9000 more than were before *Bristol*, then *Bristol* Garrison of above 2000 Foot, and 300 Horse, must needs be abundantly sufficient to defend it against 9000 Enemies less than were before *Glocester*. And whereas the Defendant alledged his Letter of Complaint for want of a sufficient Garrison; this was in *March* 20, 1643. when he had but one complete Regiment of Foot, and but two Troops of Horse, not at the Siege, when he had above twice double the Number. 5. For his Excellency's Opinion, and his own Propositions, that the Garrison should consist of three Regiments of Foot, and three Troops of Horse and Dragoons: It was answered, that he had above that Number of Horse, and almost his full Number of Foot at the Siege, and might have raised more had he pleased; therefore a competent Garrison, according to his own Desire. But that which quite takes off this Objection, is, That such a large Garrison as this, was not desired by him, or thought meet by his Excellency, only to defend *Bristol* against a Siege, but likewise to defend *Bath*, *Berkley-Castle*, and the Country round about for twenty Miles space, and to suppress Insurrections, if any should happen in the Western Parts; as appears by his Excellency's Letter, and his own Propositions. Therefore this Pretence, that he had not a full Garrison to defend the Town, because he wanted some of his number of Foot, which should have defended *Bath*, and the Country twenty Miles round about, is but an impertinent Plea. 6. For his want of Reserves to relieve his Men, himself confessed, that Reserves might have well been

drawn from the main Guard and Castle Garrison, who were not in any Fight or Action during the Siege; that he had some few Reserves for some particular Places, as there was Occasion; that Captain *Stokes*, whose Company was a mere Reserve, stood in *St. James's Church-yard*, when the Enemy entred, tho' not employed to repulse them at the first, nor afterwards in the Sally. If then he had Reserve for some special Services, he had, no doubt, a competent Garrison; it being unusual to have a whole Reserve, and a vast unnecessary Expence to maintain a double Garrison in any Place. 7. Whereas he alledged that his Men, for want of Relief and Reserves, would have quite been tired out in three or four Days more, having been near five Days on Duty without Relief; and that a Man might die of a lingering Consumption as well as of a Fever. It was answered, That the Garrison of *Glocester* had no Reserves at all, and were constantly upon Duty without Relief, above thirty-five Days and Nights together, yet held it out courageously, without dying of a Consumption; and why *Bristol* Garrison might not have done the like (being furnished with good Store of *Bristol* Milk, strong Wines and Waters) with as good Success, had the Defendant put them to it, (especially having some Reserves to relieve one another) he could see no Reason, but only his willingness to yield up the Town to the Enemy, for fear of a Consumption, of which none are willing, or use to die, till Nature be totally spent. 8. There was then no Sicknes at all in the City, no want of Provisions, or Necessaries; no Loss but of eight Men at the most when yielded: how then the City and Castle could be surrendered upon this Pretence of an Impossibility to keep them longer, for want of a sufficient Garrison, we cannot conceive; especially since the Women with their Children proffered to go unto the Cannons Mouth to dead the Bullets.

Thirdly, To the pretended want of Match, Powder, Ammunition, (for a Sufficiency of all other Provisions and Victuals was acknowledged) it was answered, 1. That we had proved * there were 1400 weight of Match (besides a Dray-load more of Match in the Castle itself, when surrendered; and a Match-Maker with Materials to make more Match in the Castle as fast as they could spend it, besides much Match in the City: and he might as soon have alledged want of Water in the River *Avon*, as of Match in *Bristol*, which makes Match and Cordage for all the West of England, and other Parts. 2. For Powder, we have proved by some Witnesses, that there were at least sixty Barrels in the Castle only, besides as many more in the City, Forts, and what was weekly made in the Town: yea some Witnesses prove there were seventy double Barrels in the Castle, left to the Enemy. Captain *Husbands* confesseth he had two Barrels of Powder in his Fort, *Arthur Williams* attesteth there were sixty Barrels in the Town, and Major *Allen* brought nine Barrels more from *Malmesbury*: And by his own printed Relation, there must be at least 90 Barrels left; For he therein confesseth that he found 45 Barrels of Powder in the Town, when he first entred upon the Charge thereof; after which he received 30 Barrels more from London, 126 Barrels from France, besides six or seven Barrels weekly made in the City, all the Powder taken out of Shops, Ships, and the nine Barrels from

* Joan Battin, Arthur Williams, Major Wood.

from *Malmesbury*; all which (admit the Barrels out of *France* single) amount to 210 Barrels; but to 336 Barrels, if those from *France* were double, as they were: Of these he saith, Sir *William Waller* had about 60 Barrels, and that he spent about 60 more in the Siege: deduct then 120 Barrels out of 336, there remained no less than 216; or 120 out of 210, there were left 90 Barrels at least by his own Confession, allowing him all that was made or found in the City and Ships merely for Waste and Musters. And whether there were a Necessity of surrendring the Town for want of Powder, when so many Barrels remained only in the Castle, besides what was in the Forts and City, let all Men judge: there being 60 Barrels more than Col. *Massey* had when *Glocester* was first besieged.

But his grand Pretence is, That this Powder would have lasted them only two or three Days at most; whence this Prodigal of his Powder, not Blood or Coin, writes thus in his *Relation*, Pag. 9, 10. *That which made it evident, we could not hold out the Castle above two or three Days, was, because we had Ammunition for no longer Time, having only 50 Barrels of Powder, and no Match, at all, (No Match for himself, he means for Cowardice, else there was Match enough) and according to the Proportion of Powder, we had spent the Days before, would not have served us above two Days, and it is clear we should not have had any Relief in six or eight Weeks.* A pretty prejudicating Fancy, not to be admitted on any Terms: For by the same Argument he surrendred it up now when he had 90, or admit but 50 Barrels left; he would have then yielded it had he 500 remaining: For thus he would have argued, 500 Barrels after the rate of 50 Barrels we spent the two first Days, would have lasted us but twenty Days at most; and we could have no Succour in six or eight Weeks, therefore I was necessitated to render the Town for want of Powder to hold out till Relief might come: Nay, if he had 1000 Barrels then left, he would by this Reason have yielded the Town up, for want of Powder: for he argued thus; Col *Warrnslow* at *Plymouth* spent 40 Barrels in one Day; Ergo, I should have spent so many every Day at *Bristol*, and by this Computation 2 1000 Barrels would have lasted me but 30 Days: and I had no hopes of Relief in forty or fifty Days at nearest; Ergo, I was necessitated to yield for want of Powder to serve me till Relief might come. Had valiant *Massey* argued thus at *Glocester*, he might have surrendred it to the King on this Pretence the very first Day and Hour he came before it. He might have alledged (with better Reason than Col. *Fiennes*) we have but 30 Barrels of Powder in all to defend the Town with, and these will not last above one Day, for Col. *Fiennes* spent thirty Barrels a Day at *Bristol*, and Col. *Warrnslow* 40 in one Day at *Plymouth*: Therefore 30 Barrels against a far greater Army of Enemies, will not last above one Day, and we lawfully may and ought, in true Military Policy, to surrender *Glocester* to the Enemy the first Hour they come before it, for want of Powder, since Col. *Fiennes* surrendred *Bristol* for this very Cause, when he had twice as much Powder as we. Had *Massey* done or argued thus, what had become of *Glocester* and the Kingdom ere this? But since he made no such anticipating Argument, but with his little Store of Powder (far less than was in the Castle of *Bristol* only) maintained the Siege for 31 Days, and preserved the Town when he had more Cause to despair of Relief than Col.

Fiennes, Why the Defendant might not, should not have done the like at *Bristol*, I cannot yet conjecture. Indeed, he saith, in his Answer to the eighth Article, *That he was less able to defend the Town four, or the Castle fourteen Days, than Massey was to defend Glocester 24 Days with the same Proportion of Powder.* Certainly, if it were possible for *Massey* to defend *Glocester* against a far greater Force than was at *Bristol* with 50 Barrels of Powder for 31 Days, it was more possible for the Defendant to have defended the Castle of *Bristol* of less Circumference by three Parts than it, with 90 single or 70 double Barrels (which he surrendred) for three times 30 Days, and till Succours had arrived. But to exclude all Pretences, Mr. *Prynne* affirmed, that there must the same Rule and Law be observed in case of Powder, Ammunition, and Men, as there is in case of Victuals: And what that is, the King of *Sweden*'s and his Excellency's Articles of War (newly reprinted, define, to wit, *a present and absolute want of Victuals, and all edible things to sustain Nature*: And so a present absolute Want and Expence of all Powder and Ammunition; else any Fort may be betrayed upon remote pretended Necessities. A Governor must not argue thus, It may be I may spend 50 Barrels of Powder in two Days: Ergo, 50 being all my Store, I will presently surrender before I put it to the Hazard, and yield up my present Stores to the Enemy before the two Days expire: for then what Place can be secure, or will hold out to real Extremity? But on the contrary, he must thus resolve, I have thus much Powder yet left, and by good Husbandry it may last much longer than I apprehend; the Enemy's Ammunition, for ought I know, may fail before it, who knows not how small our Stores now are; however it is better I should spend that little I have left against the Enemy, rather than yield it up to supply their Wants and annoy our Friends: Therefore I will, yea, I ought in Reason and Duty to be reduced to a present real, not a surmised possible Want of Powder, before I would yield up the Fort, committed to my Trust, to the whole Kingdom's Prejudice. This was Col. *Massey*'s Resolution, this ought to be the Conclusion of every Governor whatsoever, and of the Defendant at *Bristol*, which wanted neither Fortifications, Men, Victuals, Ammunition, Cannon, Powder, Wine, Beer, Match, Water, nor any Necessaries when it was surrendred, to defend it till Supplies might have arrived. Therefore it was yielded up before any the least Extremity, and so unworthily, and cowardly, both in Law and real Verity.

Fourthly, as to his best and most special Plea or Inducement, That he *surrendred the City and Castle so speedily as he did, of Purpose to preserve a Body of 1500 Foot and Horse for the Service of the State, then wanting Men; and the Lives and Estates of divers of our Friends.*

Mr. *Prynne* answered, 1. That he might be ashamed of such a poor absurd Pretence as this, to veil his Cowardice: his Surrender in Truth being but to save his own Life and Estate, not the Garrison's, who were safer in the Town and Castle, than in any other Place whatsoever, and lost both themselves and their Estates by surrendring them, which they had preserved (as *Glocester* Men did their City and Estates) had they manfully held them out to the last.

2. The Parliament had no less than 2000 armed Foot, and 300 Horse in the City, to serve them there

there immediately before the Surrender: yet this thrifty Governor would for their Service and Advantage, surrender both City and Castle, with all the Cannon, Ammunition, Arms, Magazines, Provisions, Wealth, Ships, Prisoners, Colours in it, to preserve them only 1500 disarmed, plundered, dismounted Men, to serve them God knows where or how. A very frugal Steward surely for the Republick, to lose them no less than 800 Men in the very Bargain, with the City, Castle, Arms, and Premises to boot.

3. Neither did he save those 1500 naked Men, as he pretended, nor yet a Body of three hundred to serve them else where, he bringing scarce one hundred of them with him into *London*. He lost the City, Castle, Arms, all else in them before, only to save the Men, and their Estates; and after lost both the Men and their Estates, to save himself, never reserving so much as one Ensign, Drum, Trumpet, upon the Parley, to call or keep his Men together, nor yet mustering them into Order, nor marching away with them in a Body, nor relieving them when dismounted, plundered, abused in his Sight, leaving every Man to shift for himself the best he might. And was not this a pretty Saving of Men to serve the Parliament elsewhere, thus carelessly to lose them, and of twenty three hundred Men compleatly armed to serve them, to preserve scarce two hundred, stript of all their Arms, and quite disbanded? God preserve the Republick from such frugal Stewards, such pernicious Bargains.

4. Admit he had saved full fifteen hundred unarmed Men to serve the State, was not this a sweet Purchase (think you) to save so many Mens Persons with the Loss of such a Place of Consequence, Strength, Shipping, Trade, Command by Sea and Land, with the Hazard of the whole Kingdom? Better himself, and all those fifteen hundred, nay, better ten thousand Men had bravely lost their Lives in Defence thereof; yea, better the whole City had been ruined, if not possible otherwise to be secured to the State, than that the Enemy should have so easily possessed it, to the City's, Country's, and whole Kingdom's infinite Prejudice.

5. The Parliament needed no Man at that time to serve them elsewhere, but they would extremely want *Bristol* were it lost, far more than they wanted Men. It was a bootless Service then, to lose what they should certainly most of all want, to preserve only what they needed not.

6. These Mens Service was useful no where but in *Bristol*, where the State only needed and expected it; and those who would not do them the best, the uttermost Service there where they most needed it, with the Hazard of their Lives, would hardly do them Service elsewhere, unless they might have Victory in a Bag, (as *Ulysses* had the Winds) and might fight only where they were sure of no Resistance, to gain *Sarmacida spolia, sine sanguine & sudore*.

7. They could do the Parliament no such good Service any where as there, in keeping *Bristol*; there most of them were in their proper Center, their Native Soil, where they fought for their Lives, Estates, Lands, Houses, Wives, Children, Liberties, in the very Height and Strength of their Spirits; there they were entrenched in strong Forts and Bulwarks, well mann'd, victuall'd, ammunition'd; where, in respect of the Enemy's Disadvantage in assailing,

and their own Conveniency in defending, they might have slain one hundred Enemies for one of ours, as they had done before, killing and wounding above fifteen hundred of the Enemies, with the Loss only of eight of the Garrison; after which Rate they might have slain the Enemy's whole Army with the Loss only of one hundred Men, (a Service they could never hope to attain to in the open Fields) and also have saved not only fifteen hundred, but two thousand two hundred of their own Men, to serve the State, together with the City, Castle, Ships, Arms, Magazines, and Western Parts, all depending on them; and that with the total Ruin of the Enemies Forces.

8. It is very improbable that these Garrison-Soldiers and Citizens would adventure their Lives to serve the State in any Place else, who would not do it on their own Dunghil, and in their proper Charges, where they were most concerned; those that will not fight it out to the utmost in a Fort where they have all Advantages, will certainly not do it in the open Fields, where the Enemy and they are upon equal Ground. And it is not very likely, that Men disarmed, discouraged, left to the Scorn and Plunder of the Enemies, stript of all their Fortunes, driven from their native Habitations, and brought to trust to the Enemy for their Lives, rather than to God and their own Swords for Victory and Security, should fight for the Parliament without Arms, or any other Encouragement in the open Fields.

9. Admit he secured the Parliament fifteen hundred pillaged naked Friends to serve them elsewhere, yet sure I am, he hath truly gained them fifteen, nay, fifty thousand Enemies, with all the Arms, Strength, Ports, Forts, Traffick, Provisions, Wealth, that the West of *England, Wales, or Ireland* can afford, whence divers Thousands of Enemies and Rebels are lately arrived in *Bristol* Ships, to cut our Throats, possess our Estates, yea lay our Kingdom waste. And was not this a good Piece of publick Service worthy our highest Applause?

10. The very Loss of *Bristol* (for ought any wise Man can yet perceive) is like to cost the Parliament and Kingdom the Lives of above fifteen thousand, nay thirty thousand Men, (as it hath cost them some thousands already) ere *Bristol* and the West be reduced to that Condition they were when this City was surrender'd. And is not this a sweet Piece of good Husbandry, to endanger the Loss of thirty thousand Mens Lives, but to save the Lives of fifteen hundred only, and that when they were in greatest Security, and no Danger at all of being lost, had they stood it out?

11. The Defendant and his Men were purposely placed in the City and Castle, (to the Kingdom's vast Expence) to this very end, that they might preserve them from the Enemy, even with the Loss of their Lives, rather than the Enemy should possess them to the publick Prejudice: And yet this valiant Gentleman is so discreetly sparing (at leastwise of his own, if not of their Lives) as rather certainly to lose the Town and Castle, than to hazard the Loss of all or any of their Lives, contrary to his very Trust and Duty.

12. Might not every Governor and General upon this Pretence deliver up any Fort, City, Town, Country to the Enemy, without Shot or Stroke, to preserve the Lives of their Men to serve the Parliament elsewhere? Had Colonel *Massey* at

Glocester, or *Col. Warnslow at Plymouth*, made this Plea of saving their own and their Garrisons Lives, to serve the Parliament elsewhere, these Towns might have been yielded up upon better Articles than *Bristol* long ago. Had his Excellency been acquainted with this frugal State-Policy by *Col. Fiennes*, at the famous Battles of *Edge-Hill* and *Newbury*, he might easily, before the Fights began, have founded a Parley, and yielded up all his Ammunition, Cannons, Arms, Carriages, Colours, Drums, Cornets, Prisoners to the Enemy, and given them the Honour of the Field, of purpose to save the Effusion of Christian Blood, and preserve the Lives of his Soldiers to serve the Commonwealth in other Places, (there being the same Pretence of Reason in these Cases as in *Bristol*;) And then I pray, what had become of our Parliament, Religion, Laws, Liberties, Estates, and Lives too ere this; I doubt they had all been lost by this new kind of Saving. And then what Service could these Men do the Parliament or State when all was certainly lost? We owe our Lives, Limbs, Fortunes, all we have, to our dear Country; delete this Principle out of Mens Hearts, and you dissolve, yea ruin all civil Society. It is therefore no Excuse at all for the Defendant to lose this Place of Consequence to save a few Mens Lives, or Estates, together with his own.

13. It is the greatest Honour of a Governor, and a Soldier, to die fighting; to lose his Life to save his Country. The very Heathen Romans, and *Tully*, teach us thus much Martial Divinity: *Dulce & decorum est pro patria mori*. But this unmanly Governor was clear of another Mind, he will neither hazard his own, nor other Mens Lives to save a City, a Parliament, a Kingdom. Better all these were lost than his Life, or Garrison endangered by any bloody Assaults. And is not then this his principal Excuse the highest Manifestation of a degenerate cowardly Spirit? Our Saviour Christ informs us, *He that loseth his Life* (by adventuring it for his Religion, God, and Country) *shall save it*; yea, and the Place committed to his Trust, as *Massej* and others have done: *but he that will save his Life* (or others) by a cowardly and unworthy Surrender, as this Gentleman did, *shall lose it*, and that deservedly, by the Ax of Justice, for such unmanly Cowardice. It was *Caiaphas's* Divinity concerning Christ himself, *It is expedient for us that one Man should die for the People, that the whole Nation perish not*: And it should have been the Defendant's Honour and Integrity to have said the like; better that I, being but one Man, yea, better my whole Garrison had died in defending this noble City, than that the whole Nation should perish thro' its Surrender, to preserve our Lives. It was the Defendant's Promise before the Siege, *to die in Bristol's Defence, and lay his Bones therein*; but this he now professeth, was spoken only in Policy, to encourage and keep the Soldiers in heart, not in reality with any Intent to perform it. Certainly if it be a sign of a good Shepherd, or Governor, *to lay down his Life for his Sheep*, his Country, it is an undoubted Badge of an evil and timorous one, to refuse to do it after so many Promises. This is the Defendant's Case, who would rather adventure his Head in a martial Trial, than his Life in a Breach, and for this deserves the Loss of both.

The next Debate was of a Point of principal Concernment; namely, *What should be judged uttermost Extremity in regard of Men, Ammunition,*

Viſuals, or Intenability of any Fort, to justify the Governor's Surrender of it to the Enemy? And whether the Defendant were reduced to any such Extremity ere he surrender'd Bristol?

For resolving of this grand Question, Mr. *Prynne* alledged, that his Excellency's Ordinances of War determined, *That whosoever yieldeth up any Town, Fort, Magazine, Viſuals, Ammunition, Arms, or that moveth any such thing but upon Extremity, and that to the Governor, or in Council, shall be executed as a Traitor*. This is the general Law. Now what this Extremity is, will be the sole Question; for Resolution whereof we need go no further than to the several Cases of *Gomineys, Weston, Crissham, Elmham*, and the Bishop of *Norwich*, antiently resolved in Parliament, to the late King of *Sweden's* Military Laws, and his Excellency's own Explanation of this Point (taken out of them) in the second Edition of his *Laws and Ordinances of War*, which reduce Extremity to these three Heads; (where there is no absolute present want of Men thro' Slaughter or Mortality to defend the Place.)

1. *If the Garrison be reduced to an utter Extremity of all eatable Things whatsoever, so as they have no kind of Food whereby to subsist, but must necessarily perish by Famine if they yield not presently.*

2. *If there be no hope at all left them in such a Case of any Succour or Relief.*

3. *If without parlying at the very Instant, both the Forts, Men, and Arms, must of necessity fall into the Hands of the Enemy.* If the Governor can prove by pregnant Witnesses that he was really reduced to all these Extremities, then he is to be acquitted; but if he fail in real Proof of any one of these, then he is to be condemned and executed as a Traitor, both by the King of *Sweden's* and his Excellency's Martial Laws: and this is the general Law-Martial of all Nations, approved by our own Common Law, of purpose to establish Military Discipline against Cowardice, Negligence, and Treachery, which are apt to be varnish'd over with specious tho' false Pretences.

To prove this Definition of Extremity, Mr. *Prynne* produced the last Edition of his Excellency's Ordinances of War, printed by his special Command, and the Judge-Advocate's License. But the Judge-Advocate opposed the reading of them, pretending they were not yet approved by his Excellency so far as to be used at a Council of War, and that they were made since the Loss of *Bristol*.

To which Mr. *Prynne* reply'd, that they were printed by his Excellency's special Direction, and enjoined to be observed by all, (as appears by the Title) having been first voted and agreed on at a Council of War; that the publishing of them in Print, by special Command, was the highest Approbation that might be; and it were in vain to ratify and publish them, if we might not make use of them at this Council of War, in a Case which falls punctually within their Resolution: and tho' *Bristol* was surrender'd before the last Edition of these Ordinances, yet this Clause which defines Extremity, being on y an Exposition of the former Laws, and no new additional Law not formerly published, we might and ought to read it of right, to determine this Difficulty, for which it was purposely added. But the Advocate being very earnest against the reading thereof, the Council referr'd it to my Lord General, whether the *Explanation in the new printed Ordinances and Laws of War* should be used at this Trial? Who declared his Judgment, they should not now be read, or used.

Whereupon

Whereupon Mr. Prynne laid down this Conclusion for a positive and necessary Principle in War, that utmost Extremity to justify the Surrender of any Garrison, Town, Fort, or Place of Consequence, must not be an imaginary, or possible Extremity, or a conjectural Improbability of holding out any long time, but a real, necessary, and present Impossibility of holding out any longer against the Enemy: affirming, that no Governor of any fortify'd Town or Castle ought to surrender the same upon any pretence of Extremity but where there is an absolute, real, and present Impossibility of holding out any longer than that very instant time wherein he makes the Surrender. The Reasons whereof (he said) were very observable, grounded upon the highest Principles of Policy and War; as namely,

1. To retard the Enemy's Progress and Conquests, lest a whole Kingdom should be lost in a Moment, as all England would have been long ere this, had Gloucester, Hull, Plymouth, Exeter, and other Places, made no longer nor better Resistance than Bristol tho' not of such importance to the Realm, nor so well furnish'd as Bristol with all manner of Provisions for a Siege. A General of an Army, Governor of a Town, must defend his Part with respect to the whole Kingdom; and therefore tho' he cannot hold his Ground, or guard his Fort absolutely, or for any long Space against the Enemy, yet he must lose Ground but by Inches, not give it away by whole Towns or Countries; and tho' he cannot defend his Charge still, yet he must hold out till the last Minute to stay the Enemies Progress, and prevent a sudden total Conquest of the Realm.

2. To spend the Enemies Men, Ammunition, Provisions, a long Siege being the usual Bane of any Army; an infinite Charge, Disadvantage, Discouragement to the Besiegers, but great Advantage, Encouragement to the opposite Party.

3. To give a good Precedent and Encouragement to other Governors, Garrisons, Forts, adjacent Counties, and to uphold Martial Discipline thereby; the holding out of a Place of Consequence (as is evident by the late Example of Gloucester) giving great Encouragement to the adjoining Places to hold out strenuously to the last, and animating all the Party adhering to them: whereas the sudden Loss, or yielding up of any eminent City, strikes Terror into all adjoining Towns, Forts, Counties, who presently wheel about to the conquering Enemy, as appears by the Example of Bristol; whose unexpected Surrender, drew on the Loss of Dorchester, Barnstable, Exeter, Dartmouth, with most of the Western Parts; and it had hazarded the Loss of London, yea of the whole Kingdom, had the Enemies pursued their Victory to London Walls, and not been unexpectedly beaten off at Gloucester, endanger'd by Bristol's Surrender, and quite given for lost by Col. Fiennes and his Officers.

4. To give Advantage of surprizing other Places, or Quarters of the Enemies, to cause either a Raising of the Siege by such Diversions, or to get something equivalent to the Place besieged, in case it should be lost, or not relievable: whereas a sudden unexpected Surrender forestals all such Diversions and Compensations of Losses. Had Bristol been held out to the utmost, in case his Excellency could not have timely relieved it; yet he might have carry'd Oxford, or surprized divers of the Enemy's Garrisons, Forts, Men, Arms, Horse, in other Quarters, whilst they were occu-

pied at Bristol; when as its sudden Surrender before three full days Siege, anticipated all Diversions, and Recoveries in Value, to help ballance Bristol's Loss.

5. To deprive the Enemy of the Ammunition, Provision, Victuals, and Magazines in the Town and Castle; which if spent in their Defence, to the Enemy's Loss and Slaughter, the Cannons cloyed, the Arms made unserviceable to the Enemy, they could not have readily been supply'd from other Parts, and so the Town and Castle might have been easily regained by a present Siege, in case they had not been seasonably relieved: however, the Victory at least had been less honourable, less advantageous to the Enemy; who by an unworthy speedy Surrender gained a City and Castle ready fortify'd, victualled, ammunition'd, provided with all Necessaries to their Hands; fit for present Defence, without any Cost or Labour; with Cannon and Arms almost sufficient to furnish an Army by Land, and Shipping enough to set out a strong Fleet by Sea.

6. To preserve the adjacent Towns, Forts; Counties, depending upon the holding out of the Place besieged, who by a cowardly present Surrender may be in danger to be surprized on a sudden, and taken unprovided of Ammunition, Men, Arms, Victuals, or sufficient Fortifications. If a Town well fortified, manned, victualled, to hold out three Months Siege in most Mens Opinions, shall be cowardly yielded up before Extremity, in three Days space, as Bristol was; all the neighbouring Garrisons, Counties, Cities, Castles, who depend upon its three Months Defence, are in danger of surprisal, and being taken unfurnished at unawares, as infinite historical Examples evidence; and the unexpected Surrender of Bristol (as the Relation of Gloucester Siege truly styles it) was likely to have endangered Gloucester, whose vigilant Governor would doubtless have been better furnished with Men, Ammunition, Victuals; had not Bristol's over-hasty Surrender forestalled his Intentions. And who knoweth not, that this Surrender might have endangered the Loss of London thro' an unexpected surprize, had the Enemy presently advanced towards it, as some advised?

7. If any Town be yielded up before absolute Extremity and Necessity of holding out longer, there is a most certain present Loss to the State, (perchance irrecoverable for the future too) but if held out till Extremity, there is still either a probability or possibility of securing and preserving it left, even to the utmost minute of its Tenability, and that by infinite Casualties, Contingencies, and Passages of divine Providence, transcending all human Apprehensions. As, (1.) By unexpected Supplies from other Parts. (2.) By Diversions or Invasions of the Enemies Quarters elsewhere, engaging them to raise their Siege. (3.) By successful Sallies. (4.) By extraordinary slaughters of the Enemies upon disadvantageous Assaults, of which they of Bristol had former Experiences, where the Enemy lost an hundred Men to one of ours; and had near 1700 slain and hurt in less than three Days, with the Loss only of seven or eight. (5.) By sudden Sickness in the Enemies Camp. His Excellency (as this Defendant affirmed) had two or three hundred Men that fell sick about this time in his Army in one Day, and one thousand or more in one Week's space, and the Enemies (for ought he knew) might have undergone the like Mortality. We read that God's Angel in-

one Night slew in the King of Assyria his Host, an hundred fourscore and five thousand Men, and thereby raised Jerusalem's Siege: And for ought the Defendant knew, God might have sent an equivalent destroying Plague among the *God-damn-me Army of Cavaliers*, who besieged *Bristol*. (6.) By unreasonable tempestuous Weather, which had broke up many Leaguers. (7.) By the Death or Slaughter of some principal Officers or Commanders. (8.) By sudden pannick Fears and Apprehensions of approaching Rescues, of which we have an eminent Scripture-Precedent in the Besiegers of Samaria; to omit profane Histories. (9.) By sudden Mutinies and Discords among themselves, which in Scripture, and Stories, are copious. (10.) By Scarcity of Provisions, with which the Enemy before *Bristol* was very much pinched, as Mr. *Savidge* deposeth. (11.) By want of Ammunition, the Enemies condition at *Bristol*, who had spent most of their Powder and Shot, of which they had far less in their Camp, than the Defendant surrender'd to them in the Castle. (12.) By Despair of Success, for which very reason the Enemies had retreated from *Bristol* in two or three Days more, had those who entred the Lines at first been repulsed, as they might have been with ease, tho' the Defendant alledged they had taken a solemn Oath not to raise the Siege till they had taken the Town; which might have been as easily frustrated, as the Oath of the *Jewish* Conspirators, *Who vowed they would neither eat nor drink till they had murdered Paul*; yet missed of their Design. Besides all these (whereof Histories afford plenty of Examples) there are infinite other Contingencies frequent in Story, whereby God, out of his divine Providence, hath many times miraculously preserved Forts and Cities, even in their utmost Extremities, against their potent Enemies; when they have been resolute to stand out to the last, especially in the Cause of God, Religion, or their Country. And in such a Case as this is, where we may with Confidence expect the best and speediest Assistance the Lord of Hosts, and God of Heaven can provide for us, (if we dare rely upon his Promises or Providence without distrust) he deserves not the Title of a Soldier, much less of a *Christian Soldier, Governor or Commander*, who will not trust God to the utmost Exigency, and rely upon his Power, Wisdom, Faithfulness for seasonable Deliverance and Relief; which the Defendant (for want of Faith as well as Courage) durst not do, and so yielded up all.

8. If absolute and present Impossibility of longer Defence, be not made the only Rule of utmost Extremity, we shall open a wide Gap to the Treachery, Cowardice, Negligence, Indiscretion, Avarice, Ambition, Discontent of every Governor and Commander, to the Overthrow of all Martial Discipline, and expose the whole Kingdom to speedy Loss and Ruin; it being an easy matter for any Governor or Commander, how cowardly, false or treacherous soever, to invent many plausible Excuses, many forged, supposed, probable Extremities, and to find Witnesses under his Command to attest them; and by Pretext thereof, to betray and yield up the most considerable Towns, Castles, Forts, throughout the Realm, to the Enemy, without any Stroke at all, or after a few Days counterfeit Siege, the better to palliate his treacherous Designs. And therefore upon all these Grounds, as likewise to reduce Extremity to a certainty, no other Extremity ought to be ad-

mitted, but only a present absolute Impossibility of holding out any longer; to which the Defendant was no ways reduced, as we have already proved.

In Opposition to these Reasons, Col. *Fiennes* maintained these three Things.

The first was this, That whenever the principal Rampart of any Town was once entred by the Enemy, this was a sufficient Extremity to justify both a Parley and Surrender. But the Line of Communication which the Enemies entred at *Bristol* was the principal Rampart, as he pretended: Therefore his Surrender of it upon their entering the Line, was justifiable.

To which was answered: 1. That the Enemies entering the principal Rampart, is no lawful sufficient Ground of a Parley or Surrender, no nor yet the taking of the principal Fort (for the Reasons aforesaid) as long as the other Forts or Towns are tenable; by holding whereof the Enemy may in time be repulsed out of the Works they have entred. If this were true military Doctrine, then *London* should by like reason be surrender'd to the King, in case he came before it, together with the *Tower*, as soon as the Line of Communication (the chief Rampart) were enter'd, or any Out-Fort taken; and an whole Army should yield the Field, if one Troop or Company of the forlorn Hope were routed. 2. Tho' the Line of Communication of *Bristol* were enter'd in only one Place, yet not one of the Out-Forts was taken; the Body of the City defended by the Key, and all that Part beyond the Bridge, together with the Castle (the chiefest Fort, Rampart, Sconce) and every Street in the Town both tenable and defensible, as we have formerly proved; therefore the Enemies bare Entry within the Line of Communication only, was no Extremity at all to justify its Surrender, in the Judgment of any but extreme Cowards. 3. That the maintaining of such a cowardly Paradox to excuse this Surrender, was an Argument it proceeded from Cowardice, and a sufficient Proof of a timorous Spirit.

The Second was, That if the Enemy had once enter'd or possessed the Town, the Castle ought not to be kept to the Prejudice of the Citizens, but ought to be surrender'd together with the Town, by the constant Practice and Policy of War in all Places, all Ages. In which he was so confident, that he challenged Mr. *Prynn* to shew one Precedent to the contrary, and produced divers Examples in foreign Parts, out of *French Mercuries* and *Gallobelgicusses*, with some late Examples at home to justify this Assertion: As namely, the Example of *Leipsick, Mentz, Philipsburgh, Prague, Aushurg, the Burse, Breda*, and other Towns abroad; of *Portsmouth, Exeter, Lincoln, Worcester, Winchester, Chichester, Malmesbury, Hereford, Taunton Town and Castle, Bridgwater, Dorchester, Dartmouth, Lime, Reading*; where he saith, the Towns and Castles were both surrender'd together, and not the Castles held out when the Towns were taken; yet none of these Governors were ever questioned by the King or Parliament. And he gave this Reason to prove this Paradox, that if Castles should hold out when the Towns were taken or yielded, it would much dishearten the Citizens, and make them unwilling to entertain or assist any Garrisons in the Castles.

To which Mr. *Prynn* retorted, That this was the grossest Absurdity that ever was broached by any Man in his right Senses, and had he not been intoxicated

toxicated with a Spirit of Pusillanimity, he would never have invented such a poor Subterfuge, or made such an ignorant Challenge as this to save his endangered Life. For, 1. Castles and Citadels, in most Towns, are usually the strongest, most tenable, most impregnable Places of all others, best able to resist and annoy the Enemies; the Out-works, Line, and Towns themselves less tenable and resistible than they: to argue therefore, that the Castle ought to be surrender'd as soon as the Town is enter'd or taken by the Enemy, is in effect to aver, That the strongest Fort of all must be yielded, because the weakest part of all is enter'd. If this were a good soldiery Argument, then, by the self-same Reason, if there were twenty strong Forts or Castles about a Town, and but one weak one, the whole twenty strong ones, tho' tenable, must be yielded, because only the weakest one was forced; and the Lord Mayor of *London* (in case that City were besieged) might yield up both the Tower, Town, and all the other Forts to the King, if the weakest part of the Line were but enter'd, or *Hide-Park* or *Issington* Fort once enter'd by the Enemy; yea, by this kind of Soldiery, if the weakest Troop or Company in an whole Army be routed, the main Body and Battallion of it must presently yield up themselves and the Field too, because this weak Party thereof is defeated: and his Excellency at *Edge-hill* Fight, where some of his Horse and Foot run shamefully away upon the first Charge, should by this senseless Policy have fled or yielded, and not won the Day, (as he did with greater Honour) because the worst and weakest part of his Army was routed. But since all Men know, that the strongest Forts and Parties are to defend the weakest, not the feeblest them; and the Castles in Cities made more strong and tenable than other Parts, for this very purpose, that they might hold out when the weaker Parts are taken, (this being the only Use for which they were built and made so strong) the Reason holds good on the contrary Part; that because the Town which is the weakest is taken, therefore, for this very Reason, the Castle, which is the strongest Part, ought to be held out and not surrender'd.

2. Castles in most Towns command the whole Towns where they are, and those who are Masters of them, are still Masters of the Places, and will soon regain the Towns; but if once surrender'd, the Enemies become presently absolutely Masters of both; and no Hope is left of regaining either Town or Castle again, without a Siege, or infinite Expence and Danger. Therefore there is all the Reason in the World to maintain the Castles to the utmost, when the Towns are enter'd, and not to yield them up together, both to preserve the Dominion of the Place, and regain the Towns with Ease and Speed.

3. As long as the Castles hold out, the Enemy can enjoy little Benefit by the Towns, and have less Security in them. Besides, their Conquest is incomplete, less terrible, not advantageous; their Progress from thence to other Places retarded, unless they leave the Castles unbesieged. And their forcing of the Castles will consume them far more Men, Ammunition, Money, than the entering of the Towns, which, without the Castles commanding them, are little worth. Therefore for all these Reasons it is apparent, that Castles ought to be kept by the constant exquisitest

Grounds and Policy of War, whenas the Towns themselves are taken or surrender'd.

4. Neither will this be a Discouragement, but the greatest Incouragement that may be to the Citizens, that the Castles must thus hold out to utmost Extremity: (1.) Because the Persons and Estates of the wealthiest Citizens will be there secured against the Enemy's Rage and Plunder, (as the honest *Bristolians* thought to have saved their Persons and Estates, by retiring into the Castle when the Town had been forced; which were lost by surrendering it.) (2.) Because by keeping the Castles, the Towns are certain to be preserved or regained in a short time, and thereby their Liberties and Privileges. (3.) Because by this means they shall not be long under the absolute Power of the Enemy, and new Lords to controul them; whereas if the Castles be yielded, their Persons, Estates, Laws, Liberties, will be wholly exposed to the Enemies Will and Pleasure, and subjected to their Tyranny. Therefore, upon all these Grounds, the Defendant ought to have kept the Castle of *Bristol*, being strong and tenable, to the utmost Extremity, and not to have surrender'd it with the Town, tho' the City had been taken or yielded by Composition.

5. For Examples, Mr. *Prynn* answered, That if he had his Books about him, he could shew him at least one thousand Examples in Story to one of his, where Castles have held out when the Towns were taken or yielded; but since his Challenge was to produce but one Example to the contrary, he should out of present Memory furnish him with divers. The first, was a very antient and memorable one recorded in Scripture, (which he wondred the Defendant, who had read the Scriptures, could forget) to wit, that of *Thebez*, *Judg. 9.* where we read, *That Abimelech went to Thebez, and encamped against it, and took it. But there was a strong Tower (or Castle) within the City, and thither fled all the Men and Women, and all they of the City, and shut it to them; and got them up to the Tower; but did not yield it up, tho' the City was taken. And Abimelech came to the Tower and fought against it, and went hard to the Door of the Tower to burn it with Fire: And a certain Woman cast a piece of a Millstone upon Abimelech's Head, and all to break his Skull: Then he called hastily to his Armour-bearer, and said unto him, draw thy Sword, and slay me, that Men say not of me, a Woman slew him; and he thrust him thro' and he died: and when the Men of Israel saw that Abimelech was dead, they departed every Man to his place.* Thus the Siege was raised, the Town preserved, regained, and that by a Woman. Had Col. *Fiennes*, in case the City of *Bristol* had been taken, retired to the Castle, according to his Promise, and there stood upon his Guard, perchance Prince *Rupert* coming for to assail it, as *Abimelech* did the Tower of *Thebez*, might have been slain with a Millstone by one of those valiant Women who offered to go up to the Cannons-mouth to dead the Bullets, in case he or his Soldiers were afraid to charge; or at least by some Musket or Cannon-Bullet; and so the Siege might have been raised, and the Town regained: No Man could tell whether such an Accident might not have happen'd, had the Defendant patiently expected the Issue of God's Providence in the Castle till utmost Extremity, which no Man ought to despair of, since (as the wise Man informs us) *Time and Chance*

Chance happen alike to all Men. Besides, the Siege might by sundry other forementioned Casualties have been raised, and the City preserved: But alas, the Defendant was so far from having the Faith and Courage of a Man, that he fell infinite short of the Courage and Prowess of this Woman of *Thebez*; styling the holding out of the City and Castle, tho' but a Day or two longer, a *desperate Resolution*, &c. not staying till they were assaulted, but presently yielding up both without any Assault, contrary to this Scripture Precedent, which he had neither Heart nor Courage to imitate. But lest he should pretend this one Example to be singular, I shall furnish him with sundry others, which I wonder he could forget. If he had read the *Roman Story*, he should have found the *Capitol* defended against the *Gauls* when the *City of Rome* was taken; and preserved from *Surprize* only by the crying of a *Goose*. In our unhappy antient Civil Wars, the *Tower of London* hath oft-times been held out when the City hath been yielded; the like we read of the Castles of *Edinburgh*, *Berwick*, *Northampton*, *Salisbury*, *Devizes*, *Oxford*, (in the time of *Maud* the Empress) *Rocheſter*, *Bedford*, *Nottingham*, *Pomfret*, frequently kept in former times, when the Towns were yielded, or taken: and not to rove farther for Precedents; even *Bristol-Castle* itself was held out by *King Edward II.* and the younger *Spencer* (in the last Year of this King's Reign) against the *Queen* and her Son *Prince Edward*, after the Town was yielded up to them by *Composition*, to save their *Lives* and *Goods*; and in these Days *Bristol* was styled and reputed, a good Town, and a strong, well closed, standing on a good Port of the Sea, having a strong Castle, and the Sea beating round about it, writes the Historian. Certainly had this Gentleman well studied the History of *Bristol* while he was there, he might have found a Precedent for holding out this very Castle after the City surrendered, and then he would not have made such a silly Challenge, to shew him one such Example. But if these antient Examples had been forgotten, yet we have fresh Precedents enough of this kind, which we cannot but remember. The Castles of *Warwick* and *Nottingham* both held out lately against the King's Forces, when the Towns were taken. Nay, the very Close at *Litchfield* (tho' no Castle but a Cathedral) held out against the Lord *Brooks*, when the Town was yielded; and since the Parliament took it, against all *Prince Rupert's* Forces, almost as many Weeks as *Bristol* itself did Days, and against near as great an Army, tho' it had not above 160 Soldiers in it: Yea, when the Prince had drained the Mote about it, sprung a Mine, blown up a great Part of the Wall, and enter'd the Breach with above 200 Men (being 50 more than first enter'd the Line at *Bristol*) yet the Garrison there was so far from yielding the Place by a Parley, that they encounter'd the Enemies, took 200 of them Prisoners, beat the rest out, made good the Breach, till all their Powder within half a Barrel was spent; and then came off upon more honourable Terms by far than the Defendant at *Bristol*, (which was not so much as assaulted, much less enter'd) even with their Colours displayed, their Bag, Baggage, Arms, and Restitution of their Prisoners taken by the Enemy: which Conditions were most punctually performed, because they shewed themselves Men of Valour, and had their Arms about them to defend themselves from Violence; when as the Defendant yielded up both

Arms and Colours. To these I might add the Examples of *Limerick* and *Galloway* Castles in *Ireland*, who held out many Months against the *Irish* Rebels, after the Towns were yielded: Of *Stafford* Castle, defended long against the Parliament after the Town taken; and the fresh Example of *Lincoln*, where the Close was kept against the Earl of *Manchester*, after the Town surrendered. But Examples of this kind are so frequent in all Stories, and so experimentally known to every one who hath been bred a Soldier, that I shall forbear to trouble this honourable Council (so well versed in Histories and War) with any more Precedents of this kind.

6. To his objected Precedents, Mr. *Prynn* answered: (1.) That they were only alledged, not proved by Witnesses or Records; *Gallo Belgicus* being neither a legal Testimony, nor Record to be given in Evidence at a Trial. (2.) That many of his Precedents were foreign, and it did not legally appear what were the Grounds of those Towns or Castles speedy Surrenders; which in all Probability was want of Food, there being such a Scarcity of it in *Germany* by Reason of the long continued Wars, that few Towns or Castles were victualled for one Fortnight's Siege: and perchance they wanted Ammunition as well as Food. (3.) It appears not whether those Governors were not questioned, and capitally punished for delivering up these Towns and Castles; since we find that in these late *German* Wars, some have been condemn'd and executed for yielding up Towns too suddenly. (4.) Many of our Towns he named had no Castles in them, at least none fortified to keep out an Enemy. (5.) Although the surrendering and quitting of these Town to the Enemy, was connived at, and never brought legally into question, as the Surrender of *Bristol* now is; yet they deserved to be both questioned and punished, (as the quitting and yielding of *Taunton*, *Dorchester*, *Lincoln*, *Banbury*, *Oxford*, and other Places:) And if so, these Examples can be no Justification or Extenuation of the Defendants Crime. It is no Plea for a Thief, when taken and arraigned, to say, such and such Thieves have robbed others, and yet were never indicted nor punished for their Robberies: *Ergo*, my Robbery is lawful, and I must not be condemned for it. Had they been apprehended and indicted, it had been no Plea for them, that some other Thieves escaped without questioning, therefore no Justification or Excuse for him who is arraigned; yet this is the Sum of the Defendant's Argument: Other Governors in *Germany* and *England*, who have cowardly and treacherously surrender'd and quitted Garrison-Towns, have not been questioned for it; *Ergo*, I must not be condemned or blamed for my cowardly, traitorously Surrendering of *Bristol*, now I am actually impeached and convicted for it. If this be a good Plea, to what end are martial Laws? Every Coward and Traitor shall then 'scape scot-free, tho' he undo and betray a whole Kingdom.

7. Some of the Towns he instanced in, were cowardly quitted, or yielded up upon his Surrender of *Bristol*, (as *Barnstable*, *Dorchester*, &c.) whose Loss must be put upon the Defendant's Score. As for the Loss of *Exeter*, which he instanced, it was answered: (1.) That *Exeter* was besieged, and held out more Months than *Bristol* did Days; being beleaguered above three Months Space ere it yielded: and had he held out *Bristol* so long, as he easily might, it would have been relieved

relieved in half the time, and kept safe till now.

(2.) That the yielding up *Bristol*, was the loss of *Exeter*, which was much discouraged by its ill Precedent, and left destitute of all Hopes or Probabilities of Relief by its Surrender; being too remote for his Excellency to relieve it, without endangering the loss of *Kent*, *London*, and *Essex*, during his absence hence; and there being no other Forces near, that could in any possibility or probability relieve it: yet tho' it were thus hopeless of all Succours, and much discouraged with the ill Examples of *Bristol*, *Barnstaple*, *Dorchester*, *Bridgwater*, *Taunton*, and other Western Towns, it held out till the principal Fort was taken, and all their Powder spent; yea the Garrison and Citizens were all resolved to have kept it with their Pikes and Swords, when their Ammunition was exhausted, had they had but any probable Hopes of Succours from any part; of which being utterly hopeless, they did for want of Powder, after above three Months Siege, surrender the Town and Castle upon somewhat more honourable Terms than the Defendant did *Bristol*. Wherefore this Precedent was so far from justifying his ignoble Act, that it was a pregnant Testimony and Conviction of his Guilt in not holding out *Bristol* three Days, when *Exeter* held out above three Months Siege, and spent all their Ammunition before they fell to Parley.

The third Thing maintain'd by Col. *Fiennes* was, That some Generals had sentenced Commanders to Death for being too obstinate in Defence of Forts, and standing it out over-long; and that a *French* Author (there produced) affirmed, it was a capital Offence to stout out a Place over-long.

To which Mr. *Prynn* answered, 1. That this new Doctrine was certainly calculated only for that Meridian where this great Soldier was born, and fit for none but it. 2. That the Defendant was so far from this Fault of stouting it out over-long, that he deserves to lose his Head for yielding *Bristol* up too soon; which certainly, in all Mens Judgments, is the more capital Crime of the two. 3. That no one Precedent could be produced in Story, where ever any Governor of a Town or Fort was judicially condemned or executed by the Prince or State that intrusted him to keep them, for holding them against the Enemy over-long: And if the Defendant had been guilty of this Crime, we would have been so far from impeaching, that we, and the whole Kingdom, should have honour'd him highly for it, tho' we have both just Cause to prosecute him for the contrary; for which sundry Governors have legally been condemned. 4. That it was a most ingrate Requital to execute any Man for his over-much Valour and Fidelity; and if this were once allowed for Martial Law, it would quickly make all Governors and Soldiers Cowards or Traitors; therefore certainly the Defendant had much mistaken his *French* Author, who writes only in general, that some have been put to death for stouting and holding out a Town over-long, without defining by whom this was done. He pretends it was done by those who intrusted them with the Towns, of which no Example can be produced; but certainly the Author meant it only of the Enemies, who have sometimes put a Governor to death when a Town hath been forced, for holding it over-obstinately out against them, for which there are divers Precedents. And in this Sense (which doubtless is

the true) it suits very well to the Defendant's Case. The poor Man was excepted (as he tells us) out of the King's Pardon sent to *Bristol*, and so like to suffer if he held the Town or Castle till it were forced by the Enemy: Wherefore to prevent all Danger, and save his best-beloved Life, he thought good to avoid the Rigour of this Law, by purchasing his Impunity with the over-hasty Surrender of them to the King; and so by this unworthy Shift,

Incidit in Scyllam qui vult vitare Carybdin:

Forfeiting his Head to the Parliament and Kingdom, to secure it from the King.

Mr. *Prynn* concluded his Reply to the Defence of the fourth Article, and those that followed it, with Col. *Fiennes*'s Commission for *Bristol*, and some Precedents in point resolved in Parliament; the Transcripts whereof out of the Parliament Rolls, proved upon Oath to be true Copies, he there delivered to the Council*.

Col *Fiennes*'s Commission (the Original whereof he there produced) was read as followeth.

Robert Earl of *Essex*, &c. To Col. Nathanael *Fiennes*. By virtue of an Ordinance of the Lords and Commons in Parliament, I do constitute and appoint you Governor of the City of *Bristol*, as also Commander in Chief of all the Forces raised, or to be raised and imployed for the Defence of the said City, and the Liberties of the same, and of the Garrison there, to serve for the Defence of the King, Parliament, and Kingdom. These are therefore to will and require you by virtue of this Commission, to take the said City and Forces into your Charge as Governor in Chief, and by all possible ways and means (except in point of Civil Government) to provide for the Defence and Security of the same, and to maintain the same against all Enemies and Opposition whatsoever: and from time to time diligently to exercise the said Forces within the said City and Liberties, in Arms; commanding all Officers and Soldiers to obey you as their Governor and Commander in Chief, for the Service above-mentioned, according to this Commission given you. And you are likewise to observe and follow such further Order and Direction as you shall receive from myself, or from both Houses of Parliament. Given under my Hand and Seal of Arms this first Day of May, 1643.

E S S E X.

From this Commission it appears, 1st, That Col. *Fiennes* was constituted Governor of *Bristol* by Commission from his Excellency, under his Hand and Seal. 2^{dly}, That he had the Command in Chief of all the Forces and Garrisons there, who were to be imployed for the Defence of the said City, and the Liberties of the same; and to serve for the Defence of the King, Parliament, and Kingdom. 3^{dly}, That he was specially charged by that Commission, to take the said City and Forces into his Charge as Governor, and by all possible Ways and Means to provide for the Defence and Security of the same, and to maintain the same against all Enemies and Opposition whatsoever; and that all Officers and Soldiers were there to obey him as their Governor and Commander in Chief for this Service: Therefore he and his Officers were expressly enjoined by this Commission to defend and keep it against the Enemy,

to

* See these Records at large, with some others to the same purpose, at the end of this Trial.

to the uttermost Extremity, and were there placed for that very Purpose: and that he sent for and accepted this Commission upon these very Terms, and not only to rule his Soldiers, not to keep the Town and Castle, as he falsely at first pretended. 4thly, That he was to observe and follow such further Order and Direction from Time to Time, as he should receive from his Excellency and both Houses of Parliament; therefore not to surrender the City and Castle without their special Order or Direction, which he never had to do it, as himself confesseth. His very Commission therefore being expressly violated in all these Particulars by this his Surrender, before he was reduced to utmost Extremity, is a sufficient Evidence to declare and condemn him for a Traytor, by the very Ordinances of War, especially since he knew the grand Importance of the Place, for the Kingdom's Safety.

For Precedents adjudged in Point, I could produce many out of foreign * Histories, which I shall pretermitt, because they are no binding Evidence in Law; wherefore I shall confine myself to such domestick Examples of this Nature, as have been formerly adjudged in Parliament, (the supreme Council of War, whose Judgments must direct all others) register'd amongst our Parliamentary Records, which cannot be controlled, and are the best Evidence of any other. The Records themselves (examined by the Parliament Rolls) are long, and written in Law French, which perchance some of this Honourable Council understand not; I shall therefore briefly open them in English, and apply them to the present Case, in order as they are opened.

The first † Precedent is the Case of John Lord of Gomineys, who in the Parl. of 1 R. 2. n. 38, 40. was indicted and arraigned before the Lords, 'for that he being made Governor of the Town and Castle of Arde (in France) by K. Edward III. to this Intent, That he should safely keep the same for the King and his Heirs, without surrendering them to any Person without their Command, did yet in K. Richard II's Reign, deliver and surrender the same to the King's Enemies, without any Command from him, to the dishonour and disinheriting of the King and his Crown, and of the Realm of England, against his Undertaking aforesaid, without any default of Victuals or Artillery, or of any other things necessary for the Defence thereof. To which Indictment the Defendant pleaded, that the Town and Castle were so weak, that he could not well keep them against so great a Power of the Enemies as was then ready to assail them: Whereupon he assembled all the Knights, Esquires, and others in the Town, and informed them of the Danger the Town was in, and of the Enemies Forces; and by common Counsel and Consent of them all, he enter'd into a Treaty with the Enemies, to save the Lieges of the King within the Town and Castle; and thereupon yielded up the same upon Terms of Composition, receiving no Reward at all for surrendering the Town or Castle. But because one Geoffery of Argentine, Knight, affirmed in Parliament, that he was then in Person within the said Town and Castle, in the Defence whereof he was always ready to live and die, never consenting to the Surrender thereof; and because Sir Ralph de Ferrers, Kt. had valiantly defended them in former Times against a great Force of the Enemy, when they were not so strong as at the time they were surrender'd: And because de Gomineys had

'undertaken to keep them, and if he could not have done it, he ought in no wise to have undertaken to keep them; and that another should and would have undertaken the safe keeping of them, had he not undertaken it; and for that he yielded them up in this sort before utmost Extremity, when he wanted neither Men, nor Victuals, nor Ammunition, he was adjudged to lose his Head, notwithstanding his Plea, that he did it by the Advice of a general Council of War, to save the King's Liege People's Lives and Estates, and that the Town and Castle were weak, unable to resist the Enemies Power.'

This Town was of far less Importance to the Realm of England than Bristol; no Treachery at all appeared in the Surrender, made by the Vote of a general Council of War; yet we see the Governor adjudged to lose his Head, for not holding it out to the utmost Extremity, according to his Duty. And if his Plea could not secure him from such a Sentence, Col. Fiennes's Plea being the very same with his, that he surrender'd the City and Castle of Bristol to the Enemy before utmost Extremity, because they were weak and untenable for any long time, to save the Lives and Estates of the Garrison, and Parliament's Friends, and that by the Counsel and Assent of all the Knights, Esquires, Soldiers, and Inhabitants thereof, must needs be frivolous, and can no way extenuate his Fault, nor save his Neck from the Block; the rather because Bristol was of far greater Consequence to the Kingdom now, and better provided, fortified, manned, victualled, and more likely to be relieved, than Arde was then.

The second Precedent was of Pierce de Cressingham, and John de Spikefworth, Esquires, who were arrested and arraigned in Parliament 7 Rich. II. num. 17. 'for yielding up the Castle of Drinkham in Flanders to the Enemies, from whom it was gained by the Bishop of Norwich, tho' it were well and sufficiently stored with Victuals and other Necessaries, and strong enough to be held against the Enemies, without the Will or Command of the King or his Lieutenant. To which Spikefworth pleaded, That he had never the Custody of that Castle, or any thing to do therewith, but was chased into it by the Enemy, it being then in the Custody of Pierce de Cressingham: That soon after the Enemy assaulting the Barbican he was unhappily routed, and one of his Varlets slain close by him: That he had never any thing to do in the Castle, neither as a Soldier thereof, nor in any other manner whatsoever, but only continued in it in manner aforesaid, till it was surrender'd by the said Pierce; and therefore prayed, that it would please the King to have him excused. Whereupon it was ordered he should be set at Liberty, if nothing else could be said against him. Pierce Cressingham, who had the Custody of the Castle, alledged, That upon the yielding up of the Town and Castle of Burburgh to the Enemy, of all the Garrison-Soldiers he had with him at Drinkham, none would continue with him for the Safeguard of that Castle but only five Persons; by Reason of which great Necessity, he was constrained for the Safety of his own Person and People, to enter into a Treaty with the Enemies to deliver up that Fort; and thereupon he yielded it up, and not for any other Cause, nor in any other manner, but only by Constraint of the Power of the Enemies aforesaid; denying that he ever received any thing from the Enemies by way of Gift, or in any other manner:

* See Grimston's History of the Netherlands, p. 827, 828.

† 1 R. 2. num. 38, 40.

manner: Whereupon he conceived that no Man ought to impute any manner of Blame or Reproach unto his Person; but if it should be thought he had done ill in any manner, he most humbly cast himself upon the Grace of his Liege Lord. But because this Excuse was held insufficient, he was committed to Prison, till the King should otherwise declare his Opinion concerning him.

Here was a Case of far greater Extremity than Bristol, without any apparent Mixture of Treachery; but only five of the Garrison left to defend the Castle, when as the Defendant had 2300 Soldiers at least in Bristol; and a Surrender by common Advice for the Governor's and Inhabitants Safety: yet because *Cressingham* the Governor, by Virtue of his Office, was bound to hold it till the utmost Extremity, he was for the present adjudged to Prison, and to expect a farther Sentence afterwards; whereas *Spikeforth* was acquitted, because he came casually into the Castle, as forced by the Enemy, and had no Charge of it, as a Governor, Officer, or Garrison-Soldier; all which (as appears by this Resolution) are answerable and punishable for delivering up the smallest Fort before utmost Extremity.

The third Precedent is the Case of the Bishop of *Norwich*, accused in Parliament 7 R. II. num. 32. for surrendering the Town of *Gravelin* to the Enemy, before utmost Extremity, upon Condition that it should be totally demolished. To which the Bishop pleaded, that by Reason of the Disobedience of his Captains, who quitted the Field, and betook themselves to their Forts, he was constrained to retire with his Forces to the Town of *Gravelin*, which he would have held out well enough against all Men, and did hold out till the other Captains had surrendered their Forts adjoining to the French; and after that, until speedy Supplies might have arrived from England: But because there were six or 7000 Englishmen, who came out of the Forts surrendered, lying on the Sands near *Calais*, who could not get into the Town, and were in danger to be slain by the French within two or three Days, (the Truce being then expired) whose Loss would have been charged principally upon him; thereupon he was commanded by the King himself to render the Town to the Enemies, or else to demolish it, and then to march to succour the said English, and after that towards England, to save himself and others of his Army, in case they were in any great Want of Victuals, as in Truth they were: and because it behoved him to abate and void the Town, as it was lawful for him to do at his Pleasure, being gained by his proper Conquest from the Enemy; it seemed to him, that he ought to be well excused of whatever was furnished against him (for *compounding with the French to raze the Town to the Ground, and to depart whither he would with his Bag, Baggage, and Men.) To which was answered by the Lord Chancellor, That there was sufficient Victuals in the Town when the King's Letter came there; after which the King sent other Victuals thither in great Plenty, with Letters importing, how he had appointed his Uncle to come speedily to his Aid and Succour: yet notwithstanding he departed thence, leaving the Town to the Enemies, against the Form of his Indenture; by which the King granted him whatsoever he should conquer, not at all to surrender, sell or leave the same to the Enemy, but to hold and possess it. And as for the Disobedience and Defaults of his Officers, and their Surrender of the Fortresses, they neither could nor ought at all to excuse him, seeing they were all named

and chosen by himself, not by the King or his Council, and the Articles of the Surrenders sealed between them and the Enemies, were made without the Authority and Consent of the King: Wherefore by the Assent of the Earls, Barons, and other Lords temporal present in Parliament, it was assented and decreed, That the Bishop should be in the King's Mercy, (who out of his Grace would forbear to lay Hands on his Body in regard of his Function, tho' he might justly have proceeded against him as a Lay-man;) that he should be put to a Fine and Ransom, according to the Quantity and Quality of his Offence, for which his Temporalities should be seized, and whatever Monies he had received from the King, and imploy'd to his own Use, he should presently make full Payment thereof into the King's Treasury, without Delay or Difficulty. Had he been a Lay-man his Censure had proved capital, and more rigorous.

Here we have all Col. *Fiennes's* Excuses pleaded to justify this Action: 1. The saving not of a Body of 1500, but 7000 Englishmen to serve the State, whose Lives were all endangered, not in a Garrison-Town or Castle well victualled, or ammunitioned, as those in *Bristol* were, but lying on the open Sands without Defence, and that not in their own native Soil, but beyond the Seas in an Enemy's Country. 2. Despair of timely Relief, and greater Want of Victuals than was in *Bristol*, where there was too much Plenty. 3. A Letter from the King himself, injoining the Bishop to quit the Town to the Enemy in case they wanted Victuals, as he alledged they did; whereas Col. *Fiennes* received no such Letter from the Parliament or his Excellency, to quit or yield up *Bristol*. 4. This Town was won from the Enemy by the Bishop himself, not immediately committed to him to guard by the King or Parliament, as *Bristol* was to the Defendant, who had less Right to surrender *Bristol*, than this Bishop *Gravelin*, being his own Conquest. 5. He did not yield up the Town, with all the Cannon, Arms, and Provisions in it to the Enemy, as the Defendant did *Bristol*; but only demolished it and slighted the Fortifications, departing thence with Bag, Baggage, Cannon, and his Men: yet notwithstanding all these Particulars, and the gallant Service this martial Bishop had done in this Expedition, he incurred this heavy Censure, and had his Temporalities seized divers Years for his Fine and Ransom. And if he deserved such a Censure, no doubt the Defendant deserves a far greater, notwithstanding his Excuses.

The fourth Precedent is that of Sir *William de Elmham*, Sir *John Tryvet*, Sir *Henry de Ferrers*, and Sir *William de Farendon*, Knights, and *Robert Fitz-Ralph*, Esquire, impeached in the Parliament of 7 R. II. rot. Par. n. 24. for Surrendering the Town and Castle of *Burburgh* to the Enemy, and receiving Monies for the Arms, Victuals, Prisoners, and Goods within the same. To the which Sir *William de Elmham*, and most of the others pleaded, that they were enforced to surrender the Town and Castle to the Enemy of fine Force, for the Salvation of themselves, the Garrison and People therein, the Enemy having besieged and assaulted it in very great Numbers, and set the Town on Fire within, who would have taken it by force, and taken or slain, all those within it, had they not yielded it by Agreement: And that the Monies they received, was only for the Prisoners, Victuals, and other Goods within the same, not for the Surrendering of the Town itself.

* *Walsingham Hist. Ang. p. 327. to 330. Holingshed, Speed, Grafton in an. 6. Rich. II.*

Yet notwithstanding, this Excuse was adjudged insufficient, and the Parties ordered to make full Payment to the King of all the Monies received from the Enemy, to stand committed to Prison, to make Ransom at the King's Will according to the Quantity of their several Offences; and Sir William de Farendon left to the King's Mercy, both for his Body and Goods, to do with them what he pleased.

Here we have a Town assaulted by a Multitude of Enemies, fired in Part, and thereupon a Surrender upon Composition, to save the Officers and Soldiers from being taken or slain by the Enemy; yea, a better Market than the Defendant made at Bristol, even a Sale of the Prisoners, Victuals, and Goods in the Town to the Enemy for Money, when endangered to be all surprized by Force; yet this was judged no Excuse: Therefore certainly the Defendant's pretended Necessity, and Danger of forcing the Town by the Enemy, not half so real as this, cannot excuse his Crime, nor extenuate his Guilt, nor yet his Pretence of saving his Officers and Garrison's Lives and Estates, to do the Parliament Service elsewhere.

The fifth Precedent is that famous Case of William de Weston in the Parliament of 1 R. II. num. 38, 39, 40. 'The Commons in this Parliament prayed, that all those Captains who had render'd or lost Castles or Towns thro' their Default, might be put to answer it in this present Parliament, and severely punished according to their Deserts, by award of the Lords and Barons, to eschew the evil Examples they had given to other Governors of Towns and Castles. Whereupon John de Gomineys, (whose Case I began with) and William de Weston, then detained Prisoners in the Tower, because they had lost and rendered the King's Towns and Castles to the Enemies, were brought by the Constable of the Tower before the Lords in full Parliament in the White-chamber; where Weston, by the Lords Command, was arraigned by Sir Richard Lescop, Steward of the King's House, in manner following:

'William de Weston, you took upon you from the most puissant Prince (whom God assail) Sir Edward late King of England, Grandfather to our Lord the King that now is, safely to keep to him and his Heirs, Kings of England, the Castle of Outhrewyke, without Surrendering it to any one but to the said Grandfather, or to his said Heirs, or by Command from him, or from his said Heirs: Have you William, who are a Liege-man of our Lord the King, in times of the same our Lord the King who now is, true Heir to the said Grandfather, delivered and surrender'd the same to the Enemies of our Lord the King, without Command from him, to the Dishonour (or Damage) of him and his Crown, and of the Estate of his Realm of England, against your Allegiance and Undertaking aforesaid? What will ye say hereunto?

Whereupon the said William put in his final Answer in this behalf: 'To the most sage Council of our Lord the King, and to the other Lords and Commons of the Parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously render'd the Castle of Outhrewyke, of which he had the Custody, by delivery and assignment of our Lord the King; may it please your sage and just Discretion to have the said William excused thereof, for these Causes ensuing. First of all, May it please you to remember how that the said William was lately informed by a Spy, that a great Power of the Enemies would come upon him to besiege the said Castle, with very great and very grievous Ordnances; whereupon he the said William presently by his Attorney, and by his Letters, required of the

said Council that it would please them to re-enforce the said Castle with more Men, for the Defence and Safeguard thereof, in regard that the Garrison of the said Castle that then was, were not half sufficient in respect of Multitude to resist so great a Force in so large a Place; but in conclusion, for all this, he could not have any Succour from the said Council: And so the said William, not at all thro' his Default, was left without People sufficient for to keep and defend the said Castle any long Time; which he beseecheth you to take into your just and benign Consideration. Also please you to know, how upon a Monday about one of the Clock the Enemies came to besiege the said Castle, to the Number of 2600 Men of Arms, and 700 Arblasters Genevoyes, and with 5000 of the Commonality of the Country, having nine great Cannons, divers Engines, and one great Mortar-piece, beyond all Measure greater than ever they had seen any before in those Marches, and the same Hour presently a great Number of the Men of Arms and Arblasters aforesaid came before the Gates for to assail the said Castle, and at this Time a Knight of theirs was slain who was Cousin to the Lord de Clifton as was reported, and many others were likewise then slain and wrecked. And within a short Time after they began to shoot with their Ordnances and other Engines, and so continued their Assault from one Day to another, that is to say, Tuesday, Wednesday, Thursday; and then were the Walls and Houses of the Castle battered down, and bruised in many Places; and they had likewise by Force trenched the Ditches of the said Castle in three Places, so as the Water was drained out; and that Night came a great Party of them, and by fine Force made an Assault, and abated the Barricados; and the next Day (which was Friday) they came about Day-breaking with all their Forces to assault the said Castle, but with God's Assistance they were yet repulsed with Force from their Assault, and of the one part and the other were some slain and wounded. And the same Day the Marshal of Burgoyne sent to the said William, and others of the said Castle, to render it; whereupon having consideration that the said Castle could not be kept, as well in regard of the small Number of the People, as by reason that the Walls in many Places were enfeebled by their marvellous Ordinance, there was a Treaty with the Lords to this End; That the said William and his Company might advise themselves against the next Morning; and so they departed each to his own. Also this same Night the Enemies caused all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-ladders, Galleries, and all other Necessaries, to be drawn up near to the very Dutch of the aforesaid Castle; and the next Day (which was Saturday) they made all Things ready plainly for to assault the Place: And then first of all sent an Herald to the said William, to know if the said Castle should be render'd to them or not? Whereupon the said William, by Advice of the wisest of his Companions, taking consideration how that the said Place was destroyed and enfeebled with their Ordinance, and also that they were too few Men for its Defence, by reason that twelve of their Companions were in this Time slain, wounded and sick, so as there remained of all the People in the Garrison in Health, but only 38 Men to defend the same; hereupon by common Assent the said Castle (which could be kept no longer) was by Force surrender'd, for to save their Lives granted to them, and their Goods. And that all these Things aforesaid are true, the said William puts himself upon his Proof, according to your most discreet Ordinances. Also it is to be remember'd,

that

that when the said Castle was thus rendred as aforesaid, certain French People bargained with the said William for his Victuals, to buy them, together with certain Prisoners which the said William held imprisoned within the said Castle, for which things he received of them for his Payment 1500 Franks; of which he paid his Companions for part of their Wages which was behind unto them for one quarter of a Year and an half, 78 Franks; likewise after was paid at Calais for the Victuals of the said Castle before that time due, 442 Franks; also for the Passage of the said William, and of his Companions into England, and likewise for the Expences of the said William being at Calais, 135 Franks. And therefore the said William prayeth in this Regard your Justice and Benignity, seeing, by envious Suggestion, he hath against all Reason been accused, whereby his Estate and Name, by the grievous Sin of Mis-informers, and he also, is ruined; having likewise Consideration, that out of his proper Goods he hath for the greater part paid his Companions their Wages which were due unto them as aforesaid, and also for the great Costs he hath been at before this time, for to victual the said Castle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reason whereof he is on all sides undone, if your just Benignities do not succour him) that you would be pleased for God's sake, and for Pity, to ordain likewise for him, that he may, by your discreet Nobleness, recover his Estate and Goods. Also the said William Weston sheweth, how the first Day when the Enemies came before Arde, that he went in haste to Calais unto the Captain, and desired of him more Succour and Aid of Men, for the better guarding of his Fort of Outhrewyke, and to defend it if the Enemy should come thither: and the Captain answered him briefly, that he would not deliver nor give him Aid nor Succour at the same time, because he doubted that the said Enemies would come before the Town of Calais. But notwithstanding all these Pleas, the Lords in this Parliament, together with the most valiant and discreet Knights, and other Members thereof, after good and mature Deliberation hereupon, delivered their Judgment and Resolution against Weston in form following. It seemeth to the Lords aforesaid, that you, William, who had taken upon you safely to keep the Castle of Outhrewyke, as before is said, that you have without any Duress or Default of Victuals evilly delivered and surrendered the same to the Enemies of our Lord the King, by your own Default, against all apparent Right and Reason, and against your Allegiance and Undertaking aforesaid: and having by due Information read the Case of the late Baron of Graystock, who was a Lord, and one of the Peers of the Realm, who had taken upon him safely to keep for the foresaid Grandfather the Town of Berwick; the said Baron perceiving afterwards that the said Grandfather addressed himself to go into the Realm of France, the said Baron (without Command of the said Grandfather) committed the said Town of Berwick to a valiant Esquire, Robert de Ogle, as Lieutenant to the said Baron, for to keep safe the said Town of Berwick to the said Grandfather; and the said Baron went as an Horseman to the Parts of France to the said Grandfather, and there remained in his Company; during which time an Assault of War was made upon the said Town of Berwick by the Scots; and the said Robert, as Lieutenant of the said Baron, valiantly defended the same; and at last by such forcible Assaults the said Town was taken upon the said Robert, and two of the Sons of the said Robert there

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slain in the Defence of the same. Notwithstanding, because that the said Baron himself had taken upon him the Safeguard of the said Town to the said Grandfather, and departed himself from thence without Command of the said Grandfather, and the said Town of Berwick was lost in the Absence of the Baron, he being in the Company of the said Grandfather in the Parts of France, as is aforesaid; it was adjudged, by Advice of the said Grandfather, the King of Castile, who is present, the Nobles, Dukes, and Counts, Henry late Duke of Lancaster, the late Earl of Northumberland and Strafford, and Sir Walter de Manny, that the said Town was lost in default of the said Baron: and for this Cause he had Judgment of Life and Member, and that he should forfeit all that he had: and to render his Judgment in these Words, the said Sir Walter had a Command from the said Grandfather. Which Things consider'd, and this also, that you, William, surrender'd the Castle of Outhrewyke to the Enemies of our Lord the King aforesaid, without any Duress or Want of Victuals, against your Allegiance and Undertaking aforesaid, the Lords above-mentioned sitting here in full Parliament adjudge you to death, and that you shall be drawn and hanged. But because that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof shall be respited until the King be informed thereof: Whereupon it was commanded to the said Constable safely to keep the said William, until he had other Command from our Lord the King.

This Case is very punctual, this Judgment fatal to the Defendant; wherein all his former Pleas, and far better than he could make, are over-ruled against him long since, even in full Parliament. (1.) This Weston, as soon as he heard of the Enemy's Approaches and Intent to besiege Outhrewyke Castle, sent post to the Council, and to the Governor of Calais, acquainting them with the Weakness of the Garrison, and craving present Aid, (as the Defendant pretended he sent to his Excellency) yet could receive no Supplies from either. (2.) His Garrison was not half enough to resist the Enemies great Power, neither had he Means to increase it; whereas Bristol Garrison was abundantly sufficient to resist the Enemy, and the Defendant might have doubled it had he pleased; there being six thousand or eight thousand able Men more in the Town, whom he might have employed in its Defence. (3.) There were eight thousand four hundred Enemies before it, as many or more than were before Bristol, and but fifty Men only in the Castle to defend it; whereas there were two thousand Foot and three hundred Horse at least to guard Bristol; a vast Disproportion. (4.) They had nine great Pieces of Battery, a great Ram, or Mortar-piece, greater than ever were seen in those Parts before, with many other Engines, as many or more than the Enemy had at Bristol. (5.) The Siege, Battery, and Assault thereof, continued from Monday till Saturday; whereas Bristol was besieged only from Monday till Wednesday Noon (not half so long) and then yielded upon Parley. (6.) All the Walls and Houses of the Castle were beaten down and battered exceedingly, and the Ditches drain'd of the Water by Trenches, and all their Barricado's beaten down, yet they still held it out; whereas not one Shot at all was so much as made against the Castle or Walls of Bristol, but against the Out-works only. (7.) After the Walls and Barricado's were thus broken down, and the Ditch drained, they manfully repulsed,

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pulsed the Enemy, who fiercely assaulted it, and slew divers of them, with the Loss and Wounding of some of the Garrison; whereas *Bristol* Castle, and the Body of the Town, were yielded up before the least Battery, Mine, or Assault. (8.) They made all things ready for an Assault, planting all their Ordnance, Engines, Galleries and Faggots close to the Castle Ditch, and sent two several Heralds and Messengers to him for a Parley ere he would treat; whereas the Defendant, before any Battery or Assault against the City or Castle, sent out twice to the Enemy for a Parley, with so much haste, that he would not hearken to any who would beat them out, or oppose or delay the Treaty. (9.) Twelve of his fifty Men were by this time slain, sick and wounded, so that he had only thirty-eight left to make good the Castle, thus batter'd and assaulted with so great a Power; whereas the Defendant lost but eight Men at most, and had at least two thousand three hundred Horse and Foot when he fell to Parley. (10.) He surrender'd the Castle by the Advice of a general Council of War, upon better Grounds than the Defendant yielded up *Bristol*; to wit, because the Walls were beaten down, the Garrison over-small to defend it, the Enemy very likely to force it by the Assault, no present Relief near at hand, and to save his own, with the Soldiers Lives and Goods, which else were endanger'd to be lost; none of which the Defendant can justly alledge, as we have manifested. (11.) He made the most of an ill Bargain, by selling the Victuals and Prisoners in it to the *French* for fifteen hundred Franks, with which he paid his Soldiers their Arrears of Wages, discharged the Debts of the Castle owing for Victuals, and defray'd the Charges of their Passage into *England*; whereas the Defendant yielded up all the Prisoners and Victuals to the Enemy gratis, with which Provisions the Ships that brought over the *Irish* Soldiers were victualled, and left the State to pay the Soldiers Arrears and other Debts contracted by him there, amounting to many thousand Pounds, which ought to be made good out of his own Estate. Therefore, in these Respects, he ought to undergo the self-same Judgment of Death, and to be drawn and hanged, much more justly than he.

To these Precedents Colonel *Fiennes* answer'd, 1. That these Governors had all of them Commissions under the Great Seal of *England* to keep these Towns and Castles, and that made their Offence so great; but he had no such Commission under the Great Seal of *England* to be Governor of *Bristol*: and this he conceived differenced the Cases much.

To which Mr. *Prynn* reply'd, (1.) That the Defendant was much mistaken in this Point; for these Towns and Castles lying in *France*, if the Commissions of their Governorships were under any Seal, it was under the Great Seal of *France* not of *England*, as appears by the express Statute of 14 Ed. III. Stat. 4. & 1 H. VI. Rot. Parl. Num. 14, 15. (2.) That the great Seal being carry'd from the Parliament when his Commission was granted, he could not expect any such Commission under the Great Seal, but from the King himself in opposition to the Parliament, to whom he surrender'd *Bristol*, perchance for want of a Commission under the Great Seal to keep it. (3.) If this were a good Plea or warrantable Distinction, then all the Governors of Towns and Castles within the Parliament's Power might treacherously or cowardly surrender them forthwith to the King

without Punishment or Danger, because they wanted a Commission under the Great Seal to keep them. (4.) He had a Commission under his Excellency's Hand and Seal to keep the City; under whose Authority he took the Custody of it for the Parliament's and Kingdom's Safety, in these distracted Times, by virtue of a Commission of both Houses granted to his Excellency: therefore his Offence is as great and capital for surrendering it contrary to his Trust, and his Excellency's Commission to keep it, as if it had been under the Great Seal. (5.) When his Commission was first granted, the Parliament had not made a new Great Seal to seal it, but since his Surrender of *Bristol* they had made one: and he durst assure the Defendant, had his Courage and Fidelity been such as to hold out *Bristol* till the new Seal was made, he would have procured him a Commission under it to keep *Bristol*, rather than he should have yielded it up cowardly to the Enemy, for want of a Commission under the Great Seal of *England*. But because he held it not till such Commission might be obtained, he must be condemned for rendering it contrary to that Commission, which he both sent for and received from his Excellency under his Seal of Arms alone.

Col. *Fiennes*'s second Answer was, That it appear'd not in these Records what other Matters and Proofs were produc'd against these Persons, besides those mentioned in them; and therefore, for ought he knew, they might be condemned for something else besides what is alledged in these Records, else the Cases might seem very hard, and the Sentences none of the justest.

To which Mr. *Prynn* reply'd, That the Defendant by this strange Answer betray'd his extraordinary Ignorance in Matters of Law and Records, into which no Depositions of Witnesses are wont to be inserted, but only the true State of the Case itself, and the Judgment given thereupon: and therefore to surmise they were condemned for any thing else, than what is expressly mentioned in the Records and Judgments themselves, is to aver against the very Records, and the Judges that gave the Sentences, and so to falsify and nullify all Records. The Cases therefore being admitted to be really such as the Records relate, in nature of a Demurrer or Confession, and the Judgments determining them to be such; this Answer must rather be deemed an ignorant Mistake than any solid Reply.

Col. *Fiennes*'s third Answer was, That the Castle of *Outhrewyke*, *Arde* and *Burburgh*, were Places of no great Consequence or Wealth, and therefore ought to be held out to the utmost: But *Bristol* being one of the richest, chiefest Cities in the Realm, and of great Importance, ought not to be endanger'd or ruined by holding it to the utmost Extremity, as Castles and other such Places of less Concernment might be.

To which Mr. *Prynn* answer'd, (1.) That if Places of smallest Concernment ought to hold out to Extremity, and if it be Death to yield them up before; then certainly *Bristol*, and Places of greatest Consequence to the Ruin or Safety of the Realm, ought much more to be kept to Extremity, and the yielding of them up must be more capital; else he that betrayeth the greatest Trust, and doth most Mischief to the State, shall be less culpable, and undergo a milder Censure, than he that betrays the smallest Fort: yea, if this were either good Justice, Law or Logick, the Defendant might argue, that he who steals ten thousand Pounds, or murders

murders a Man, deserves not Death; but he who steals Thirteen Pence Half-penny, or strikes a Man, ought to be hang'd without Pity. The Precedent and Argument therefore held *a minori ad majus*: If these were condemned for their cowardly Surrendring of those inconsiderable Towns and Castles before utmost Extremity, which did but little Prejudice to the Republick; then much more ought the Defendant to lose his Head for yielding *Bristol* thus, a Place of highest Concernment to the Kingdom, which is almost lost in and by its Loss. And doubtless the Defendant, who would not adventure his Life to preserve such a considerable City as *Bristol* to the utmost Exigence, would never adventure it to hold out any other inferior Places till the last, but yield them up without Resistance. Since therefore it appeared by these Precedents, that the Parties impeached for Surrendring up any Forts were always detained under Custody during their Trial; he desired the Council the second time, that Col. *Fiennes* might presently be put under safe Custody, and Judgment given against him according to these Precedents and the Laws of War; the rather because they were seconded by his own late Judgment against *Yeomans* and *Butcher*, whom he condemned and executed by Martial Law only for endeavouring to deliver up *Bristol* to the Enemy before it was fully fortify'd, whereas himself thus cowardly and traitorously surrender'd it to them after it was fortify'd, and abundantly furnish'd with all Necessaries to hold out a Siege, their intentional Surrender being not so criminal or fatal to the Republick as his actual.

When we had thus made good the several Articles of our Charge, and fixed the Loss of *Bristol* and the *West* too on Col. *Fiennes*, who by his not denying it in his Answer to the fourth Article, did thereby in point of Law confess it; the Colonel to free himself from this heavy Charge, averr'd before the Council, *That Bristol and the West were not lost by him but Sir William Waller*: to prove this he produced several Allegations. Upon which Mr. *Prynn* humbly moved the Council, that a Gentleman of his Worth and Honour might not be thus publicly traduced, where he was neither present to make his Defence, nor a Party to the Articles; desiring that either he might substantially prove this palpable Slander by pregnant Evidences, or else be exemplarily punished for it.

Hereupon the Defendant first alledged, that he sent Sir *William Waller* twelve hundred Foot out of *Bristol* (to wit, Col. *Popham's* whole Regiment) very well armed, who at the Rout of Sir *William*, near the *Devises*, lost all their Arms, (not many of these Men returning to *Bristol*, and those without Arms;) the Loss of which Regiment so weakened the Garrison, that it lost both *Bristol* and the *West*, which he could not defend for want of Men.

To which Mr. *Prynn* answer'd, (1.) That *Bristol* was not lost for want of Men; and that this Regiment was fully made up and supply'd by the Defendant's own Confession, with a great over-plus; Sir *William Waller* not receiving above seven or eight hundred Foot out of *Bristol*, in lieu whereof the Defendant raised 1100 or 1000 at the least, besides these from *Malmesbury*. (2.) That when he sent forth that Regiment he had an independent Commission, and could not be enforced

to it, nor ought to have sent them if the City were thereby endanger'd, without special Command from the Parliament or his Excellency: His sending out then of this Regiment being his own voluntary Act, (as his own Letter to Col. *Popham* attests, and he confessed) it is clear that himself only was the Loss both of *Bristol* and the *West*: and if there were no other Evidence, this alone would endanger his Head, it being Capital by all Laws of War for any Governor to send out his Garrison; or to absent himself from his Charge, without special Command, if the Place be by this Means lost or surprized, as was adjudged in Parliament in the Case of the Baron of *Greystock*, cited in *Weston's* Case; of the Earl of *Northumberland**, *Henry Percy*, in 7 R. 2. and others. Upon which Ground we find the Governor of *Calais* refused to part with any of his Garrison for the Defence of *Outhewyke* Castle: And the reason is apparent, because if Governors might draw out their Garrisons, or desert their Charges at their Pleasure, their Forts might be easily surprized, betrayed, and a Gap opened to infinite Treacheries.

2. He produced his Cousin Capt. *Temple* to testify, that a Gentlewoman of his Acquaintance, and of Kin to Col. *Fiennes*, overtook another Gentlewoman upon the Highway, newly come from *Oxford*; of whom asking what News, she answer'd, that the greatest News now at *Oxford* was, that tho' Sir *William Waller* had occasioned the Loss of *Bristol* and the *West*, yet Col. *Fiennes* was like to suffer for it, and become his Sacrifice; who being the great *Diana* of the People, and so necessary a Man to the Parliament, now in the Field with an Army, they would forbear to question him, and sacrifice Colonel *Fiennes* to humour him and his Party.

To which Mr. *Prynn* answer'd, (1.) That this extravagant Report, testify'd only at the third or fourth hand, was no Evidence at all, and favoured rather of a direct Plot to traduce Sir *William Waller* than to justify Col. *Fiennes*. (2.) That all the Western Gentlemen had a quite contrary Opinion of this Business, that *Bristol* and the *West* were lost by the Defendant, not by Sir *William*, as appear'd both by their extraordinary Respects unto him, and present Employment of him to regain the *West*. (3.) Admit this fabulous Report to be bruited in *Oxford*, (to asperse Sir *William* and the Parliament, and justify the Defendant) yet it signify'd no more, but that Col. *Fiennes* had better Friends and Respect at *Oxford* than Sir *William Waller*, perchance for his good Service in Surrendring up *Bristol* to them at so easy a Rate in so short a time, (enough to purchase him both Friends and Favour at the Court) where Sir *William* was not so grateful, because he never did them so great a Courtesy, or good Piece of Service, nor the Republick so grand a Mischief.

3. Col. *Fiennes*, for a Conclusion of his Defence, informed the Council, *That this Trouble, Prosecution, and Disgrace had never befallen him, but for that constant Affection and Service which he and his Family had always shewed to his Excellency and his Army, for which Sir William Waller and his Party did malign him.*

To which Mr. *Prynn* reply'd, That this was a most false, scandalous and seditious Speech, discovering who they were that raised and fomented the late unhappy Differences between his Excellency and Sir *William*, and to what sinister end; that nothing could

* Walsing. Hist. Angl. p. 337. See 56 E. 3. n. 23.

could be utter'd more effectual to set all the Parliament's several Armies into a Faction against one another, instead of joining against the publick Enemy; and therefore having neither the least Ground nor Proof to justify this Calumny, he desired he might be exemplarily proceeded against for it.

In fine, after some hear-say Proofs, what Opinion the Enemies had of his valorous Defence of *Bristol*, and the Intenability thereof, and a Recapitulation of all the Heads of his Defence, he concluded with this Peroration.

'My Lords, I have at last ended my Defence, and (as I hope) sufficiently cleared both my Honour, Valour, and Fidelity to the State in the Defence of *Bristol*: And now I beseech you to consider, whose Honour or Life can be in Safety if Lawyers (fee'd by their own Malice) may sift and turn up all his Actions, and snarl at his Words; if such who are no Soldiers, may upon the Information of Attorneys, and Testimony of Shop-keepers, Ale-Wives, Enemies, but of no Soldiers at all, (except such who appear out of particular Spleen) be brought thus upon the Stage for their Lives, and the great Privileges of Parliament broken by such an Impeachment of a Member of it, which could not be parallel'd but by that Accusation of the five Members. Wherefore I desire, that as I have served my Country faithfully, and done many good Services for it, so I may by this honourable Council be justified in my Faithfulness, and repaired against the Prosecutors in my Honour, more dear unto me than my Life; that so after all my publick Services, I may not now be cast behind the Door like a Dishclout, unfit for any further Employment.'

To which Mr. *Prynn* reply'd, (1.) That he wonder'd much why the Defendant should thus except against him as an unfitting Prosecutor, since himself (without his Privy or Desire) had by a Proclamation under his Excellency's Hand and Seal, posted up at *Westminster* and the *Exchange*, selected him and Mr. *Walker* by Name to prosecute this Business against him: if then we were unmeet Prosecutors, it was his own, not our Error, and he must blame only his own Judgment in the Choice, not us. (2.) That tho' he were but a common Lawyer, yet he deemed one of that Profession a very fit Prosecutor of him who had betrayed his Trust, and in it the Kingdom, contrary to Law: And whereas the Defendant scandalously objected, that he was fee'd by his own private Malice, he protested that there was never any Malice, nor Cause thereof between them; that he formerly honour'd the Defendant for his Pen, but never for his Sword, and bestowed some Courtesies on, tho' he never received any from him; that he was born not far from *Bristol*, bred up some Years therein, had many Friends and Kindred in or near it, who lost much, and himself not a little, by its Surrender; that nothing had engaged him in this Prosecution but the Defendant's own Summons, nor fee'd him but the publick Service of the Parliament, and Security of the Realm: and altho' he had lost and suffer'd much for the Church and State, yet he never received nor expected the least Recompence, much less Reward from either, nor ever had any Pay for publick Services, whereas the Defendant received good Wages for all his Services, and for losing *Bristol* too: that himself had never lost any thing of the State's, as he had done, but only what was his own, (his Liberty, Calling,

Estate, Members) and that only for doing the Church and Kingdom Service, none of all which the Defendant had parted with for the publick. And therefore whereas the Defendant boasts of his publick Actions, he could without Vanity or Prejudice truly affirm, he had done ten times more Service for Church and State, and suffer'd a thousand-fold more for both, not only *gratis*, but even with the Loss of all his earthly Comforts, than this Boaster had done upon Pay; and that he doubted not, thro' God's Assistance, he should be able to do the Church and State as good or better Service for the future as he: wherefore he had little Reason to extol himself so much, or depress him so low, as not to be a fitting Prosecutor of such an unworthy Action. That tho' he were no professed Soldier, yet he doubted not but he had read as many or more Treatises of Military Affairs than himself; that he had for eight Years Space of his Restraint in the Tower of *London* and *Mount-Orgueil* Castle, conversed with old Soldiers, (and by Name with Sir *William Balfour* for five Years in the Tower) from whom he gained so much Experience in Martial Affairs, as he would have undertaken to have kept the City and Castle of *Bristol* till this Day, had he been Governor there as the defendant was, notwithstanding their pretended Intenability, and the Enemy's Power: That in the managing of this very Business before this Honourable Council, he had in sundry Particulars manifested himself, if not a better, yet at least as good a Soldier as the Defendant, (for which he appealed to the Council) and in regard of his long Suffering and Restraint in Castles was the antienter Soldier of the two: That the Defendant had confessed to the Lieutenant Colonels *Paleologus* and *Andrews*, when he first undertook the Government of *Bristol*, That he was no Soldier; and his yielding it up in a short Time, before Extremity, upon such poor Conditions, manifested him in truth to be no Man at Arms; and therefore tho' he were no professed Soldier, yet why he should not be a Soldier sufficient to prosecute him, who, by his own Confession and Action, is no real Soldier, he could yet discern no Reason. For his Witnesses, whom he here vilified and traduced, they were many of them Persons of Quality and Honour, some of them Members of Parliament; others more expert Soldiers, and Persons better versed in martial Affairs, than any of the Defendant's Witnesses; all of them Persons of good Fame and Conversation disinterested, and disengaged in the Cause, against whom no Exceptions can be taken: when all his material Witnesses were his own Officers, Brother, Kinsmen, Servants, Creditors, and Parties in the Cause, most of them involved with him in the self-same Guilt. That his Life and Honour were now drawn in question only by himself, upon his own Motion and Engagement of us; and if he lost them (as he lost *Bristol*) he might thank himself for interesting us in this publick Service, for our Country's Honour and future Security, the only thing we aimed at in this present Prosecution. That his pretended Breach of Privilege of Parliament was but a Fancy, already answered and over-ruled in the Commons House, who referred him to a Trial before a Council of War, by two several Orders, upon his own Motion and pretended voluntary waving of his Privilege, before any Impeachment put in against him; which Impeachment was first tendred to the House of Commons, who upon the reading of it, with one unanimous Vote referred it to his

his excellency, to be proceeded on by a free and fair Hearing before this honourable Council: and if the Proceedings on this Impeachment upon his own Motion, by the Commons Direction, be a Breach of Privilege, it is only in himself and the Parliament, not in us; and it hath no more Resemblance to the Case of the five Members, than an Ape to a Lion. That he was now questioned, not for his faithful but unfaithful Service to the Republick and Parliament, in the Surrender of Bristol, in which he presumed he durst not manifest himself so far a Papist as to plead a Justification by Works, or Absolution by preceding Merits. That he needed not to crave Reparation of his Honour and Reputation from us or any other in this Case, since they were both impaired and ruined by himself thro' this ignoble Action: That he had given the whole Kingdom an incurable fatal Wound, an irreparable Loss, (which the Loss of his Head and Estate could no way recompense) by this Surrender, for which in the whole Kingdom's behalf we here demand Judgment against him according to the Quality of his Offence: That our Services for the Republick were every way equivalent to, if not transcending his, our Credits, our Reputations, as dear to us as his to him, which he hoped should no ways suffer for our Zeal and Fidelity in this publick Prosecution upon our own Expences, without Thought of Recompence. That if the Defendant should be pronounced Guiltless by this honourable Council, after so full a Charge and Hearing, he was obliged to us for bringing him to such a publick Vindication of his suspected Fidelity, which else would have lain eclipsed under a black Cloud of Jealousies: But if he were pronounced guilty of the Impeachment, (as we made no doubt he would, the Evidence being so clear, the Proofs and Precedents in point so punctual) we should deserve Thanks, if not from him, (who pretended a Desire to be tried to the uttermost) yet at least from the Parliament, Kingdom, and our native Country, for bringing such a grand, politick, daring Delinquent to his Trial and condign Judgment; who by surrendring Bristol hath endanger'd the Loss of three whole Kingdoms, and of our Laws, Religion, Liberties, Lives, and present Parliament.

And now (my honoured Lords and Gentlemen) lest we should incur your just Censure (according to the Defendant's Doctrine) for stouting out this Cause over-long, which by the Defendant's Tedioufness hath lasted nine Days Dispute, (tho' the City's Siege continued not three full Days) we shall close up all in a Word or two: We render you many hearty Thanks, in our own and the Kingdom's Names, for your nine Days Pains, Patience, and that fair, honourable, impartial Hearing, you have afforded both Parties in the Trial of this great publick Cause, in which the whole Realm is interested, and whereon their Eyes are fixed; not doubting but as you have granted us a most full, fair, indifferent Hearing, so you will in due Season (after serious perusal of your Notes and the Evidence on both sides) give such a just and equal Sentence as shall chronicle your Justice

to, and make this Case a leading Precedent for all future Times, to deter all Governors of Towns or Castles from cowardly, traitorly, or unworthy Surrenders of them.

Thus ended the long Debate of this great Cause, begun on Thursday the 14th of December 1643, and concluded on Saturday the 23d of December. After which both Parties were ordered to attend the Council again on Friday following, being the 29th of December, to hear Sentence, the Council desiring so much Respite to peruse their Notes and prepare their Judgment. Who sitting again, and we attending them, on the designed Day, the Council first delivered their several Judgments of the Cause among themselves in private; after which Colonel Fiennes was disarmed at the Council-Chamber-door, (whereat he was much appalled) and then he and we being called in, the Judge-Advocate read his Sentence out of a Paper *in hæc verba*.

Colonel Nathanael Fiennes, you have been arraigned and convicted before this honourable Council, for Surrendring and Delivering up the Town and Castle of Bristol, with the Forts, Magazines, Arms, Ammunition, Victuals, and other things thereunto belonging, and for not having held the same to the utmost Extremity, according as by your Duty you ought to have done: For which Offence this honourable Council hath adjudged you to be executed according to the Tenor of the Articles of War, by having your Head cut off. God have Mercy on your Soul.

The Defendant, astonished at this Sentence, told the Council, that he little expected such a Sentence from them; and demanded upon what Grounds and Reasons they thus condemned him? and whether they did allow of our Paper-Witnesses, or disallow the Testimonies of his Officers? Whereupon all being commanded to withdraw for a short Space, and then called in again, the Defendant was told, *it was against the Style and Honour of the Council, to be demanded the Reasons of their Judgment after it was once pronounced.* Upon this the Defendant alledged, that he was a Parliament-man, and claimed his Privilege; that he ought not to be condemned without the Privy of the Commons House, to which he appealed against this Sentence, and desired his Appeal might be entred.

To which Mr. Prynne answered, That he had formerly appealed from the Parliament (the antient proper Judge of his Cause) to a Council of War, and by his own voluntary Motion waves his Privilege to put himself upon this Trial, as appeared by two Orders of the House; therefore he could not now appeal back again to the House, or resume or claim his waved Privilege after Judgment. Notwithstanding, upon his Request, his Appeal was entred; yet Guard was set upon his Person at his Lodging: and upon better Consideration he sent to withdraw his Appeal that Night. *He was afterwards pardon'd by the Lord General.*

Cases of Cowardice, referr'd to in the foregoing Trial, as stated from the Records by Mr. Pryn.

BY the ^a Laws of King Edward the Confessor, *he who flieth from his Lord or Fellow-Soldier for fear of War, or Death, in the Conduct of the Heretock (or Captain) in any Expedition by Sea or Land, let him lose all that is his, and his very Life, and the Lord may lay Hands on the Land which he had formerly given to him. And he who shall be slain in War before his Lord, be it in the Land or elsewhere, let his Reliefs be pardoned, and his Heirs enjoy his Money and Land without any Diminution, and divide it among themselves.*

By the Statutes of 18 Hen. VI. c. 19. 7 Hen. VII. c. 1. 3 Hen. VIII. c. 5. 2 Ed. VI. c. 2, 4 & 5 Phil. & Mary, c. 2, 3. 5 Eliz. c. 15. *It is made no less than Felony and Death for any Soldiers to depart from their Captains without their License under Hand; for which many Soldiers have been condemned and executed, Coke's 6 Rep. f. 27. in the Case of Soldiers: And before these Statutes, Thomas Earl of Lancaster was ^b proclaimed a Traitor by the whole Army, in the twelfth Year of King Edward II. for departing in Discontent from the Army at the Siege of Berwick, by means whereof it was not taken, and the Siege raised.*

Henry de Essex's Case, 2 Hen. II.

Henry de Essex ^c, Standard-bearer to the Kings of England by Right of Inheritance, was accused of High-Treason in the second Year of King Henry II. by Robert de Montford his near Kinsman, and vanquished by him in a Duel at Reading for his cowardly abandoning and throwing down the Standard-Royal in North-Wales, in the Battle against Prince Owen, amidst the Mountains, and flying when fiercely assaulted by the Welsh, whereby the King's Army was endanger'd to be routed: Whereupon tho' his Life was pardoned, yet his Lands were seized into the King's Hand, and he shorn and shut up a Monk in the Abbey of Reading, where he died.

Thomas Katrington's Case, 50 Ed. III.

Sir ^d John Annesly, Kt. in the Parliament of 50 Ed. III. (commonly stiled, *The good Parliament*) had accused Thomas Katrington, Esq; of Treason for selling and delivering up the Castle of St. Saviour's (built by the Lord John Chaundois within the Isle of Constantine) to the French, for an inestimable Sum of Money, whenas he wanted neither Means of Defence, nor Victuals: which Castle, had it not been thus traitorously alienated, had descended to the said Sir John in right of his Wife, being next-Heir to the Lord Chaundois, offering to make good this Accusation, and try it out by Duel: whereupon the said Thomas Katrington was then apprehended and imprisoned; but soon after, by Means of the Duke of Lancaster and the Lord Latimer, (who then did what they pleased) released, being formerly their Instrument and Creature in Peace and War, in all just and unjust, in true and false Things; neither could the said Sir John obtain the Effect of his Suit till the Parliament of 3 R. II. An. 1380. some Men affirming, *That it was against*

the Laws of the Realm for any Man of the Realm to fight such a Duel for such a Cause; many who feared the like Tax and Accusation did most of all hinder this Trial: but at last, in this Parliament, the antientest and Truth-speaking Knights of the Realm being assembled, it was resolved, that for a foreign Cause, such as the present was, which arose not within the Limits of the Kingdom, and for the Possession of transmarine Things, it was lawful for any Man to fight a Duel, if the Cause were before certified to the Constable and Marshal of the Realm, and the Duel accepted by the Parties in their Presence. Whereupon a Day of Battle, and Lists were appointed them in the Court at Westminster, where this Duel being solemnly fought on the 7th of June between these two Champions, in the Presence of the King, Nobles, and an infinite Multitude of People; the traitorous Esquire was vanquished by the Knight, to the Joy of the Common People, and to the Grief of Traitors: The Esquire who fainted in the Place, died the next Morning.

Gomeney's and Weston's Case, 1 Ric. II.

In the Parliament Rolls of 1 R. II. Num. 38, 39, 40. The Record is thus: *Item, 'Whereas it was prayed by the Commons, that all those who have rendered or lost Castles or Towns thro' the very Default of the Captains, might be put to answer it to this Parliament, and severely punished according to their Desert, by Award of the Lords and Barons to eschew the evil Examples which they have given to others who are Governors of Towns and Castles, it was commanded to Sir Alexander de Buxhall, Constable of the Tower of London, that he should cause to come before the Lords in Parliament at Westminster, on Friday the 27th of November, in the Year aforesaid, Sir John de Gomeney, and William de Weston, apprehended and detained in the said Tower by the Command of our Lord the King, because they had lost and rendered Castles and Towns to the Enemies of our Lord the King, to answer thereunto, upon the Articles which shall be surmized against them for the said Cause, on the Behalf of our Lord the King. Upon which Day of Friday the said John and William, being brought by the said Constable before the Lords aforesaid in full Parliament, sitting in the White-Chamber, they were severally arraigned at the Commandment of the said Lords, by Sir Richard Lescrop, Kt. Steward of the House of our Lord the King, in manner as ensueth.*

'William de Weston, you took upon you from the most Puissant Prince, whom God assoil, Sir Edward late King of England, Grandfather of our Lord the King that now is, safely to keep to him and his Heirs, Kings of England, the Castle of Outbreyke, without surrendering it to any one but to the said Grandfather, or to his said Heirs: or by Command from him or from his said Heirs: Have you, William, who are a Liegeman of our Lord the King, in Times of the same our Lord

^a Lambard. Arch. fol. 1, 5. De Heretochiis. 12 R. II.

^b Dan. p. 18. Speed, p. 502. Holin. and Stow, An. 2. H. 2.

^c Walsingham Hist. p. 89. Holinghed, Grafton, Stow, Speed, Trussell, in Walsing. Hist. Ang. p. 245 to 248.

the King who now is, true Heir to the said Grandfather, deliver'd and surrender'd the same to the Enemies of our Lord the King, without Command from him, to the Dishonour (or Damage) of him and his Crown, and of the Estate of his Realm of England, against your Allegiance and Undertaking aforesaid? What will you say hereunto?

* Whereupon the said William said, that he had put his Answers in Writing, and produced before them a Schedule containing many things comprized within the same, and came and read the said Schedule in full Parliament. Whereupon it was demanded of him by the said Steward, if he presented before them this Schedule for a final Answer in this Behalf, or not? And hereupon the said William prayed that this Schedule might be re-delivered to him, and that he might put in his final Answer; which Schedule, for the Cause aforesaid, was re-deliver'd to him; and after the said William deliver'd the said Schedule, with an Addition put thereunto in full Parliament for his final Answer in this Behalf; the Tenor of which Schedule is such as followeth. To the most sage Council of our Lord the King, and to the other Lords and Commons of the Parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously rendered the Castle of Outhrewyke, of which he had the Custody by Delivery and Assignment of our Lord the King; may it please your sage and just Discretion to have the said William excused thereof, for these Causes ensuing. First of all, may it please you to remember, how that the said William was lately informed by a Spye that a great Power of the Enemies would come upon him to besiege the said Castle, with very great and very grievous Ordnances; whereupon he the said William presently, by his Attorney and by his Letters, required of the said Council, that it would please them to reinforce the said Castle with more Men for the Defence and Sofeguard thereof, in regard that the Garrison of the said Castle that then was, were not half sufficient in respect of Multitude to resist so great a Force in so large a Place; but in Conclusion for all this, he could not have any Succour from the said Council. And so the said William, not at all thro' his Default, was left without People sufficient for to keep and defend the said Castle any longer time, which he beseecheth you to take into your just and benign Consideration. Also, please you to know, how upon a Monday about One of the Clock the Enemy came to besiege the said Castle, to the Number of about 2600 Men of Arms, and 700 Arblasters Genevoyes, and with 5000 of the Commonality of the Country, having nine great Cannons, divers Engines, and one Mortar-piece, beyond all measure greater than ever they had seen any before in those Marches; and the same Hour, presently a great Number of the Men of Arms, and Arblasters aforesaid, came before the Gates for to assail the said Castle; and at this time a Knight of theirs was slain, who was Cousin to the Lord de Clifton as was reported, and many others were likewise then slain and wrecked; and within a short time after they began to discharge and shoot with their Ordnances, and other Engines, and so continued their Assault from one Day to another, that is to say, Tuesday, Wednesday, and Thursday, and then were the Walls and Houses of the Castle batter'd down and bruised in many Places; and they

had likewise by force trenched the Ditches of the said Castle in three Places, so as all the Water was drained out; and that Night came a great Party of them, and by fine Force made an Assault and abated the Barricadoes; and the next Day, which was Friday, they came about Day-breaking with all their Forces to assault the said Castle, but with God's Assistance they were yet repulsed with Force from their Assault, and of the one Part and other there were some slain and wounded. And the same Day the Marechal of Burgoyne sent to the said William and others of the said Castle to render it. Whereupon having Consideration that the said Castle could not be kept, as well in regard of the small Number of the People, as by reason that the Walls in many Places were enfeebled by their marvellous Ordnances, there was a Treaty with the Lords to this end, that the said William and his Companions might advise themselves against the next Morning; and so they departed each to their own. Also this same Night the Enemies caused all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-Ladders, Galleries, and all other Necessaries to be drawn up near to the very Ditch of the aforesaid Castle; and the next Day, which was Saturday, they made all things ready plainly for to assault the Place; and then first of all they sent an Herald to the said William, to know if the said Castle should be rendered to them or not? Whereupon the said William by Advice of the wisest of his Companions, taking Consideration how that the said Place was destroyed and enfeebled with their Ordnances, and also that they were too few Men for its Defence, by reason that twelve of their Companions were in this time slain, wounded, and sick, so as there remained of all the People of the Garrison in Health but only thirty eight Men to defend the same: Hereupon by common Assent the said Castle which could be kept no longer, was by Force surrendered for to save their Lives granted to them, and their Goods. And that all these things aforesaid are true, the said William puts himself upon his Proof, according to your discreet Ordinances. Also it is to be remembered, that when the said Castle was thus rendered as aforesaid, certain French People bargained with the said William for his Victuals to buy them, together with certain Prisoners which the said William held imprisoned within the said Castle, for which things he received of them for his Payment fifteen hundred Franks; of which he paid to his Companions for part of their Wages which was behind unto them for one Quarter of a Year and an Half seventy eight Franks; likewise after was paid at Calais for the Victuals of the said Castle before that time due, four hundred forty two Franks; also for the Passages of the said William and of his Companions unto England, and likewise for the Expences of the said William being at Calais, one hundred thirty five Franks: And therefore the said William prayeth, in this regard, your Justice and Benignity, seeing by envious Suggestion he hath against all Reason been accused, whereby his Estate and Name, by the grievous Sin of Misinformers, and he also are ruined; having likewise Consideration that out of his proper Goods he hath for the greater Part paid his Companions their Wages which were due unto them as aforesaid, and also for the great Costs he hath been at before this Time for to victual the said Castle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reason whereof he is on all sides undone, if your just Benignity does not succour him; that you would be

pleased for God's sake, and for Pity, to ordain likewise for him, that he may, by your discreet Nobleness, recover his Estate and Goods. Also the said William Weston sheweth, how the first Day when the Enemies came before Arde, that he went in haste to Calais unto the Captain, and desired of him more Succour and Aid of Men for the better guarding of his Fort of Outhrewyke, and to defend it if the Enemies should come thither. And the Captain answer'd him briefly, That he would not deliver, nor give him Aid nor Succour at the said time, because he doubted that the said Enemies would come before the Town of Calais. And the same Schedule being viewed and read in full Parliament, immediately after was the said John brought thither by the said Steward in the manner following.

John Lord of Gomenys, you took upon you to the most Puissant Prince, whom God assign'd, Sir Edward late King of England, Grandfather to our Lord the King that now is, safely to keep to him and his Heirs, Kings of England, the Town and Castle of Arde, without surrendring the same to any Person, except to the said Grandfather and his Heirs, or by Commandment of him or of his Heirs. These have you, Lord of Gomenys, in time of our Lord the King that now is, true Heir to the said Grandfather, deliver'd and surrender'd to the Enemies of our Lord the King without Commandment from him, to the Dishonour of him and of his Crown, and of the Estate of the Realm of England, against your Undertaking aforesaid: What will you say thereunto? Whereupon the said John answered, That the said Town and Castle of Arde were so weak, that he could not well keep them against so great a Power of the Enemies, which was then ready to assail the same Town and Castle; and therefore he caused to assemble all the Knights, Esquires, and others, being in the said Town, and informed them of the Perils of the said Town, and Force of the said Enemies; and by common Counsel and Assent of the said Knights, Esquires, and others, he issued out to the Enemies to treat with them, for to save the Lieges of our Lord the King, being within the said Town and Castle of Arde; without that, that he ever took any thing for to surrender the said Town and Castle of Arde. Upon which one Geoffry of Argenton Kt. said in full Parliament to the said John, that he the said Geoffry was at that time in the said Town in company of the said John, and that the Town and Castle of Arde were never deliver'd nor surrender'd by his Counsel nor Assent, but that he was always ready to die and live upon the Safeguard of the same; and the said Geoffry offer'd to prove it, if any would deny it. And further, it was demanded of the said John, if he would say any thing else? and he said he would not. Whereupon the said Constable was charged with the safe Custody of the said John and William until the next Day, the Saturday next ensuing, and to bring them again safe before the said Lords in the said Parliament, at the Place and Day aforesaid. At which Day of Saturday, that is to say, on the 20th Day of November in the Year aforesaid, it was shewed unto them severally by the said Steward on the same Day, by the Commandment of the Lords aforesaid, how upon the Answers that the said John and William had given in the said Parliament, as before is said, the Lords of the said Parlia-

ment, that is to say, the King of Castile and of Leon, and Duke of Lancaster, Edmund Earl of Cambridge, Edmund Earl of March, Richard Earl of Arundel, Thomas Earl of Warwick, Hugh Earl of Stafford, William Earl of Suffolk, William Earl of Salisbury, Henry Earl of Northumberland, John Lord Nevil, Roger Lord Clifford, and many other Lords, Barons, and Bannerets being in the said Parliament, who had assembled and advised together from the time that the said Answers were given in Parliament the Friday, until this Saturday at three of the Clock, of Things touching the Answers aforesaid, and came and examined diligently the said Answers and other Articles touching those Matters, and taking thereupon good and mature Deliberation, and due Information of the most valiant and most discreet Knights, and others, being in the said Parliament, it was thus said. First of all, in manner as followeth, to the said William by the Steward, reciting the Things aforesaid touching the said William: It seemeth to the Lords aforesaid, that you, William, who had taken upon you safely to keep the Castle of Outhrewyke, as before is said, that you William, have without any Durefs or Default of Victuals, evilly deliver'd and surrender'd the same to the Enemies of our Lord the King by your own Default, against all apparent Right and Reason, and against your Allegiance and Undertaking aforesaid: and having by due Information read the Case of the late Baron of Graystock, who was a Lord, and one of the Peers of the Realm, who had taken upon him safely to keep to the aforesaid Grandfather the Town of Berwick; the said Baron perceiving afterward, that the said Grandfather addressed himself to ride into the Realm of France, the said Baron, (without Command of the said Grandfather) committed the said Town of Berwick to a valiant Esquire Robert de Ogle, as Lieutenant to the said Baron, for to keep safe the said Town of Berwick to the said Grandfather, and the said Baron went as an Horseman to the said Parts of France to the said Grandfather, and there remained in his Company. During which time, an Assault of War was made upon the said Town of Berwick by the said Scots, and the said Robert, as Lieutenant to the said Baron, valiantly defended the same; and at last by such forcible Assaults the said Town was taken upon the said Robert, and two of the Sons of the said Robert there slain in the Defence of the same. Notwithstanding, because that the said Baron himself had taken upon him the Safeguard of the said Town to the said Grandfather, and departed himself from thence without Command of the said Grandfather, and the said Town of Berwick was lost in the Absence of the Baron, he being in the Company of the said Grandfather in the Parts of France, as is aforesaid; It was adjudged by Advice of the said Grandfather, the King of Castile, who is present, the Nobles, Dukes, and Counts, whom God assign'd, Henry late Duke of Lancaster, the late Earls of Northampton and Stafford, and Sir Walter de Manny, that the said Town was lost in Default of the said Baron; and for this Cause he had Judgment of Life and Member, and that he should forfeit all that he had: And to render this Judgment in these Words, the said Sir Walter had a Command from the said Grandfather. Which Things consider'd, and this also, that you, William, surrender'd the said Castle of Outhrewyke to the Enemies of our Lord the King aforesaid, without any Durefs or Want of Victuals, against your Allegiance and

‘ and Undertaking aforesaid, the Lords above-named
‘ sitting in Parliament, adjudge you to Death, and
‘ that you shall be drawn and hanged: But because
‘ that our Lord the King is not yet informed of the
‘ manner of this Judgment, the Execution thereof shall
‘ be respited until the King be informed thereof.
‘ Whereupon it was commanded to the said Con-
‘ stable safely to keep the said William, until he
‘ had other Command from our Lord the King.
‘ And as to the said John Lord of Gomenys, touch-
‘ ing his Answers aforesaid, it was shewed unto him
‘ by the said Steward, how the said Lords had as-
‘ sembled and consider’d of the said Answers as a-
‘ fore is said; and moreover it was shewed to
‘ him, how that in the time that Sir Ralph de Fer-
‘ rers, Knight, had the Custody of the said Town
‘ and Castle of Arde, the said Town of Arde was
‘ not half so strong as it was at the time the said
‘ John surrender’d the same; and the said Ralph
‘ had a Command from the said Grandfather to
‘ surrender the same for the Feebleness thereof,
‘ before that the said Ralph would put himself in-
‘ to very great Peril for Safeguard thereof; not-
‘ withstanding the said Ralph valiantly defended
‘ and maintained the same against a very great and
‘ strong Assault of War. And thereupon, and the
‘ Things aforesaid, and other Evidences touching
‘ the Answers of the said John in this Behalf; it
‘ was said in manner as followeth to the said John,
‘ being in Parliament, by the said Steward, reci-
‘ ting all Things aforesaid touching the aforesaid
‘ John; and also the forecited Judgment of the
‘ said Baron, and the Cause thereof in manner a-
‘ bovesaid, That it seemed to the Lords aforesaid,
‘ sitting here in Parliament, considering your Answers
‘ in this Behalf, and the Examinations and Infor-
‘ mations had thereupon as before, and having regard
‘ also to this, that there were lately sent unto you to
‘ the said Town and Castle of Arde, above the num-
‘ ber of Men with which you had at another time un-
‘ dertaken the safe guarding of the said Town and
‘ Castle, twenty Men of Arms, and twenty Archers
‘ to enforce the same, according to your Request then
‘ made to certain Lords, late being upon a Message
‘ at Calais on the Behalf of the said Grandfather; and
‘ this also, that at that time it was said unto you by
‘ the King of Castile, who is here present, that if
‘ you could not well keep them, you ought in no man-
‘ ner to undertake to keep the same, and that another
‘ should have and keep them, who would take upon
‘ him safely to keep the same to the said Grandfather
‘ and his Heirs aforesaid; and thereupon you under-
‘ took to keep them safely without surrendering them to
‘ any, except in manner as aforesaid; and now you,
‘ John, without Durefs or Default of Victuals or Ar-
‘ tillery, or of other things necessary for the Defence
‘ of the said Town and Castle of Arde, without Com-
‘ mand of our Lord the King, have evilly delivered
‘ and surrendered the same to the Enemies of our Lord
‘ the King, by your own Default, against all Appea-
‘ rance of Right or Reason, and against your Under-
‘ taking aforesaid; wherefore the Lords aforesaid,
‘ here in full Parliament, adjudge you to Death; and
‘ because that you are a Gentleman and a Baronet,
‘ and have served the said Grandfather in his Wars,
‘ and are no Liegeman of our Lord the King, you
‘ shall be beheaded, without having other Judgment;
‘ and because also that our Lord the King is not yet
‘ informed of the manner of this Judgment, the Exe-

cution thereof shall be put in respite, until our
‘ Lord the King be informed thereof. Where-
‘ upon the aforesaid Constable was commanded
‘ safely to keep the said John until he had other
‘ Command from our Lord the King*.’

Cressingham and Spikefworth’s Case, 7 Ric. II.

In the Parliament-Rolls of 7 R. II. Num. 17.
there is this Case; ‘ Item, Upon the Complaint
‘ which hath been made to the King, of Pierce de
‘ Cressingham and John de Spikefworth Esqrs; con-
‘ cerning this, That whereas there were made in
‘ the said Voyage (to wit, of the Bishop of Norwich
‘ into Flanders with an Army) Captains and Guar-
‘ dians of the Castle of Drinkham in Flanders,
‘ which was gained from the Enemies, and after
‘ that well and sufficiently stored with Victuals
‘ and other Necessaries, and strong enough to be
‘ held against the Enemies, that they left and ren-
‘ dered the said Castle to the said Enemies, re-
‘ ceiving of them for this Delivery and Surrender,
‘ by Treaties made with the Enemies, a Sum of
‘ Gold, and that by Covenant made with the
‘ King’s Enemies, without the Will and Command
‘ of our Lord the King himself, or of his Lieu-
‘ tenant: for which the said Esquires were arrested
‘ by command of the King, and after put to their
‘ Answer in Parliament. And the said John Spikef-
‘ worth excused himself before the King in Parlia-
‘ ment in this manner, That he had never the Custody
‘ of the said Castle, nor any thing to do therewith, save
‘ only that as he was riding into the Country, somewhat
‘ near the said Castle of Drinkham, to make his best
‘ Advantage upon the Enemy, by force of the said
‘ Enemies he was there chased to the said Castle, then
‘ being in the Custody of the said Pierce de Cress-
‘ ingham; and soon after he saith, That upon an
‘ Assault made to the Barbican there, by the Ene-
‘ mies, he was unhappily routed, and one of his Var-
‘ lets slain in the Garrison very near him, where he
‘ remained continually until the said Pierce render’d
‘ the same, and otherwise he had never any thing
‘ there to do, neither as a Soldier thereof, nor in any
‘ other manner whatsoever; praying, that therefore
‘ it would please our Lord the King to have him well
‘ excused. To whom it was answered on the be-
‘ half of the King, that if any Man knoweth not
‘ to say more against the said John, contrary to his
‘ said Answer now made, that the King will hold
‘ him well excused, and wills that he shall be dis-
‘ arrested, and suffered to go at large. And the
‘ said Pierce of Cressingham well knowing that he
‘ had the Guard of the said Castle, said, That as
‘ soon as the Enemies were come before Burburgh,
‘ in which were the Lord Beaumont, Sir William
‘ of Elingham, Sir Thomas Tryvet, Sir William Far-
‘ rinden, and many other Englishmen; and the
‘ Town and Castle of Burburgh being surrender’d
‘ to the Enemy, of all the Soldiers which he had
‘ with him at Drinkham, none would there con-
‘ tinue with him upon the Safeguard of the said
‘ Castle, but only five Persons in all; by reason
‘ of which great Necessity he was forced, in Safe-
‘ guard of his own Person and his People, to
‘ make a Treaty with the Enemies, for to deliver
‘ up the said Fort, and thereupon he did it, and
‘ not for any other Cause, nor in any other Man-
‘ ner, but only by constraint of the Power of the

* Geoffrey Martin, Clerk of the Crown, made this very Record, and delivered it written in this present Roll, with his own Hand.

‘ said Enemy as aforesaid. And further he saith, ‘ that he never received any thing from the said ‘ Enemies by way of Gift, or in any other manner; whereupon he conceiveth, that no Man ‘ ought to impute any manner of Blame, nor of Reproach unto his Person. But if it shall be thought ‘ that he hath done ill in any manner, he puts himself most humbly into the Grace of his Liege ‘ Lord. And because that this Excuse seemed not ‘ at all to be sufficient, he was committed to Prison, ‘ there to remain until the King our Lord had otherwise declared his Pleasure concerning him.’

The Case of the Bishop of Norwich, 7 Ric. 2.

In the same Parliament of 7 Ric. 2. *Num. 22.* The Bishop of *Norwich*, General of the Forces sent over into *Flanders*, having four Articles exhibited against him in this Parliament, touching that Expedition, and the Surrendring of *Graveling* to the Enemy, to which he had given some former Answer, (see *Num. 15, 17, 20, 21.*) upon his second Arraignment had this Proceeding. ‘ At which ‘ Day the said Bishop rehearsing the four Articles ‘ surmised against him formerly in Parliament, and ‘ in presence of the King himself, gave there his ‘ Answers, such almost as before, concerning all ‘ the things aforesaid; adjoining thereunto, that ‘ the time when he heard the News that the Vanguard of the Host of *France* was entered the ‘ Country of *Flanders*, and that thereupon the said ‘ Siege of *Ipre* was thereby removed, he took a ‘ Resolution to have encountered the Vanguard, ‘ for to have fought with them; which Purpose of ‘ his he could not perform by reason that the Captains of his Host would not assent thereunto, but ‘ those Captains and others of his Host contraried ‘ him, insomuch that of Necessity, and for doubt ‘ of the Enemies they ought to depart, and betake ‘ themselves to their Fortresses; and thereupon ‘ the said Bishop returned to the Town of *Graveling*, and the same would he have held out well ‘ enough against all Men, and did hold out until ‘ the other Captains and rendered their Forts to ‘ the *French*; and after that, until that some *English* might come unto him incontinently, altho’ ‘ there were well-nigh about six or seven thousand ‘ *English* lying upon the Sands near *Calais*, who ‘ were made to come out of the said Forts rendered, to their great Mischief and Prejudice, ‘ because they had not wherewith to live, neither ‘ could they have Entrance into the Town of ‘ *Calais*. And forasmuch as the Truce made before that time ought to cease within two or ‘ three Days then next ensuing, the *French* had a ‘ Purpose to run upon them and slay them all, as ‘ soon as the said Truce was ended; which Slaughter, if it had been made, would principally have ‘ turned upon the said Bishop, and after on the ‘ other Captains, to far greater Villany and Mischief than any other thing could bring. The ‘ Bishop was thereupon required and charged on ‘ the behalf of the King himself, that he should ‘ render the Town to the Enemies, or else demolish it, and go his way to succour the said ‘ People, and after that towards *England*, in Salvation of himself and others of his Host; for ‘ they said, that if any thing else but Good had ‘ happen’d to the said People, lying on the Sands. ‘ they would have truly called the said Bishop to

‘ an Account before the King himself: Where- ‘ upon it behoved him the said * Bishop to abate ‘ and void the said Town of *Graveling*, as it was ‘ lawful for him to do at his Pleasure, being ‘ gained by his proper Conquest from the Enemy. ‘ And for this, and for the other Reasons formerly ‘ alledged by him, as also because that a Letter ‘ from our Lord the King came to him before, ‘ commanding him, that if there were great want ‘ of Victuals in the said Town, as in verity there ‘ was, that then in Salvation of himself, and of ‘ the said People, he should void the Town ‘ and succour the said People, and after return ‘ into *England*; it seems to him, that he ought ‘ to be well excused of whatever is surmised against him.’ To which the said † Chancellor replied and the said: ‘ Master Bishop, as to this your ‘ last Reason, it is true that you had sufficient ‘ Victual when this Letter came unto you; and ‘ besides this, the King sent you other Victuals in ‘ great Plenty; and also with it other good Letters, containing, how he had appointed his Uncle ‘ of *Spain* to come speedily to you for your Aid ‘ and Succour; and all this notwithstanding, you ‘ departed thence, leaving the said Town to the ‘ Enemies, against the Form of your Indenture, ‘ by the which the King hath given and granted ‘ you whatever you might conquer, not at all ‘ to render, sell or leave the same to the Enemy, ‘ but to hold and possess. And also to that which ‘ you have said in your first Answer, that by your ‘ said Voyage Truces had been agreed between the ‘ Realms, and happy Offers of Peace made by the ‘ Adversaries of *France*, which you say shall be ‘ an Introduction to a good and final Peace, which ‘ God grant, it contains no Truth at all: for ‘ true it is, that the News spread in the Army of ‘ *France* of the coming of our Lord the King, ‘ and of Monsieur of *Lancaster*, who was at the ‘ Sea-side ready to pass for your Succour, was the ‘ principal Cause of the Truce and Profers aforesaid, ‘ and of the Treaty to be commenced; for it is no ‘ probable thing at all, nor in any wise agreeable ‘ to Reason, that you who were with your People ‘ chased by Force of the Enemies out of the Field, ‘ and afterwards besieged by them within your ‘ Fortresses, should be the Cause of the said ‘ Treaty by any way. And so as to this, nor yet ‘ as to any other of the Reasons before alledged, ‘ nor for the Rebellion of your Captains or other ‘ of your Retinue, nor any other Defaults which ‘ you have or may surmise unto them, (considering ‘ that you had them all of your proper Choosing ‘ and Election, and not at all by the Nomination of our Lord the King, or of his Council) ‘ you neither can or ought to be at all excused of ‘ the Damages, Deceits, Villanies, Contempts, and ‘ the other Losses and Misprisions surmised to you, ‘ nor in especial of the Treaty made with the Enemies upon the Deliverance of the said Fortresses, ‘ of which there are certain Indentures made and ‘ drawn between you and your Captains on the one ‘ Part, and the Enemies of the King on the other ‘ Part, sealed with their Seals, and the Seals of the other Captains, without the Authority or Consent of ‘ the said our Lord the King, as before is said. And ‘ moreover the said Chancellor said in the behalf ‘ of the King, Sir Bishop, altho’ the King our Lord ‘ might clearly handle and judge you as a temporal

* See the History of this Treaty and Abatement of the Town in Wallingham Hist. Angl. p. 327 to 330. and in Holinshed, Speed, Grafton. † *Num. 27.*

‘ral Person of his Realm, because you have behaved and carried yourself as a temporal Person; for you expressly obliged your self to the King our Lord by your Indentures, to be a Soldier of the King, to govern the Christian People after the Term of your *Crossado* ended, and you used commonly to have your Sword carried before you; and you did many other such like things every Day publickly as a Lord Temporal, against the common Custom of the Estate of a Prelate of *England*: Notwithstanding, by reason of your Estate, the King our Lord, of his Grace, will forbear for the present to lay his Hands upon your Body. But forasmuch as he is informed, that you yourself have complained to many Lords of the Realm, that Wrong hath been lately done you on the last Day, affirming by your Words, that that which was done passed not at all by Assent or Knowledge of your Peers of the Realm, this is greatly to be marvelled of you, and of these your Words, seeing the ill Success touched nothing at all your Perality, but only certain Misprisions which you have made and perpetrated as a Soldier of the King, against the form of your Indentures and Covenants which you have made with the King our Lord, to the great Damage of the King as before is said, whereof the Connissance and Punishment of common Right and antient Custom of the Realm of *England*, only and totally appertaineth to our Lord the King, and to no other. And true it is, that you have not at all by this your last Answer any whit amended your matter in Excuse of yourself, upon the Things furnished against you, but as it seems have more greatly impaired the same. *Wherefore by the Assent of the Earls, Barons, and other Lords temporal present in this Parliament*, it is assented and accorded, that you shall be in the Mercy of the King, and put to a Fine and Ransom for your Misdoing, according to the Quality and Quantity thereof. And to do this you shall be compelled and constrained by the Seizure of the Temporalities of the Bishoprick of *Norwich*. And the King commands you, that from henceforth you shall not cause nor suffer any Sword to be carried before you, as it hath been done, under the Peril which shall follow. And it is expressly accorded in this Parliament, that whatsoever hath been expended on your Use of the said Franks of Gold, you shall make full Payment thereof in the Treasury of our Lord the King, without Delay or Difficulty.

Upon this Judgment the Temporalities of this Bishop were immediately seized into the King's Hands, and detained in them a long Time for this his Surrender of *Graveling*; as *Walsingham*, *Holinshed*, *Grafton*, *Speed*, *Trussel*, in their Histories, and *Godwin* (in the Life of this Bishop) attest.

The Earl of Northumberland's Case, 7 Ric. II.

In the same * Parliament, 7 R. II. News came from the Northern Parts, that the Castle of *Berwick* was taken by the *Scots*, whose Custody *Henry Percy* Earl of *Northumberland* then possessed by antient Right: The *Scots*, for Money, fraudulently getting Entrance into the said Castle by one who had the Custody of it at the second-hand, under the Earl. Hereupon, by Duke *John's* Procurement, (as was reported) the said Earl on the fourth of *December*, for the Loss of the said Royal Castle,

by the Judgment of the Lords, and of the King then present in the said Parliament, had a Sentence of Condemnation publickly pronounced against him, notwithstanding that the said Earl had been summoned to the said Parliament by the King's Writ, and would rather have tarried at home for the Defence of his Country. But the Execution of the said Sentence was soon after released by the King, and the Earl by his Indulgence restored to his Life and Possessions, which he was adjudged to lose. Whereupon he posted into the North, and calling his Forces and Friends together, strongly besieged the said Castle, and in few Days took it by Composition, he giving the Besieged their Lives, Movables, and two thousand Marks to surrender it.

The Case of Sir William de Elmham, and others, 7 Ric. II.

In the Parliament-Rolls of 7 Ric. II. num. 24. there is this Record. *Item*, Sir *William de Elmham*, Sir *Thomas Tryvet*, Sir *Henry de Ferriers*, and Sir *William de Farndon* Knights, and *Robert Fitz-Ralph* Esq; who by the said Charge formerly given in Parliament, had been with the Chancellor, and acknowledged and confessed to him, How that they had received certain Sums of Franks of Gold of the *French*, in lawful and due manner, and not otherwise. To which they said, ‘First of all, that is to say, the said Sir *William* of *Elmham*, *Thomas Tryvet* and *William Farndon*, in one Parcel three thousand Franks of Gold. *Item*, In another Parcel, &c. *Item*, the said Sir *William Elmham* received another Parcel of the *French* for the Castle of *Burburgh*, whereof Master *William de Hoo* was then Captain, and for the Victuals of the said Master *William de Hoo*, being in the said Castle of *Burburgh*, two thousand Franks, whereof of the said *William de Elmham* presently paid, as he said, one thousand Franks to the said Master *William de Hoo*, and the other thousand Franks he promised to pay at a certain Term to the same Master *William de Hoo*, &c. *Item*, There is another great Misprision that some Lieges of the King rendered and delivered to the said Enemies of the King, Castles, Fortresses, Victual, Armour and other Refreshment, without special Command and Authority of the King, or of his Lieutenant; but yet it is far worse to sell or alien to the said Enemies any Fort, Victuals, Armour or other Refreshment, by receiving Money or other Goods of the said Enemies, without Authority of the King, or of the same his Lieutenant. And, Sirs, you know well, and cannot deny, That by certain Covenants made between the said *French* Enemies, and you the said Sir *William de Elmham*, *Thomas Tryvet*, *Henry de Ferriers*, and *William de Farndon*, and others, of which there are certain Indentures made and sealed with your Seals, you lately made a Treaty with the said Enemies, without the Will or Authority of the King, or of his Lieutenant; and by this Treaty, and your Sale of the said Forts, Victuals and Arms, you received the said Sums of Gold; and by this, and by other your Affairs, and Rebellions made to your General, the said Host was spoiled and destroyed, to the grievous Damage, Villany, and Contempt of the King our Lord, and very great

* *Walsing Hist. Angl.* p. 337.

great Profit and Comfort of the said Enemies, for which you are worthy to undergo Reproach and grievous Punishment. For you Sir William de Elmham, received of the said Enemies the said two thousand Franks, for the Sale and Surrender of the said Castle of Burburgh, and of the Victuals, Arms, and other Goods therein, then being to a great Number and Value, without the Leave and Authority of the King our Lord, and the Consent of the said Master William de Hoo, Captain of the same, altho' that the said Castle was well able to have held out for a long time against all Men. And also you the said William de Elmham, Thomas Tryvet, and William de Farndon, received to your proper Use in common the said three thousand Franks of the Gift of the said Enemies, for your Consent and Aid to the said Treaty, made upon the Voydance of the English out of that Country, and the Deliverance of the Town of Graveling, and of the other Fortresses then occupied in those Parts, &c. And you the said Sir William Farndon are in another very great Default, because you would not carry back to the said Enemies the five thousand Franks by you left at Graveling, against the Will and Command of the said Bishop your Chieftain, &c. And the said Sir William de Elmham saith, That altho' he hath so received the Sums aforesaid, yet it was done for Victuals, Prisoners, and other Goods which he had within the Fortress of Burburgh, and elsewhere in those Parts, and which, with the said Fortress, he render'd by the said Treaty, as of fine Force he ought to do for the Salvation of himself and his People; for otherwise the Town of Burburgh, where the Lord Beaumont, Sir Thomas Tryvet, Sir William Tryvet, Sir William de Elmham, and a great number of the People of their Army were besieged, and assaulted by the Enemies in very great number, and the Town within set on fire, had been taken by them by force, and all those within it taken or slain: and therefore he conceiveth, that in doing this, he hath done nothing amiss. But notwithstanding, if it appears to the King our Lord that he hath done any thing amiss, he puts himself upon his noble Grace, &c. And the said Chancellor, in replying to the said Sir William de Farndon, Henry, and Robert, saith, &c. And certainly as to this which you Sir William de Farndon say, That it had been better to cast the said Gold into the Sea, than to have sent it back to the said Enemies: This is not true; for it had been better that the Enemies had received their own Gold, than any Traitor of the King our Lord: and he who shall hereafter sell the Fortresses of the King to the Enemies for Gold, or other Goods, may excuse himself in such manner as you would now excuse yourself. And after these Matters, thus by the same Persons alledged for their Excuse, being considered, and held and adjudged insufficient for their Excuse in this behalf; the said Chancellor, in behalf of the King, spake thus, It is accorded in Parliament, that you Sir William de Elmham, Thomas Tryvet, Henry Ferriers, William de Farndon, and Robert Fitz-Rauf, shall make Agreement and full Payment to our Lord the King of whatsoever you or any of you have so received, and taken of the Enemies aforesaid; and further, that all you the said Sir William de Elmham, Thomas, Henry, and Robert, be committed to Prison, and there ransomed at the

Will of the King for your Misdeeds aforesaid, having due Consideration of the Quality and Quantity of that Deed which every one of you hath done. And that you, Sir William de Farndon, because that you have received of the said Enemies divers Sums of Gold, and have given them Horses to their great Refreshment, for which you had no License of the King, nor of his Lieutenant, shall be in the Mercy of the King, Body and Goods, to do with them what he pleaseth.

The Duke of Suffolk's Case, 28 Hen. VI.

In the Parliament of 28 Henry VI. Rot. 50, 51, 52. the Commons preferred divers Articles of High-Treason to the King and Lords against the Duke of Suffolk, among others these ensuing, That he being Ambassador for the King of England to Charles, calling himself French King, promised to Reynor King of Sicily, and to Charles Dangers his Brother, Enemies to the King, the Release of Angeou, with the Deliverance of the County of Main, and the City of Mault or Mauns; which Promise, after his Return, he caused to be performed, to the King's Disinheritance and Loss irrecoverable, and to the strengthening of his Enemies, and Feeblishment of the Dutchy of Normandy. To the which Article he answered, That his Commission was, to conclude and do all Things according to his Discretion, for the obtaining of a Peace; and because, without Delivery of those Countries, he perceived the Truce could not be obtained, he agreed to the Release and Deliverance of them.

Item, The said Duke, within this your Realm, hath untruly counselled you to grant fro you, without due Consideration, the Castle of Mawlyon de Sool, and full many divers other great Lordships, Seignouries, Places, Offices, Profits, Revenues, Casualties, and Commodities within your said Dutchy of Guyen, whereby your Power there to support your Wars and Arms, and to pay the Wages of your great Counsellors, Captains and Soldiers, hath been so enfeebled, that your People of the same Dutchy, neither your Land there, might in no wise be defended.

Item, The said Duke of Suffolk, without Deliberation and Advice of your Council, hath caused your Highness to grant to divers Persons, many Captains, Offices, Towns, Lordships, Places, Interests, Profits and Revenues within your Realm of France, and Dutchy of Normandy, to such Persons as were not to you profitable, nor able, nor convenient to have or govern any of the Premises, nor ever had deserved to obtain of your Grace any such Grant; which hath been done by him for his great Avail and Lucre, and hath been one of the greatest Means of the Loss of the said Realm of France, and Dutchy of Normandy.

The Duke upon these Articles was committed to the Tower for one Month's Space, to pacify the People, and then released by the Queen's Means, who entirely loved him: whereupon the Commons were so far from being pacified, that they were more enraged; openly denouncing, that it was a Shame to all the whole Realm to see such a Person, guilty of so many Misdeeds, either to rule about a Prince, or to be had in Honour, or suffered to go unpunished. Upon this the Commons rising up in divers Places of the Realm in Companies under Captain Blewbeard, the Commons in Parliament earnestly beseeched the King, that such a Person as assented to the Release of Angeou, and Deliverance of France, &c. might be extremely punished and tormented; and to be privy to this Fact, they accused as Principal the said Duke of Suffolk,

Suffolk, with John Bishop of Salisbury, Sir James Fines, Lord Say, and others. Whereupon, the King plainly seeing, that neither Glossing would save, nor Dissimulation appease the continual Clamour of the importunate Commons against the Queen's Darling and his Complices; to begin a short Pacification of so long a Broil, First, he sequestred the Lord Say, being Treasurer of England, from his Office, (who for the same Offence was after committed to the Tower, and after that beheaded by Jack Cade, and the Kentish Mutineers, at the Standard in Cheap-side, who carried his Head about the Streets of London fixed on a Pole, &c.) And then by his own Authority, assembling all his Lords Spiritual and Temporal together, on the 17th Day of March, in a Chamber over the Cloysters at Westminster, he arraigned and banished the said Duke for five Years, against the Lords and Commons Consent, who would have capitally proceeded against him; meaning by this Exile, to appease the present furious Rage of the People, and that pacified, to recal him to his old Estate, as the Queen's chief Friend and Counsellor. But Fortune would not that he should so escape; for when he was shipped in Suffolk, intending to be transported into France, he was encounter'd by a Ship of War appertaining to the Duke of Exeter, of which the Constable of the Tower of London was Captain, who entering the Duke's Ship with small Fight brought him to Dover Road, and there on the Side of a Cockboat cut off his Head as a Traitor, and there left his Body and Head upon the Sands. Such was the End of these two ill Counsellors, only for advising this weak King himself thus dishonourably and cowardly to surrender up these Towns, Forts, and Territories in France, to his Enemies, to purchase an unhappy Peace, to the King's and Kingdom's irreparable great Damage, Dishonour, and Weakning, and the Enemy's extraordinary Advantage, Strengthening and Encouragement.

The Lord Wentworth's Case, 1 Eliz.

The Lord *Wentworth*, Governor of Calais, delivering up that Town to the French, (after they had taken the Castle by force, made a Breach in the Town-Walls, and slain above fourscore of the Garrison at one Assault when they took the Castle, together with Sir *Anthony Ager*, Marshal of the Town, and his Son and Heir) and that upon

dishonourable Terms, not without some Suspicion of Treachery; he was thereupon indicted in Queen Mary's Days for his cowardly and treacherous Surrender of this Town, contrary to his Trust; and after that was arraigned at Westminster, in the first Year of Queen Elizabeth, the Marquis of Northampton being his Judge, and Lord chief Steward of England for that Day. But that Nobleman so nobly defended himself, that he was acquitted by his Peers.

Van Hemert's Case, 29 Eliz.

*Meteranus**, *Grimstone*†, *Thuanus*, and others, relate, Anno 1587. 'That Van Hemert, a very wise and brave young Nobleman, one of the chief Houses of the Netherlands, and Governor of the Town of Grave, together with two of his Captains, Du Banck and Korfe, were imprisoned, condemned by a Council of War, and then beheaded and executed at Bommel, by Command of Robert Dudley Earl of Leicester (Governor of the Low-Countries under Queen Elizabeth of famous Memory) for that they surrendered the said Town of Grave to the Prince of Parma, when he had besieged it above three Months Space, with a puissant Army, and beaten down the Walls of it level to the Ground, with perpetual Batteries and Assaults: And altho' there appeared no Treachery at all, nor any Intelligence held with the Enemy, in this Case; and that the Governor condescended to a Treaty, and surrendered the Town to the Enemy only upon the Citizens Importunity, who earnestly intreated him upon their Knees with Tears in their Eyes to embrace a Parley, for the saving of their Lives, Estates, and Liberties, which were granted them upon the Articles of Agreement; and altho' the Garrison-Soldiers likewise marched away with their Arms, [which they left behind them at Bristol] and had all the Articles punctually fulfilled; and altho' himself and his potent Friends earnestly besought the Earl of Leicester, that he might serve the Queen of England either by Sea or Land at his own Charges, and by his Valour and Fidelity make Recompence of his Fault, committed only thro' want of Understanding and martial Policy, contrary to the Will and Intent of the Earl then Governor-General under the Queen; yet the Earl, for upholding martial Discipline, and to prevent all future Surrenders of this kind, would on no wise dispense with the Execution; whereupon they were all three openly beheaded at Bommel, June 28, 1587.'

* Belgica Hist. Universalis, l. 13. p. 402, 403, 404.

† Pag. 827, 828.





XLI. *The Trial of Dr. WILLIAM LAUD, Archbishop of Canterbury, for High-Treason, which began March 12. 1643. 19 Car. I. Wrote by himself during his Imprisonment in the Tower* *.

ON the 16th of December 1640, upon the Condemnation of the new Canons in the House of Commons, as being against the King's Prerogative, the fundamental Laws of the Realm, the Liberty and Property of the Subject; and containing divers things tending to Sedition, and of dangerous Consequence; the Archbishop of Canterbury was there accused to be the Author of, and chief Actor in them, and was order'd to be impeach'd of High-Treason: whereupon a special Committee was appointed to inquire into all his Actions, and prepare a Charge against him, which is thus enter'd in the Journal of the House of Commons.

December 16. 1640. This Committee is to prepare the several Votes concerning the new Canons, and to make them ready for this House to present the same to the Lords, and to consider and examine who were the Promoters of these new Canons, and who the principal Actors, and what Execution hath been made upon them, and by whom; and to consider how far the Lord Archbishop of Canterbury hath been an Actor in all the Proceedings of them; and further, to examine how far he hath been an Actor, in the great Design of the Subversion of the Laws of the Realm, and of the Religion and to prepare and draw up a Charge against him, and such others as shall appear Offenders in these Particulars, and have Power to send for Parties, Witnesses, Papers, Books, Records, and to do any other Act, which they in their Judgments should think fit to conduce to the Business, and are to meet at four a-Clock this Afternoon in the Star-Chamber.

On Friday the 18th of the same December, the Archbishop was impeached in the House of Commons of High-Treason, and voted by the whole House to be a Traitor, thus enter'd in their Journal.

December 18. 1640. Resolved upon the Question, that a Message shall be sent from this House to the Lords, to accuse William Laud, Archbishop of Canterbury, of High-Treason, in the Name of this House, and of all the Commons of England, and to desire that he may be sequester'd from Parliament, and committed; and that within some convenient time, this House will resort to their Lordships with particular Accusations and Articles against him; and that Mr. Hollis go up with the same.

Upon this Accusation, divers remarkable Speeches were made against him in the House of Commons; among others one by Mr. Harbottle Grimstone, as follows.

Mr. Speaker, There hath been presented to the House a most faithful and exact Report of the Conference we had with the Lords yesterday, together with the Opinion of the Committees that we employed in the Service, That they conceived it fit that the Archbishop of Canterbury should be sequester'd; and I must second the Motion. And with the Favour of this House I shall be bold to offer my Reasons, why I conceive it more necessary we should proceed a little further than the Desire of a bare Sequestration only.

Mr. Speaker, Long Introductions are not suitable to weighty Businesses: We are now fallen upon the great Man, the Archbishop of Canterbury: Look upon him as he is in Highness, and he is the Sty of all pestilential Filth, that hath infested the State and Government of this Commonwealth: Look upon him in his Dependencies, and he is the only Man, the only Man that hath raised and advanced all those that, together with himself, have been the Authors and Causes of all our Ruins, Miseries, and Calamities we now groan under. Who is it but he only that hath brought the Earl of Strafford to all his great Places and Employments? A fit Spirit and Instrument to act and execute all his wicked and bloody Designs in these Kingdoms. Who is it but he only that brought in Secretary Windebank into this Place of Service, of Trust, the very Broker and Pandar to the Whore of Babylon?

Who is it, Mr. Speaker, but he only that hath advanced all our Popish Bishops? I shall name but some of them, Bishop Manwaring, the Bishop of Bath and Wells, the Bishop of Oxford, and Bishop Wren, the least of all these Birds, but one of the most unclean ones. These are the Men that should have fed Christ's Flock; but they are the Wolves that have devour'd them: The Sheep should have fed upon the Mountains; but the Mountains have eaten up the Sheep. It was the Happiness of our Church, when the Zeal of God's House eat up the Bishops, glorious and brave Martyrs, that went to the Stake in Defence of the Protestant Religion; but the Zeal of our Bishops have been only to persecute and eat up the Church.

Who is it, Mr. Speaker, but this great Archbishop of Canterbury, that hath sat at the Helm, to steer and manage all the Projects that have been set on foot in this Kingdom: this ten Years last past? And rather than he would stand out, he hath most unworthily trucked and chaffered in the meanest of them. As, for Instance, that of Tobacco, whereby Thousands

* See Clar. Hist. Vol. I. p. 69, 118, 141. Vol. II. p. 440, &c. To make this Trial the more complete, what was wanting is supplied out of Rushworth's Collections, Vol. V. p. 763. &c. and Prynne's Compl. History of this Trial. The additions are inserted in their proper Places, but to preserve the Archbishop's own Account entire, are distinguished by a different Character within Crochetts.

of poor People have been stripp'd and turned out of their Trades, for which they have served as Apprentices. We all know he was the Compounder and Contractor with them for the Licenses, putting them to pay Fines and a Fee-farm Rent to use their Trade. Certainly, Mr. Speaker, he might have spent his Time much better, and more for his Grace in the Pulpit, than thus sberking and raking in the Tobacco-Shops. Mr. Speaker, we know what he hath been charged withal in this House, Crimes of a dangerous Consequence, and of a transcendent Nature, no less than the Subversion of the Government of this Kingdom, and the Alteration of the Protestant Religion; and this is not upon a bare Information only, but much of it is come before us already upon clear and manifest Proofs: And there is scarce any Grievance or Complaint come before us in this Place, wherein we do not find him intermentioned, and, as it were, twisted into it; like a busy angry Wasp, his Sting is in the Tail of every Thing. We have this Day likewise heard the Report of the Conference Yesterday, and it is the Accusation which the Scotch Commissioners have charged him withal; and we do all know he is guilty of the same, if not more, here in this Kingdom.

Mr. Speaker, He hath been the great and common Enemy of all Goodness and good Men; and it is not safe that such a Viper should be near his Majesty's Person, to distil his Poison into his sacred Ears; nor is it safe for the Commonwealth that he sit in so eminent a Place of Government, being thus accused. We know what he did in the Earl of Strafford's Case: This Man is the corrupt Fountain, that hath corrupted all the Streams; and till the Fountain be purged, we can never expect nor hope to have clear Channels. I shall be therefore bold to offer my Opinion; and if I err, it is the Error of my Judgment, and not my want of Zeal and Affection to the publick Good: I conceive it is most necessary and fit that we should now take up a Resolution to do somewhat, to strike while the Iron is hot, and to go up to the Lords in the Names of the Commons of this House, and in the Names of the Commons of England, and to accuse him of High-Treason; and to desire their Lordships, his Person may be sequestred, and that in convenient Time we may bring up his Charge.]

December, 18. 1640, being Friday. Upon this Day, Mr. Denzil Hollis, second Son to John Earl of Clare, by Order from the House of Commons, came up to the Lords, and accused me of High-Treason; and told the Lords, they would make proof thereof in convenient time: but desired in the mean time, that I might be committed to safe Custody. This was strange News to my Innocency; for this I can say of myself, without Falshood or Vanity, that to the uttermost of my Understanding I served the King, my gracious Master, with all Duty and Faithfulness; and without any known or wilful Disservice to the State there-while. And this I did, with as true and free a Heart, as ever any Man did, that served a King. And, I thank God, my Care was such for the Publick, that it is well known I much neglected my own private Fortunes there-while. The more was I amazed at the first Apprehension of this heavy and undeserved Charge.

Upon this Charge, I was commanded to withdraw. But I first desired leave to speak a few Words: and I spake to this effect, That I was heartily sorry for the Offence taken against me; and that I was most unhappy, to have my Eyes

open to see that Day, and mine Ears to hear such a Charge: But humbly desired their Lordships, to look upon the whole Course of my Life, which was such, as that I did verily perswade myself, not one Man in the House of Commons did believe in his Heart that I was a Traitor. Here my Lord the Earl of Essex interrupted me, and said, That Speech of mine was a Scandal put upon the whole House of Commons, that they should bring me up charged with so high a Crime, which themselves did not believe. I humbly desired then, that I might be proceeded with in the antient Parliamentary Way of England. This the Lord Say excepted against; as if I would prescribe them how they should proceed. So I withdrew, as I was commanded, and was presently called in again to the Bar; and thence delivered to Mr. James Maxwell, the Officer of the Black Rod, to be kept in safe Custody, till the House of Commons should farther impeach me.

[December 18. 1640. It is this Day order'd, that the Lord Archbishop of Canterbury (being accused of High-Treason by the House of Commons in their own Names, and in the Name of the whole Kingdom of England) be committed to the safe Custody of the Gentleman Usher attending this high Court, and that he be sequestred from the said House, until his Grace shall clear himself of the Accusation that shall be laid against him by the said House.]

The Lords further order'd, that no Member of the House should visit the Archbishop without leave of the House.]

Here I humbly desired leave, that I might go home to fetch some Papers necessary for my Defence. This was granted me with some Difficulty; and Mr. Maxwell was commanded to attend me all the while I should stay. When I was gone to Lambeth, after some little Discourse (and sad enough) with my Steward, and some private Friends, I went into my Chapel to Evening-Prayer. The ^b Psalms for that Day gave me much Comfort, and were observed by some Friends then present, as well as by myself. And upon the Comfort I then received, I have every Day since (unless some urgent Business prevented me) read over both these Psalms; and, God willing, purpose so to do every Day of my Life. Prayers being ended, I went with Mr. Maxwell, as I was commanded; Hundreds of my poor Neighbours standing at my Gates to see me go, and praying heartily for my safe Return to my House: for which I blessed God, and them.

^b P/al. lcliii, & lcliv. In vulgata Editione, P/al. lclii, & lcliii.

Upon Friday, Feb. 26. 1640. I had been full ten Weeks in restraint, at Mr. Maxwell's House: and this Day, being St. Augustine's Day, my Charge in general Articles was brought up from the House of Commons to the Lords, by Sir Henry Vane the Younger. It consisted of fourteen Articles. These Generals they craved time to prove in particular; and that I in the mean time might be kept safe. Upon this I was presently sent for to the House, and the Articles were read to me at the Bar. [They were carried up by Mr. Pym, Mr. Hampden, and Mr. Maynard.]

And Mr. Pym coming to the Lords Bar to present them, spake as followeth.

Mr. Pym's Speech.

My Lords,

I Am commanded by the Knights, Citizens, and Burgeses, now assembled for the Commons in Parliament, to deliver to your Lordships these Articles, in maintenance of their Charge against the Archbishop of Canterbury. Their Desire is, That first your Lordships would be pleased to hear the Articles read; and then I shall endeavour to present to you the Sense of the Commons concerning the Nature of the Charge, and the Order of their Proceedings.

(The Articles being mentioned hereafter, are here omitted.)

The Articles being read, Mr. Pym proceeded as follows:

My Lords,

There is an Expression in the Scripture which I will not presume either to understand, or to interpret; yet to a vulgar Eye it seems to have an Aspect something suitable to the Person and Cause before you. It is a Description of the evil Spirits, wherein they are said to be Spiritual Wickednesses in high Places: Crimes acted by the spiritual Faculties of the Soul, the Will and Understanding, exercised about spiritual Matters, concerning God's Worship and the Salvation of Man, seconded with Power, Authority, Learning, and many other Advantages, do make the Party who commits them very suitable to that Description, Spiritual Wickednesses in high Places. These Crimes, my Lords, are various in their Nature, heinous in their Quality, and universal in their Extent. If you examine them Theologically, as they stand in opposition to the Truth of God, they will be found to be against the Rule of Faith, against the Power of Godliness, against the Means of Salvation.

If you examine them Morally, as they stand in opposition to the Light of Nature, to right Reason, and the Principles of human Society, you will then perceive Pride without any Moderation; such a Pride as that is which exalts itself above all that is called God: Malice without any Provocation; Malice against Virtue, against Innocence, against Piety: Injustice, without any Means of Restitution; even such Injustice as doth rob the present Times of their Possessions, the future of their Possibilities.

If they be examined, my Lords, by legal Rules in a Civil Way, as they stand in opposition to the publick Good, and to the Laws of the Land, he will be found to be a Traitor against his Majesty's Crown, an incendiary against the Peace of the State; he will be found to be the highest, the boldest, and most impudent Oppressor that ever was, an Oppressor both of King and People.

This Charge, my Lords, is distributed and conveyed into fourteen several Articles, as you have heard; and those Articles are only general, it being the Intention of the House of Commons (which they have commanded me to declare) to make them more certain and particular by preparatory Examinations, to be taken with the Help of your Lordships House, as in the Case of my Lord of Strafford. I shall now run thro' them with a light Touch, only marking in every of them some special Point of Venom, Virulency and Malignity.

1. The first Article, my Lord, doth contain his Endeavour to introduce into this Kingdom an arbitrary Power of Government, without any Limitations or Rules of Law. This (my Lords) is against the Safe-

ty of the King's Person, the Honour of his Crown, and most destructive to his People. Those Causes which are most perfect, have not only a Power to produce Effects, but to conserve and cherish them. The seminary Virtue, and the nutritive Virtue in Vegetables, do proceed from the same Principles. It was the Defect of Justice, and for the Restraining of Oppression and Violence, that first brought Government into the World, and set up Kings, the most excellent way of Government; and by the Maintenance of Justice all kinds of Government receive a sure Foundation and Establishment. It is this that bath in it an Ability to preserve and secure the Royal Powers of Kings, yea, to adorn and increase it.

2. In the second Article, your Lordships may observe absolute and unlimited Power defended by preaching, by Sermons, and other Discourses printed and published upon that Subject. And truly (my Lords) it seems to be a prodigious Crime, that the Truth of God and his holy Law should be perverted to defend the Lawlessness of Men; that the holy and sacred Function of the Ministry, which was ordained for Instruction of Mens Souls in the Ways of God, should be so abused, that the Ministers are become the Trumpets of Sedition, the Promoters and Defenders of Violence and Oppression.

3. In the third Article, my Lords, you have the Judges, who under his Majesty are the Dispensers and Distributors of Justice, frequently corrupted by Fear and Solicitation: you have the Course of Justice, in the Execution of it, shamefully obstructed. And, if a wilful Act of Injustice in a Judge be so high a Crime, in the Estimate of the Law, as to deserve Death, under what Burden of Guilt doth this Man lie, who hath been the Cause of Great Numbers of such voluntary and wilful Acts of Injustice?

4. In the fourth Article he will be found in his own Person to have sold Justice in Causes depending before him; and by his wicked Counsel endeavouring to make his Majesty a Merchant of the same Commodity: only with this Difference, that the King by taking Money for Places of Judicature should sell it in gross, whereas the Archbishop sold it by retail.

5. In the fifth Article there appears a Power usurped of making Canons, of laying Obligations on the Subjects in the nature of Law: And this Power abused to the making of such Canons as are in the Matter of them very pernicious, being directly contrary to the Prerogative of the King, and the Liberty of the People. In the manner of pressing them, may be found Fraud and Shuffling; in the Conclusion, Violence and Constraint, Men being forced by Terror and Threatning to subscribe to all. Which Power thus wickedly gotten, they labour to establish by Perjury, enjoining such an Oath for the Maintenance of it, as can neither be taken nor kept with a good Conscience.

6. In the sixth Article you have the King robbed of his Supremacy; you have a Papal Power exercised over his Majesty's Subjects in their Consciences, and in their Persons; you have Ecclesiastical Jurisdiction claimed by an incident Right, which the Law declares to proceed from the Crown.

And herein your Lordships may observe, That those who labour in Civil Matters to set up the King above the Laws of the Kingdom, do yet in Ecclesiastical Matters endeavour to set up themselves above the King. This was first procured by the Archbishop to be extrajudicially declared by the Judges, and then to be published in a Proclamation: In doing whereof, he hath made the King's Throne but a Footstool for his own and their Pride.

7. You have, my Lords, in the seventh Article, Religion undermined and subverted; you have Popery che-

rished

risht and defended; you have this seconded with Power and Violence, by severe Punishment upon those which have opposed this mischievous Intention: And by the subtle and eager Prosecution of these Men, hath the Power of Ecclesiastical Commissioners, of the Star-Chamber and Council-Table, been often made subservient to his wicked Designs.

8. My Lords, you may observe in the eighth Article, great Care taken to get into his own Hand the Power of nominating to Ecclesiastical Livings and Promotions: You have as much mischievous, as much wicked Care taken in the disposing of these Preferments, to the Hindrance and Corruption of Religion. And by this Means, my Lords, the King's sacred Majesty, instead of Sermons fit for Spiritual Instructors, hath often had Investives against his People, Encouragement to Injustice, or to the Overthrow of the Laws. Such Chaplains have been brought into his Service as have, as much as may be, laboured to corrupt his own Household, and been eminent Examples of Corruption to others; which hath so far prevailed, as that it hath exceedingly tainted the Universities, and been generally dispersed to all the chief Cities, the greatest Towns and Auditories of the Kingdom. The grievous Effects whereof are most manifest to the Commons House, there being divers hundred Complaints there depending in the House against scandalous Ministers; and yet I believe the hundredth Part of them is not yet brought in.

9. The Ninth Article sets out the like Care to have Chaplains of his own, that might be Promoters of this wicked and traitorous Design, Men of corrupt Judgments, of corrupt Practices, extremely addicted to Superstition. And to such Mens Care hath been committed the licensing of Books to the Press: By means whereof, many have been published that are full of Falshood, of Scandals, such as have been more worthy to be burnt by the Hand of the Hangman in Smithfield, (as I think one of them was) than to be admitted to come into the Hands of the King's People.

10. In the tenth Article it will appear, how he having made these Approaches to Popery, comes now to close and join more nearly with it: He confederates with Priests and Jesuits; he, by his Instruments, negotiates with the Pope at Rome, and hath Correspondence with them that he authorised from Rome here; he hath permitted a Roman Hierarchy to be set up in this Kingdom. And tho' he hath been so careful, that a poor Man could not go to the Neighbour-Parrish to hear a Sermon, when he had none at home, could not have a Sermon repeated, nor Prayer used in his own Family, but he was a fit Subject for the High-Commission Court; yet the other hath been done in all parts of the Realm, and no notice taken of it by any Ecclesiastical Judges or Courts.

11. My Lords, you may perceive Preaching suppressed in the eleventh; divers godly and orthodox Ministers oppressed in their Persons and Estates. You have the King's loyal Subjects banished out of the Kingdom; not as Elimelech, to seek for Bread in foreign Countries, by reason of the great Scarcity which was in Israel; but travelling abroad for the Bread of Life, because they could not have it at home, by reason of the spiritual Famine of God's Word, caused by this Man and his Partakers. And by this Means you have had the Trade, the Manufactory, the Industry of many Thousands of his Majesty's Subjects carried out of the Land.

It is a miserable Abuse of the Spiritual Keys, to shut up the Doors of Heaven, and to open the Gates of Hell; to let in Profaneness, Ignorance, Superstition, and Error. I shall need say no more: These Things are evident, and abundantly known to all.

12. In the twelfth Article, my Lords, you have a Division endeavour'd between this and the foreign Reformed Churches. The Church of Christ is one Body; and the Members of Christ have a mutual Relation, as Members of the same Body. Unity with God's true Church every where, is not only the Beauty, but the Strength of Religion; of which Beauty and Strength he hath sought to deprive this Church, by his manifold Attempts to break this Union. To which Purpose he hath suppressed the Privileges granted to the Dutch and French Churches: he hath denied them to be of the same Faith and Religion with us: and many other werys hath he declared his Malice to those Churches.

13. In the thirteenth Article, as he hath sought to make an Ecclesiastical Division of Religious Difference between us and foreign Nations, so he hath sought to make a Civil Difference between us and his Majesty's Subjects of the Kingdom of Scotland: And these he hath promoted by many Innovations there, pressed by himself and his own Authority. When they were incapable of such Alterations, he advised his Majesty to use Violence. He hath made private and publick Collections towards the Maintenance of the War, which he might justly call his own War; and with an impudent Boldness hath struck Tallies in the Exchequer for divers Sums of Money procured by himself, pro Defensione Regni; when, by his Counsels, the King was drawn to undertake, not a Defensive but an Offensive War.

14. He hath, lastly, thought to secure himself and his Party, by seeking to undermine Parliaments, and thereby hath laboured to bereave this Kingdom of the Legislative Power, which can only be used in Parliaments; and that we should be left a Kingdom, without that which indeed makes and constitutes a Kingdom, and is the only Means to preserve and restore it from Distempers and Decays. He hath hereby endeavoured to bereave us of the highest Judicatory; such a Judicatory, as is necessary and essential to our Government, some for Cases of Treason, and others concerning the Prerogative of the Crown, and Liberty of the People. It is the Supreme Judicatory, to which all difficult Cases resort from other Courts. He hath sought to deprive the King of the Love and Counsel of his People, and of that Assistance which he might have from them; and likewise to deprive the People of that Relief of Grievances, which they most humbly expect from his Majesty.

My Lords, The Parliament is the Cabinet wherein the chiefest Jewels both of the Crown and Kingdom are deposited. The great Prerogative of the King, and Liberty of the People, are most effectually exercised and maintained by Parliaments. Here, my Lords, you cannot pass by this Occasion of great Thanks to God and his Majesty for passing the Bill, whereby the frequent Course of Parliaments is established; which I assure myself he will by Experience find to be a strong Foundation both of his Honour and of his Crown.

This is all, my Lords, I have to say to the Particulars of the Charge. The Commons desire your Lordships, that they may have the same way of Examination that they had in the Case of the Earl of Strafford; that is, to examine Members of all kinds, of your Lordships House and their own, and others, as they shall see Cause: and those Examinations to be kept secret and private, that they may with more advantage be made use of when the Matter comes to Trial. They have declared, That they reserve to themselves the Power of making Additional Articles; by which they intend to reduce his Charge to be more particular and certain, in respect of the several Times, Occasion, and other Circumstances of the Offences therein charged. And that your Lordships would be pleased to put this Cause in such

a quick way of Proceeding, that these great and dangerous Crimes, together with the Offenders, may be brought to a just Judgment.

When the Clerk of the Parliament had done reading, I humbly craved leave of the Lords to speak a few Words; which were to this effect:

‘My Lords, this is a great and a heavy Charge, and I must be unworthy to live, if it can be made good against me: For it makes me against God, in point of Religion; against the King, in point of Allegiance; and against the Publick, in point of Safety, under the Justice and Protection of Law. And tho’ the King be little, if at all mentioned; yet I am bold to name him, because I have ever been of Opinion, that the King and his People are so joined together in one Civil and Politick Body, as that it is not possible for any Man to be true to the King, as King, that shall be found treacherous to the State established by Law, and work to the Subversion of the People: Tho’ perhaps every one, that is so, is not able to see through all the Consequences, by which one depends upon the other. So my Charge, my Lords, is exceeding heavy in itself; tho’ I, as yet, do not altogether feel the Weight of it. For ’tis yet, (as your Lordships see) but in Generals; and Generals make a great Noise, but no Proof; Whereas ’tis Proof upon Particulars that makes the Weight of a Charge sit close upon any Man. Now, my Lords, ’tis an old and a true Rule, *Errare contingit descendendo*, Error doth most often happen, and best appear, when Men descend to Particulars: And with them when I shall be charged, I hope my Innocence will furnish me with a sufficient Answer to any Error of mine, that shall be thought criminal, or any way worthy the Cognizance of this High and Honourable Court. As for human Frailties, as I cannot acquit myself of them, so, I presume, your Lordships will be favourable Judges of them: Since in the Transaction of so many Businesses as passed my Hands, Men, far abler than ever I can be, have been subject to them; and, perhaps, to as many and as great. But for Corruption in the least degree (I humbly praise God for it) I fear no Accuser that will speak Truth. But, my Lords, that which goes nearest unto me among these Articles, is, That I should be thought foul and false in the Profession of my Religion: As if I should profess with the Church of *England*, and have my Heart at *Rome*, and labour by all cunning Ways to bring *Romish* Superstition in upon the Kingdom. This (my Lords) I confess, troubles me exceedingly: And if I should forget myself, and fall into Passion upon it, I should but be in that Case which *St. Jerome* confessed he was in, when he knew not how to be patient, when Falshood in Religion was charged upon him. And yet that was nothing so high a Charge as this which is laid against me: Which is not only to be basely false myself, but withal, to labour to spread the same Falshood over the whole Kingdom.’

And here I humbly besought their Lordships, that I might a little enlarge myself, and I did so. But because I purpose here to set down the general Articles that were brought up against me, and that one of them comes home to this Point of Re-

ligion; I shall put it off till I come to that Article, and there set it down at large, what I now said. ^{a 'Tis Article 10.} And this I do to avoid an useles and tedious Repetition. Here then follow the Articles themselves, as they were that Day charged upon me.

Articles of the Commons assembled in Parliament, in Maintenance of their Accusation against William Laud, Archbishop of Canterbury, whereby he stands charged with High-Treason, and other High Crimes and Misdemeanours.

I. **T**HAT he hath traitorously endeavoured to subvert the Fundamental Laws and Government of the Kingdom; and instead thereof, to introduce an Arbitrary and Tyrannical Government against Law: And to that end hath wickedly and traitorously advised his Majesty, that he might, at his own Will and Pleasure, levy and take Money of his Subjects without their Consent in Parliament. And this he affirmed, was warrantable by the Law of God. ^{b This Kingdom of England, Ruth. & Prynn.}

II. He hath, for the better Accomplishment of that his traitorous Design, advised and procured divers Sermons, and other Discourses, to be preached, printed and published, in which the Authority of Parliaments, and the Force of the Laws of this Kingdom are denied; and an absolute and unlimited Power over the Persons and Estates of his Majesty’s Subjects is maintained and defended, not only in the King, but also in himself, and other Bishops, above and against the Law. And he hath been a great Protector, Favourer and Promoter of the Publishers of such false and pernicious Opinions.

III. He hath by Letters, Messages, Threats, Promises, and divers other Ways, to Judges and other Ministers of Justice, interrupted and perverted; and at other times, by the Means aforesaid, hath endeavoured to interrupt and pervert the Course of Justice in his Majesty’s Courts at *Westminster*, and other Courts, to the Subversion of the Laws of this Kingdom: whereby sundry of his Majesty’s Subjects have been stopped in their just Suits, and deprived of their lawful Rights, and subjected to his tyrannical Will, to their utter Ruin and Destruction.

IV. That the said Archbishop hath traitorously and corruptly sold Justice to those that have had Causes depending before him, by colour of his Ecclesiastical Jurisdiction, as Archbishop, High-Commissioner, Referee, or otherwise; and hath taken unlawful Gifts and Bribes of his Majesty’s Subjects: And hath, as much as in him lieth, endeavoured to corrupt other Courts of Justice, by advising [and procuring] his Majesty to sell Places of Judicature, and other Offices, [and procuring the Sale of them] contrary to the Laws and Statutes in that behalf.

Ruth. & Prynn.

Defant in Ruth. & Prynn.

V. He hath traitorously caused a Book of Canons to be composed and published, [and those Canons to be put in execution] without any lawful Warrant and Authority in that behalf. In

Defunct in
Rush. &
Pryn.

which pretended Canons many Matters are contained contrary to the King's Prerogative, to the Fundamental Laws and Statutes of this Realm, to the Right of Parliament, to the Propriety and Liberty of the Subjects; and Matters tending to Sedition, and of dangerous Consequence; and to the Establishment of a vast, unlawful, and presumptuous Power in himself and his Successors: Many of the which Canons, by the Practice of the said Archbishop, were surreptitiously passed in the last Convocation, without due Consideration and Debate; others by Fear and Compulsion were subscribed to by the Prelates and Clerks there assembled, which had never been voted and passed in the Convocation, as they ought to have been. And the said Archbishop hath contrived, and endeavoured to assure and confirm the unlawful and exorbitant Power which he hath usurped and exercised over his Majesty's Subjects, by a wicked and ungodly Oath, in one of the said pretended Canons, enjoined to be taken by all the Clergy, and many of the Laity of this Kingdom.

VI. He hath traitorously assumed to himself a papal and tyrannical Power, both in Ecclesiastical and Temporal Matters, over his Majesty's Subjects in this Realm of *England*, and other Places, to the Disinheritance of the Crown, Dishonour of his Majesty, and Derogation of his supreme Authority in Ecclesiastical Matters. And the said Archbishop claims the King's Ecclesiastical Jurisdiction, as incident to his Episcopal and Archiepiscopal Office in this Kingdom; and doth deny the same to be derived from the Crown of *England*: which he hath accordingly exercised, to the high Contempt of his Royal Majesty, and to the Destruction of [^a divers of] the King's liege People in their Persons and Estates.

^a Rush. &
Pryn.

VII. That he hath traitorously endeavoured to alter and subvert God's true Religion by Law established in this Realm; and instead thereof, to set up Popish Superstition and Idolatry: and to that end hath declared and maintained in Speeches and printed Books divers Popish Doctrines and Opinions, contrary to the Articles of Religion established [^b by Law.] He hath urged and enjoined divers popish and superstitious Ceremonies, without any warrant of Law; and hath cruelly persecuted those who have opposed the same, by corporal Punishment and Imprisonment; and most unjustly vexed others who refused to conform thereto, by Ecclesiastical Censures of Excommunication, Suspension, Deprivation and Degradation, contrary to the Law of the Kingdom.

^b Rushw. &
Pryn.

VIII. That for the better advancing of his Traitorous Purpose and Designs, he did abuse the great Power and Trust his Majesty reposed in him; and did intrude upon the Places of divers great Officers, and upon the Right of ^c divers of his Majesty's Subjects: whereby he did procure to himself the Nomination of sundry Persons to

^c Other, Rush.
& Pryn.

Ecclesiastical Dignities, Promotions and Benefices, belonging to his Majesty, and divers of the Nobility, Clergy, and others; and hath taken upon him the ^d Nomination of Chaplains to the King; by which means he hath preferred to his Majesty's Service, and to other great Promotions in the Church, such as have been popishly affected, or otherwise unsound and corrupt both in Doctrine and Manners.

^d Commendation, Rush. &
Pryn.

IX. He hath for the same traitorous and wicked Intent, chosen and employed such Men to be his [^e own Domestical] Chaplains, whom he knew to be notoriously disaffected to the Reformed Religion, grossly addicted to popish Superstition, and erroneous and unsound both in Judgment and Practice. And to them, or some of them, he hath committed Licencing of Books to be printed; by which means divers false and superstitious Books have been published, to the great Scandal of Religion, and to the seducing of many of his Majesty's Subjects.

^e Pryn. &
Rushworth.

X. He hath traitorously and wickedly endeavoured to reconcile the Church of *England* with the Church of *Rome*: And for the effecting thereof, hath consorted and confederated with divers Popish Priests and Jesuits; and hath kept secret Intelligence with the Pope of *Rome*: And by himself, his Agents and Instruments, treated with such as have from thence received Authority and Instruction. He hath permitted and countenanced a Popish Hierarchy or Ecclesiastical Government to be established in this Kingdom. By all which traitorous and malicious Practices this Church and Kingdom have been exceedingly endangered, and like to fall under the Tyranny of the *Roman* See.

XI. He in his own Person, and his Suffragans, Visitors, Surrogates, Chancellors, or other Officers, by his Command, have caused divers learned, pious, and orthodox ^f Preachers of God's Word to be silenced, suspended, deprived, degraded, excommunicated, or otherwise grieved and vexed, without any just and lawful Cause; whereby, and by divers other Means, he hath hindered the Preaching of God's Word, caused divers of his Majesty's Loyal Subjects to forsake the Kingdom, and increased and cherished Ignorance and Profaneness amongst the People; that so he might the better facilitate the Way to the effecting of his own wicked and traitorous ^g Designs of altering and corrupting the true Religion here established.

^f Ministers, Rush. &
Pryn.

^g Design, Rush. &
Pryn.

XII. He hath traitorously endeavoured to cause Division and Discord between the Church of *England* and other Reformed Churches; and to that end hath suppressed and abrogated the Privileges and Immunities which have been by his Majesty and his Royal Ancestors granted to the *French* and *Dutch* Churches in this Kingdom: And divers other Ways hath expressed his Malice and Disaffection to these Churches, that so, by such ^h Disunion, the Papists might have more Advantage for the Overthrow and Extirpation of both.

^h Disunion, Rushw. Disunion, Pryn.

XIII. He hath maliciously and traitorously plotted and endeavoured to stir up War and Enmity betwixt his Majesty's two Kingdoms of *England* and *Scotland*; and to that purpose hath laboured to introduce into the Kingdom of *Scotland* divers Innovations both in Religion and Government; all or the most part, tending to Popery and Superstition: to the great Grievance and Discontent of his Majesty's Subjects of that Nation. And for their refusing to submit to such Innovations, he did traitorously advise his Majesty to subdue them by Force of Arms: And by his own Authority and Power, contrary to Law, did procure fundry of his Majesty's Subjects, and enforced the Clergy of this Kingdom, to contribute toward the Maintenance of that War. And when his Majesty, with much Wisdom and Justice, had made a Pacification betwixt the two Kingdoms, the said Archbishop did presumptuously censure that Pacification, as dishonourable to his Majesty; and [by his Counsel and Endeavours] so incensed his Majesty against his said Subjects of *Scotland*, that he did thereupon, by Advice of the said Archbishop, enter into an offensive War against them, to the great Hazard of his Majesty's Person, and his Subjects of both Kingdoms.

*These Words
are added
from Prynne &
Rush.*

XIV. That to preserve himself from being questioned for these and other his traitorous Courses, he hath laboured to subvert the Rights of Parliament, and the antient Course of Parliamentary Proceedings; and by false and malicious Slanders to incense his Majesty against Parliaments. By which Words, Counsels, and Actions, he hath traitorously, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majesty, to set a Division between them, and to ruin and destroy his Majesty's Kingdoms. For which they do impeach him of High-Treason against our Sovereign Lord the King, his Crown and Dignity,

The said Commons do farther aver, that the said *William* Archbishop of *Canterbury*, during the time in which the
 * Treasons and Offences afore named were committed, hath been a Bishop or Archbishop in this Realm of *England*, one of the King's Commissioners for Ecclesiastical Matters, and ^b of his Majesty's most Honourable Privy Council: And that he hath taken an Oath for his faithful Discharge of the said Office of Counsellor, and hath likewise taken the Oath of Supremacy and Allegiance. And the said Commons, by Protestation, saving to themselves the Liberty of exhibiting at any time hereafter, any other Accusation or Impeachment against the said Archbishop, and also of replying to the Answers that the said Archbishop shall make unto the said Articles, or to any of them; and of offering farther Proof also of the Premises, or any of them, [^c or of any other Impeachment or Accusation that shall be exhibited by them] as the Case shall, according to the Course of Parliaments, require: do pray that the said Archbishop may be put to answer to all and every the Premises;

** Aforementioned Crimes,
Rushworth.
Crimes aforementioned
were done and committed,
Prynne.
^b One of, Rush.
& Prynne.*

*^c These words
are added
from Prynne &
Rushworth.*

and that such Proceedings, Examinations, Trial and Judgment, may be upon every of them had and used, as is agreeable to Law and Justice.

When these Articles had been read unto me in the Upper House, and I had spoken to the Lords, in a general Answer to them, what I thought fit, as is before expressed; I humbly desired of the Lords (this being upon *Friday, Febr. 26. 1640.*) that my going to the *Tower* might be put off till the *Monday* after, that so I might have time to be the better fitted for my Lodging. This, I humbly thank their Lordships, was granted.

[*February 20. 1640. Ordered by the Lords in Parliament, that the Lord Archbishop of Canterbury his Grace, shall stand committed to the Tower of London. But the Pleasure of this House is, that he continue still in the safe Custody of the Gentleman Usher of this House, till Monday the first of March 1640, and then that the Lieutenant receive his Grace in his safe Custody, until the Pleasure of this House be further known, and in the mean time Mr. Maxwell is to be responsible for him, and not to permit him to go Abroad, and that the Archbishop of Canterbury and the Earl of Strafford shall not come together.*]

I returned to Mr. Maxwell's Custody, and that Afternoon sent my Steward to Sir *William Balfore*, then Lieutenant, that a Lodging might be had for me with as much Convenience as might be. On *Monday, March 1. 1640.* Mr. Maxwell carried me in his Coach to the *Tower*. *St. George's* Feast, having been formerly put off, was to begin that Evening. By this means Mr. Maxwell (whose Office tied him to Attendance upon that Solemnity) could not possibly go with me to the *Tower* at Evening, as I desired. Therefore Noon, when the Citizens were at dinner, was chosen as the next fittest time for Privateneſs. All was well till I passed thro' *Newgate* Shambles, and entred into *Cheapside*. There some one Prentice first hollow'd out; and more follow'd the Coach, (the number still increasing as they went) till by that time I came to the *Exchange*, the shouting was exceeding great. And so they follow'd me with Clamour and Revilings, even beyond Barbarity itself; not giving over, till the Coach was entred in at the *Tower-Gate*.

[*Afterwards the Lords made the following Orders.*]

An Ordinance of the Lords and Commons, assembled in Parliament, concerning the Archbishop of *Canterbury*.

Die Martis, 16 Maii 1643.

‘ **W**HEREAS William Laud, Archbishop of
 ‘ *Canterbury*, standeth impeached in this pre-
 ‘ sent Parliament for High-Treason, and for divers
 ‘ other great Offences and Misdemeanours; and by
 ‘ reason of many great and weighty Businesses he can-
 ‘ not yet be brought to Trial for the said Offences and
 ‘ Misdemeanours; and he, in respect of his said Arch-
 ‘ bishoprick of *Canterbury*, hath power to give and
 ‘ collate fit Clerks to divers Parsonages, Vicaridges,
 ‘ Prebends, and other Ecclesiastical Promotions and
 ‘ Preferments; and if any of them should become void,
 ‘ and he left to prefer whom he please to the same, the
 ‘ same

same may prove very inconvenient, he bestowing them upon unfit and unworthy Persons.

Be it therefore ordered and ordained, by the Lords and Commons in this present Parliament, That in case any of the aforesaid Parsonages, Vicaridges, Prebends, or other Ecclesiastical Promotions or Preferments, now be, or shall hereafter, and before the Trial of the said Lord Archbishop, become void; That the said Lord Archbishop of Canterbury shall forbear to present or collate any Person or Persons thereunto, without the Leave and Order of both Houses of Parliament. And it is further ordered and ordained, That the said Lord Archbishop shall, from time to time, until his said Trial, present and collate such fit Person or Persons, to every such Parsonage, Vicaridge, Prebend, and other Ecclesiastical Preferment, as aforesaid, which now are, or hereafter before his said Trial shall become void, as by both Houses of Parliament shall be nominated and appointed. And it is further ordered by the said Lords and Commons in Parliament, that all Archdeacons, Registers, and other Officers, Ministers, and Persons whatsoever, shall forbear to give or make any Admission, Institution, Collation, or Induction of any Person or Persons whatsoever, which by the said Archbishop shall be presented in or to any such Parsonage, Vicaridge, Prebend, or other Ecclesiastical Preferment, other than such Person and Persons as shall be nominated and appointed by both Houses of Parliament, as aforesaid. And it is lastly ordered, That the Lord Archbishop, and the Churchwardens of every Parish, and other Officers of the Church, where any Parsonage, Vicaridge, Prebend, or other Ecclesiastical Promotions or Preferments, in the Donation or Gift of the said Archbishop, are; shall, within two Months after the respective Avoidance thereof, give notice of such Avoidance to the Lord Speaker of the House of Peers, for the time being.

Die Sabbati 10 Junii, 1643.

An Ordinance of the Lords and Commons assembled in Parliament, That all the Temporal Livings, Dignities, and Ecclesiastical Promotions, belonging unto William Lord Archbishop of Canterbury, be forthwith sequestered by and unto the Parliament.

WHEREAS by an Ordinance of Parliament, of the 16th of May 1643. the Archbishop of Canterbury is required from time to time, until his Trial, to collate such fit Persons unto any Ecclesiastical Preferment in his Patronage, as shall by both Houses be nominated unto him; and, in pursuance of the said Ordinance, another Ordinance of the Lords and Commons past the 20th of the same Month, requiring the said Archbishop to collate upon Edward Corbet, Fellow of Merton-College in Oxford, the Rectory of Chartham in the County of Kent, void by the Death of Dr. Bargrave, the last Incumbent, and whereas the said Archbishop of Canterbury refuseth Obedience to the said Ordinance, it is therefore ordered, and be it so ordained by the Lords and Commons in Parliament, That all the Temporalities of the Archbishop of Canterbury be hereby sequestered by and unto the Parliament, and William Lord Archbishop of Canterbury be suspended ab Officio & Beneficio, & omni & omnimoda Jurisdictione Archiepiscopali, until he be either convicted or acquitted of

High-Treason, for which he stands now accused. And whatsoever Livings, Dignities, or Ecclesiastical Promotions, in the said Archbishop's Gift or Collation, are, or hereafter shall be void, shall henceforth be instituted or inducted into by the Archbishop's Vicar-General, or any other having Authority in his behalf, upon the Nomination and Recommendation of both Houses of Parliament, during the time of the Suspension and Sequestration aforesaid. And upon this Ordinance it is ordered, and be it so ordained by the Lords and Commons in Parliament, that the said Edward Corbet be, and is hereby nominated and recommended forthwith, upon sight hereof, to be admitted, instituted, and inducted by the Vicar-General aforesaid, or any other having Authority in his behalf, into the said Rectory of Chartham, ratione suspensionis Domini Gulielmi Archiepiscopi Cantuariensis, & Sequestrationis Temporalium Archiepiscopatus in manibus supremæ Curie Parliamenti jam existentium, the same belonging unto their Gift. And it is hereby further ordained by the Lords and Commons in Parliament, that during the Suspension and Sequestration aforesaid, the Jurisdiction of the said Archbishop shall be executed and exercised by his Vicar-General, and other his inferiour Judges and Officers, as formerly the same hath been.]

On Tuesday, Octob. 24. an Order was brought me from the Lords, dated Octob. 23. with a Copy of ten Additional Articles, brought up by the Commons against me. This Order required me to make my Answer in writing by the 30th of the same Month. These Articles charged me not with Treason only, as the former did, but with Treason, and other high Crimes and Misdemeanours.

[Further Articles of Impeachment by the Commons assembled in Parliament, against William Laud, Archbishop of Canterbury, of High-Treason, and divers High Crimes and Misdemeanours; as followeth.

I. THAT the said Archbishop of Canterbury, to introduce an Arbitrary Government within this Realm, and to destroy Parliaments, in the third and fourth Year of his Majesty's Reign that now is, a Parliament being then called and sitting at Westminster, traitorously and maliciously caused the said Parliament to be dissolved, to the great Grievance of his Majesty's Subjects, and Prejudice of this Commonwealth. And soon after the Dissolution thereof, gave divers Propositions under his Hand to George then Duke of Buckingham; casting therein many false Aspersions upon the said Parliament, calling it a factious Parliament, and falsely affirming that it had cast many Scandals upon his Majesty, and had used him like a Child in his Minority; stiling them Puritans, and commending the Papists for harmless and peaceable Subjects.

II. That within the space of ten Years last past, the said Archbishop hath treacherously endeavoured to subvert the Fundamental Laws of this Realm; and to that end hath in like manner endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws and Statutes of the Realm. And for Manifestation thereof, about six Years last past, being then a Privy-Counsellor to his Majesty, and sitting at the Council-Table,

Table, he said, That as long as he sat there, they should know, that an Order of that Board should be of equal force with a Law or Act of Parliament. And at another time used these Words, That he hoped ere long, that the Canons of the Church and the King's Prerogative should be of as great power as an Act of Parliament. And at another time said, That those that would not yield to the King's Power, he would crush them to pieces.

III. *That the said Archbishop, to advance the Canons of the Church, and Power Ecclesiastical, above the Law of the Land, and to pervert and hinder the Course of Justice, hath at divers times within the said time, by his Letters, and other undue Means and Sollicitations used to Judges, opposed and stopped the granting of his Majesty's Writs of Prohibition, where the same ought to have been granted for stay of Proceedings in the Ecclesiastical Court: whereby Justice hath been delayed and hindered, and the Judges diverted from doing their Duties.*

IV. *That for the end and purpose aforesaid, about seven Years last past, a Judgment being given in his Majesty's Court of King's-Bench against one Burley a Parson, being a Man of bad Life and Conversation, in an Information upon the Statute of 21 Hen. 8. for wilful Non-Residency; the said Archbishop, by Sollicitations and other undue Means used to the Judges of that Court, caused Execution upon the said Judgment to be stayed: and being moved therein, and made acquainted with the bad Life and Conversation of the said Parson, he said, That he had spoken to the Judges for him, and that he would never suffer a Judgment to pass against any Clergyman by Nihil dicit.*

V. *That the said Archbishop about eight Years last past, being then also a Privy-Counsellor to his Majesty, for the end and purpose aforesaid, caused Sir John Corbet of Stoke in the County of Salop Baronet, then a Justice of Peace of the said County, to be committed to the Prison of the Fleet, where he continued Prisoner for the space of half a year or more, for no other cause, but for calling for the Petition of Right, and causing it to be read at the Sessions of the Peace for that County, upon a just and necessary Occasion. And during the time of his said Imprisonment, the said Archbishop without any Colour of Right, by a Writing under the Seal of his Archbishoprick, granted away a parcel of the Glebe-Land of the Church of Adderly in the said County, whereof the said Sir John Corbet was then Patron, unto Robert Viscount Kilmurrey, without the Consent of the said Sir John, or the then Incumbent of the said Church: which said Viscount Kilmurrey built a Chapel upon the said parcel of Glebe-Land, to the great Prejudice of the said Sir John Corbet, which hath caused great Suits and Contentions between them. And whereas the said Sir John Corbet had a Judgment against Sir James Stonehouse Knight, in an Action of Waste, in his Majesty's Court of Common-Pleas at Westminster, which was afterwards affirmed on a Writ of Error in the King's-Bench, and Execution thereupon awarded; yet the said Sir John by means of the said Archbishop could not have the effect thereof, but was committed to Prison by the said Archbishop and others at the Council-Table, until he had submitted himself unto the Order of the said Table, whereby he lost the benefit of the said Judgment and Execution.*

VI. *That whereas divers Gifts and Dispositions of divers Sums of Money were heretofore made by divers charitable and well-disposed Persons, for the buying in of divers Improvements for the Maintenance of preaching the Word of God in several Churches; the said Archbishop about eight Years last past wilfully and ma-*

liciously caused the said Gifts, Feoffments, and Conveyances made to the Uses aforesaid, to be overthrown in his Majesty's Court of Exchequer, contrary to Law, as things dangerous to the Church and State, under the specious pretence of buying in Appropriations; whereby that pious Work was suppressed and trodden down, to the great Dishonour of God, and Scandal of Religion.

VII. *That the said Archbishop at several times, within these ten Years last past, at Westminster, and elsewhere within this Realm, contrary to the known Laws of this Land, hath endeavoured to advance Popery and Superstition within the Realm: And for that end and purpose hath wittingly and willingly received, harboured, and relieved divers Popish Priests and Jesuits; namely, one called Sancta Clara, alias Dampont, a dangerous Person and Franciscan Friar: who having written a Popish and Seditious Book, entitled, Deus, Natura, Gratia, wherein the Thirty nine Articles of the Church of England, established by Act of Parliament, were much traduced and scandalized; the said Archbishop had divers Conferences with him, while he was writing the said Book: and did also provide Maintenance and Entertainment for one Monsieur S. Giles, a Popish Priest, at Oxford, knowing him to be a Popish Priest.*

VIII. *That the said Archbishop about four Years last past, at Westminster aforesaid, said, That there must be a Blow given to the Church, such as had not been yet given, before it could be brought to Conformity; declaring thereby his Intention to be, to shake and alter the true Protestant Religion established in the Church of England.*

IX. *That in or about the Month of May 1640. presently after the Dissolution of the last Parliament, the said Archbishop, for the Ends and Purposes aforesaid, caused a Synod or Convocation of the Clergy to be held for the several Provinces of Canterbury and York, wherein were made and established by his means and procurement divers Canons and Constitutions Ecclesiastical; contrary to the Laws of this Realm, the Rights and Privileges of Parliament, the Liberty and Propriety of the Subject, tending also to Sedition, and of dangerous Consequence. And among other things, the said Archbishop caused a most dangerous and illegal Oath to be therein made and contrived, the Tenour whereof followeth in these words:—That I A. B. do swear that I do approve the Doctrine and Discipline or Government established in the Church of England, as containing all things necessary to Salvation; and that I will not endeavour by myself or any other, directly or indirectly, to bring in any Popish Doctrine, contrary to that which is so established: Nor will I ever give my Consent to alter the Government of this Church by Archbishops, Bishops, Deans, and Archdeacons, &c. as it stands now established, and as by Right it ought to stand: nor yet ever subject it to the Usurpations and Superstitions of the See of Rome. And all these things I do plainly and sincerely acknowledge and swear, according to the plain and common Sense and Understanding of the same Words, without any Equivocation, or mental Evasion, or secret Reservation whatsoever. And this I do heartily, willingly, and truly upon the Faith of a Christian; so help me God in Jesus Christ. Which Oath the said Archbishop himself did take, and caused divers other Ministers of the Church to take the same, upon Pain of Suspension and Deprivation of their Livings, and other severe Penalties; and did also cause Godfrey, then Bishop of Gloucester, to be committed to Prison for refusing*

refusing to subscribe to the said Canons, and to take the said Oath: and afterward the said Bishop submitting himself to take the said Oath, he was set at liberty.

X. That a little before the calling of the last Parliament, Anno 1640. a Vote being then passed, and a Resolution taken at the Council-Table, by the Advice of the said Archbishop, for assisting of the King in Extraordinary Ways, if the said Parliament should prove peevish, and refuse to supply his Majesty: the said Archbishop wickedly and maliciously advised his Majesty to dissolve the said Parliament, and accordingly the same was dissolved: And presently after the said Archbishop told his Majesty, That now he was absolved from all Rules of Government, and left free to use extraordinary Ways for his Supply.

For all which Matters and Things, the said Commons assembled in Parliament, in the Name of themselves and of all the Commons of England, do impeach the said Archbishop of Canterbury of High-Treason, and other High Crimes and Misdemeanours, tending to the Subversion of our Religion, Laws, and Liberties, and to the utter Ruin of this Church and Commonwealth. And the said Commons by Protestation saving to themselves the liberty of exhibiting at any time hereafter any further or other Accusation or Impeachment against the said William Laud, Archbishop of Canterbury, and also of replying to the Answer that he shall make unto the said Articles, or any of them; or offering Proof of the Premises, or any other Impeachments or Accusations that shall be exhibited by them, as the Cause shall (according to the Course of Parliament) require: do pray that he the said William Laud, Archbishop of Canterbury, may be called to answer the said several Crimes and Misdemeanours, and receive such condign Punishment as the same shall deserve; and that such further Proceedings may be upon every of them had and used against him, as is agreeable to Law and Justice.

Die Lunæ, 23 Octob. 1643.

ORDERED, &c. That the Lord Archbishop of Canterbury shall put in his Answer in writing into this House by the 30th Day of this Instant October, unto the particular Articles in maintenance of their former Impeachment of High-Treason, and divers High Crimes and Misdemeanours, brought up from the House of Commons against him, and remaining now before the Lords in Parliament.]

I sent instantly by the same Messenger a Petition for longer time; for Means out of my Estate to fee my Counsel, and bear the necessary Charge of my Trial; for Counsel, and for a Solicitor and some Servants to attend my Business. The Lords, I humbly thank them, gave me longer time, and assigned me Mr. Hearn, Mr. Chute, Mr. Hales; and at my Petition added Mr. Gerrard. For Money, they referred me to the Committee of Sequestrations; but delayed their Answers concerning my Servants, and the Papers of my Defence, which Mr. Prynne took from me. For tho' he promised me a faithful Restitution of them within three or four Days, yet to this Day (being almost five Months after) I had received but three Bundles of the twenty and one which he had from me.

VOL. I.

[To the Honourable the Lords assembled in the High Court of Parliament, the Humble Petition of William Laud, Archbishop of Canterbury.

Humbly sheweth,

THAT he hath received your Lordships Order of October 23. 1643. with a Copy of the Articles charged against him, and requiring him to make answer.

Most humbly prayeth, That according to an Order of that Honourable House, he may have Counsel assigned him, and that Master Hearne and Master Chute may be his Counsel, and may have free Liberty to come unto him; and that he may have some Money out of his Estate to fee his Counsel, and defray his other Charges, he having been for this last whole Year burdensome to his Friends. And further, That he may have all his Papers and Books, most of which belong to his Defence, which Master Prynne took from him by Order of the Lords, delivered unto him, that he may be able to answer for himself. That also he may have Time and Means to send for his Witnesses, which can hardly be done in the time limited: and that he may have his Servants about him, to send about his necessary Occasions. And lastly, That he may have longer time, the Articles being large and many. And he shall ever pray, &c.

William Cant.

Which Petition being read in the Lords House October 24. 1643. this Order was made.

Die Martis, 24 Octob. 1643.

UPON the reading of the Petition of the Lord Archbishop of Canterbury this Day in the House, it is ordered, &c. That time is given him until Monday the sixth of November for the putting in his Answer in writing into this House unto the particular Articles brought up from the House of Commons, in maintenance of their former Impeachment of High-Treason, and divers High Crimes and Misdemeanours against him. That Master Hearne and Master Chute are hereby assigned of Counsel for the drawing up of his Answer, who are to be permitted to have free Access in and out to him. That this House doth hereby recommend to the Committee of Sequestrations, that the said Lord Archbishop shall have such Means afforded him out of his Estate, as will enable him to pay his Counsel, and defray his other Charges. That when his Lordship shall set down particularly what Papers and Writings are necessary for his Defence that should be restored unto him, their Lordships will take it into their Consideration. That upon his Lordship's nominating who shall be his Solicitor, the Lords will return their Answer. And for the Witnesses, when a Day shall be appointed for his Lordship's Trial, this House will give such Directions therein as shall be just.]

Friday, October 27. I petitioned again, that the Papers of my Defence being (as I was informed) in the hands of the Close Committee, might be delivered unto me; and sent my Petition, with the Order of the Lords annexed, to the Committee for Sequestrations. There many were very favourable, till Mr. Glyn was pleased to say, They were not to allow me Means, and there was a known Course in Law, which was,

that I might go on in *forma Pauperis*; and so was left without any Allowance out of my Estate, to fee my Counsel, or supply other Wants. This succeeding so ill with me, I petitioned the Lords again on Saturday, October 28. 1643. and then Mr. Dell my Secretary was assigned me for my Solicitor; and I was allowed two Servants more to go about my Business.

[Die Sabbati, 28 Octob. 1643.]

Ordred, &c. That Master Hales is hereby appointed to be of Counsel with the Lord Archbishop of Canterbury, with his other Counsel already appointed for the drawing of his Answer to the Charge of the House of Commons against him. And that Master W. Dell, Richard Cobb, and Master George Smith, his Lordship's Servants, shall have liberty to attend the said Archbishop's several Affairs, and be permitted to come in and out unto him, as there shall be occasion.]

And the House of Commons, by their Order, agreed to the Lords, that I should have Copies of any of the Papers taken from me, but it should be at my own Charge. Wonderful Favour this, and as much Justice! My Estate all taken from me, and my Goods sold, before ever I came to Hearing; and then I may take Copies of my Papers at my own charge.

On Tuesday, October 31. I humbly petitioned the Lords for Direction of my Counsel, how to carry themselves towards me and my Defence; and that they would honourably be pleased, in regard the Articles charged me with Treason and Misdemeanour, and were intermixed one with another, to distinguish which were for Treason, and which for Misdemeanour; as also for longer Time to put in my Answer. The Lords upon this gave an Order, that I should have time till Novemb. 13. but would declare no Opinion touching the Distinguishment of the Articles, but left me to my Counsel to advise as they pleased.

[To the Right Honourable the Lords assembled in Parliament, the humble Petition of William Archbishop of Canterbury.]

Most humbly sheweth,

THAT your Petitioner having presented against him, by the Honourable House of Commons, to your Lordships, an Impeachment, intitled, Further Articles of Impeachment by the Commons assembled in Parliament, of High-Treason, and divers High Crimes and Misdemeanours; to which, by your Honourable Order of the 24th of October annexed, he is directed to put in his Answer in Writing by Monday the 6th of November; and hath thereby Counsel assigned him to draw up the same.

That your Petitioner's Counsel, upon reading of the Articles, finding that as well in the Frame, as the Conclusion thereof, the Matters of Crime and Misdemeanours are so interwoven with References to the Matters thereby charged as Treason, as they cannot take upon them to distinguish them: and conceiving it not to have been your Lordship's Intention, by their Assignments, that they should advise an Answer to any part of the Impeachment charged against your Petitioner as Treason, do forbear to advise your Petitioner's Answer to the said Articles, without some Declaration first had, which of the said Articles are intended to be a Charge of High-Treason, and which

of them of Crimes and Misdemeanours; without which, your Petitioner is like to be deprived of the Assistance of Counsel, granted by your Lordships Order.

Your Petitioner humbly beseecheth your Lordships, in this so heavy a Charge on him, from so Great and Honourable a Body, in such a Strait of Time, that it may be declared which of the said Articles are intended to be Charges of Crimes and Misdemeanours only, in which your Petitioner may have the Assistance of his Counsel assigned him, to advise him in his Answer thereunto: And that your Lordships will be further honourably pleased to enlarge your Petitioner in the Time allotted for his Answer. And your Petitioner shall pray, &c.

William Cant.

Upon which Petition, this Order was formed.

Die Martis, 31 Octob.

Ordred, &c. That the Lord Archbishop of Canterbury shall have time to put in his Answer to the Impeachment of the House of Commons, until Monday the 13th of November next. And that this House doth forbear to declare any Opinion concerning the several Articles of the said Impeachment, but leaves it to his Counsel to do and advise as his Counsel shall think most fitting.]

My Counsel told me plainly, I might as well have no Counsel, if the Articles were not distinguished; for they were so woven one within another, and so knit up together in the Conclusion, that they might refer all to Treason, and so they be suffered to give me no Counsel at all in Matter of Fact. Hereupon they drew me another Petition to the same Effect, which I caused to be delivered Novemb. 6. but it received the same Answer. Then Novemb. 7. being Wednesday, I petition'd the House of Commons to the same purpose: And Novemb. 8. this my Petition was read in the House of Commons; and after a short Debate, the Resolution was, That they being my Accusers, would not meddle with any thing, but left all to the Order of the Lords, before whom the Business was, and my Counsel's own Judgment thereupon. This seemed very hard, not only to myself and my Counsel, but to all indifferent Men that heard it. In the mean time, I could resort no whither but to Patience and God's Mercy.

[Die Veneris, 10 Novemb. 1643.]

Ordred, That the Lieutenant of the Tower, or his Deputies, shall bring in Safety the Lord Archbishop of Canterbury before their Lordships on Monday the 13th of this Instant November, by Ten of the Clock in the Morning, to put in his Answer into the House to the Impeachment of the House of Commons, remaining now before the Lords in Parliament; and this to be a sufficient Warrant in that behalf.

To the Gentleman-Usher, &c.]

November 13. I appeared in the Parliament-House according to the Order, and was at the Bar. That which I spake to the Lords, was this: 'That I had no Skill to judge of the Streights into which I might fall by my Plea which I had resolved on, being left without all Assistance of my Counsel, in regard of the Nature and Form of the Impeachment that was against me. That

' yet

'yet my Innocency prompted me to a ready Obedience of their Lordships Order, casting myself wholly upon God's Mercy, their Lordships Justice, and my own Innocency.' Then I humbly desired that their Lordships Order first, and the Impeachment after, might be read. This done, I put in my Answer in Writing, as I was ordered to do, and humbly prayed it might be entered. My Answer was; *All Advantages of Law against this Impeachment saved and reserved to this Defendant, he pleads Not Guilty to all and every part of the Impeachment, in manner and form as 'tis charged in the Articles: And to this Answer I put my Hand.*

[*The Humble Answer of William Archbishop of Canterbury, to the further Articles of Impeachment of High-Treason and divers High Crimes and Misdemeanours exhibited against him by the Honourable House of Commons, according to Direction of an Order of this Honourable House of the 13th of Octob. last.*

ALl Advantages of Exception to the said Articles of Impeachment, to this Defendant saved and reserved, this Defendant humbly saith, That he is not guilty of all or any the Matters by the said Impeachment charged, in such manner and form as the same are by the said Articles of Impeachment charged.]

My Answer being thus put in, I humbly besought their honourable Lordships, 'To take into their Consideration my great Years, being Threescore and Ten compleat, and my Memory, and other Faculties, by Age and Affliction much decayed: my long Imprisonment, wanting very little of three whole Years, and this last Year little better than close Imprisonment: my want of Skill and Knowledge in the Laws to defend myself: the Generality and Incertainty of almost all the Articles, so that I cannot see any Particulars against which I may provide myself. In the next place, I did thankfully acknowledge their Lordships honourable Favour, in assigning me such Counsel as I desired: But I told their Lordships withal, that as my Counsel were most ready to obey their Lordships in all the Commands laid upon them, so there were certain Doubts arisen in them, how far they might advise me without offence; considering the Charges against me were so interwoven, and left without all Distinguishment, what is intended as a Charge of Treason, and what of Crime and Misdemeanour: That to remove these Doubts, I had humbly besought their Lordships twice for Distinguishment, by several Petitions: That their Lordships not thinking it fit to distinguish, I have without Advice of Counsel put in my Plea, as their Lordships see. But do most humbly pray, that their Lordships will take me so far into Consideration, as that I may not lose the benefit of my Counsel for Law in all, or any; and for Law and Fact, in whatsoever is not charged as Treason, when it shall be distinguished: As still my Prayers were, that by their Lordships Wisdom and honourable Direction, some way might be found to distinguish them; and that having (not without much difficulty) prevailed with my Counsel to attend, their Lordships would be pleased to hear them speak in this per-

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'plexed Business.' While I was speaking this, the Lords were very attentive, and two of them took Pen and Paper at the Table, and took Notes: And it was unanimously granted, that my Counsel should be heard; and so they were. And the Order then made upon their Hearing was, that they should advise me, and be heard themselves in all things concerning Matter of Law, and in all things, whether of Law or Fact, that were not charged as Treason; and that they would think upon the Distinguishment in time convenient.

[Die Lunæ, 13 Novemb. 1643.]

ORDERED by the Lords in Parliament, That, the Lord Archbishop of Canterbury's Counsel shall provide themselves to advise him in point of Law, in all the Articles of the whole Charge; and for the Matter of Fact, when the Cause comes to be prosecuted by the House of Commons, as there shall be need, their Lordships will give further Directions in due time.

On the 11th of December 1643, the House of Commons made this ensuing Order.

11 December 1643.

ORDERED, That the Committee for the Trial of the Archbishop of Canterbury do meet this Afternoon at Two of the clock in the Star-Chamber, to prepare the Evidence against the Archbishop of Canterbury; and to summon such Witnesses as are needful and prepare the Business fit for Trial, and to acquaint the House when they are ready; and this they are to do with all convenient speed they can and to have power to send for Parties, Witnesses, Papers, Records, &c. And the Care thereof is particularly committed unto Serjeant Wilde.]

Wednesday at Night, Jan. 3. 1643. I received an Order for my Appearance, and to answer to the Impeachment against me, on the Monday following, Jan. 8.

[Die Mercurii, 3 Jan. 1643.]

IT is this Day ordered by the Lords in Parliament, That this House will proceed against William Laud Archbishop of Canterbury, upon the Impeachment brought up from the House of Commons for High Crimes and Misdemeanours, on Monday Morning next at Ten of the clock, being the eighth of this Instant January 1643. At which time the said Archbishop is to prepare himself for his Defence.

To the Gentleman-Usher attending this House, or his Deputy, to be delivered to the Lieutenant of the Tower, or his Deputy, for the Archbishop.

Jan. 3. 1643. A Message sent from the Lords by Sir Robert Rich and Mr. Page, The Lords commanded us to put you in mind, that the Archbishop of Canterbury hath put in his Plea to the Impeachment of this House sent up to the Lords some time since, which they desire you to take into Consideration what is fit to be done in it.

Jan. 5. The House of Commons desired the Lords to appoint a Committee to examine some Witnesses upon Oath, against the Archbishop, in the presence of the Committee of the Commons; which was granted.]

This Summons seemed sudden, after so great an Intermission; yet I could not petition for more

Time, till *Saturday, Jan. 6.* because (as the Messenger told me) the House sat not again till then. Then I petitioned for more Time, in regard my Counsel were not in Town: and I had Time given till *Tuesday, Jan. 16.* and that Day set pre-emptorily.

[*To the Right Honourable the Lords assembled in the High Court of Parliament, the humble Petition of William Laud Archbishop of Canterbury, Prisoner in the Tower.*

Humbly sheweth,

THAT your Petitioner having received your Lordships Command, by your Honourable Order of the 3^d of this Instant January, annexed, to attend and answer the Impeachments against your Petitioner, from the Honourable House of Commons, on Monday the 8th of this Instant January, which is but five Days distance, and at a Time when two of his three Counsel assigned are out of Town, and your Petitioner's Witnesses residing in several remote Places, cannot be summoned in so short a time, nor willing happily to come upon their Summons, without Warrant from your Lordships:

Your Petitioner's most humble Suit to your Lordships is, That you will honourably vouchsafe him some more convenient time to send for his Counsel and Witnesses, to testify in the Matters of Fact charged against him; and withal, to grant the Petitioner your Honourable Order, to command the Witnesses summoned to attend at the time by your Lordships to be appointed. Which his humble Request, your Petitioner had sooner presented to your Lordships, but that no Sitting hath been (as your Petitioner is informed) until this Day, since your Honourable Order in this behalf made known to him. And your Petitioner shall pray, &c.

William Cant.

Sabbati, 6 Jan. 1643.

WHereas the House formerly appointed Monday, being the 8th of this Instant January, 1643. to proceed against William Laud, Archbishop of Canterbury, upon the Impeachment brought up against him from the House of Commons for High-Treason, and High Crimes and Misdemeanours; upon reading the Petition of the said Archbishop, it is this Day ordered by the Lords in Parliament, to the end that the Counsel and Witnesses of the said Archbishop may have competent Time to attend the Hearing of the Cause, That this House will respite the Proceedings against the said Archbishop, upon the said Impeachment, until Tuesday the 16th of this Instant January, 1643. at Ten of the Clock in the Morning. At which Time the said Archbishop is pre-emptorily appointed to provide his Witnesses, and prepare his Defence unto the said Impeachments.

To the Gentleman-Usher, &c.]

Notwithstanding the shortness of this Time, my Counsel being out of Town, as not expecting it, I was on Sunday, Jan. 7. order'd again to appear in Mr. Smart's Suit the next Day. The Warrant bare date a Fortnight before; yet partly to sanctify the Sabbath, and partly to shew his great Civility to me in giving me warning, I was not served with it till Sunday Night at Seven of the Clock. The next Morning I went to Westminster, as I was commanded: but I was sent back, and

not so much as called upon. So, beside the Charge I was at, that Day was lost and taken from me and my Business, as short time as I had given me.

Then Tuesday came on Jan. 16. And whereas I was ordered to appear at the Lords House at Nine in the Morning, I was by another Order put off till One of the Clock in the Afternoon.

[Die Lunæ, 15 Jan. 1643.]

IT is this Day ordered by the Lords in Parliament, that the Lieutenant of the Tower of London, or his Deputy, shall bring in Safety the Archbishop of Canterbury before their Lordships, on Tuesday the 16th this Instant January, by One of the Clock in the Afternoon; at which time this House will proceed against the said Archbishop upon the Impeachment brought up from the House of Commons against him for High-Treason, and high Crimes and Misdemeanours, and this to be a sufficient Warrant in that behalf.] Then I appear'd.

[About Three a Clock that Afternoon the Lords sent down this Message to the House of Commons.

16 Jan. 1643.

A Message from the Lords, by Sir Robert Rich and Mr. Page, to acquaint the House that they are ready to bear the Charge upon the Impeachment against the Bishop of Canterbury.

Upon this Message, the Committee of the House of Commons, appointed to manage the Evidence against him, went up to the Lords House. And then the Archbishop being brought to the Bar, after he had there kneeled a little space, was commanded to stand up. Which Ceremony ended,]

The Committee, that were to press the Evidence against me, began to proceed upon the former general Articles, as well as upon the latter. But to the first Articles I had never been called to answer, nor ever joined Issue. Upon this, there was much looking one upon another, as if they meant to ask where the Failure was.

[Hereupon Mr. Maynard spake to the Lords to this effect.

Mr. Maynard's Speech on this occasion.

My Lords,

IT now appears to your Lordships, how unwilling the Archbishop is (out of Conscience of his own Guilt) to come to his Trial, that in all this Space, from his first Impeachment, he hath not so much as put in any Answer to the original Articles, tho' he had long since Counsel assigned him for that purpose. My Lords, this is none of the Commons Fault, but his own: For your Lordships well know, that the Commons can take no notice what is done in the House of Peers in a Parliamentary way, but by a Message from your Lordships, who, after our Articles exhibited, were to call upon the Archbishop for an Answer to them. And your Lordships sending us several Messages heretofore, that the Archbishop had put in his Answer to the Articles, and that you were ready to bear our Charge against him, and appointing this Day for his Trial, the Commons thereupon conceived that he had formerly put in his Plea and Answer, in due Form, to all their Articles: But the contrary now appearing both to your Lordships and us,

it is impossible for us to proceed at this time on his Trial, there being no Issue joined upon the Original Articles, for want of an Answer to them; and to proceed upon the Additional before any Answer given to the Originals, will be very preposterous. Wherefore we humbly pray your Lordships, to order that the Archbishop may forthwith put in his Answer both to the Original and Additional Articles, by the Advice of his Counsel, or otherwise, in such a sort as he will stand to it: And then we shall without any Delay join Issue with him, proceed on in his Trial and Evidence against him, when your Lordships shall appoint.]

But by this Means there could not then be any Proceeding. So I was there peremptorily ordered to put in my Answer on Monday, Jan. 22. both to the original and additional Articles, and in Writing.

[The Archbishop desired the Lords that he might advise with his Counsel, whether the Articles were certain and particular enough to be answered unto; and that if their Lordships should over-rule him to put in his Answer to them, he might have convenient Time to do it.

Upon this, all being commanded to withdraw, the Lords, after some short Debate among themselves, and upon reading the Archbishop's Petition to have Mr. Gerrard of Grays-Inn assigned for his Counsel, to join with those formerly assigned him, made this ensuing Order:

Die Martis, 16 Jan. 1643.

UPON the reading the Petition of William Archbishop of Canterbury, it is this Day ordered by the Lords in Parliament, That Mr. Richard Gerrard of Grays-Inn be added to the former Counsel assigned to the said Archbishop, to be likewise of his Counsel.

It is also ordered by the Lords in Parliament, That William Archbishop of Canterbury shall put in his Answer in Writing into this House, to the first and further Articles of Impeachment brought up from the House of Commons against him by Monday Morning next peremptorily; and that the same Counsel formerly assigned him shall be of Counsel with him.

On the 19th of January the Archbishop sent this Petition to the Lords.

To the Right Honourable the Lords assembled in Parliament, the humble Petition of William Archbishop of Canterbury, Prisoner in the Tower;

Sheweth,

THAT whereas your Petitioner having formerly answered the particular Articles exhibited against him by the honourable House of Commons; and now by your Lordships Order, of the 16th of this Instant, is commanded to put in his Answer to the first and further Articles of Impeachment brought up against him by Monday Morning next; for the doing whereof his former Counsel is assigned him.

That your Petitioner having advised with his Counsel concerning the first Articles, which were exhibited now almost three Years since, finding upon Perusal and Debate of the same, that the said former Articles are such, that no Answer can be made thereunto, nor

your Petitioner in any wise enabled to prepare for his Defence of the same, as they now stand:

That forasmuch as the said Articles of Impeachment import no less than a Charge of High-Treason; and forasmuch as your Petitioner is by his Counsel informed that (especially in Cases of Life) the Defendant is allowed to offer to the Court, where the same depends, his Exceptions by his Counsel before any Plea pleaded:

Your Petitioner most humbly beseecheth your Lordships to appoint a Day for the hearing of your Petitioner's Counsel concerning the same. And your Petitioner shall pray, &c.

William Cant.]

At this Day and Time I appeared, as I was ordered to do; but could not obtain of the Lords either to take my former Answer off from the File, if I must put in another; nor to distinguish the Articles, which were Treason, and which Misdemeanor; nor leave for my Counsel to speak to the Generality and Uncertainty of the original Articles; which they professed were such, as no Man living could prepare Answer for. But I must put in my Answer presently, or be taken *pro Confesso*. So in these Streights I put in my Answer to both Articles;

The humble Answer of William Archbishop of Canterbury, to the first and farther Articles of Impeachment brought up by the honourable House of Commons against him, and by Order of the Right Honourable the Lords in Parliament of the 16th of this Instant directed to be put in.

AS to the 13th Article of the said first Articles, and the Matters therein charged, and all Matters or Things in the same, or any of the rest of the said Articles contained, which concern any Act of Hostility, whether between the King and his Subjects, or between Subject and Subject, or which may be conceived to arise upon the coming of any English Army against Scotland, or the coming of the Scottish Army into England; or upon any Action, Attempt, Assistance, Counsel, or Device, having relation thereunto, and falling out by the occasion of the late Troubles, preceding the late Conclusion of the Treaty, and Return of the Scottish Army into Scotland: This Defendant saith, That it is enacted by an Act, made during the Sitting of this present Parliament, that the same, and whatsoever hath ensued thereupon, whether trenching upon the Laws and Liberties of the Church and Kingdom, or upon his Majesty's Honour and Authority, in no time hereafter may be called in question, or resented as a Wrong, national or personal; and that no mention be made thereof in time coming, neither in Judgment, nor out of Judgment: but that it be held and reputed as though never such Things had been thought or wrought; as by the said Act may more at large appear: With this, That this Defendant doth aver that he is none of the Persons excepted by the said Act, or the said Offences charged upon this Defendant any of the Offences excepted by the said Act.

And as to all the rest of the said first and farther Articles, this Defendant, saving to himself all Advantages of Exception to the said Articles, humbly saith, He is not guilty of all, or any of the Matters by the said Articles charged, in such Manner

Manner and Form as the same are by the said Articles charged against him.

[The same Day the Lords, by Sir Robert Rich and Mr. Page, sent down this Answer of the Archbishop's to the House of Commons; which was read, and ordered to be referred to the Committee, appointed to manage the Evidence against the said Archbishop, and accordingly delivered to Serjeant Wilde.

And it was further, the same Day, ordered by the Commons, That the said Committee, appointed to manage the Evidence at the Trial of the Archbishop of Canterbury, do peremptorily meet this Afternoon, at three of the clock, in the Court of Wards, upon the Distribution of the Parts of the Evidence.]

All February passed over, and Mr. Prynne not yet ready; he had not yet sufficiently prepared his Witnesses. But on Monday, March 4. an Order passed to call me to the House, to answer my Charge of High-Treason, on Tuesday March 12. following.

[Die Lunæ, 4 Martii, 1643.

A Message to be sent to the Lords to desire them to appoint a Day for the Trial of the Archbishop of Canterbury. Mr. Serjeant Wilde went up to the Lords, to appoint a Day for the Trial of the Archbishop of Canterbury. Serjeant Wilde brings Answer, That the Lords have appointed to-morrow seven-night for the Trial of the Archbishop of Canterbury.

For which purpose the Lords made the following Order.

Die Lunæ, 4 Martii, 1643.

ORDERED, That the Archbishop of Canterbury shall appear before their Lordships on Tuesday the 12th of this Instant March, at Nine of the clock in the Morning. At which Time this House will proceed against the Archbishop upon the first and further Articles of Impeachment, brought up from the House of Commons against him for High-Treason, and High Crimes and Misdemeanours: whereof the said Archbishop is hereby to take notice, and provide himself accordingly.]

And on Saturday March 9. I received a Note from the Committee which were to press the Evidence against me, what Articles they meant to begin with; which had a Shew of some fair Respect. But the Generality and Uncertainty of the Articles was such, as render'd it a bare Shew only; no Particular being charged, concerning which I might provide for any Witnesses or Counter-proof.

[After this, the Archbishop petitioning the Commons House, That Sir Henry Mildmay, a Member thereof might be examined as a Witness for him at his Trial; this Order was thereupon conceived.

9 Martii, 1644.

THE humble Petition of William Archbishop of Canterbury, desiring that Sir Henry Mildmay may be examined as a Witness in his Business, he being to come to his Trial on Tuesday next, was this Day read; and it is ordered according to his Petition, That he shall be examined as a Witness at the Trial of the said Bishop accordingly. It was like-

wise then ordered, That divers Members of the House of Commons shall be examined as Witnesses against him; and that the Lords be moved by Serjeant Wilde, that some Members and Attendants of the Lords House be examined at the Archbishop's Trial. And that it be referred to the Committee of Sequestrations, to consider of some convenient Recompence for such Clerks, Solicitors, and others, as have been or shall be employed in the transcribing of Breviats, and other Services done by them to the Committee for the Bishop of Canterbury's Trial.]

And now being ready to enter upon the Hearing and the Trial itself, I hold it necessary for me to acquaint the Reader with some general Things before that begin: partly to the end he may see the Course of this Trial, and the Carriage which hath been in it; and partly to avoid the often and tedious Repetition, which else must necessarily be of some of them; and especially, that they may not be mingled either with the Evidence, or my Answers to it, to interrupt the Current, or make any thing more obscure.

1. The Committee appointed by the House of Commons, to manage and press the Evidence against me, were Serjeant Wilde, Mr. Browne, Mr. Maynard, Mr. Nichols, Mr. Hill. But none spake at the Bar but the first four. Mr. Hill was Consul Bibulus; Mr. Prynne was trusted with the providing of all the Evidence.

2. Mr. Prynne took to him two young Men to help to turn his Papers, and assist him; Mr. Grice and Mr. Beck. Mr. Grice was Son to Mr. Thomas Grice, Fellow of St. John Bapt. College in my Time, and after beneficed near Stanes.

3. And tho' my Hopes, under God, were upon the Lords; yet when my Trial did come on, it did somewhat trouble me to see so few Lords in that great House: For at the greatest Presence that was any Day of my Hearing, there were not above fourteen, and usually not above eleven or twelve. Of these one third part, at least, each Day took or had occasion to be gone before the Charge of the Day was half given. I never had any one Day the same Lords all present at my Defence in the Afternoon, that were at my Charge in the Morning; some leading Lords scarce present at my Charge four Days of all my long Trial, nor three at my Defence; and which is most, no one Lord present at my whole Trial but the Right Honourable the Lord Gray of Werk, the Speaker, without whose Presence it could not be a House. In this case I stood in regard of my Honourable Judges.

4. When my Hearing came on, usually my Charge was in giving till almost Two of the clock. Then I was commanded to withdraw: And upon my humble Petition for Time to answer, I had no more given me than till Four the same Afternoon; scarce Time enough advisedly to peruse the Evidence: My Counsel not suffer'd to come to me till I had made my Answer, nor any Friend else, but my Solicitor Mr. Dell, to help to turn my Papers; and my Warder of the Tower to sit by to look to this. And this was not the least Cause why I was at first accused of no less than

Treason, * *Ne quis necessariorum juvaret periclitantem, Majestatis Crimina subdebantur*; as it fell out in Silanus's Case, who had more Guilt about him (yet not of Treason) than (God be thanked) I have, but was prosecuted with like Malice, as appears in that Story.

* Tacit. L. 3. Annal.

Story. At Four a-clock, or after, the House sat again, and I made my Answer: And if I produced any Witness, he was not suffered to be sworn; so it was but like a Testimony at large, which the Lords might the more freely believe, or not believe, as they pleased. After my Answer, one or more of the Committee replied upon me. By that time all was done, it was usually half an Hour past Seven. Then in the Heat of the Year (when it overtook me) I was presently to go by Water to the Tower, full of Weariness, and with a Shirt as wet to my Back with Sweat, as the Water could have made it, had I fallen in. Yet I humbly thank God for it, he so preserved my Health, as that tho' I were weary and faint the Day after, yet I never had so much as half an hour's Head-ach, or other Infirmity, all the time of this comfortless and tedious Trial.

5. Now for the Method, which I shall hold in this History of my Trial, it shall be this: I will set down the Evidence given on each Day by itself, and my Answer to it. But whereas all the Evidence was given together, and so my whole Answer after, to avoid all looking back and trouble of turning Leaves to compare the Answer with the Evidence, I will set down each particular Evidence and my Answer to it, and so all along, that the indifferent Reader may, without farther Trouble, see the Force of the one, and the Satisfaction given in the other, and how far every Particular is from Treason. And if I add any thing to my Answers in any place, either it is because in the Shortness of time then given me to make my Answer, it came not to my present Thoughts; or if it did, yet I forbear to speak it with that Sharpness, holding it neither fit nor safe, in my Condition, to provoke either my Accusers, or my Judges. And whatsoever is so added by me in either of these respects, the Reader shall find it thus^a marked in the Margin, as here it stands in this. *

6. Nor did I wrong Mr. Prynne, where I say, *That for all the haste to put in my Answer Jan. 22. he could not make this broken Business so soon ready against me:* For 'tis well known he kept a kind of School of Instruction for such of the Witnesses as he durst trust, that they might be sure to speak home to the purpose he would have them. And this an Utter Barrister, a Man of good Credit, knows; who, in the hearing of Men beyond Exception, said, *the Archbishop is a Stranger to me; but Mr. Prynne's tampering about the Witnesses is so palpable and foul, that I cannot but pity him, and cry shame of it.* When I heard this, I sent to this Gentleman, to know if he tendered my Case so far as to witness it before the Lords. The Answer I received was, That the Thing was true, and that very Indignation of it made him speak; but heartily prayed me I would not produce him as a Witness; for if I did, the Times were such, he should be utterly undone: And 'tis not hard to guess by whom. Upon this I consulted some Friends; and upon regard of his Safety on the one side, and my own Doubt, left it forced to his undoing, he might thro' Fear blanch and mince the Truth to my own prejudice who produced him,

I forbear the Business, and left Mr. Prynne to the Bar of Christ, whose Mercy give him Repentance, and amend him. But upon my Christianity this Story is Truth.

The First Day of my Hearing.

AND now I come to Tuesday, March 12. 1643: the Day appointed for my Trial to begin: And begin it did.

[*The Archbishop about Three of the clock in the Afternoon was brought by the Lieutenant of the Tower and Usber of the Black Rod to the Bar in the Lords House; where after he had kneeled a little Space, the Lord Gray of Werk, Speaker pro tempore, commanded him to rise up. And the Committee of the House of Commons, appointed to manage the Evidence at his Trial, demanded that the several Articles of their Impeachment against him might be read. Whereupon one of the Clerks of the Lords House read both the Original and Additional Articles before mentioned, and after that his Answer, Plea, and Demurrer thereunto.*

The Archbishop then desired the Lords, that the House of Commons might give in all their Charge and Evidence to all the Articles against him together, before he should be put to give his Answer to any particular Charge, because he was ancient, his Memory very short, and the Articles general; and that he might answer all his Charge together, and not each Day's Evidence by piece-meal. To which on the behalf of the Commons, it was answered by Mr. Maynard;

I. *That if the Archbishop's Memory was so bad, it would be far worse for him to charge it with answering many Particulars, and the whole Evidence against him together, than to answer every particular Charge each Day, as it should be given in against him, whilst it was fresh in Memory.*

II. *That it might and would be a great Inconvenience to have Witnesses cross-examined upon other Days than those whereon they gave in their Testimony against the Prisoner.*

III. *That the Lords themselves would find it difficult to pass their Judgment upon all the Charge together, without hearing his punctual Answer to every particular Proof as it should be given in Evidence, whilst it was fresh in their Memories.*

IV. *Because else all the Witnesses, which were very many, must of necessity attend, and be kept in Town from the first to the last Day of his Trial; which would be a very great Charge and Inconvenience.*

V. *In the Earl of Strafford's Case, this very Parliament, he was put to answer every Day to the Particular Evidence given against him on the same Day.*

Upon which Reasons the House of Peers ordered, that the Archbishop should make his particular Answer to every particular Charge on the same Day it was given in against him.

Then the Archbishop desired, that the House of Commons would sever the Articles which were Treason from those other Articles which were matter of Crime and Misdemeanor only; that so he might know which

* Note, That where entire set Speeches were made by the Archbishop, altho' spoken by him at the Bar, the same Marks are put to them. But wheresoever those Marks are found in the History, from the second to the last Day of the Trial inclusive, the Words to which they are affixed were not spoken at the Bar at that time, but either added afterwards by the Archbishop at the Recapitulation, of his Answer, or inserted in writing the History. H. W.

which of them were Treason, and which not. Here-to Mr. Maynard answered, That this they might not do, because they were now only to try the Matter of Fact, not Law; and because all the Articles taken together, not each or any particular Article by itself, made up the Treason wherewith he was charged; to wit, His Endeavours to subvert and destroy Religion, the fundamental Laws of the Land, and Government of the Realm, and to bring in Popery and an arbitrary Tyrannical Government against Law.]

When I was come, and settled at the Bar, Serjeant Wilde made a solemn Speech for Introduction. I had a Character given me before of this Gentleman, which I will forbear to express; but in this Speech of his, and his future Proceedings with me, I found it exactly true. His Speech my decayed Memory cannot give you at large; but a Skeleton of it I here present, according to such Limbs as my brief Notes then taken can now call to my Memory.

He began, and told the Lords, That the Children which I had travailed with, were now come to the Birth; and that my Actions were so foul, and my Treason so great, as that the like could not be read in any History; nay, so great, as that *nullus Poeta fingere*, no Poet could ever feign the like. And that if all Treason were lost, and not to be found in any Author what it is, it might be recovered and found out in me and my Actions: with divers Pieces of Latin Sentences to this effect. [And tho' these high and loud Expressions troubled me much at the present, yet I could not but think, that in this Canto of his he was much like one of them which cry up and down the City, *Have you any old Ends of Gold and Silver?*]

After this, he proceeded to give Reasons why I was not sooner proceeded against, having now lain by it above three Years. The first Reason he gave was the Distractions of the Time. [And they indeed were now grown great; but the Distractions which were now, can be no Argument why I was not proceeded against at the Beginning of the Parliament, when Things were in some better Quiet.] His second Reason was the

^a The Death and Dispersion of our Witnesses, the Loss of some of our Members, who have been employed and taken pains in this Business. So Wilde's Speech apud Prynn, p. 51.

^a Death of some Persons. [But this could be no Reason at all: For if the Persons he speaks of were Witnesses against me, more might die, but the dead could not be made alive again by this Delay; unless Mr. Serjeant had some hope the Resurrection might have been by this time, that so he might have produced them. And if the Persons were Members of the House of Commons, as all Men

know Mr. Pym was in the Chair for Preparation of my Tryal; then this is known too, That Mr. Pym came up to the Committee of Lords full of great hopes to prove God knows what against me. The Persons to be examined were William Lord Bishop of London, and Matthew Lord Bishop of Ely, my very worthy Friends, and Men like to know as much of me as any Men. A Lord then present told me, there were some eighteen or nineteen Interrogatories, upon which these Bishops were to be examined against me, concerning my Intercourse with Rome; but all were built upon the first, which was their Knowledge of the Man, who (it seems) was thought to be my chief Agent

in that Secret. But both the Bishops denying upon their Oaths that they, or either of them, ever knew any such Man, all the rest of the Interrogatories, what relations he had to me, and the like, must needs fall to nothing, as they did. And the Lord told me farther, he never saw Mr. Pym, and the rest, so abashed at any thing in his Life. After this Mr. Pym (as 'tis well known) gave over that Chair, despairing to do that against me which was desired.] His third Reason was a good large one, and that was other Impediments. [And that's true, some Impediments there were, no doubt, or else I had come sooner to hearing. And, as I conceive, a chief Impediment was, that there was not a Man whose Malice would make him diligent enough to search into such a forsaken Business, till Mr. Prynn offered himself to that Service. For I think I may be confident, that that honourable and great House would not seek any Man out of their own Body for any such Employment, had not Suit some way or other been made for it.]

^b The Multitude of Diversions which we have had, and have daily. So Wilde's Speech, Ibid.

After these Reasons given for the Delay of my Trial, he fell upon me again as foul as at first; as that I was the Author of all the Extravagancies in the Government, and of all the Concussions in the State; That the Quality of my Person aggravated my Crime; That my Abilities and Gifts were great, but that I perverted them all; and that I was guilty of ^c Treason in the highest Altitude. [These were the Liveries which he liberally gave me; but I had no mind to wear them: And yet I might not desire him to wear this Cloth himself, considering where I then stood, and in what Condition.]

^c Treason in the highest Pitch and Altitude. So Wilde's Speech, p. 52.

This Treason in the Altitude, he said, was in my Endeavour to alter the Religion established by Law, and to subvert the Laws themselves: And that to effect these, I left no way unattempted. For Religion, he told the Lords, That I laboured a Reconciliation with Rome; That I maintained Popish and Arminian Opinions; That I suffered ^d Transubstantiation, Justification by Merits, Purgatory, and what not, to be openly preached all over the Kingdom; That I induced superstitious Ceremonies, as ^e Consecrations of Churches, and Chalices, and Pictures of Christ in Glass-Windows; That I gave liberty to the Prophanation of the Lord's-Day; That I held Intelligence with Cardinals and Priests, and endeavoured to ascend to Papal Dignity; Offers being made me to be a Cardinal. [And for the Laws, he was altogether as wild in his Assertions, as he was before for Religion: And if he have no more true Sense of Religion, than he hath Knowledge in the Law (tho' it be his Profession) I think he may offer both long enough to Sale, before he find a Chapman for either.] And here he told the Lords, That I held the same Method for this, which I did for Religion. [And surely that was to uphold both, had the Kingdom been so happy as to believe me.]

^d Transubstantiation is not mentioned in Wilde's Speech apud Prynn, p. 52.

^e The particular Ceremonies, charged with Popery and Superstition, are not named in Wilde's Speech. Ibid.

But

^a None of the Particulars, which follow to the end (save the conclusive Sentence) are to be found in Wilde's Speech apud Prynne; but only, some general Invectives and Accusations to this purpose. H. W.

But he affirmed (with great Confidence) • That I caused Sermons to be preached in Court to set the King's Prerogative above the Law, and Books to be printed to the same Effect; That my Actions were according to these. Then he fell upon the Canons, and discharged them upon me. Then, that I might be guilty enough, [if his bare Word could make me so] he charged upon me the Benevolence, the Loan, the Ship-Money, the illegal pulling down of Buildings, Inclosures; saying, That as

Antichrist sets himself above all that is called God; so I laboured to set the King above all that is called Law. And after a tedious Stir, he concluded his Speech with this, That I was like Naaman the Syrian, a great Person (he confessed) but a Leper. [So ended this Noble Celeustes.]

[Here follows Serjeant Wilde's Speech entire.

My Lords,

THIS great Cause of the Archbishop of Canterbury, after a long and painful Travail, is now come to the Birth; of which it may be truly said, as it was in a like Case, Repertum est hodierno die facinus, quod nec Poeta fingere, nec Histrio sonare, nec Mimis imitari potuerit.

For if all the Oppressions, all the pernicious Practices and Machinations, which have been in each Time to ruin our Religion, Laws, and Liberties, were lost, I think here they might have been found and drawn out again to the Life. So that your Lordships, who have been the great Assertors of our Liberties, and stood so fast to the Rules and Principles of your noble Progenitors, (which others have ignobly deserted) may, after a long Conflict with so many great and matchless Difficulties, say now as a great Commander once did upon an extraordinary Danger, Tandem par animo meo periculum video. Here is a Cause proportionable to your selves, apt and proper for the Justice and Power of this Honourable Court.

Had they been Faults of common Frailty, Error, or Incogitancy, which this Man hath committed, we should gladly have stepped back, and cast a Cloke over them; but being so wilful, so universal, so destructive to the Laws of God and Man, so comprehensive of all the Evils and Miseries which now we suffer, the Sin would lie upon our own Heads, if we should not call for Justice. Which that it hath been so long uncalled for, (not deferred or delayed) I suppose no Man will think strange, who considers the present Distractions, the Death and Dispersion of our Witnesses, the Loss of some of our Members who have been employed and taken Pains in this Business, the Multitude of Diversions we have had, and have daily, occasioned by the Acts and Influences of this Meteor.

But the Truth survives, and Matter enough survives; so copious and so full of Variety, that if all the Particulars should be examined, for his three Years Imprisonment, which he complains of, there would be three Years Time of Trial and Hearing of the heavy Charge that lies against him. A Charge of High-Treason in all and every Part: Treason in the highest Pitch and Altitude. For what greater

Treason can there be, than to betray the whole Realm, and to subvert the very Foundations, leaving nothing for Posterity but a Curse upon him that shall go about to build again?

That which of itself is so heinous, is much more enhanced and aggravated by the Quality of the Person, a Churchman, a great Prelate, a Man in great Trust, Place, and Authority in Church and Commonwealth.

A Man indued with so great Gifts of Nature, and so many of Grace and Favour from his Majesty; and for all these to be perverted to a contrary End, even to the Destruction of the Publick, and the Ruin of the Womb that bare him, how deep a Dye do these impose upon this foul Crime?

How Churchmen in all Ages (as hath been often observed) should come to be the archest Seedsmen of Mischief, and principal Actors in all the great Distractions and Alterations that have happened, is a Destiny that may seem strange. But the Reason is, (Ex bono Theologo malus Medicus) their intermeddling with temporal Things and Matters heterogeneous to their Calling, wherein God is pleased to smite them with Blindness, and to insatiate their Counsel. Whereof a perfect Pattern we have in this great Prelate; who, by abusing his Profession, and making the Business of State the customary Subject of all his Endeavours, became the Author of all the illegal and tyrannical Proceedings in the Star-Chamber, High-Commission Court, and other Courts; of all the Innovations in Doctrine and Discipline; of the suppressing of godly Ministers and Preaching; of the advancing of others, who were the Promoters of Popery and Arbitrary Power; and indeed, of all the Concussions and Distractions in Church and State, whereby Religion hath been jostled out, Laws and Parliaments trodden down with Contempt.

For Matter of Religion, surely those Times were happy, when by the Magnanimity of Princes, and the Wisdom and Piety of our Predecessors, the Antichristian Yoke of Popery was shaken off.

And now after so many bloody Massacres in France, such fiery Persecutions here in Queen Mary's Days, so many treacherous Conspiracies in time of Queen Elizabeth, that execrable and horrid Powder-Plot in the Time of the late King James, such Streams and Rivers of Blood in Germany and Ireland, and other Parts of the Christian World ever since, by those restless and cruel Firebrands of all Mischief: for any Man now to go about to rebuild these Walls of Jericho, and to reduce us to those rotten Principles of Error and Darknes, how can it be expected better than that the People should be even ready to stone him, as they did him that did but act the Part of Bellerophon in Rome?

But to avoid this Danger, he conveys this Poison in a gilded Pill, with Baits and Pretences of Reconciliation; a pleasing Snare, Laqueus Diaboli ad miserorum animas ad infernum detrudendas.

A Bead-Roll of Particulars might be recited, wherein this Reconciliation was to be wrought in Points of Free-Will, Merits, Justification, Universal Grace, Purgatory; and, in effect, all the rest.

To draw on these, there must be an introducing of Popish Ceremonies in all the Particulars contained in the Mass-Books, and Pontificals themselves: And to make way for these, the Book of Sports must be published, and pressed beyond the King's Intention or Declaration, which was but a civil Command: But he subjoins Ecclesiastical Penalties, even the sharpest, Suspension, Deprivation, and the like; these executed

on divers good and godly Men with a high Hand. Thus a Liberty proclaimed not to Captives, but to profane Caitiffs; this Day set apart by God ab æterno, exposed and prostituted to all Looseness and Irreligion, and that by a Law; This Lamb taken out of his Bosom.

Jehosaphat sends Priests and Levites into all the Cities and Tribes to instruct them: This Prelate sends Declarations and Injunctions to corrupt them, and to extinguish the Lamp and Light of Religion. In the former Acts, he destroys the Protestants; in this, Religion itself. In the one, he leaves Superstition; in the other, nothing but Atheism and Profaneness: In the one, he destroys Presbyters, as did Dioclesian; in the other, Presbyterium, as did the Apostate Julian. Yet to shew his Love to Religion, (the Pope's only) he holds Correspondency with those of Rome, Cardinal Barberino, Panzani, Con, Rosetti, the Pope's Nuncios, Sir Toby Matthews, Saint Clara, Saint Giles, the most dangerous and desperate Jesuits, and many others ejusdem Farinæ. And by all these Steps and Rounds he makes a Ladder for himself to climb up to Papal Dignity; in example of Anselme, whom (tho' famous for his Contumacy and Rebellion) yet he calls him his worthy Predecessor, (as was Becket also) and is contented to take upon him the Plenitude of Power, the Title of Holiness, of Archangel of this Church, the Lineal Successor of Gregory the First, rather of Gregory the Seventh; and for all this was well worthy to have these great Offers made him, recorded in his own Memorials, by those that had Ability to perform it, (viz.) a Cardinal's Cap. But such was his Modesty to forbear it; because, tho' Rome be a true visible Church in his Opinion, yet something dwelt with him that hindered it for a time, to wit, I suppose his dwelling here.

For his Attempts against the Laws, the Subject's Birth-right, and the Rights of Parliaments, their chief Support and Refuge, how little Regard he had to them, how much he did despise and abhor them, making it his Ambition to prefer the Contemners and Abusers of them, and to set up his Canons and Constitutions above them, imposing of unjust and unlawful Oaths, Exactions, Monopolies, all sorts of Oppressions, stopping of Prohibitions and Course of Justice, rescinding of Acts of Parliament, advancing of Proclamations, and all kind of Arbitrary Power above the Laws of God or Man; is fully expressed in the Articles, and will more fully appear in the Evidence. To conclude, Naaman was a great Man; but he was a Leper. This Man's Leprosy hath so infected all, as there remains no other Cure but the Sword of Justice; which we doubt not but your Lordships will so apply, that the Commonwealth shall yet live again and flourish.]

I was much troubled to see myself, in such an Honourable Assembly, made so vile: Yet seeing all Mens Eyes upon me, I recollected myself, and humbly desired of the Lords two Things: 'One, 'That they would expect Proof, before they give 'up their Belief to these loud, but loose Affertions: Especially since it an easy thing for Men 'so resolved, to conviciate, instead of accusing; 'whenas the Rule given by Optatus
Optat. l. 6. cont. Parmenianum.
'holds firm, *Quum intenditur Crimen,*
'when a Crime is objected, (especially so high a Crime, as this charged on me) 'tis necessary that the Proof be manifest, which yet against me is none at all. The 'other, That their Lordships would give me 'leave, not to answer this Gentleman's Particulars,

(for that I shall defer till I hear his Proofs) but 'to speak some few things concerning myself, 'and this grievous Impeachment brought up against me.'

Which being yielded unto, I then spake as follows.

'My Lords, my being in this Place, and in 'this Condition, recalls to my Memory, that which I long since read
Sen. l. 6. de Benef. c. 28.
'in Seneca; *Tormentum est, etiam si absolutus quis fuerit, Causam dixisse:*

'Tis not a Grief only, no, 'tis no less than a 'Torment, for an ingenuous Man 'to plead 'Criminally, much more
^a Capitally or Criminally, Rushworth & Pryn. 'Capitally, at such a Bar as this; 'yea, tho' it should so fall out, that 'he be absolved. The great Truth

'of this, I find at present in myself: And so 'much the more, because I am a Christian; and 'not that only, but in Holy Orders; and not so 'only, but by God's Grace and Goodness preferred to the greatest Place this Church affords: 'and yet now brought, *Causam dicere*, to plead, 'and for no less than Life, at this great Bar. 'And whatsoever the World thinks of me, (and 'they have been taught to think

'more ill, than, I humbly thank
^b Much more, Rushw. & Pryn. 'Christ for it, I was ever acquainted 'with;) yet, my Lords, this I find

'*Tormentum est*; 'tis no less than Torment to me 'to appear in this Place to such an Accusation.

'Nay, my Lords, give me leave, I beseech you, 'to speak plain Truth: No Sentence that can 'justly pass upon me, (and other I will never fear 'from your Lordships) can go so near me as '*Causam dixisse*, to have pleaded for myself, upon 'this Occasion, and in this Place. For, as for the 'Sentence (I thank God for it) I am at St. Paul's 'Ward; If I have committed any thing worthy of 'death, I refuse not to die, Acts xxv. 11. For, I 'bless God, I have so spent my Time, as that I 'am neither ashamed to live, nor afraid to die. 'Nor can the World be more weary of me, than 'I of it: For seeing the Malignity which hath 'been raised against me by some Men, I have 'carried my Life in my Hands these divers Years 'past. But yet, my Lords, if none of these 'Things, whereof these Men accuse me, merit 'Death by Law; tho' I may not in this Case, and 'from this Bar appeal unto *Cæsar*, yet to your 'Lordships Justice and Integrity I both may and 'do appeal; not doubting but that God of his 'Goodness will preserve my Innocency. And as 'Job, in the midst of his Affliction, said to his 'mistaken Friends, so shall I to my Accusers; 'God forbid I should justify you; till I die I will 'not remove my Integrity from me; I will hold it 'fast, and not let it go: my Heart shall not reproach 'me as long as I live, Job xxvii. 5.

'My Lords, I see by the Articles, and have 'now heard from this Gentleman, that the Charge 'against me is divided into two
^c An Endeavour to subvert, Rushw. & Pryn. 'main Heads; 'the Laws of the 'Land, and the Religion by those 'Laws established.

'For the Laws first; I think I may safely say, 'I have been, to my Understanding, as strict an 'Observer of them all the Days of my Life, so 'far as they concern me, as any Man hath; and 'since I came into Place, I have followed them, 'and been as much guided by them, as any Man 'that sat where I had the Honour to sit. And 'for

^a *Testimony,*
Rush. &
Pryn. &

‘ for this I am sorry I have lost the
‘ ^a Witnefs of the Lord Keeper Co-
‘ *ventry*, and of some other Persons
‘ of Honour, since dead. And the
‘ Learned Counsel at Law, which attended fre-
‘ quently at the Council-Table, can
‘ witnefs (some of them ^b) that in
‘ References to that Board, and in
‘ Debates arising at the Board, I

^b *here present,*
Heylin &
Rush. &
Pryn.

‘ was usually for that Part of the Cause where
‘ I found Law to be: And if the Counsel de-
‘ fired to have their Clients Cause referred to
‘ the Law, (well I might move in some Cases for
‘ Charity or Conscience to have Admittance, but)
‘ to the Law I left them, if thither they would
‘ go. And how such a Carriage as this thro’
‘ the whole Course of my Life, in private and
‘ publick, can stand with an Intention, nay, a
‘ Practice to overthrow the Law, and to intro-
‘ duce an Arbitrary Government, which my Soul
‘ hath always hated, I cannot yet see. And ’tis

^c *Arist. 2. Polit.*
c. 7, 8.

‘ now many Years since I learned of
‘ my great Master (*in humanis*) *Arif-*
‘ *tolle, Periculosum esse*; that it is a ve-
‘ ry dangerous thing to trust to the Will
‘ of the Judge, rather than the written Law. And

^d *Tho. 2. 2. c. 9.*
60. Ar. 5.

‘ all Kingdoms and Commonwealths have followed
‘ his Judgment ever since; and the
‘ School-Disputes have not dissented
‘ from it. Nay more, I have ever
‘ been of Opinion, that human Laws

‘ bind the Conscience; and have accordingly made
‘ Conscience of observing them. And this Doctrine
‘ I have constantly preached, as Occasion hath
‘ been offered me. And how is it possible I should
‘ seek to overthrow those Laws, which I held
‘ myself bound in Conscience to keep and ob-
‘ serve? Especially, since an Endeavour to over-
‘ throw Law, is a far greater Crime than to break
‘ or disobey any particular Law whatsoever; all
‘ Particulars being swept away in that General.
‘ And, my Lords, that this is my Judgment, both
‘ of Parliaments and Laws; I beseech your Lord-
‘ ships that I may read a short Passage in my
‘ Book against *Fisher* the Jesuit, which was printed
‘ and published to the World, before these Troubles
‘ fell on me, and before I could so much as suspect
‘ this Charge could come against me; and there-
‘ fore could not be purposely writ-

^e *Confer. with*
Fisher, §. 26.
Num. 14.
p. 211.

‘ ten to serve any Turn.’ *I had leave,*
‘ *and did read it; but, for Brevity-*
‘ *sake, refer the Reader to the Book itself.*

‘ As for Religion, I was born and
‘ bred up in and under the Church of *England*,
‘ as it yet stands established by Law. I have,
‘ by God’s Blessing, and the Favour of my Prince,
‘ grown up in it to the Years which are now
‘ upon me, and to the Place of Pre-
‘ ferment which I yet bear: And
‘ in this Church, by the Grace and
‘ Goodness of God, I resolve to die.

^f *note, Rush.*
& Pryn.

‘ I have ever since I understood ought in Divinity,
‘ kept one constant Tenor in this my Profession,
‘ without variation or shifting from one Opinion
‘ to another, for any worldly Ends: And if my
‘ Conscience would have suffered me to shift
‘ Tenets in Religion with Time and Occasion,

^g *held a Pal-*
sy, &c. most
dangerous,
Rush.

‘ I could easily have slid thro’ all
‘ the Difficulties which have pressed
‘ upon me in this kind. But, of all
‘ Diseases, I have ever ^h hated a Palsy
‘ in Religion; well knowing that

‘ too often a Dead-Palsy ends that Disease in
‘ the fearful Forgetfulness of God and his Judg-
‘ ments. Ever since I came in place, I laboured no-
‘ thing more, than that the external
‘ publick Worship of God (^h too ^b so, Rush. &
‘ much slighted in most Parts of this Pryn.
‘ Kingdom) might be preserved, and
‘ that with as much Decency and Uniformity as
‘ might; being still of Opinion, that Unity
‘ cannot long continue in the Church, where Uni-
‘ formity is shut out at the Church-Door. And I
‘ evidently saw, that the publick Neglect of God’s
‘ Service in the outward Face of it, and the nasty
‘ lying of many Places dedicated to that Service,
‘ had almost cast a Damp upon the true and inward
‘ Worship of God; which while we live in the
‘ Body needs external Helps, and all little enough
‘ to keep it in any Vigour. And this I did to the
‘ uttermost of my Knowledge, according both to
‘ Law and Canon, and with the Consent and
‘ Liking of the People: Nor did any Command
‘ issue out from me against the one, or without
‘ the other, that I know of.

‘ Farther, my Lords, give me
‘ leave, I beseech you, to tell ⁱ you
‘ this also: That I have as little Ac-
‘ quaintance with Recusants of any
‘ sort, as I believe any Man of ^k Place
‘ in *England* hath: And for my Kin-
‘ dred, no one of them was ever a
‘ Recusant, but Sir *William Webb*,
‘ Grandchild to my Uncle Sir *Wil-*
‘ *liam Webb*, sometime Lord-Mayor
‘ of *London*; and ^l him, with some
‘ of his Children, I reduced back a-
‘ gain to the Church of *England*, as is well known,
‘ and I as able to prove.

ⁱ *acquaint you*
with, Rush.
& Pryn.

^k *my Place*
both or ever
had since the
Reformation,
Rush. &
Pryn.

^l *since which*
Rush. &
Pryn.

‘ One thing more I humbly desire may be
‘ thought on; ’tis this: I am fallen into a great
‘ deal of Obloquy in Matter of Religion, and
‘ that so far as that ’tis charged in the Articles,
‘ That I have endeavoured to advance and bring
‘ in Popery. Perhaps, my Lords, I am not igno-
‘ rant what Party of Men have raised this Scandal
‘ upon me, nor for what End, nor perhaps by
‘ whom set on: But howsoever, I would fain have
‘ a good Reason given me (if my
‘ Conscience ^m led me that way, ^m flood, Rush.
‘ and that with my Conscience I & Pryn.
‘ could subscribe to the Church of
‘ *Rome*) what should have kept me here (before
‘ my Imprisonment) to endure the

ⁿ *Libelling,*
Rush. &
Pryn.

‘ ⁿ Libels and the Slanders, and the
‘ base Usage in all kinds, which
‘ have been put upon me, and these
‘ to end in this Question for my Life: I say, I
‘ would fain know a good Reason of this.

‘ For, First, my Lords, Is it because of any
‘ Pledges I have in the World to sway me against
‘ my Conscience? No sure. For I have nor Wife
‘ nor Children, to cry out upon me to stay with
‘ them; and if I had, I hope the Call of my
‘ Conscience should be heard above them.

‘ Or Secondly, Is it because I was loth to leave
‘ the Honour and the Profit of the Place I was
‘ risen unto? Surely no: for I desire your Lord-
‘ ships, and all the World else should know, I do
‘ much scorn Honour and Profit, both the one
‘ and the other, in comparison of my Conscience.
‘ Besides, it cannot be imagined by any reasonable
‘ Man, but that if I could have complied with
‘ *Rome*, I should not have wanted either Honour

‘ or

or Profit. And suppose I could not have so much
 of either, as here I had; yet sure, would my
 Conscience have served me that way, less of either
 with my Conscience would have prevailed with
 me, more than greater against my Conscience.

Or Thirdly, Is it because I lived here at ease,
 and was loth to venture the Loss of that? Not
 so neither: for whatsoever the World may be
 pleased to think of me, I have led a very painful
 Life, and such as I could have been very well

^{content to change, had I well}
^{known how. And had my Con-}
^{science led me that way, I am}
^{sure I might have lived at far more}

Ease; and either have avoided the barbarous Li-
 bellings, and other bitter and grievous Scorns,
 which I have here endured, or at the least been
 out of the hearing of them, Nay, my Lords,
 I am as innocent in this Business of Religion, as
 free from all Practice, or so much as Thought of
 Practice for any Alteration to Popery, or any
 way blemishing the true Protestant Religion,
 established in the Church of England, as I was
 when my Mother first bare me into the World.
 And let nothing be spoken against me but Truth,
 and I do here challenge whatsoever is between
 Heaven and Hell, to say the worst against me
 in Point of my Religion: in which, by God's
 Grace, I have ever hated Diffimulation; and had
 I not hated it, perhaps it might have been better
 with me for worldly Safety, than now it is. But
 it can no way become a Christian Bishop to halt
 with God.

Lastly, If I had any Purpose to blast the true
 Religion established in the Church of England,
 and to introduce Popery, sure I took a very wrong

^{Way to it. For, my Lords, I have}
^{staid as many that were going to}
^{Rome, and reduced as many that}
^{were already gone, as (I believe)}
^{any Bishop or other Minister in this}

Kingdom hath done; and some of them Men
 of great Abilities, and some of
 them Persons of great Place.

And is this the way, my Lords, to
 introduce Popery? I beseech your
 Lordships consider it well. For

surely, if I had blemished the true
 Protestant Religion, I could not
 have settled such Men in it; and if
 I had purposed to introduce Po-
 pery, I would never have reduced
 such Men from it. And tho' it
 please the Author of the *Popish Royal*
Favourite to say, *That scarce one of*
the swaying Lord Prelates is able to say,
that ever he converted one Papist to our
Religion; yet how void of Charity
 this Speech of his is, and how full

of Falshood, shall appear by the Number of those
 Persons, whom by God's Blessing upon my Labours
 I have settled in the true Protestant Religion estab-
 lished in England: And with your Lordships
 Leave, I shall name them, that you may see both
 their Number and their Condition; tho' I cannot

set them down in that order of Time, in which
 I either converted or settled them.

1. And first, *Henry Birkhead* of *Trinity-College*
 in *Oxford* was seduced by a Jesuit, and brought
 up to *London* to be conveyed beyond the Seas.
 His Friends complained to me: I had the Hap-
 piness to find him out, and the Blessing from
 God to settle his Conscience. So he returned to
Oxford, and there continued*.

2, 3. Two Daughters of *Sir Rich. Lechford* in
Surrey were sent to Sea, to be carried to a Nun-
 nery. I heard of it, and caused them to be
 brought back, before they were got out of the
Thames. I settled their Consciences, and both
 of them sent me great Thanks since I was a Pri-
 soner in the *Tower*.

4, 5. Two Scholars of *St. John's-College* in *Cam-*
bridge, *Topping* and *Ashton*, had slipped away from
 the College, and here at *London* had got the *French*
 Ambassador's Pass (I have the Pass to shew:) I
 found Means to get them to me, and I thank God
 settled both their Minds, sent them back to their
 College. Afterwards hearing of *Topping's* Wants,

I allowed him Means till I procured
 him a Fellowship: And he is at
 this Time a very hopeful young
 Man, as most of his Time in that
 University, a Minister, and Chaplain in House
 at this present, to the Right Honourable the
 Earl of *Westmorland*.

6, 7, 8. *Sir William Webb*, my Kinsman, and
 two of his Daughters; and the better to secure
 them in Religion, I was at the Charge, (their
 Father being utterly decay'd) to marry them to
 two Religious Protestants; and they both con-
 tinued very constant. 9. And his eldest Son I
 took from him, placed him with a careful Divine,
 maintained him divers Years, and then settled
 him with a Gentleman of good Worth.

10, 11. The next, in my Remembrance, was
 the Lord *Maio* of *Ireland*, who, with another
 Gentleman (whose Name I cannot
 recal) was brought to me to *Ful-*
ham, by *Mr. Jefford*, a Servant of
 his Majesty's, and well known to
 divers of your Lordships.

12. The Right Honourable the Lord Duke of
Buckingham was almost lost from the Church of
 England, between the continual cunning Labours
 of *Fisher* the Jesuit, and the Per-
 suasions of the Lady his Mother.

After some Miscarriages, *K. James*,
 of ever-blessed Memory, command-
 ed me to that Service. I had God's Blessing upon
 me so far as to settle my Lord Duke to his
 Death. 13. And I brought the
 Lady his Mother to the Church
 again; but she was not so happy,
 as to continue with us.

14. The Lady Marchioness *Ham-*
ilton was much solicited by some
 Priest, and much troubled in Mind about it.
 My Lord spake with me of it; and tho' at that
 present I was overlaid with Business, that I
 could not (as I much desired) wait upon that Ho-

nourable

* See *Rushworth*, Vol. 5. p. 778. who relateth, that when some of the Lords hearing of the Name of *Birkenhead*, and imagi-
 ning him to be the Author of the *Oxford Aulicus*, smiled at it; the Archbishop taking notice of it, stopped, and assured the Lords
 that he meant not him, but another Person of like Name. Yet after all *Prynne*, in publishing this Speech, hath the Impudence to af-
 firm in the Margin of his Book, That this Convert of the Archbishop's, was the Author of all the libellous *Popish Oxford Aulicus's*;
 altho' he knew full well, that his Name was *John Birkenhead*: and adds, that at the naming of this Convert, most of the Lords
 and Auditors smiled; but saith not one Word of the Archbishop's Correction of their Mistake. H. Wharton.

nourable Person myself, yet I told my Lord I would send one to his Lordship, that should diligently attend that Service, and that I would give him the best direction I could. And this I did and God be thanked she died very quietly and very religiously, and a good Protestant: And my Lord Marquis told me, he had acknowledged this Service of mine to an Honourable Lord, whom I now see present.

15. Mr. *Chillingworth's* Learning and Abilities are sufficiently known to all your Lordships. He was gone and settled at *Doway*. My Letters brought him back; and he lived and died a Defender of the Church of *England*. And that this is so, your Lordships cannot but know: For Mr. *Prynne* took away my Letters, and all the Papers which concerned him, and they were examined at the Committee.

16, 17, Mr. *Digby* was a Priest; and Mr. *James Gentleman*, a School-Master in a Recusant's House. This latter was brought to me by a Minister (as far as I remember) in *Buckinghamshire*. I converted both of them, and they remain settled.

18. Dr. *Hart* a Civilian, Son to a Neighbour of mine at *Fulham*. He was so far gone, that he had written part of his Motives which wrought (as he said) that Change in him. I got sight of them, shew'd him wherein he was deceived, had God's Blessing to settle his Conscience, and then caused an able Divine to answer his Motives, and give him the Copy.

19. There were, beside these, Mr. *Christopher Seburne*, a Gentleman of an antient Family in *Herefordshire*; and 20. Sir *William Spencer* of *Yarnton* in *Oxfordshire*. 21. The

Sons and Heirs of Mr. *Wintchome* and Mr. *Williscot*, whom I sent with their Friends good-liking to *Wadham College* in *Oxford*; and I received a Certificate, Anno 1638,

of their continuing in conformity to the Church of *England*: nor did ever any of these relapse again to *Rome*, but only the old Countess of *Buckingham*, and Sir *William Spencer* that ever I

heard of. And if any of your Lordships doubt of the Truth of any of these Particulars, I am able and ready to bring full Proof of them all. And by this time I hope it appears, that one of the swaying Prelates of the time is able to say, he hath converted one Papist to the Protestant Religion. And let any Clergyman of *England* come forth, and give a better Account of his Zeal to this present Church.

And now, my Lords, with my most humble Thanks for your Lordships Favour and Patience in hearing me, I shall cease to be farther troublesome for the present; not doubting but I shall be able to answer whatever shall be particularly objected against me.

After I had ended this Speech, I was commanded to withdraw. As I went from the Bar, there was Alderman *Hoyle* of *York*, and some other which I knew not, very angry, and saying, it was a very strange Conversion that I was like to make of them; with other Terms of Scorn. I went patiently into the little Committee-Chamber, at the

entering into the House. Thither Mr. *Peters* followed me in great haste, and began to give me ill Language, and told me that he and other Ministers were able to name Thousands that they had converted. I knew him not, as having never seen him (to my remembrance) in my Life, tho' I had heard enough of him. And as I was going to answer him, one of my Counsel, Mr. *Hearn*, seeing how violently he began, stepped between us, and told him of his uncivil Carriage towards me in my Affliction: and indeed he came as if he would have struck me. By this time, some Occasion brought the Earl of *Essex* into that Room, and Mr. *Hearn* complained to him of Mr. *Peters's* Usage of me; who very honourably checked him for it, and sent him forth. Not long after, Mr. *Hearn* was set upon by Alderman *Hoyle*, and used as coarsely as *Peters* had used me, and (as far as I remember) only for being of Counsel with such a one as I; tho' he was assigned to that Office by the Lords.

What put them into this Choler, I know not; unless they were angry to hear me say so much in my own defence: especially for the Conversion of so many, which I think they little expected. For the next Day a great Lord met a Friend of mine, and grew very angry with him about me; not forbearing to ask what I meant, to name the Particulars which I had mentioned in the end of my Speech, saying many godly Ministers had done more. And not long after this (the Day I now remember not) Mr. *Peters* came and preached at *Lambeth*, and there told them in the Pulpit that a great Prelate, their Neighbour (or in Words to that Effect) had bragged in the Parliament-House, that he had converted two and twenty; but that he had Wisdom enough, not to tell how many thousands he had perverted: with much more Abuse. God of his Mercy relieve me from Reproaches, and lay not these Mens causeless Malice to their Charge.

After a little stay, I received my dismissal for that time, and a Command to appear again the next Day at Nine in the Morning: which was my usual Hour to attend, tho' I was seldom called into the House in two Hours after.

The Second Day of my Hearing.

I Came as commanded, *March* 13. 1643. But here before the Charge begins, I shall set down the Articles, upon which, according to the Order of *March* 9. they which were intrusted with the Evidence meant this Day to proceed. They were the first and second original Articles, and the second additional Article: which follow in these Words.

I. That he hath traitorously endeavoured to subvert the Fundamental Laws and Government of the Kingdom; and instead thereof, to introduce an Arbitrary and Tyrannical Government against Law: And to that end hath wickedly and traitorously advised his Majesty, that he might, at his own Will and Pleasure, levy and take Money of his Subjects without their Consent in Parliament. And this he affirmed, was warrantable by the Law of God.

II. He hath, for the better Accomplishment of that his traitorous Design, advised and procured divers

Hundreds of real Converts to Christ, for every one of his pretended ones, and that himself had converted above 120 Papists. Prynne. p. 56.

It being only in God's power not mine, to preserve them from Relapse; Ruth. & Prynne. Note, That the vulgar Copies of this Speech, printed in Ruth. &c. are very different from this, being taken from the Archbishop's Mouth as he spoke; this from the Original, as he wrote it. H.W.

divers Sermons, and other Discourses, to be preached, printed and published, in which the Authority of Parliaments, and the Force of the Laws of the Kingdom are denied; and an absolute and unlimited Power over the Persons and Estates of his Majesty's Subjects is maintained and defended, not only in the King, but also in himself, and other Bishops, above and against the Law. And he hath been a great Protector, Favourer and Promoter of the Publishers of such false and pernicious Opinions.

Second additional Article.

II. That within the space of ten Years last past, the said Archbishop hath treacherously endeavoured to subvert the Fundamental Laws of this Realm; and to that end hath in like manner endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws and Statutes of the Realm. And for manifestation thereof, about six Years last past, being then a Privy-Counsellor to his Majesty, and sitting at the Council-Table, he said, *That as long as he sat there, they should know that an Order of that Board should be of equal force with a Law or Act of Parliament.* And at another time used these Words, *That he hoped ere long, that the Canons of the Church and the King's Prerogative should be of as great Power as an Act of Parliament.* And at another time said, *That those which would not yield to the King's Power, he would crush them to pieces.*

These three Articles they begun with; and the first Man appointed to begin was Mr. Maynard: And after some general things against me, as if I were the most violent Man for all illegal Ways;

I. The First Particular charged against me, was out of my Diary: the Words these, *The King declared his Resolution for a Parliament in case of the Scottish Rebellion. The first Movers of it were my Lord Deputy of Ireland, the Lord Marquis Hamilton, and myself; and a Resolution voted at the Board, to assist the King in Extraordinary Ways if Parliament should prove peevish, and refuse, &c.* The Time was December 5. 1639. That which was enforced from these Words, was, First, that I bestowed the Epithet *Peevish* upon the Parliament; and the second, that this voting to assist the King in extraordinary Ways, in case the Parliament refused, proceeded from my Counsel.

1. To this I replied: And first I humbly desired once for all, that all things concerning Law may be saved intire unto me, and my Counsel to be heard in every such Particular.

2. Secondly, that the Epithet *Peevish* was a very peevish Word, 'if written by me. I say, If: For I know into whose Hands my Book is fallen; but what hath been done with it, I know not. This is to be seen, some Passages in that Book are half burnt out, whether purposely or by chance, God knows: and some other Papers taken by the same hand from me, are now wanting. Is it not possible therefore some Art may be used in this?' Besides, if I did use the Word *Peevish*, it was in my private Pocket-Book, which I well hoped should never be made publick; and then no Disgrace thereby affix'd to the Parliament. And I hope, should a Man forget himself in such an Expression of some Passage in some one Parliament (and this was no more) it is far short of any thing that can be called Treason. And yet farther, most manifest it is in the very Words themselves,

that I do not bestow the Title upon that Parliament, in that Case; but say only, 'If it should prove peevish: which is possible, doubtless, that in some Particulars a Parliament may; tho' for the Happiness of this Kingdom, I would to God it were impossible. But suppose the Word *peevish* had been absolutely spoken by me, is it lawful upon Record to say the Parliament

An. 42. Hen. III. was Insanum Parliamentum, a mad Parliament; and that in the 6 Hen. IV. Indoctum, an

unlearned Parliament; and that in the 4 Hen. VI. a Parliament of Clubs? And shall it be High-

Treason in me, to say a Parliament in some one Particular was peevish? or but to suppose if it

were? Can any Man think, that an unlearned, or a mad Parliament, or one of Clubs, did not

do something peevishly? Might my Predecessor, Thos. Arundel, tell the

Commons openly in Parliament that their Petitions were sacrilegious?

And may not I so much as suppose some one Action of a Parliament to be peevish, but it shall

be Treason? May an ordinary Historian say of that unlearned Parliament, That

the Commons were fit to enter the Commons with their Cattle, for any

Virtue they had more than Brute-Beasts? And may not I in my private Notes write the Word

Peevish of them without Treason?

3. Thirdly, Whereas 'tis said, *That the voting at the Council-Table to assist the King in extraordinary Ways, if, &c. was by my Counsel;* there is no such thing in my Diary. There is, that I, with others, advised a Parliament; but there is not one Word, that the voting mentioned at the Council-Table proceeded from any Advice of mine. 'So there is no Proof from my Diary, and other Proof beside that, was not so much as urged; which was not in favour, but because they had it not: For had they had any other Proof, I see already it should not have been lost for want of urging.' Where I desired their Lordships also to observe in what a Difficulty I have lived with some Men who will needs make me a great Enemy to Parliaments, and yet are angry with me, that I was one, with others, who moved for that Parliament. So it seems nothing that I do can content some Men: For a Parliament, or against it; nothing must be well, if the Counsel be mine.

4. Fourthly, For *the voting of Assistance in extraordinary Ways*, I was included in the general Vote of the Table; and therefore that cannot be called or accounted my Counsel.

5. Fifthly, It is expressed in my *Diary*, whence all this Proof is taken, that it was in and for the *Scottish* Business; and so is within the Act of Oblivion. 'And these Answers I gave to Mr. Browne, when in the summing up of the Charge against me in the Honourable House of Commons, he made this to be my Counsel to the King; and he began with it in his charging of the Points against Law.'

II. The second Particular this Day charged against me, was, *That after the ending of the late Parliament I did use these Words to the King That now he might use his own Power, or Words to that effect.* This was attested by Sir Henry Vane the elder, then a Counsellor, and present.

1. To this my Answer was, That I spake not these Words, either in Terms or in Sense, to the uttermost of my Knowledge.

2. Secondly, If I had spoken these Words, either they were ill advised Words, but no Treason, and then they come not home to the Charge; or they are treasonable, and then I ought by
1 Eliz. c. 6. § antepenult. Law to have been tried within six Months. 'Mr. Browne in his Reply to me in the House of Commons, said, That this Statute expired with the Queen, because it concerned none but her, and the Heirs of her Body. I had here urged
Part 4. Inst. c. 74. Sir Edward Coke, as urging this Statute, and commending the Moderation of it: But I was therein mistaken, for he speaks of 1 Eliz. Cap. 1. And that Statute is in force, and is for
1 Eliz. c. 1. § 1 Ed. 6. c. 12. Trial within six Months, for such Crimes as are within that Statute. So it comes all to one for my Cause, so either of the Statutes be in force. And to this Charge in general, I gave the same Answers which are here.'

3. Thirdly Sir Henry Vane is in this a single Witness; whereas by Law, he that is accused of Treason must be convicted by two Witnesses, or his own Confession without Violence; neither of which is in this Case. And strange it is to me, that at such a full Table no Person of Honour should remember such a Speech but Sir Henry Vane.

4. Fourthly, Both this and the former Charge relate to the *Scotish* Business, and so are within the Act of Oblivion, which I have pleaded.

Besides, here is nothing expressed in the Words charged which favours of Practice, Conspiracy, Combination, or Force, and cannot therefore possibly, be adjudged Treason; especially since there is no Expression made in the Words witnessed, what Power is meant: For what should hinder the King to use his own Power? But legal still; since nothing is so properly a King's own Power, as that which is made or declared his own by Law. As for the Inference, That this was called his own in opposition to Law: First, Sir Henry Vane is a Witness to the Words only, and not to any Inference; so the Words have but one Witness, and the Inference none. And perhaps it were as well for themselves, as for Persons questioned in great Courts, if they who are employed about the Evidence would be more sparing of their Inferences, many Men laying hold of them without Reason or Proof.

Lastly, For the Honour of Sir Henry Vane, let me not forget this: He is a Man of some Years; and Memory is one of the first Powers of Man on which Age works; and yet his Memory so good, so fresh, that he alone can remember Words spoken at a full Council-Table, which no Person of Honour remembers but himself: Had any Man else remember'd such Words, he could not have stood single in this Testimony. But I would not have him brag of it: For
Aug. 1. 7. de Civ. Dei, c. 3. I have read in St. Augustine, that quidam pessimi, some, even the worst of Men have great Memories, and are tanto peiores, so much the worse for having them. God bless Sir Henry.'

I have staid the longer upon these two, because they were apprehended to be of more weight than most which follow.

III. The next was a Head containing my illegal Pressures for Money, under which the next Particular was, That in the Case of Ship-Money I was very angry against one Samuel Sherman of Dedham in Essex: That I should say Dedham was a Maritime Town; and that when the Sum demanded of him was named, I should say a proper Sum; whereas the Distress came to eleven Subsidies.

To this I answered, First, Here was no Proof but Sherman; and in his own Cause. Secondly, He himself says no more, than that he believes I was the Instrument of his Oppression, (as he called it;) whereas his Censure was laid upon him by the Council-Table, not by me: Nor was I in any other Fault than that I was present, and gave my Vote with the rest. So here's no Proof at all but his Belief. Lastly, Here can be no Treason, but against Dedham or Sherman, that I can discover.

IV. The next to Sherman comes in my great Friend, Alderman Atkins; and he testifies, That when he was brought to the Council-Table, about the Ship-Money, none was so violent against him as I was; and that this Pressure for Ship-Money was before the Judges had given Sentence for the King. And that at another Time I pressed him hard to lend Money, the King being present: At which time he conceived that I favoured Alderman Harrison for Country-sake; because himself was committed, and not the other.

To this, I must confess, I did use to be serious and zealous too in his Majesty's Service; but not with any the least Intention to violate Law. And if this, here instanced, were before the Judgment given for the King; yet it was long after the Judges had put the Legality of it under their Hands. And I for my part could not conceive the Judges would put that under their Hands to be Law, which should after be found unlawful. Therefore in this, as I erred with Honourable Company at the Council-Table, so both they and I had, as we thought, sufficient Guides to lead us.

As for the Partiality which he puts upon me in preserving my Countryman, Alderman Harrison, from Prison: First, He himself durst not affirm it upon his Oath, but says only, that he conceives I favoured him; but his Conceit is no Proof. Secondly, If I had favoured him, and done him that Office, 'tis far short of Treason. But the Truth is, Alderman Harrison gave a modest and a civil Answer; but this Man was rough, even to Unmannerliness: and, so far as I remember, was committed for that.

And whereas he says, I pressed him hard to lend Money, and that none was so violent as I; he is much mistaken. For of all Men in that Fraternity, I durst never press him hard for any thing, least of all for Money. For I knew not what Stuffing might fly out of so full a Cushion, as afterwards 'tis said did, when being a Colonel he was pressed, but not hard, in a little Skirmish-
 ing in Finsbury-Fields.'

V. Then it was urged, That I aggravated a Crime against Alderman Chambers, and told him, That if the King had many such Chambers, he would have never a Chamber to rest in: That in the Case of Tunnage and Poundage, he laboured to take Bread from the King; and that I pressed upon him in the Business of Coat and Conduct-Money.

To this I gave this Answer, That by the Affection Mr. Chambers then shewed the King, I had some reason

reason to think, he desired so many *Chambers* to his Use; that if the King had many such Subjects, he might want a Chamber for himself; or to that effect. And the violence of his Carriage in that honourable Assembly gave just Occasion to other Men to think so. But as for the Business of Tunnage and Poundage, and of Coat and Conduct-Money, I conceived both were lawful on the King's part. And I was led into this Opinion by the express Judgment of some Lords present, and the Silence of others in that behalf; none of the great Lawyers at the Table contradicting either. And no Witness to this, but Alderman *Chambers* himself.

VI. The sixth Particular was, That I urged the Business of Ship-Money upon Alderman *Adams*.

To this my Answer was, That I never pressed the Ship-Money, but as other Lords did at the Council-Table, nor upon other Grounds: Nor doth Alderman *Adams* say any more, than that he was pressed to this Payment by me and others. And to me it seems strange, and will, I hope, to all Men else, that this, and the like, should be a common Act of the Lords at the Council-Table, but should be High-Treason in no body but in me. And howsoever, if it be Treason, it is against three Aldermen, *Atkins*, *Chambers*, and *Adams*.

VII. The seventh Particular was, That I was so violent about the slighting of the King's Proclamations, as that I said, A Proclamation was of as great force, or equal to a Statute-Law; and that I compared the King to the Stone spoken of in the Gospel; that *whosoever falls upon it, shall be broken; but upon whomsoever it falls, it will grind him to powder*, St. *Matth.* xxi. 34. And for this they brought three Witnesses, Mr. *Griffin*, *Tho. Wood*, and *Rich. Hayles*.

1. This was in the Case of the Soap-business, and two of the Witnesses were Soap-boilers. They and their Company slighted all the Proclamations which the King set out; and all the Lords in the Star-Chamber were much offended, (as I conceived they had great reason to be) at the great and open Daring of that whole Company. And whatsoever Sentence passed upon them in that whole Business, was given by the Court of Star-Chamber, not by me.

For the Words: First, these Men have good Memories, that can punctually, being plain ordinary Men, swear Words spoken full twelve Years since; and yet, as good as their Memory is, they swear doubtfully touching the time, as that the Words were spoken in *May 1632*, or 33.

2. Secondly, My Lords, 'tis impossible these Words should be spoken by me. For I think no Man in this Honourable Presence thinks me so ignorant, as that I should not know the vast difference that is between an Act of Parliament and a Proclamation. Neither can these Gentlemen, which press the Evidence, think me so wilfully foolish so to speak, considering they accuse me here for a cunning Delinquent. 'So God forgive these Men the Falseness and the Malice of this Oath.'

3. For the Words spoken of the Stone in Scripture, 'tis so long since, I cannot recal whether I said it or no: Nor have I any great Reason to observe these angry Witnesses in their own Cause. But if, by way of Allusion I did apply that Place to the King and them, 'tis far enough from Treason. And let them, and their like take heed lest it

'prove true upon themselves: For seldom do Subjects fall upon their King, but in the end they are broken; and if it so happen that he falls upon them, they are ground to Powder.' And *Solomon* taught me this Answer, where he says, *The Anger of a King is Death*, Prov. xvi. 14. And yet I would not be mistaken: For I do not conceive this is spoken of a King and his natural Anger, (tho' it be good Wisdom to stir as little Passion in Kings as may be;) but of his legal Anger: According to which, if the Stone roll strictly, few Men can so live, but for something or other they may be in danger of grinding.

4. And for these Soap-boilers, they have little cause to be so vehement against me. For if the Sentence passed against them in the Star-Chamber were in any thing illegal, tho' it were done by that Court, and not by me; yet I alone, so soon as I heard but muttering of it, was the only means of resettling them and their Trade, which none of all the Lords else took Care of. And the Sum of these Answers I gave to Mr. *Browne*, when he gave up the Sum of his Charge against me.

VIII. The next Particular was about Depopulations. A Commission of Grace, to compound with some Delinquents in that kind, was issued under the Broad-Seal, to some Lords, and other Persons of Honour of the Council of which I was one. One Mr. *Talboys* was called thither: And the Charge about this was, That when he pleaded, that by Statute 39 *Eliz.* he might convert some, to Pasture; I should say, *Do you plead Law here? Either abide the Order, or take your Trial at the Star-Chamber:* And that he was fined 50 l.

In this Particular Mr. *Talboys* is single, and in his own Cause; but I was single at no Sitting of that Commission: Nor did I ever sit, unless the Lord Privy-Seal and Mr. Secretary *Coke* were present, that we might have Direction from their Knowledge and Experience.

And for the Words (if spoken) they were not to derogate from the Law; but to shew, that we sat not there as any Judges of the Law, but to offer his Majesty's Grace to such as would accept it.

As for the Fine mentioned, we imposed none upon him or any other, but by the Consent of the Parties themselves. If any Man thought he was not faulty, and would not accept of the Favour shewed him, we left him to the Law, but the plain truth is, this Gentleman being Tenant to the Dean and Chapter of *Christ-Church* in *Oxford*, offered them (as they conceived) great Wrong in the Land he held of them; insomuch as they feared, other their Tenants might follow his Example, and therefore complained of him. And because I laid open his Usage of his Landlords before the Commissioners, he comes here to vent his Spleen against me. And 'tis observable, that in all the Business of Depopulations, in which so many appeared, no one complained either against me or any other Lord, but only this *Talboys*. Mr. *Browne*, when he pressed the Sum of this Charge against me, added, 'That at the Council-Table I was for all illegal Projects, as well as for those Inclosures. But, First, I was neither for this nor any other, either longer or otherwise than I understood them to be lawful. And, Secondly, I opposed there the Business of Salt and the base Money; and I alone took off that of the Malt and the Brewing: And three Gentlemen of *Hertfordshire* (which County was principally concerned in the Case of the Malt) came over to *Lambeth* to give me thanks for it.'

IX. Then was charged upon me the Printing of Books, which asserted the King's Prerogative above Law, &c. The Instance was in Dr. *Cowel's* Book, Word King. That this Book was decryed by Proclamation: That Complaint was made to me, that this Book was printing in a close House without License, and by *Hodgkinson*, who was my Printer; that I referred them to Sir *John Lamb*; that they came to me again, and a third time, and I still continued my Reference; which Sir *John Lamb* slighting, the Book came forth. The Witnesses to this, were *Hunt* and *Wallye*, if I mistook not their Names.

1. For this Book of Dr. *Cowel's* I never knew of it, till it was printed; or so far gone on in printing, that I could not stay it. And the Witnesses say, it was in a close House, and without License; so that neither I nor my Chaplains could take Notice of it.

2. They say, they informed me of it, but name no time but only the Year 1638. But they confess I was then at *Croydon*: So being out of Town (as were almost all the High Commissioners) I required Sir *John Lamb*, who, being a High Commissioner, had in that Business as much Power as myself, to look to it carefully, that the Book proceeded not; or if it were already printed, that it came not forth. If Sir *John* slighted his own Duty and my Command (as themselves say) he is living, and may answer for himself; and I hope your Lordships will not put his Neglect upon my Account.

3. As for *Hodgkinson*, he was never my Printer; but *Badger* was the Man whom I employed, as is well known to all the Stationers. Nor was *Hodgkinson* ever employed by me in that kind or any other: Upon just Complaint I turned him out of a Place, but never put him into any. And therefore those Terms which were put upon me, of my *Hodgkinson*, and my Sir *John Lamb*, might have been spared. Sir *John* was indeed Dean of the Arches, and I employed him, as other Archbishops did the Deans which were in their Times: otherwise no way mine. And *Hodgkinson* had his whole dependence on Sir *Henry Martin*, and was a mere Stranger to me. And this Answer I gave to Mr. *Brown* when he summ'd up the Charge. Nor could any Danger be in the printing of that Book to mislead any Man; because it was generally made known by Proclamation, that it was a Book condemned, and in such Particulars; but for other things, the Book very useful.

X. The next Charge was, That when Dr. *Gill*, School-Master of *Paul's* School in *London*, was warred out by the Mercers (to the Care of which Company that School some way belongs) upon Dr. *Gill's* Petition to the King, there was a Reference to some other Lords and myself to hear the Business. The Charge is, That at this Hearing I should say the Mercers might not put out Dr. *Gill* without his Ordinary's Knowledge: And that upon mention made of an Act of Parliament, I should reply, *I see nothing will go down with you but Acts of Parliament; no regard at all of the Canons of the Church*: And that I should farther add, *That I would rescind all Acts which were against the Canons; and that I hoped shortly to see the Canons and the King's Prerogative of equal force with an Act of Parliament*.

To this I answered, That if all this Charge were true, yet this is but the single Testimony of *Samuel Bland*, an Officer belonging to the Com-

pany of Mercers, and no small Stickler against Dr. *Gill*, whose aged Reverend Father had done that Company great Service in that School for many Years together.

The Reference, he grants, was to me and others; for I neither thrust myself into the Business, nor was alone in it.

And as there is a Canon of this Church (*Can. 77.*) That no Man may be allowed to teach School, but by the Bishop of the Diocese; so à *paritate rationis*, it stands good, they may not turn him out, without the said Bishop's Knowledge and Approbation. And 'tis expressed in another Canon (*Can. 79.*) That if any School-Master offend in any of the Premises (there spoken of) he shall be admonished by his Ordinary; and if he do not amend upon that his Admonition, he shall then be suspended from teaching: Which, I think, makes the Case plain, that the Mercers might not turn out Dr. *Gill*, without so much as the Knowledge of his Bishop.

And for the Words, That *I saw nothing would down with them but an Act of Parliament, and that no regard was had to the Canons*; I humbly conceive there was no Offence in the Words. For tho' the Superiority by far in this Kingdom belongs to the Acts of Parliament; yet some Regard, doubtless, is or ought to be had to the Canons of the Church. And if nothing will down with Men but Acts of Parliament, the Government cannot be held up in many Particulars.

For the other Words, God forgive this Witness; for I am well assured I neither did nor could speak them. For is it so much as probable, that I should say, *I would rescind all Acts that are against the Canons*? What Power have I, or any particular Man, to rescind Acts of Parliament? Nor do I think any Man that knows me, will believe I could be such a Fool, as to say, *That I hoped shortly to see the Canons and the King's Prerogative equal to Acts of Parliament*; since I have lived to see (and that often) many Canons rejected, as contrary to the Custom of the Place; as in Choice of Parish-Clerks, and about the Reparation of some Churches, and the King's Prerogative discussed and weighed by Law: Neither of which hath, or can be done, by any Judges, to an Act of Parliament. That there is Malice in this Man against me, appears plainly; but upon what 'tis grounded, I cannot tell: unless it be that in this Business of Dr. *Gill*, and in some other about placing Lecturers (which in some Cases this Company of the Mercers took on them to do) I opposing it so far as Law and Canon would give me leave, crossed some way either his Opinion in Religion, or his Pursuit of Profit. I was (I confess) so much moved at the Unworthiness of this Man's Testimony, that I thought to bind this Sin upon his Soul, not to be forgiven him till he did publicly ask me Forgiveness for this notorious publick Wrong done me. But by God's Goodness I master'd myself: and I heartily desire God to give him a Sense of this Sin against me his poor Servant, and forgive him. And if these Words could possibly scape me, and be within the Danger of that Statute; then to that Statute which requires my Trial within six Months, I refer myself.

XI. The eleventh Charge of this Day, was the Imprisonment of Mr. *George Waker*, about a Sermon of his ^{a f. Walker.} preached to prove (as he said) That

'tis Sin to obey the greatest Monarchs in things which are against the Command of God; that I had Notes of his Sermons for four or five Years together, of purpose to intrap him; that I told his Majesty he was factious; that Sir *Dudly Carlton* writ to keep him close; that in this Affliction I protested to do him kindness, and yet did contrary.

My Answer was, That for the Scope of his Sermon, *to obey God rather than Man*, no Man doubts but it ought to be so, when the Commands are opposite. But his Sermon was viewed, and many factious Passages, and of high Nature, found in it. And yet I did not tell the King he was factious, but that he was so complained of to me; and this was openly at the Council-Table.

And whereas he spake of Notes of his Sermons for divers Years, with a purpose to intrap him: all that he says, is, That he was told so, but produces not by whom. And truly I never had any such Notes, nor ever used any such Art against any Man in my Life. For his Commitment, it was done by the Council-Table; and after, upon some Miscarriages of his there by the Court of Star-Chamber, not by me; nor can that be imputed to me, which is done there by the major Part and I having no Negative. And if Sir *Dudly Carlton* writ to keep him close at his Brother's House, contrary to the Lords Order, let him answer it: And if he supposes that was done by me, why is not Sir *Dudly* examined to try that Truth? As for the Protestation, which, he says, I made to his Wife and his Brother, that I complained not against him; it was no Denial of my Complaint made against him at the first, that I heard he was factious; but that after the time, in which I had seen the full Testimony of grave Ministers in London, that he was not factious, I made no Complaint after that, but did my best to free him. And the Treason in these two Charges, is against the Company of the Mercers and Mr. *Waker*.

XII. The next Charge was, That Dr. *Mantwaring* having been censured by the Lords in Parliament for a Sermon of his against the Liberty and Propriety of the Subject, was yet after this preferred by me in contempt of the Parliament-Censure, both to the Deanery of *Worcester*, and the Bishoprick of *St. Davids*: And my own Diary witnesses that I was complained of in Parliament for it; and that yet after this I did consecrate him Bishop.

1. To this I answered, That he was not preferred by me to either of these; and therefore that could not be done in contempt of the Parliament-Censure, which was not done at all. For as for *St. Davids*, 'tis confessed, Secretary *Windebank* signified the King's Pleasure, not I. And whereas it was added, that this was by my means; this is only said, but not proved. And for *Worcester*, there is no Proof but the Docket-Book: Now, my Lords, 'tis well known in Court, that the Docket doth but signify the King's Pleasure for such a Bill to be drawn; it never mentions who procured the Preferment. So that the Docket can be no Proof at all against me; and other there is none.

2. For the Sermon, 'tis true, I was complained of in Parliament, that I had been the Cause of Licensing it to the Press; and 'tis as true, that upon that Complaint I was narrowly sifted, and an Honourable Lord now present, and the Lord Bishop of *Lincoln*, were sent to Bishop *Mountague*, who licensed the Sermon, to examine and see whether any Warrant had come from me, or any Message:

But when nothing appeared, I was acquitted in open Parliament, to somebody's no small Grief. 'God forgive them, and their Malice against me; for to my knowledge my ruin was then thirsted for. And as I answered Mr. *Brown's* summary Charge, when he pressed this against me, could this have been proved, I had been undone long since; the Work had not been now to be done.'

That he was after consecrated by me, is true likewise; and I hope, 'tis not expected I should ruin myself, and fall into a *Præmunire*, by refusing the King's Royal Assent; 25 Hen. 8. c. 20. § ult. and this for fear lest it might be thought I procured his Preferment.

But the truth is, his Majesty commanded me to put him in mind of him when Preferments fell; and I did so: But withal, I told his Majesty of his Censure, and that I feared ill Construction would be made of it.

To this it was replied, That I might have refused to consecrate, the Cause why being sufficient, and justifiable in Parliament, and excepted in that Law. 'But how sufficient soever that Cause may be in Parliament, if I had been in a *Præmunire* there-while, and lost my Liberty, and all that I had beside, for disobeying the Royal Assent; I believe I should have had but cold Comfort when the next Parliament had been summoned; no Exception against the Man being known to me, either for Life or Learning, but only this Censure: nor is there any Exception which the Archbishop is by that Law allowed to make, if my Book be truly printed.'

XIII. Then followed the Charge of Dr. *Heylin's* Book against Mr. *Burton*; out of which it was urged, That an unlimited Power was pressed very far; and out of p. 40. *That a way was found to make the Subject free, and the King a Subject*: that this Man was preferred by me; that Dr. *Heylin* confessed to a Committee, that I commanded him to answer Mr. *Burton's* Book; and that my Chaplain Dr. *Braye* licensed it. 1 Heylin cont. Burton, p. 40.

I answered as follows: I did not prefer Dr. *Heylin* to the King's Service: it was the Earl of *Danby*, who had taken honourable Care of him before in the University. His Preferments I did not procure: For it appears by what hath been urged against me, that the Lord Viscount *Dorchester* procured him his Personage, and Mr. Secretary *Coke* his Prebend in *Westminster*.

For his Answer to the Committee, that I commanded him to write against *Burton*, is was an ingenuous and a true Answer, and became him and his Calling well; for I did so. 'And neither I in commanding, nor he in obeying, did other than what we had good Precedent for in the Primitive Church of Christ. For when some Monks had troubled the Church at *Carthage*, but not with half that danger which Mr. *Burton's* Book threatened to this; *Aurelius*, then Bishop, commanded *St. Augustine* to write against

it; and he did so. His Words are, *Aurelius scribere jussit, & fecit.* But Aug. 2. Retract c. 21.

tho' I did, as by my Place I might command him to write an Answer; yet I did neither command nor advise him to insert anything unsound or unfit. If any such thing be found in it, he must answer for himself, and the Licenser for himself. For, as for licensing of Books, I held the same course which all my Predecessors, had done: and when any Chaplain came new into my House,

House, I gave him a strict Charge in that particular. And in all my Predecessors times, the Chaplains suffer'd for Faults committed, and not their Lords; tho' now all is heaped on me.

As for the particular Words urged out of Dr. *Heylin's* Book, p. 40. there is neither Expression by them, nor Intention in them, against either the Law, or any lawful Proceedings; but they are directed to Mr. *Burton* and his Doctrine only. The words are, *You have found out a way* (not the Law, but you Mr. *Burton*) *to make the Subject free, and the King a Subject.* Whereas it would well have becom'd Mr. *Burton*, to have carried his Pen even at the least, and left the King his Freedom, as well as the Subject his.

XIV. From this they proceeded to another Charge; which was, That I preferred Chaplains to be about the King and the Prince, which were disaffected to the publick Welfare of the Kingdom. The Instance was in Dr. *Dove*; and a Passage read out of his Book against Mr. *Burton*: and it was added, that the declaring of such Disaffection was the best Inducement or Bribe to procure them Preferment.

To this I then said, and 'tis true, I did never knowingly prefer any Chaplain to the King or Prince, that was ill-affected to the Publick. And for Dr. *Dove*, if he uttered by Tongue or by Pen any such wild Speech concerning any Members of the Honourable House of Commons, as is urged, thereby to shew his Disaffection to the Publick; he is living, and I humbly desire he may answer it. But whereas it was said, That this was the best Inducement or Bribe to get Preferment; this might have been spared, had it so pleased the Gentleman which spake it; but I know my Condition, and where I am, and will not lose my Patience for Language.

And whereas 'tis urged, That after this he was named by me to be a Chaplain to the Prince his Highness; the thing was thus: His Majesty had suit made to him, that the Prince might have Sermons in his own Chapel for his Family. Hereupon his Majesty approving the Motion, commanded me to think upon the Names of some fit Men for that Service. I did so: but before any thing was done, I acquainted the Right Honourable the Lord Chamberlain that then was, with it; my Lord knew most of the Men, and approved the Note, and delivered it to his Secretary Mr. *Oldsworth* to swear them. This was the Fact; and at this time, when I put Dr. *Dove's* Name into the List, I did not know of any such Passage in his Book, nor indeed ever heard of it till now. For I had not read his Book, but here and there by snatches.

XV. I am now come (and 'tis time) to the last Particular of this Day. And this Charge was, the giving of Subsidies to the King in the Convocation, without Consent in Parliament: That the Penalties for not paying were strict, and without Appeal, as appears in the Act; where it is farther said, that *we do this according to the Duty which by Scripture we are bound unto*; which reflects upon the Liberties of Parliaments in that behalf. But it was added, they would not meddle now with the late Canons for any thing else, till they came to their due place.

1. My Answer to this was, That this was not any single Act, but the Act of the whole Convocation, and could not be applicable to me only.

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2. That this Grant was no other, nor in any other way, *mutatis mutandis*, than was granted to Queen *Elizabeth* in Archbishop *Whitgift's* time. This Grant was also put in execution, as appeared by the Originals which we followed. These Originals (among many other Records) were commanded away by the Honourable House of Commons, and where they now are I know not; but for want of them, my Defence cannot be so full.

3. For the Circumstances, as *that the Penalties are without Appeal*, and the like, 'tis usual in all such Grants. And *that we did it according to our Duty and the Rules of Scripture*, we conceived was a fitting Expression for ourselves, and Men of our Calling, without giving Law to others, or any Intention to violate the Law in the least. For thus, I humbly conceive, lies the mutual Relation between the King and his People, by Rules of Conscience: The Subjects are to supply a full and honourable Maintenance to the King; and the King, (when Necessities call upon him) is to ask of his People, in such a way as is, *per pacta*, by Law and Covenant agreed upon between them, which in this Kingdom is by Parliament: yet the Clergy ever granting their own at all times. And that this was my Judgment long before this, appears by a Sermon of mine appointed to be preached at the opening of the Parliament, in the Year 1625. My Words are these; *If you would have indeed a flourishing both State and Church, the King must trust and indear his People, and the People must honour, obey, and support their King, &c.* This, I hope, is far enough from derogating from any Law: and if I should privately have spoken any thing to him contrary to this, which I had both preached and printed, how could his Majesty have trusted me in any thing?

My Sermon on
Psal. 75. 2, 5.
p. 14.

This brought this tedious Day to an end. And I had an Order the same Day to appear again on Saturday, *March* 16. 1643. with a Note also from the Committee which were to charge me, that they meant then to proceed upon part of the second Additional Article; and upon the third Original, and the third and fifth Additional Articles. The second Additional Article is written down before: And here follow the rest now mentioned to be next proceeded upon.

The Third Original is,

III. He hath by Letters, Messages, Threats, Promises, and divers other ways, to Judges and other Ministers of Justice, interrupted and perverted; and at other times, by the Means aforesaid, hath endeavoured to interrupt and pervert the Course of Justice in his Majesty's Courts at *Westminster*, and other Courts, to the Subversion of the Laws of this Kingdom: whereby sundry of his Majesty's Subjects have been stopped in their just Suits, and deprived of their lawful Rights, and subjected to his tyrannical Will, to their utter Ruin and Destruction.

The Third and Fifth Additionals follow:

III. That the said Archbishop, to advance the Canons of the Church and Power Ecclesiastical above the Law of the Land, and to pervert and hinder the Course of Justice, hath at divers times within the said time, by his Letters and other undue Means, and Solicitations used to Judges, op-

posed and stopped the granting of his Majesty's Writs of Prohibition, where the same ought to have been granted for Stay of Proceedings in the Ecclesiastical Court; whereby Justice hath been delayed and hindered, and the Judges diverted from doing their Duties.

V. That the said Archbishop, about eight Years last past, being then also a Privy-Counsellor to his Majesty, for the End and Purpose aforesaid, caused Sir John Corbet, of Stoke in the County of Salop, Bart. then a Justice of Peace of the said County, to be committed to the Prison of the Fleet, where he continued Prisoner for the space of half a Year or more; for no other Cause but for calling for the *Petition of Right*, and causing it to be read at the Sessions of the Peace for that County, upon a just and necessary Occasion. And during the time of his said Imprisonment, the said Archbishop, without any colour of Right, by a Writing under the Seal of his Archbishoprick, granted away Parcel of the Glebe-Land of the Church of *Adderley* in the said County, whereof the said Sir John Corbet was then Patron, unto Robert Viscount Kilmurry, without the Consent of the said Sir John, or the then Incumbent of the said Church: which said Viscount Kilmurry built a Chapel upon the said Parcel of Glebe-Land, to the great Prejudice of the said Sir John Corbet, which hath caused great

* Contentions,
Rushw.

Suits and *Diffensions between them. And whereas the said Sir John Corbet had a Judgment against Sir James Stonehouse Knight, in an Action of Waste in his Majesty's Court of *Common-Pleas* at *Westminster*, which was afterwards affirmed in a Writ of Error in the *King's-Bench*, and Execution thereupon awarded; yet the said Sir John, by means of the said Archbishop, could not have the Effect thereof, but was committed to Prison by the said Archbishop and others of the Council-Table, until he had submitted himself unto the Order of the said Table; whereby he lost the Benefit of the said Judgment and Execution.

The Third Day of my Hearing.

SATURDAY, March 16, 1643. In the interim, between the 13th and this 16th of March, upon some strict Charge to look to the Tower, my Solicitor was not suffer'd to come in to me. Whereupon, so soon as I was settled at the Bar, before the Evidence began to be open'd, I spake to the Lords as follows.

My Lords, I stand not here to complain of any Thing, or any Man; but only am inforced to acquaint your Lordships with my sad Condition. Your Lordships have appointed my Secretary to be my Solicitor, and given him leave to assist me in the turning of my Papers, and to warn in such Witnesses, and to fetch me the Copies of such Records as I shall have occasion to use. And I humbly desire your Lordships to consider, that myself being imprisoned, and so utterly disenabled to do these things myself; it will be absolutely impossible for me to make any Defence, if my Solicitor be denied to come to me, as now he is. ^b This was granted, and the Hearing adjourned till Monday following; and I humbly thank'd their Lordships for it.

^b Here the Relation is imperfect. It seems he moved, that his Solicitor might come to him, and in the mean time the Hearing put off.
W. S. A. C.

The Fourth Day of my Hearing.

THE fourth Day of my Hearing was Monday, March 18. and was only my Answer to the third Day's Charge, and the only time in which I was not put to answer the same Day.

I. The first Charge of this Day was about *St. Paul's*. And first out of my Diary, (where I confess it one of my Projects to repair that ancient Fabrick;) and three strict Orders of the Lords of the Council, for the demolishing of the Houses built about that Church. One was November 21, 1634. the demolishing of the Houses commanded by this before Jan. 6. for one, and for the rest by *Midsummer*. Another was March 26. 1631. a Committee appointed, with Power to compound with the Tenants, and with Order to pull down, if they would not compound. The third was March 2, 1631. which gives Power to the Sheriffs to pull down, if Obedience be not yielded.

To this I confess I did, when I came first to be Bishop of London, project the Repair of that antient and famous Cathedral of *St. Paul*, ready to sink into its own Ruins. And to this I held myself bound in general, as Bishop of the Place; and in particular for the Body of the Church, the Repair of which is by the local Statutes laid upon the Bishop. And the Bishop was well able to do it, while he enjoyed those Lands which he had when that Burden was laid upon him. 'But what sacrilegious Hands despoiled that Bishoprick of them, 'tis to no purpose to tell.' And truly, my Lords, since I am in this present Condition, I humbly and heartily thank God, that *St. Paul's* comes into my Sufferings; and that God is pleased to think me worthy to suffer either for it, or with it any way: tho' I confess, I little thought to meet that here, or as a Charge any where else. And so God be pleased (as I hope in Christ he will) to pardon my other Sons, I hope I shall be able (Human Frailties always set aside) to give an easy Account for this. But whereas I said, the Repair of *St. Paul's* was a strange piece of Treason; and they presently replied, that they did not charge the Repair upon me, but the Manner of doing it, by demolishing of Mens Houses: To that I answered as follows; with this first, That the Work hath cost me above One Thousand and Two Hundred Pounds out of my own Purse, besides all my Care and Pains, and now this heavy Charge to boot: no one Man offering to prove, that I have mispent or diverted to other use, any one Penny given to that Work; or that I have done any thing about it, without the Knowledge, Approbation, and Order of his Majesty, or the Lords of the Council, or both.

To the Particulars then. For the three Orders taken out of the Council-Books, I shall not need to repeat them. But what is the Mystery, that these Orders are reckoned backward, the last first? Is it to aggravate, as if it rose by Steps? That cannot well be; because the first Order is the fourest, if I conceive it right. Besides, here was real Composition allotted for them, and that by a Committee named by the Lords, not by me. And I think it was very real; for it cost Eight or Nine Thousand Pounds (as appears upon the Accounts) merely to take down the Houses (which had no Right to stand there) before we could come at the Church to repair it.

And

And if any thing should be amiss in any of these, (which is more than I either know or believe) they were the Council's Orders, not mine. And shall that be urged as Treason against me, which is not imputed to them so much as a Misdemeanour? Besides, the Lords of the Council are in the antient Constitution of this Kingdom one Body; and whatsoever the major part of them concludes, is reputed the Act of the whole, not any one Man's. And this I must often inculcate, because I see such publick Acts like to be heaped upon my Particular.

1. The first Witness about this Business of *St. Paul's* is *Mich. Burton*, and 'tis charged that his House was pulled down in King *James's* time; that he was promised Relief, but had none; that hereupon he got a Reference from his Majesty that now is, and came with it to the Council, and was referred to the Committee: That Sir *Hen. Martin* told him, that the Archbishop was his Hindrance; that he resorted to me, and that I bid him go to King *James* for his Recompence.

To this my Answer was, That this House, which he says was his, was (as is confessed by himself) taken down in King *James's* time, when an Attempt was made about the Repair of this Cathedral, but nothing done. If he desired Satisfaction, he was to seek it of them who took down his House, not of me. If his Majesty that now is gave him a Reference, he was by the Lords of the Council, or by me (if to me it were referred) to be sent to the Sub-Committee, because Satisfaction for each House was to be ordered by them. Nor had I any reason to take it on my Care, which was done so long before. He says, that Sir *Henry Martin* told him that I hindered him: but that's no Proof that Sir *Henry Martin* told him so; for 'tis but his Report of Sir *Henry Martin's* Speech; and I hope Sir *Henry* neither did, nor would do me such apparent Wrong. He was the third Man to whom I brake my Intentions touching the Repair, and the Difficulties which I foresaw I was to meet with; and he gave me all Encouragement. And it may be, when nothing would satisfy the eager old Man, I might bid him go to King *James* for Recompence: but 'tis more than I remember if I did so. And this Man is single, and in his own Case; and where lies the Treason that is in it? Besides, least Consideration was due to this House: for not many Years before the demolishing of it, it was built at the West End of *St. Paul's* for a Lottery, (it was said to be the House of one *Wheatly*;) and after the Lottery ended, finish'd up into a Dwelling-House, to the great annoyance of that Church: the Bishop, and Dean and Chapter being asleep while it was done.

2. The next Charge about *St. Paul's* was witnessed by *Mary Berry*, That her Husband was fain to set up his Trade elsewhere, and that every Man reported the Bishop was the cause of it.

Her Husband was forced by this Remove to set up his Trade elsewhere; so she says: and perhaps in a better Place, and with Satisfaction sufficient to make him a better Stock: Where's the Wrong? Beside, she is single, and in her own Cause, and no Proof, but that every Man reported the Bishop was the Means to remove him. And it is observable, that in King *James's* time, when the Commission issued out for the demolishing of these very Houses, the Work was highly applauded; and yet no Care taken for Satisfaction

of any private Man's Interest: 'That now great Care hath been taken, and great Sums of Money expended about it, yet I must be a Traitor, and no less for doing it. This makes me think some Party of Men were heartily angry at the Repair itself, tho' for very shame it be turned off upon the demolishing of the Houses.'

3. The next that came in, was *Tho. Wheeler*: He says, that his House was pulled down by the Committee, by my Direction, about eleven Years ago; and that word was brought him of it.

His House was pulled down; but himself confesses it was by the Committee. It was, he says, above eleven Years ago, and the Time limited in that Article is ^a *six* ^a *Ten*. Vide the second Additional Article. Years. He says, that word was brought him that I was the Cause, or gave the Direction. Word was brought him, but he names not by whom, nor from whom; so all this Proof is a single Hearsay of he knows not whom: whereas I had the Broad Seal of *England* for all that was done. It was replied here, That for demolishing of these Houses the King's Commission was no full and legal Warrant: I should have procured Authority from Parliament. I replied to this Interruption, That Houses more remote from the Church of *St. Paul's* were pulled down by the King's Commission only in King *Edward* the Third's time; and humbly desired a Salvo might be entered for me, till I might bring the ^b Record: which was granted.

4. The last Instance for this Charge of *St. Paul's*, was the House of *W. Wakern*; who witnessed, that he had a Hundred Pound Recompence for his House, but then was after fined in the High-Commission-Court 100*l.* for Profanation, of which he paid 30*l.*

To this I gave this Answer, That his Charge is true; and that after he had received 100*l.* Composition, the Cry of the Profanation brought him into the High-Commission. It was thus: The Skulls of dead Men (perhaps better than himself) were tumbled out of their Graves into his Draught, and part of the Foundation of the Church (as appeared in the taking down of his House) was broken, or pared away, to make room for the Uncleanneſs to pass into the Vault: And surely were I to sit again in the High-Commission, I should give my Vote to censure this Profanation. But himself confesses, he paid but Thirty Pound of it, which was too little for such an Offence. And besides, my Lords, this was the Act of the High-Commission, and cannot be charged singly upon me.

And I cannot forbear to add thus much more, That the Bishop, and Dean and Chapter, whoever they were, did ill to give way to these Buildings, and to increase their Rents by a Sacrilegious Revenue; no Law, that I know, giving way to build upon consecrated Ground, as that Church-yard is. But howsoever, the present Tenants being not *in dolo*, I ever thought fit they should have Recompence for their Estates; and they had it.

II. The next Charge was about the Shops of the Goldsmiths in *Cheapside* and *Lombard Street*. An Order was made at the Council-Table, *Novemb.* 12. 1634. That within six Months the Goldsmiths should provide themselves Shops there, and no where else, till all those Shops were furnished; and this under a Penalty, and to give Bond.

These

These two were the antient Places for Goldsmiths only, time out of mind: and it was thought fit by the Lords, for the Beauty of the Place, and the Honour of the City, to have these Places furnished as they were wont, and not to have other Trades mixed among them. Beside, it concerned all Mens Safety; for if any Plate were stolen, the Inquiry after it might be made with more ease and speed: whereas if the Goldsmiths might dwell here and there, and keep their Shops in every By-place of the City, stolen Plate might easily be made off, and never heard of. But howsoever, if in this Order there were any thing amiss, it was the Order of the Council-Table, not mine: and far enough off from Treason, as I conceive.

1. Upon this Charge there were two Instances. The first is Mr. *Bartley*; who said, his House was taken from him, by Order to the Lord Mayor, 1637. That my Hand was to the Order; That he was imprisoned six Months, and recovered 600*l.* Damages of Sir *Ed. Bromfield*; That after this he was committed to *Framsted*, a Messenger belonging to the High-Commission, about Dr. *Bastwick's* and Mr. *Burton's* Books; That after this he was sent for to the Council, and there heard my Voice only; That when he desired some help, Sir *Thomas Ailbury's* Man told him, he were as good take a Bear by the Tooth; That all this was for his entertaining a Man that came out of *Scotland*: and lastly, That Dr. *Haywood*, my Chaplain, had licensed a Popish Book.

To which I gave this Answer; That if the Lord Mayor put him from his House, by Order from the Lords, (being a Stationer among the Goldsmiths) then it was not done by me: and tho' my Hand were to the Order, yet not mine alone; and I hope my Hand there subscribed no more Treason than other Lords Hands did. And if he did recover 600*l.* against Sir *Ed. Bromfield*, who (I think) was the Lord Mayor spoken of, surely he was a Gainer by the Business. And whereas he says, he was after seized again, and committed to *Framsted* about the Books named: if he were (as was informed) a great Vender of those and such-like Books, less could not be done to him than to call him to answer. He says farther, that he was sent for to the Council-Table, and there he heard my Voice only against him. It may be so, and without all fault of mine: for that heavy Office was usually put upon me and the Lord Keeper, to deliver the Sense of the Board to such as were called thither, and examined there; and by this means, if any four or displeasing Sentence passed, (how just soever, it mattered not) it was taken as our own, and the Envy of it fell on us. And that this was so, many Lords here present know well. He adds what Sir *Thomas Ailbury's* Man said, when he would have petitioned again: but since Mr. *Bartley* is single here, and in his own Cause, why doth he rest upon a Hearsay of Sir *Thomas Ailbury's* Man? Why was not this Man examined, to make out the Proof? And if this Man did so far abuse me, as to speak such words of me, shall I be abused first, and then have that Abuse made a Charge? That he was troubled thus for a *Scotchman's* coming to him, is nothing so, nor is any Proof offered; tho' then the Troubles were begun in *Scotland*: and therefore if this had any relation to that Business, I pleaded again the Act of Oblivion. For that of Dr. *Haywood*, I shall give my Answer in a more proper place; for 'tis objected again.

2. The second Instance was in Mr. *Manning's* Case. He speaks also of the Order of the Council, *Novemb. 12. 1634.* That the Goldsmiths in their Books make an Order upon it, *June 15. 1635.* That they which obey not should be suspended, I think 'tis meant from Use of their Trade; That when some intreated them to Obedience, I should say, *This Board is not so weak, but that it can command; or to that effect.*

For the Council's Order, it was theirs, not mine. For the Order which the Company of Goldsmiths made upon it, it was their own Act, I had nothing to do with it. For the Words, if I did speak them (which is more than I remember) he is single that swears them, and in his own Cause. But, my Lords, I must needs say, whether I spake it then or not, most true it is, that the Council-Table is very weak indeed, if it cannot command in things of Decency, and for Safety of the Subject, and where there is no Law to the contrary. And this was then my Answer.

III. The Third Charge of this Day was, That I forced Men to lend Money to the Church of *St. Paul's*: and Mrs *Moore* was called upon. But this was deserted.

IV. The next Charge was concerning a long and tedious Suit between *Rich* and *Poole*, about the Parsonage of *North-Cerny*, in *Gloucestershire*: That *Rich* was turned out, after three Years Possession, by a Reference procured by *Poole* to my Lord Keeper *Coventry* and myself; and that I did in a manner act the whole Business at the Reference: That Letters were sent from the Council to Sir *William Masters*, one of the Patrons, to see *Poole* instituted, and to imprison *Rich* if he refused Obedience? That after, by the Lord Marshal's Procurement, there was another Reference obtained to thirteen Lords, who awarded for *Rich*.

I was never more weary of any Business in my Life than I was of this Reference. And I was so far from acting the whole Business, as that I did nothing but as the Lord Keeper directed, the Cause was so entangled with *Quare Impedit*, and many other Businesses of Law. Our Judgments upon full Hearing went with *Poole*, and we certified accordingly. And upon this (it may be) the Letters mentioned were sent down for *Poole*. And if the Lord Keeper that now is, then his Majesty's Solicitor, could not or durst not meddle, but gave back his Fee, (as was farther urged) his Lordship is living to tell the Cause himself; for here was none set down, tho' it were urged as if he did it because I was a *Referee*. And in the mean time, this is but a bare Report concerning him. If the thirteen Lords, to whom it was after referred, were of another Opinion, that was nothing to us, who, without any Touch of Corruption, did as our Knowledge and Conscience guided us. And, my Lords, it seems this Title was very doubtful; for after all this, it came into this Parliament, and was referred to a Committee, where Mr. *Rich* was very willing to compound the Business. 'And well he might; for I was since certified by a Gentleman, 'a Lawyer, that understood well, and was at the 'Hearing of that Cause, that it was one of the 'soulest Causes, on *Rich's* side, that ever he heard. 'And out of this I took the Sum of my Answer, 'which I gave to Mr. *Brown*, when he summed up 'my Charge.'

The Witnesses to this Charge were Mr. *Rich's* Brother, and my good Friend Mr. *Talboys*. But this latter witnesses nothing but that he heard me say

say that *Poole's* Behaviour was unfit; so there I checked the one Party: And that upon some Words given me by *Rich*, I should say, *Do you throw Dirt in my Face?* And why might I not ask this Question, if his Words deserved it? So upon the Matter, here is *Rich* single in his Brother's Case, and nothing throughout that looks like Treason.

Here I had Snap given me, That I slighted the Evidence: Whereas they (as 'twas said) did not urge these Particulars as Treason, but as Things tending to the Violation of Law, and should be found to make Treason in the Result. 'The Truth is, I did then think within myself, that such Evidence might very well be slighted in an Accusation of Treason. But I thought better to forbear; and so in my continued Patience expected the next Charge.

V. Which was Mr. *Foxlie's* Imprisonment about Popish Books. That he was tender'd the Oath *ex Officio*, then brought before the Council, and imprisoned again by a Warrant under my Hand, and others, and my Hand first to the Warrant, his Wife not suffer'd to come to him till he was sick; that the chief Cause of all this was the Imprisonments, because he desired to name the Men for the Feoffment.

My Lords, this Man confesses he was called in question about Popish Books; but expressing no more, I cannot tell what to make of it; nor can I tell how to accuse him of Popish Books. 'For I cannot tell which is least, his Understanding of them, or his Love to them.' And for tendering him the Oath *ex Officio*, that was the usual Proceeding in that Court. When he was brought before the Lords of the Council, he says the Warrant for his Imprisonment was under my Hand, and others: This was according to Course; so the Commitment of him was by the Lords, not by me. But my Hand was first; so was it in all Things else, to which I was to set it. And the Restraint of his Wife from coming to him, was by the same Order of the Lords: And upon her Petition, when her Husband was sick, both of them confess she had Admittance. But whereas he says the chief Cause of his Commitment was the Feoffment, he is much mistaken: Himself says before, it was about Popish Books. This I am sure of, the Feoffment was not so much as mentioned against him; tho' he freely confesses that he got twelve Men to undertake that Feoffment: which was a great deal more Power than he could take to himself by Law. And his Wife speaks not one Word to the Cause of his Imprisonment. So he is single, and in his own Cause; and no Treason, unless it be against Mr. *Foxlie*.

VI. The next Charge of this Day was Mr. *Vassal's* Imprisonment: And to save Repetition, I shall weave all the Circumstances of Aggravation and my Answer together.

First, He is single in all, both Substance and Circumstance. Secondly, He says, *That he conceives I was the Cause of his Imprisonment.* But his Conceit is no Proof. He says again, *That I said at the Council-Table, (whither he was called) Why sit we here, if we be not able to judge?* It may be, my Lords, I said so; I remember not now: But if I did say so, it was of such Things only as were fit and proper for that honourable Board to judge of. Then he charged me, that I should there say, *That he did eat the Bread out of the King's Childrens Mouths; and that if he were in another Coun-*

try he would be hang'd for it. 'I doubt this Gentleman has borrowed some of Sir *Henry Vane's* Memory: But I remember no such Thing.' Yet if I did say it, it was no Treason: For if I did say he might be hang'd for the like in some other Countries, it was because the Laws and Customs of other Countries, and this of ours, differ in many Things. So that by this Speech he was to thank the Law of the Land for his Preservation, notwithstanding his Opposition against Majesty; which, where the Laws were not so favourable to the Subject, would not be endured.

He says, *He was fain to deposit 300 l. into the Hand of Sir Abra. Dawes, and that it was taken out the next Day:* But he says withal, it was done by a Decree at the Council-Board; and I hope I shall not be held Author of all Decrees which passed there. He says that I called him *Sirrah*: A high Crime, if I did so! High-Treason at least! But sure this Gentleman's Spleen swell'd up *Sir* into *Sirrah*: 'For that is no Language of mine to meaner Men than Mr. *Vassal* is. The main of this Charge is Words; and those (if utter'd) hasty, not treasonable. And as *M. Lepidus* spake in the Case of *C. Lucius Priscus*, 'Vana à scelestis, dicta à maleficiis differunt; Vain Things differ from wicked, and Words from malicious Deeds. And let any Man else be sifted as I have been for all the time I have been a Bishop, which is now upon the Point of twenty and three Years, and I doubt not but as high Words as these will be heard from him upon less Occasion, and of greater Personages than Mr. *Vassal* is. Besides, Mr. *Vassal*, at the end of his Testimony, desired the Lords he might have Reparation; which altogether in Law infirms that which he testified.'

VII. After this followed a Charge about a Grant passed from his Majesty to one Mr. *Smith*. The Difference was between Mrs. *Burrill* and him. As far as I can recall, it was thus: The King had made a Grant to Mr. *Burrill*, in his Life-time, of a Wharf, or something else belonging to the *Thames*. Mr. *Smith* conceals this, and gets a Grant from his Majesty over the Head of the Widow and her Children: And, as himself confesses, his Majesty being informed that Mrs. *Burrill* was Sister to the reverend Prelate Bishop *Andrews*, being then dead, should say, That he ^{did} would not have granted it to Mr. *Smith*, had he known so much. This was an honourable Memory of his faithful Servant, her worthy Brother. But whatsoever was done in this Business, was by Order of the Council-Board, and not by me; as was also the 250 l. which (he says) was paid in to Sir *William Beacher*, (by way of Deposit, as I conceive.) In which, if he had any hard Measure, the Law was open for his Right. And in the whole Business he is single, and in his own Cause.

VIII. The next Charge was Sir *Jo. Corbet's*; which, because it is expressed at large in the Article before recited, I shall not here repeat, but apply the Answer to it, which I then gave.

Sir *John* says he was sent for about reading the Petition of Right at a Sessions in the Country; and that the Earl of Bridgewater should say he was disaffected to the King. This concerns not me in any thing. He says, *That for this he was committed, lay long in the Fleet, and was denied Bail.* But he says it was denied by the whole Board. 'So, by his own

own Confession, this was the Act of the Council, not mine. And this Answer I gave to Mr. Brown, when he put this Part of the Charge in to his Sum.

In his Cause with Sir John Stonehouse about a Waste, I cannot recal the Particulars: But what ever was done therein, himself confesses was by Order of the Council-Table, and his Majesty present, April 18, 1638.

For the Isle built by the Lord Viscount Kilmurry, the Grant which I made, was no more than is ordinary in all such Cases; and 'tis expressed in the Body of the Grant, *Quantum in nobis est, & de jure possumus*. So there is nothing at all done to the Prejudice of Sir John's Inheritance: for if we cannot grant it by Law, then the Grant is voided by its own Words. And that the Grant was such, and no other, I shew'd the Deeds ready attested out of the Office. Besides, had I wrong'd him, there was an ordinary Remedy open by Appeal to the Delegates. And this was well known to him; for he did so appeal from a like Grant against him by the now Lord Bishop of Duresme, then of Litchfield, and Sir John's Diocesan. And whereas 'tis alledged, *That I made this Grant without the Consent of him the Patron, or the then Incumbent*; Sir John acknowledges, like a Gentleman, that I sent unto him for his Consent, if it might have been had. And this I foresaw also, that if I had denied the Lord Viscount that which was not unusual, then the Complaint would have fallen more heavy on the other Side, that I made Persons of Quality in a manner Recusants, by denying them that Conveniency which was in my Power to grant. So I must be faulty, whatever I do.

IX. Then the Business of the Tythes of London was raised up in Judgment against me. And it was read out of my Diary, that I projected to give the Ministers Assistance therein.

I had been much to blame, having been Bishop of London, should I have had other Thoughts: For their Case is very hard; all their Offerings being shrunk away into nothing but a poor Easter-Book. The Ministers of London had often petitioned about some Relief long before my Time; and I did then, and do still think it most just they should have it. For they are now under the Task-Masters of Egypt; (*Exod 5. 7.*) the Tale of Brick must be made, they must preach twice a Sunday, get Straw where they can. And yet I never thought of any thing contrary to Law, had all been done which I desired: For that was no more than that the Citizens would voluntarily yield to some reasonable Addition, where Right and Need appeared. And this, I am sure, nor did nor could cross with the Act of Parliament concerning the Tythes of London. And Mr. Mess, who is their only Witness in this Particular, says no more against me, but that *I pressed this Business much and often*. Which is most true I did; and held it my Duty so to do; but still in the way before mentioned.

X. After this came the great Charge (as at present it is accounted) concerning the Censure of Mr. Prynne, and Burton, and Bastwick, in the Star-Chamber, and their Banishment (as 'tis called) upon it. The Witnesses produced in some Circumstances of that Cause, were Mr. Cockshott, Tho. Edwards, William Wickens, Mr. Burton, Mrs. Bastwick, and Mr. Prynne himself. The Censure is known and urged to be against Law: But so far as any Particular is put upon me, my Answer is present to it.

1. And, First, for Mr. Cockshott, he says, Mr. Attorney Banks sent him (being then his Servant) to give me an Account of that Business. Hence 'tis inferred that I took care of it. This might have had some shew of Proof, if I had sent to Mr. Attorney to give me an Account of it. But there's no Word of any such Proof. And yet, considering what relation their Cause had to the Church, if I had sent and desired some Account of the Proceedings, I humbly conceive (my Place in the Church considered) it could have been no great Crime.

2. Then were read certain Warrants, one Feb. 1, 1632. for Commitment, another of Feb. 2. 1636. to bar Access to them. These were Acts of the Lords sitting in Star-Chamber, not mine. Then was read a third Order, after Sentence given, of May 13. 1634. for the seizing of his Books. But this, as the former, was an Act of the Court, not mine: And 'tis expressed in the Order (as the Charge itself lays it down) for the Disposall of the Books according to Law. Then the Warrant of their Commitment to the Islands, Aug. 27. 1637. This Commitment was no Device of mine; nor did I ever hear of it till it was spoken by others in the Star-Chamber. Nor do any one of these Warrants prove any thing that can be called my Act. And I humbly conceive that I ought not by Law, nor can by Usage of Parliamentary Proceedings, be charged single for those Things which were done in publick Courts. The last Order was, Nov. 12. 1637. about the Aldermen of Coventry, and the Quo Warranto resolved upon against the Charter of that City, only for supposed Favours shewed to Mr. Prynne in his Passage that way. First, 'tis confessed in the Charge that this was an Act of the Lords. Secondly, 'Tis not urged that any one Man disliked it. Fourthly, the Complaint which caused it, was, that both Aldermen and their Wives, and other Citizens, were not content to shew Mr. Prynne Kindness; but they both did and spake that which was disgraceful to the Star-Chamber Sentence. But howsoever, there is no Particular in that Order that is or can be charged upon me.

3. This for the Warrants. The next Witness concerning this Charge was Tho. Edwards. He says, *That three Hampers of Mr. Prynne's Books were taken out of his House*, (whither it seems they were conveyed for Safety) and no Warrant shewed to take them. The weaker Man he, to let his Friend's Books go so. But this Witness hath not one Word of me.

4. The next Witness was William Wickens. He says, *He knew of no Warrant neither; but that License was given by the Sheriffs about six Years since*. Here's never a Word concerning me: Nor am I to answer for the Sheriffs Act. And whereas it is an Aggravation in the Charge, *That all Mr. Prynne's Books were sold*; Tho. Edwards says there were but three Hampers of them; and this Witness says he bought them for two and thirty Pounds. And these neither by Number nor Price could be half of Mr. Prynne's Books, if I have heard Truth of his Library.

5. After this Man's Testimony, comes Mr. Prynne himself in his own Cause. He made a long Relation of the Business, and full of Bitterness against me. This I doubt not was purposely done, to represent me as odious as he could to the Lords and the Hearers. But I shall assume nothing to myself, that was done by Order of the Court of Star-Chamber: Whatsoever was done there by common

mon Consent, was their Act, not mine; and if any Treason be in it, they are as guilty as I; for Treason admits no Accessaries. Nor will I meddle with the Language: God forgive him that, and whatever else he hath done against me. Only I shall answer to all such Particulars of his as seem to touch upon my self.

(1.) First then he says, *He brought a Prohibition, An. 1629. and that was the Ground of my Hatred against him.* For Prohibitions, I shall answer when they are charged: But as I remember not this, so I bare him no hatred; and bearing him none, it could not be for that Cause: Nor doth he so much as offer to prove it was.

(2.) Next he says, *I gave Direction to Mr. Attorney Noy, and that Dr. Heylin drew some Informations for him.* Dr. Heylin was well acquainted with Mr. Attorney; but how long, or upon what Grounds, I know not: Nor did I give Mr. Attorney any Direction. What Dr. Heylin did, if he did any thing, is nothing to me, unless I set him on; which is not proved, nor sworn.

(3.) He farther says, *That Mr. Attorney read his Book twice over, and said, that he found nothing amiss in it.* I know not what Mr. Attorney said to him, nor what he may say of Mr. Attorney now he is dead: This I am sure of, and 'tis well known to some of your Lordships, he said far otherwise in open Court.

(4.) He says, *That his Book was licensed to the Press, and after that seized; and that the Messenger told him it was done by me.* This was done by Warrant of the High Commission, not by me: Nor doth he offer any Proof against me, but that the Messenger told him so; which is a bare Hearsay, and no Proof.

(5.) Then he says, *That there was another Order given about his Business, and that I did it.* But he brings no Proof for this, but that Mr. Ingram, the then Keeper of the Fleet, told him so. But this is as bare a Hearsay as the former, and Mr. Ingram not produced to make out the Proof.

(6.) Then he says, *He writ me a Letter, and that I sent it to Mr. Attorney, to have him yet farther proceeded against.* 'Tis true, my Lords, he did write unto me; but whether it were a Letter, or a Libel, I leave other Men to judge. This Letter I did send to Mr. Attorney; but only to let him see how I was used, not to have any farther Proceeding against him. But Mr. Attorney was so moved at the Sight of it, that when he saw me next, he told me he would call him *Ore tenus* for it. Therefore, it seems, somewhat was very much amiss in it, call the Writing what you will.

(7.) He says, *Mr. Attorney thought he had not kept the Letter; but he was deceived, for he had it.* But how was Mr. Attorney deceived? I'll tell your Lordships what himself told me. When Mr. Attorney saw that I would not agree to any farther Prosecution, he sent for Mr. Prynne, shewed him the Letter, and thought, after he had read it, to give him some good Counsel, to desist from that libelling Humour of his. But Mr. Prynne, after he had got the Letter into his Hands, went to the Window, as if he meant to read it; and while Mr. Attorney was otherwise busied, he tare it into small Pieces, and threw it out at the Window; and then said unto him, *This shall never rise in Judgment against me.* Now he confesses he hath the Letter still, and that Mr. Attorney was deceived: Belike he tare some other Paper for it, and put the Letter in his Pocket. 'But that you may see

the Honesty of this Man, and what Conscience he makes of that which he speaks upon his Oath; here he says he had the Letter still, and that Mr. Attorney was deceived: And yet after this; when he sets out his Breviate of my Life, he confesses, in an unfavoury marginal Note, *That he tare it, Mr. Attorney having need of such a Paper.* And for this Breviate of his, if God lend me Life and Strength to end this first, I shall discover to the World the base and malicious Slanders with which it is fraught.

(8.) He went on, and said, *There was an Order made against him when Term was done, so that he could have no Remedy.* This is directly against the Court and their Order, not against me.

(9.) Then he cites out of the Epistle before my Speech in the Star-Chamber, *That I censured him for having his Hand in the Pamphlets of those times, and yet was doubtful of it.* The Words are: *For I doubt his Pen is in all the Pamphlets.* But, First, 'tis acknowledged I gave no Vote at all in his Censure; and if I did not judicially censure him, then sure I was not doubtful, and yet censured. Secondly, He was censured upon his own Pamphlet; And his Hand was certainly in his own, what Doubt soever I might make of its being in theirs. And, Thirdly, if the Words be extended to their Pamphlets also, that's nothing to prove I doubted of the Justness of the Sentence. For the Words are not, *I doubt his Pen is in all those Pamphlets of Mr. Burton and Dr. Bastwick;* but in all the Pamphlets, whether their Libels, or any others: so I might be doubtful of the one, and yet certain enough of the other.

(10.) And whereas he adds, *That he was jointly charged with Dr. Bastwick and Mr. Burton, yet could not be suffered to speak together for a joint Answer; and that his Cross-Bill was refused:* All this was done by the Court of Star-Chamber, not by me. And your Lordships know well the Lord Keeper managed the Affairs of that Court, not I.

(11.) Then he says, *That at last Mr. Holt came to him, but was threatned that very Afternoon for it.*

But he doth not tell your Lordships by whom; and for my Part, more than civil giving him the Time of the Day, I never spake with him in all my Life.

(12.) He tells your Lordships next, *how he passed thro' Coventry (to which I have spoken already) and how thro' Chester, and how some Chester Men were used concerning him and his Entertainment.* But, my Lords, whatsoever was done in this, was by the High-Commission at York; and if any thing be therein amiss, they must answer that did it.

(13.) Lastly, he spake of sending Sir William Balfore to me, and some other like Particulars. Of all which there is no Proof, but a bare Relation what Mr. Hungerford, Mr. Ingram, and Sir William Balfore said; which is all Hearsay, and makes no Evidence, unless they were present to witness what was said. And here give me leave to observe, that Mr. Prynne hath in this Charge woven together all that he could say concerning both Causes, for which he was censured: For in the third Particular he speaks of his Book, for which he was first censured; and in the ninth and tenth of his Cross-Bill, and the like, which were in his second Cause.

W. Prynne's
Breviate of
the Archbi-
shop's Life,
P. 19.

Paulo post
medium.

6. The sixth Witness was Mr. *Burton*, a Party too. For that which he said agreeable to Mr. *Prynne*, it received the same Answer. And he added nothing new, but *that his Wife was kept from him by Warrant from the Lords*. And if it was by the Lords Order, then was it not by me. And when it was replied, That till he was sentenced to *Guernsey*, his Wife had access to him: Mr. *Burton* answered, Yea; but, my Lords, *she was not suffered to be with me at Nights*. At which the Lords fell a laughing, and there ended his Charge.

7. The last Witness was Mrs. *Bastwick*; and she also said nothing different from Mr. *Prynne*, but that she was kept from their Husband, and that she petitioned the Lords about it; but of me in particular, not one Word. 'And tho' Mr. *Brown*, in his last Reply upon me, said, The Time of these Mens Cenſure, was the noted Time of the Oppression of the Subjects Liberty; yet I shall crave leave to say of these Men, as St. *Augustine* once said of two great *Donatists* in his time, who (it seems) had received some Sentence, and afterwards a Return, not altogether unlike these Men: (they were *Felicianus*

Si innocentes
erant, quare
sic damnati
sunt? sic scelerati,
quare sic
recepti? Aug.
Epist. 172.

and *Pretextatus*) of those thus St. *Augustine*; If these Men were innocent, why were they so condemned? And if they were guilty why were they with such Honour returned and received? This applies itself. And here I am willing to put the reader in mind too, That Mr. *Browne* draw-

ing up an exact Sum of my Charge, and pressing it hard against me, to my Remembrance (and I think my Notes could not have slipped it) passed by this Charge concerning Mr. *Prynne*; and I cannot but think he had some Reason for it.

XI. This tedious Charge being over, the World ran round, and I was brought back again to another Charge about demolishing the Houses at *St. Paul's*; and here three Witnesses more came against me.

1. The first was Mr. *Bently*: He said, *There were above sixty Houses pull'd down*. I answered, I know not the Number; but if there be so many, the Recompence given was sufficient for more. He said farther, *That there were twenty Yards between the Church and some of the Houses*. There were very few, if any such (let him look to his Oath;) but then some were close upon the Wall of the Church. And suppose all had been twenty Yards distant; that was not room enough to bring in, and lodge Materials for the Repair, and to turn the Carriages. And here again I made mention of my *Salvo*, before desired, for the Record of *Ed. 3.* touching the like Buildings, and their Demolition.

2. The second Witness was Mr. *Goare*. For the sixty Houses, as was before testified, I gave the same Answer; as also, that the Act of the Council-Table cannot be said to be my Act. For *St. Gregory's Church* they were not left without a Place for Divine Service, (as he would fain have it thought: For they were assigned to a part of *Christ Church*, till another Church might be built for them. And for the pulling down of *St. Gregory's* 'tis well known to divers of that Parish, that I was not so much as one of the Referrees, to whose View and Consideration it was referred. But the truth is, this Man rented the Parsonage-House,

and had a good Pennyworth of it to gain by his Under-Tenant. The going down of that House troubles him, and not the Church.

3. The third Witness, *Walter Biggs*, says nothing different from the two former; but that I said I was opposed for the pulling down of the Houses. Whence it was inferred, that it was my Act; because I was opposed. But my Lords, I hope, I might say, [I was opposed] without any Offence, or without taking the Order of the Council-Table to myself: For 'tis well known the Work of that Repair under God, was mine; and I took no indirect, no oppressing way to it: nor can I now be ashamed of that, which, in future times, in despite of the present Malice, will be my Honour. So that the Care of the Work lying upon me, I might well say I was opposed, tho' the Opposition went higher, against the Orders of the Lords.

XII. The last Charge of this Day, was about the putting down of two Brewers in *Westminster*, because the excessive and noisom Smoke from thence much annoyed the King's House, Gardens and Park at *St. James's*. These two were Mr. *Bond* and Mr. *Arnold*.

1. For Mr. *Bond*, he begins with somewhat that I should say at the Council-Table; as namely, that he must seal a Bond of two thousand Pounds to brew no more with Sea-Coal. Now this argues, if I did so speak, that it was in delivering to him the Sense of the Board; which Office (as I have before expressed, and is well known) was usually put upon me, if I were present. And your Lordships may here again see what Envy hath followed me upon that which I could not decline. He says farther, That upon this Mr. *Attorney Banks* proceeded against him in the *Exchequer*; That there upon some Occasion the Lords Chief Baron should say, *Ye are wise Witnesses for the King*; That his Counsel were forbid to plead, and so a Verdict passed for the King. All this is nothing to me; I was neither Chief Baron nor Witness, nor one of the Jury that gave the Verdict. He says, *He was informed, that there was an Order of Council made, that no Man should put up a Petition for him*: But himself doth not so much as mention, that this Order was procured by me: And it is but a Report that no Petition might be delivered for him; and none of them that told him so, produced for Proof. So he scandalizes the Lords by Hearsay.

Next he says, That the King graciously sent him with a Reference to the Council for Satisfaction. First, I must believe if he were so sent, the Wrong being only the King's, and he willing he should have satisfaction however for his Loss; That the Lords would never refuse, in such a Case, whatsoever is here said to the contrary. Secondly, It may be observed how gracious the King was to the Subject; that tho' the Annoyance, was great to that House of his Recreation and Retiring near the City yet he would not have Mr. *Bond* suffer without Satisfaction: notwithstanding which Goodness of the King, he comes in to this great Court; and so he may have a blow at me, blasts (as much as in him lies) all the King's Proceedings, under the Name of Oppression, and that in a high degree. He says also, *That a Friend of his persuaded him to come to me, and offer me somewhat to St. Paul's; and that he did come to me accordingly and that I said I must have of him a Thousand Pounds to St. Paul's: That he was not unwilling to give it, because his Brewing was worke*

twice

twice as much to him. My Lords, I humbly desire your Lordships to consider this part of the Charge well. First, What Friend of his this was, that came so to him, he says not, nor do I know, and so have no possibility to examine. Secondly, He says not that I sent his Friend of his to him, thus to advise him: and then his coming no way concerns me. Thirdly, when he was come upon this Friend's persuasion, if he were willing to give a Thousand Pounds to *St. Paul's*, in regard of his double Gain from his Brew-House, as himself confesses; I do not see (under favour) what Crime or Oppression is in it. Lastly, I remember none of this, and let him well weigh his Oath with himself; for I cannot call to mind one Penny that he gave to *St. Paul's*: nor yet shall I ever think it a Sin, to take a Thousand Pounds to such a Work, from any rich and able Man that shall voluntarily offer it; especially upon hope of gaining twice as much.

To make this Charge the heavier, he says, I sent him to the Queen-Mother, who lay then at *St. James's*; and that there he was laboured by some about her to change his Religion, and then he should have all Favour. This is a bold Oath; let him look to it, for I sent him not. It may be I might tell him, that if the Queen-Mother were offended with the Annoyance from his House, it would not be in my Power to help him; which was true. And that about his Religion, was added to make your Lordships think that I sent him thither for that Purpose: but God be thanked, this Witness says not any one Word tending that way. And for the Queen-Mother, since she is thus mentioned, I shall crave leave to say two things: the one, That I did both in open Council, and privately, oppose her coming into *England*, with all the strength I had; tho' little to my own Ease, as I after found: the other, That after she was come, the Lords of the Council went in a Body to do their Duty to her; that time I could not but go; but never either before or after was I with her.

Then he concludes, That there was a *Capias* out for him, and that he was fain to make an escape by Night; which he did to Alderman *Pemington*, who very nobly succoured him privately in his House. All which concerns me nothing.

2. The other Witness is Mr. *Arnold*; who told as long a Tale as this, to as little purpose. He speaks of three Brew-Houses in *Westminster* all to be put down, or not brew with Sea-Coal; that Secretary *Windebank* gave the Order. Thus far it concerns not me. He added, that I told him they burnt Sea-Coal: I said indeed, I was informed they did; and that I hope was no Offence. He says, That upon Sir *John Banks's* new Information, four Lords were appointed to view the Brew-Houses, and what they burnt. But I was none of the four, nor did I make any Report, for or against. He says, Mr. Attorney *Banks* came one day over to him, and told him that his House annoyed *Lambeth*, and that I sent him over. The truth is this; Mr. Attorney came one Day over to dine with me at *Lambeth*, and walking in the Garden before Dinner, we were very sufficiently annoyed from a Brew-House; the Wind bringing over so much Smoke; as made us leave the Place. Upon this Mr. Attorney asked me, why I would not shew myself more against those Brew-Houses, being more annoyed by them than any other? I replied, I would never be a means to undo any Man, or put

him from his Trade, to free myself from Smoke. And this Witness doth after confess, that I said the same Words to himself. Mr. Attorney at our parting said, he would call in at the Brew-House: I left him to do as he pleased, but sent him not. And I humbly desire Mr. Attorney may be examined of the Truth of this.

He farther says, That he came over to me to *Lambeth*, and confesses the Words before mentioned; and that he offered me Ten Pounds yearly to *St. Paul's*, and that I said he might give Twenty. He says, That I sent him to Mr. Attorney; but withal told him, that if he found not such Favour as I wished him, it was a sign he had more powerful Adversaries than my Friendship could take off. In all this I cannot see what Fault I have committed. And I foretold him Truth: for tho' the Business were after referred to Mr. Attorney and myself, (as himself says) yet we were not able to end it. Then he says, I would not suffer Sir *Edw. Powel*, Master of the Requests, to deliver his Petition to the King. But first, this is but Sir *Edward Powel's* Report, and so no Proof, unless he were produced to justify it. Secondly, the World knows I had no Power in Sir *Edward*; he would then willingly have delivered Petition, or any thing else, that he thought might hurt me: and the Cause is known.

Lastly, he says, Mr. Attorney sent out a *Capias* for him; that the Sheriff came by force to take him, and what hard shift he made to escape: That after upon his Petition, the Lords gave him six Months time to provide himself elsewhere; and that he was fain to give five hundred Pound Bond not to brew there. To all this I then said, and say still, First, Here's no one thing charged upon me in particular. Secondly, here's not a Word of my Advice or Endeavour to set on Mr. Attorney, or to move the Lords to any thing against him. And whereas it hath been urged, that my Power was such, that I swayed the Lords to go my way; this cannot be said, without laying an Imputation upon the Lords, as if they could so easily be overwrought by any one Man and that against Law: which is a most unworthy Aspersion upon Men of Honour. And if all this were true, it is but Treason against a Brew-House. Nor yet may this be called slighting of any Evidence, which is but to answer home in my own just Defence. 'And out of this I gave my answer to 'Mr. Browne's summary Charge against me in the 'House of Commons, for that which concerned 'these two Brewers.'

And here, before I close this Day, give me leave, I beseech your Lordships to observe two things. First, That here have been thirteen Witnesses at least produced in their own Cause. Secondly, That whereas here have been so many things urged this Day about the Star-Chamber and the Council-Table; the Act made this Parliament, for the regulating of the one, and the taking away of the other, takes no Notice of any thing past: and yet Acts past (and those Joint-Acts of the Council, and not mine) are urged as treasonable, or conducing to Treason, against me. Nay, the Act is so far from looking back, or making such Offences Treason, as that if any offend in future, and that several times, yet the Act makes it but Misdemeanour, and prescribes Punishments accordingly.

The Fifth Day of my Hearing.

FRIDAY, March 22. 1643. The first Charge of this Day was concerning the Indictment of Mr. *Newcommin* a Minister at *Colchester*, for refusing to administer the Sacrament; but at the Rails; and the Prosecution which followed against *Burrowes* for this. The two Witnesses of the Particulars, are *Burrowes* and Mr. *Aske*.

1. The Testimony which *Burrowes* gave, was, That Mr. *Newcommin* would not administer the Communion, but at the Rail; that he indicted him for receiving it there; that the Foreman threw it out, &c. If Mr. *Newcommin* did this, Complaint might have been made of him; but howsoever here's no one Word of any Command from me. And it seems the factious Malice of *Burrowes* was seen, that the Foreman at first threw away the Indictment. He says, That upon this he was called into the High-Commission; a Warrant from me; his House beset; *Stockdall* left the Warrant with the Mayor; a *Habeas Corpus* not obeyed. The Warrant, by which he was detained, was from the High-Commission, not from me: and himself says, there were six or seven Hands to the Warrant. But then he says, my Hand alone was to another Warrant, which is impossible, for there must be three Hands at the least, or no Warrant can issue out. And all his Proof of this latter is, that he saw my Hand; which I hope he may do, tho' other Hands besides mine were to it. For the *Habeas Corpus*, if the Mayor said (for so *Burrowes* adds) he would obey my Warrant, rather than the King's Writ, because it came first; he was extremely ill advised: but if a Mayor of a Town give an undiscree, or a worse Answer, I hope that shall not be imputed to me. And if there be any thing in this Business, why is not *Stockdall* the Messenger produced, that knows those Proceedings? Lastly, he speaks of a Letter sent to Judge *Crawley*, and shew'd to Judge *Hutton*. But first, he says not that Letter was sent by me, or by my means. Secondly, he names not the Contents of the Letter; without which, no Man can tell whether it charge any thing upon me or not. And until the Letter be produced, or sufficiently witnessed, (neither of which is offered) 'tis but like a written Hearsay. And I humbly pray you to observe from himself, that the two Reverend Judges looking into the Business, said, it was a mere Cheat for Money, and returned him back to *Colchester*: which is a Proof too, that the *Habeas Corpus* was obeyed; for if he were not brought up before them, how could he be returned by them?

2. Then Mr. *Aske*, the second Witness, was produced. He said, there came Players to Town, and that some, which said they came from me, were taken in a Tavern upon *Easter-Eve* at unreasonable Hours. I know not of any that were sent from me: but if any were, and kept any Disorder in the Town, especially at such a Time, Mr. *Aske* did very well to question them. He says, That upon the Matter I referred him twice to Sir *John Lambe*, and that, at the second time, he found the Plot was to make him an Instrument about the Rails, which he absolutely refused. I did refer him (and it may be twice) to Sir *John Lambe*; but if Sir *John* spake to him about the Rails, he had no Commission from me so to do. 'I understood Mr. *Aske* too well, to offer to make

' him an Instrument in such a Business. His Zeal would have set the Rails on fire, so soon as ever he had come near them.'

Frigidius dictum. W. S. A. C.

Next he says, That Mr. *Newcommin* was indicted, as is afore said, and that Indictment found: That Letters Missive were sent for him and his Wife, by *Stockdall*. If Letters Missive by *Stockdall*, then they were sent by the High-Commission, whose joint Act cannot be charged upon me: And if any thing can be proved, why is not *Stockdall* produced: He says, that he went into *Holland* to avoid the Oath *ex Officio*. The Oath *ex Officio* was then the common, and, for ought I yet know, then the legal Course of that Court: so I could not help the Tender of that Oath unto them, had they staid and appeared. But the truth is, he was too guilty to appear; for his Wife was a Separatist, and himself confesses that she came not to the Prayers of the Church. And as for him, I ever found him the great Maintainer of all wilful Opposition against the Church. He farther says, he came to me to *Croydon*, and that there I told him he might have put the Indictment against Mr. *Newcommin* in his Pocket. Indeed, my Lords, if I did say so, I think I spake it truly. For if he had borne any Respect to the Reputation of the Clergy, I think he might have pocketed it for one Sessions, without any prejudice at all to the Law, or any thing else. God knows, this is often done. And if thereupon I added, (as Mr. *Aske* says I did) That if he were so strictly set against Churchmen in the Temporal Courts, he must look for as strict Proceedings in the High-Commission; I see no great Crime in it: for we are as strictly bound to prosecute in the one, as he was in the other. And if his Clerk (as he says) was attached, who read the Indictment; yet it is not said by himself, that he was attached for reading it. 'And if it were so, that some Jurors were attached, and not Mr. *Aske's* Clerk only, (as Mr. *Browne* pressed it in the Sum of his Charge) yet the Answer comes all to one. For no Witness says, these Jurors were called into the High-Commission for being Jurors, or discharging that legal Duty. And then I hope a Man's being of a Jury shall not excuse him for answering any Crime in any Court, that ^{from} hath power to call him; provided

' he be not called off at the time of his Service, or while he is under the Privilege of that Court, in which he is a Juror. And according to this, I gave Mr. *Browne* my Answer. And howsoever, the Attachment goes of course out from the Commission, and not from me.'

II. The second Charge of this Day was about the Censure which fell on the Inhabitants of *Beckington* in *Somersetshire*, about their refusing to remove the Communion-Table according to the Order of their Diocesan: About which were produced three Witnesses, to whose Evidence I shall answer in order.

1. The first was *William Longe*, who says he was Foreman of the Jury, when these Men were indicted for a Riot; and that, as he conceives, the Parson spake with the Judge about it, which caused a sudden Verdict. The Parson of the Place spake with the Judge, and he conceives that produced a sudden Verdict: First, he doth but conceive so, and that can make no Proof. If it did make Proof, 'tis only against the Parson, not against me. And if the Parson speaking of it, did say, (as Mr. *Longe* affirms

affirms he did) That this Riot was like a *Waldensian* or *Swisserland* Commotion; he must answer for his own distempered Language, me it cannot concern.

2. The second Witness was *George Longe*. He says the Bishop of *Bath* commanded the Communion-Table to be removed, and set at the upper end of the Chancel; that the Church-Wardens refusing, were excommunicated: but he says withal, that they appealed to the Arches, and had remedy. Then he adds farther, That the Bishop proceeded again, but the Church-Wardens would not remove it, saying it was an Innovation, and against Law. But, my Lords, 'tis neither: and therefore these Church-Wardens were in a great Contempt against their Bishop, to the ill Example of all that Country. And that it is no Innovation against Law, appears by the Injunctions of *Queen Elizabeth*, where it is commanded expressly to be set there. The Words are; *The Holy Table in every Church* (not Cathedrals only) *shall be decently made, and set in the Place where the Altar stood.*

Injunct. of Q. Eliz. fine.

Now all Men know, that with us in *England* the Altar stood North and South, at the upper end of the Chancel; and to set it East and West, had been cross the Place where the Altar stood, and not in it. And this being Law in the beginning of the Reformation, cannot now be an Innovation.

When they came to me again, (as they say they did) if I then told them they deserved to be laid by the Heels for the Contempt of their Bishop; under favour, my Lords, I spake Truth. And give me leave, I beseech you, to tell you this: It began to be a general Complaint, not of the Bishop of *Bath* only, but of other Bishops also, that they could do little or no service in their several Countries, by reason of the Inhibitions which issued out of my Courts to stay their Proceedings. And I wanted no good Friends in Court to tell the King as much, when any thing was complained of. By this I was brought into great Streights: deny Appeals, I might not; frequent granting in my Courts, destroyed, in a manner, the Bishops Jurisdictions. In this Difficulty, seeing the Willfulness of these Men, and knowing they had received full Benefit by their Appeal once already in the same Case; I did refuse to hear any more of it, (unless there were new Matter) but yet left them free to appeal to the Delegates.

For Mr. *Hughes*, the Parson there, if he gave ill Words, or laid violent Hands on any of his Neighbours, it concerns not me; let him answer for what he hath said or done. 'Tis farther said, That Mr. *Hughes* was with me at *Windfor*, and had Letters from me to the Lord Chief Justice *Finch*. But this Witness delivers not this upon his own knowledge; I sent no Letter by him, nor did he see me send by any other: so this is merely a Report, and he doth not so much as tell from whom. Yea, but then he says, That Mr. *Morgan* (a Man inward with the Judge) told him, that the Judge told him, that the little Man had put a Spoke in their Cart; and thereupon (as he conceives) the Petty-Jury was changed. Here are, if your Lordships mark them, two great Proofs. The one is the Witness's Report of Mr. *Morgan*'s Report, that the Judge had said so of me: But why is not Mr. *Morgan* produced to clear this? The other is not the Knowledge, but the Conceit only of the Witness: *He conceives*, which I am confident cannot sway with your Lordships for a

Proof. 'Besides, were Mr. *Morgan* never so inward with that Judge, yet it follows not, that he must know all. And if that Judge did mean me, (for name me he did not) he did me the more wrong. For I never desired any thing of any Judge, him or other, but what was according to Law. Nay, I so expressed myself, as that if by mistake or mis-information I had desired any thing which was not according to Law, I humbly desired my Motion might be, as if it had never been made.'

3. The third Witness is Mr. *Jos. Ash*. That which this Gentleman says, is, That Sir *John Lambe* told, that the Man which came about that Business, could have no Appeal admitted without me; and that if he would be so troublesome, he should be laid by the Heels. I have given your Lordships an Account, why he could not have an Appeal without me: he had had the benefit of an Appeal before in the same Cause. And for this Witness, he delivers no Knowledge of his own; but only he says, the Man employ'd related it to him: so 'tis a Relation, no Proof. He says, the Penance was enjoined them in three Churches. And truly, my Lords, their Disobedience to their Bishop was great; but if the Penance enjoined were too heavy, it was the Act of their own Bishop, not mine. Then he says, That the Lord *Finch* told him, another powerful Hand was upon him; intimating me. First, this is no Knowledge of the Witness, but a Speech of the Lord *Finch*. Secondly, if the Lord *Finch* did say so of a powerful Hand, he wronged me much, but himself more, to confess he could be drawn awry in Judgment. Thirdly, this Witness says not that he named me, but that he intimated me: I pray your Lordships Judgment, what a forward Witness this Man is, that can upon Oath deliver what is intimated, and of whom.

He says farther, That upon Petition to Sir *William Portman* for some Assistance, the Bishop of *Bath* laid all upon me; and that when himself came to me at the *Tower*, since my Restraint, I told him the Bishop of *Bath* did like an obedient Bishop to his Metropolitan. For this, my Lords, there is no Proof, that the Bishop laid this Business upon me, but Sir *William Portman*'s Report. Sir *William* is a worthy Gentleman, why is not he produced? Why is not the Bishop, that is said to lay all upon me, brought into the Court, that he may clear himself and me, if he had said it not; or that I may make him ashamed, if he said it? For 'tis confessed, that in the first Business, the Church-Wardens had their Remedy by their Appeal to me; but that then the Bishop began again, as the former Witness declared. Nor knew I any thing of this Business till the Appeal came. As for my Answer to himself, that, under favour, is quite mistaken: For I did not say, That in this Particular, but that in his general Proceedings in his Diocese, the Bishop of *Bath* carried himself like an obedient Bishop to his Metropolitan. Nor can my Words be drawn to mean this Particular: For how could I say that in this Particular he carried himself like an obedient Bishop to me, when after Remedy given to these Men by their first Appeal into my Court, he began with them again upon the same Cause? Besides, my Lords, this is not the first time Mr. *Ash* hath mistaken me. 'Mr. *Browne*, in summing up this Charge against me, falls twice very heavily upon this Business of *Beckington*. First, For the Point of Religion: And there he quoted a Passage out of my Speech 'in

‘ in the *Star-Chamber*, where do I reserve the Indifferency of the standing of the Communion-Table either way; and yet (saith he) they were thus heavily sentenced for that which I myself hold indifferent. But 1st, This Sentence was laid upon them by their own Bishop, not by me. 2dly, The more indifferent the Thing was, the greater was their Contumacy to disobey their Ordinary. And had it not been a Thing so indifferent, and without danger of advancing Popery, would Queen *Elizabeth*, who banished Popery out of the Kingdom, have endured it in her own Chapel all her time? 3dly, The Heaviness of the Sentence, so much complained of, was but to confess their Contumacy in three Churches of the Diocess, to example other Mens Obedience. Secondly, For the same Point, as it contained Matter against Law, I answered Mr. *Browne*; as I had before answered the Lords.’

III. The third Charge was about certain Houses given to *St. Edmond’s Lombard-Street*, where old Mr. *Pagget* is Parson. The Witnesses are two.

1. The first is Mr. *Symms*, who says, That after Verdict, Mr. *Pagett* the Incumbent, upon a pretence that these Tenements were Church-Land, got a Reference to the Lord Bishop of *London*, then Lord Treasurer, and myself. My Lords, we procured not the Reference; but when it was brought to us under the King’s Hand, we could not refuse to sit upon it. Upon full hearing, we were satisfied that the Cause was not rightly stated; and therefore we referred them to the Law again for another Trial, and for Costs to the Barons of that Court. ‘ And this was the Answer which I gave to Mr. *Browne*, when he instanced ‘ in this Case.’ He says the Houses were given to superstitious Uses: But Possessions are not to be carried away for saying so. If Men may get Land from others by saying it was given to superstitious Uses, they may get an easy Purchase. And Mr. *Symms* is here in his own Case. But whether the Houses were given to superstitious Uses or not, is the thing to be tried in Law, and not to be pleaded to us. He complains that I would not hear his Petition alone: And surely, my Lords, I had no reason, since it was referred to another with me. And yet I see, tho’ I was not in the Reference alone, nor would hear it alone, yet I must be alone in the Treason. And here I desired that Mr. *Pagett*, the Incumbent, might be heard.

2. The other Witness was Mr. *Bernard*: He says he was present at the Hearing; and that Mr. *Symms* said he was undone, if he must go to a new Tryal. But, my Lords, so may Men say, that by their Troublesomeness in Law-suits go about to undo others. He says that Mr. *Pagett* named his own Referrees: If that be so, ’tis no Fault of mine. He says the Reference was made to us only to certify, not to make any Order in it: If this be so, here’s no Proof so much as offered that we did not certify, as we were requir’d, and then had power given to order it; which we did. And he confesses the Counsel on both sides had full hearing before ought was done.

IV. The fourth Charge of this Day was concerning the Imprisonment of one *Grafton*, an Upholster in *London*. The Witnesses three: Of which,

1. The first is *Grafton*, in his own Cause: And ’tis much if he cannot tell a plausible Tale for himself. He says first, That twelve Years ago he was

committed, and fined fifty Pounds by other Commissioners. By others, my Lords; therefore not by me: And an Act of the High-Commission, by his own Words, it appears to be. He says, He was continued in Prison by my procurement, as he verily believes. First, (as he verily believes) is no Proof. And the ground of his Belief is as weak: For he gives no reason of it but this, That Dr. *Ryves*, the King’s Advocate, spake with the Barons; but he doth not say about what, or from whom. He adds farther, That Mr. *Ingram* Keeper of the *Fleet*, would not give way to his Release, notwithstanding the Barons Orders, till he heard from me. Here’s no Man produced that heard Mr. *Ingram* say so; nor is Mr. *Ingram* himself brought to testify. Lastly, he says, That he then made Means in Court, and so repaired to the Barons again, but all in vain; and that Baron *Trevor* cried out, *O the Bishop! O the Bishop!* First, here’s a Confession of Means in Court made to the Judges: So belike they may have Means made to them, so it be not by me. For the Particular, I did humbly desire the Baron, being then present, might be asked. He was asked: He blushed, and fumbled. The Lords laughed, and I could not hear what he said.

2. The second Witness was Mr. *Lenthall*. But he said nothing, but that there was an Order for *Grafton’s* Liberty; which is nor denied.

3. The third was Mr. *Rivett*. He says, That Mr. *Ingram* said that *Grafton* was a *Brownist*, and must be brought into the *Fleet* again, because he did much hurt among the King’s Subjects. This is a bare Report of a Speech of Mr. *Ingram*; it no ways concerns me. And a Separatist he is from the Church of *England*: But whether a *Brownist*, or no, I cannot tell, there are so many Sects, (God help us.) And much harm he hath done among weak People: For most true it is, which St. *Cyril* observes, Προβλημαζει ὁ Διαβολη τα σχίσματα τῶν λαῶν, ἵνα ὑπαρξάντων γίνωνται ὁ ἐξάρμοδος, *That the Devil prepares these schismatical Separations, that so much the more easily the Enemy may be received.* As for this Man, he was in his way cunning enough: for under pretence that he suffer’d by me, he got *Madam Vantlet*, and other of the *French*, to negotiate with the Queen’s Majesty in his behalf. And this I found, that sometimes, when her Majesty knew not of it, they sent to the Barons for Fa-four for him. ‘ And yet I never heard that Baron *Trevor* ever cried out, *O the French! O the French!* Nor can I tell what stopped his Mouth ‘ in this Cry, and opened it so wide in the other, when we moved to defend ourselves and our Proceedings. Where, I humbly desire, this Passage of the Law may be considered; in the Case of depraving the *Common-Prayer-Book*, (so much scorned and villified at this day) and for not coming to Church. The Words of the Law are, *For due Examination hereof, the Queen’s most excellent Majesty, the Lords Temporal, and all the Commons in this present Parliament assembled, do in God’s Name earnestly require and charge all the Archbishops, Bishops, and other Ordinaries, that they shall endeavour, to the uttermost of their Knowledge, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God, &c.* 1 Eliz. c. 2. Now, if I do not this, here’s an apparent Breach of the Law: And if I do it against the common and great Depraver of this Book, then the Judge, who by this Law should assist me, cries, *O the Bishop!*

‘*Bishop!* And this Answer I gave Mr. *Browne*, when he summ’d his Charge against me.’

V. The fifth Charge of this Day was Mr. *John Ward*’s Case, in a Suit about Simony in the High-Commission.

He says, (for he also is in his own Cause) That upon a pretence of a Lapse by Simony, I procured a Presentation from the King to the Church of *Dinnington*. His Majesty trusted me with the Titles, which did accrue to him in that kind: And because *Simony* had been so rife, commanded me to be careful I might not betray his Trust. And therefore the Simony being offered to be proved, I procured his Majesty’s Presentation for trial of the Title. And this I conceive was no Offence; tho’ this be that which he calls the Heaviness of my Hand upon him. He farther says, That I sent to the Bishop of *Norwich* to admit the King’s Clerk, the Church being void, 7 *Junii* 1638. Nor do I yet see, my Lords, what Crime it is in me, trusted especially as before, to send to the Bishop to admit when the Church is void: Many Lay-Patrons do that, upon Allegation of Simony, before Proof. ‘And Mr. *Bland*, produced as a Witness’ also, says, That the Lord *Goring* prevailed with the Lord Bishop of *Norwich* not to admit. And ‘I hope an Archbishop, and trusted therein by his Majesty, may as lawfully write to the Ordinary for Admission of the King’s Clerk, as any Lay-Lord may write against it.’ But Mr. *Ward* says nothing to this of the Lord *Goring*; but adds, That Sir *John Rowse* prevented this Admission by a *Ne Admittas*, *Junii* 12. And that thereupon I said, *It was to no purpose for us to sit there, if after a long Trial, and Judgment given, all might be stopped.* If I did say so, I think it is a manifest Truth that I spake: for it were far better not to have Simony tried at all in Ecclesiastical Courts, than after a long Trial to have it called off into *Westminster-Hall*, ‘to the double Charge and Trouble of the Subject. But if the Law will have it otherwise, we cannot help that. Nor is this Expression of mine any Violation of the Law.’

Then he says, a Letter was directed from the Court of the High-Commission to the Judges, to revoke the *Ne Admittas*; and that I was forward to have the Letter sent. How forward soever I was, yet it is confessed the Letter was sent by the Court, not by me: and let the Letter be produced, it shall therein appear, that it was not to revoke the *Ne Admittas*, but to desire the Judges to consider, whether it were not fit to be revoked, considering the Church was not void till *Jun.* 14. And it hath been usual in that Court, to write or send some of their Body to the Temporal Judges, where they conceive there hath been a Misinformation, or a Mistake in the Cause; the Judges being still free to judge according to Law, both for the one and the other. And here he confesses the Writ of *Ne Admittas* was revoked by three Judges, and therefore I think legally.

But here he hopes he hath found me in a Contradiction. For when I writ to the Bishop of *Norwich*, *Junii* 7. 1638. I there said the Church was void; whereas this Letter to the Judges says it was not void till *Junii* 14. But here is no Contradiction at all: For after the Trial past, and the Simony proved, the Church is void to so much as the Bishop’s giving of Institution; and so I writ *Junii* 7. But till the Sentence was pronounced in open Court, and read, the Church was not void, as touching those Legalities, which (as I humbly

conceive) do not till then take place in *Westminster-Hall*: And the reading of the Sentence was not till *Junii* 14. However, if I were mistaken in my own private Letter to the Bishop, yet that was better thought on in the Letter from the High-Commission to the Judges. He says, lastly, That upon a *Quare Impedit*, after taken forth, it was found that the King had no Right. Why, my Lords, if different Courts judge differently of Simony, I hope that shall not be imputed to me. In the Court where I sat, I judged according to my Conscience, and the Law, and the Proof, as it appeared to me. And for Dr. *Ryves*’s Letter, which he says was sent to the Curfitor to stop the *Ne Admittas*, let Dr. *Ryves* answer it. The Witness himself confesses that Dr. *Ryves* says the Command to the Curfitor was from the Lord Keeper, not from me. ‘And here ends the Treason against Mr. *Ward*; and, till now, I did not think any could have been committed against a Minister.’

VI. Then followed the Case of *Ferdinando Adams*, his Excommunication, and the Suits which followed it: As it will appear by the Witnesses following, which were four.

1. The first was Mr. *Henry Dade*, the Commissary then, before whom the Cause began. And he confesses, He did excommunicate *Adams* for not blotting out a Sentence of Scripture, which the said *Adams* had caused to be written upon the Church Wall, as in many Churches Sentences of Scripture are written. But he tells your Lordships too, that this Sentence was, ‘*My House shall be called a House of Prayer; Mat. xxi. 13. but ye have made it a Den of Thieves.*’

The Commissary’s Court was kept (as usually it is) at or toward the West End of the Church; and just over the Court *Adams* had written this Sentence upon the Wall, merely to put a Scorn and a Scandal (tho’ I hope an unjust one) upon that Court. ‘He was commanded to blot it out: He would not, because it was Scripture; as if a Man might not revile and slander, nay, speak Treason too, (if he will be so wicked) and all in Scripture-Phrase: Witness that leud Speech lately utter’d, *To your Tents Reg. 12. 16. O Israel, &c.*’ Upon this he was excommunicated; and I cannot but think he well deserved it. For the Suit which followed against Mr. *Dade* in the Star-Chamber; the Motion that Mr. Attorney would leave him to the common Prosecutor, and not follow it in his own Name, himself confesses, was made in open Court by Mr. *Bierly*, and that from me he had no Instructions at all.

2. The second Witness is *Adams* in his own Cause. To the Place of Scripture I have spoken already. And the next that he says, is, That Sir *Nath. Brent*, in my Visitation, commanded the setting of the Communion-Table at the upper end of the Chancel; That upon his not blotting out the passage of Scripture, he had an Action; and that his Solicitor was committed by *J. Jones*, till he relinquished his Suit. In all this there is not one Word of any thing that I did. And for that which Sir *Nath. Brent* did about placing the Communion-Table, ’tis answer’d before. He says also, That when he saw he must prosecute his Suit against Commissary *Dade* in his own Name, he left the Kingdom. And surely, my Lords, if he would leave the Kingdom rather than prosecute his Cause in his own

‘In the second Charge of this Day.’

own Name, 'tis more than a sign, that his Cause was not very good.

3. The third Witness was Mr. *Cockshot*, one of Mr. Attorney *Banks's* Servants. He says, That *Adams* moved him, and he Mr. Attorney; and that thereupon Mr. Attorney gave his Warrant against *Dade*. By which your Lordships may see how active Mr. *Cockshot* was against a Church-Officer, and in so foul a Scandal. He says also, That Mr. *Dade* came to Mr. Attorney, and told him, that I did not think it fit, a Prosecution in such a Cause should be followed in Mr. Attorney's Name. First, 'tis true, I did not think it fit; nor did Mr. Attorney himself, when, upon Mr. *Bierly's* Motion, he fully understood it. Secondly, The Cause being so scandalous to a Church-Officer, I conceive I might so say to Mr. *Dade*, or any other, without offence. But then, Thirdly, here's not one Word that I sent Mr. *Dade* to Mr. Attorney about it: He came and used my Name, so Mr. *Cockshot* says; but not one Word that I sent him. Lastly, He says, That Mr. Attorney told him, that I blamed him for the Business, and that thereupon he chid this Witness, and sent him to me; and that I rebuked him for it: but he particularly remembers not what I said. Nor truly, my Lords, do I remember any of this. But if I did blame Mr. Attorney for lending his Name in such a scandalous Cause as this, I did (as I conceive) what became me. And if he chid his Man, he did what became him. And If I rebuked Mr. *Cockshot* when he was sent to me, sure he deserved it; and it seems it was with no great Sharpness, that he cannot remember any thing of it. 'And so I answered Mr. *Brown* when he instanced in this.'

4. The last Witness was Mr. *Prynn*, who says, No Appeal was left him. But that, under favour, cannot be: For if my Courts refused him (which is more than I know) he might have appealed to the Delegates. He says, That he advised *Adams* to an Action of the Case; that he blamed *Lechford* for deserting the Suit, and that he advised him to go to Mr. Attorney. So here's no Assistance wanting to *Adams*, but the Church-Officer Mr. *Dade* must have none. Yet I blame not Mr. *Prynn*, because he says he did it as his Counsel. He says farther, That when *Adams* was put to prefer his Bill in his own Name, that then the Excommunication was pleaded in Bar: But he doth not say it was pleaded by me, or my Advice; nor do I hear him say, it was unjustly pleaded. And had not *Adams* been wilful, he might have taken off the Excommunication, and then proceeded as it had pleased him.

VII. Then the Charge went on against me, about the Stop of Mr. *Bagshawe* the Reader of the *Middle Temple*. The Witnesses are two Lawyers, who accompanied Mr. *Bagshawe* to *Lambeth*, Mr. *White* and Mr. *Pepys*. They say, That Mr. *Bagshawe* insisted upon these two Points; First, That a Parliament might be held without Bishops; and, Secondly, That Bishops might not meddle in Civil Affairs. My Lords, these things are now settled by an Act of this Parliament, but then they were not. And I conceive, under favour, that Mr. *Bagshawe* (the Craziness of these times considered) might have bestowed his time better upon some other Argument: And sure no Man can think, that either myself, or any Church-Governor, could approve his Judgment in that Particular. And whereas they say, That the Lord Keeper

Finch, and the Lord Privy-Seal told them, that I was the Man that complained of it to the King and the Lords: 'Tis most true, I did so; and I think I had been much to blame if I had not done it. And if when they came over to *Lambeth* about it, they heard me tell Mr. *Bagshawe* (as they also say they did) that he should answer it in the High-Commission Court next Term; I humbly conceive this no great Offence; but out of all question no Treason to threaten the High-Commission to a Reader of the Inns of Court.

VIII. The last Charge of this Day was concerning the Lord Chief Justice *Richardson*, and what he suffered for putting down Wakes and other disorderly Meetings in *Somersetshire*, at the Assizes there holden.

The single Witness to this is *Edward Richardson*, (a Kinsman of the Judge's, as I suppose.) He says, That Complaints were made to the Judge of Wakes and Feasts of Dedication; That his Majesty writ Letters about it to Sir *Robert Philips* and others. They certify a Command comes by the Lord Keeper to revoke the Order next Assizes. First, 'Tis not done. Then by Command from the Lords of the Council, the Judge, upon that second Command, revokes it; but, as 'tis certified, not fitly. In all this here's not one Word that concerns me. Then he says, That upon this last Certificate, the Business was referred to the Lord Marshal and myself, and the Judge put from that Circuit. I cannot now remember what Report we made: But whate'er it was, the Lord Marshal agreed to it as well as I. Then a Letter of mine was produced of *Octob. 4. 1633*. But the Letter being openly read, nothing was found amiss in it. And, under your Lordship's Favour, I am still of Opinion, that there is no Reason the Feasts should be taken away for some Abuses in them; and those such as every Justice of Peace is able by Law to Remedy, if he will do his Duty. 'Else by this kind of Proceeding, we may go back to the old Cure, and remedy Drunkenness by rooting out all the Vines; the Wine of whose Fruit causes it. As for the Pretences, which this Witness spake of; they were none of mine, as appears evidently by the Letter itself.'

As an Appendix to these, was added a Letter of my Secretary Mr. *Dell*, to Sir *John Bridgman*, Chief Justice of *Chester*, in a Cause of one *Ed. Morris*. It was (as I think it appears) upon an Incroachment made in the Marches Court upon the Church; in which Case, I conceive, by my Place, I may write to any Judge for Information: And there is nothing peremptory in the Letter. The Words are (*If things be rightly suggested*.) But howsoever, the Letter is *Dell's*; and if he have done amiss in it, he is here present to answer. And it will be a hard Business with Men of Honour, if when any Lord shall command his Secretary to write, and give him Directions for the Matter, he shall afterwards be answerable for every Slip of his Secretary's Pen; especially in so high a way, as 'tis charged on me. But the best is, here's nothing amiss that I know.

The Sixth Day of my Hearing.

I. **THURSDAY** March 28. 1644. The first Charge of this Day concerned the Censure, Deprivation and Imprisonment of Mr. *Huntly*. The Witnesses produced are four.

1. Mr.

1. Mr. *Merifield* comes on first. He says, That himself was committed by the Lords of the Council; and that there I said, That he the said *Merifield* deserved to be laid by the Heels, and to be called into the Star-Chamber. This Man was (as I take it) Mr. *Huntly's* Attorney; and if I did speak those Words concerning him, surely his Words and Carriage deserved it; else I am confident the Lords would not have committed him for a naked, and an orderly following of his Client's Cause; especially in the Presence of two Judges, Justice *Jones* and Justice *Crook*, who, he says himself, were present. 'And this Answer I gave Mr. *Browne*; who, in the Sum of his Charge against me, omitted not this Case of Mr. *Merifield*; for so was this Attorney's Name.'

2. The next Witness is Mr. *Huntly* himself. He says, that I said unto him, That he being an Ecclesiastical Person, and in an Ecclesiastical Cause, ought not to decline the Church-Censure. Then followed his Imprisonment, and his Action for false Imprisonment, and the rest of his Proceedings. In all which the High-Commission proceeded against him, and he proceeded against the High-Commissioners; nothing done by me, or against me, in particular. So nothing of his Charge falls upon me, but the Words; and for them, they are very far from offering to exempt any Clergyman, him, or other, from the Temporal Laws, if Things cognizable by them. But I humbly conceive, his Oath of Canonical Obedience considered, that he ought not to decline the Ecclesiastical Judicature, in Things merely Ecclesiastical. And if in this my Judgment I do err, yet it is Error without Crime; and surely, my Lords, no Treason.

3. The third Witness is *John Dillingham*. He says, That Mr. *Huntly* moved before the Lord Chief Justice *Richardson*; and that the Judge replied, By his Faith he durst not do him Justice. To this, my Lords, I answer: Here's never a Word that he durst not do him Justice for fear of me; that's not said by the Witness, and ought not, by Conjectures, to be enforced against me. But howsoever, if he spake these Words, the more shame for him. He is dead, and I will not rake into his Grave; but if he so spake, it seems he was none of those Judges, which *Jethro* advised *Moses* to make for the ease of himself, and the good of the People, *Exod. xviii. 21*. 'Mr. *Browne*, in summing up of his Charge, pressed this Speech of the Judge hard upon me; which enforces me to add thus much more, That this Witness lays it hard upon the Judge, not upon me: For no Proof is offered, that I did solicit him in that Cause: And if he wanted Courage to do Justice, why sat he there?'

4. The fourth Witness was Mr. *Pit*, a sworn Officer; he says, The Order concerning Mr. *Huntly* was from the Council, and that there was then a full Board; so this was no single Act of mine. He says farther, That he was not simply prohibited, but only till he had acquainted the Lord Keeper with it, or those Judges whose Courts it concerned. And this was so ordered (as I conceive) to remedy the tedious and troublesome Interpositions of Mr. *Huntly*. Where it is not unfit for me to inform your Lordships, that this Cause of Mr. *Huntly's* was in my Predecessor Archbishop *Abbot's* Time; I had nothing to do

in it, but as any other Ordinary Commissioner then present had.

And here, at the entering upon my Answers this Day, I did in general put the Lords in mind, That nothing of late times was done, either in Star-Chamber, or at Council-Table, which was not done in King *James* and Queen *Elizabeth's* Times, before I was born; and that many Parliaments have been since, and no Man accused of Misdemeanour for Things done there, much less of Treason. Nor is there any one Witness that hath charged me, That that which I did, was to overthrow the Laws, or to introduce arbitrary Government: 'That's only the Construction made on't at the Bar; which, as it is without all Proof for any such Intention, so I am confident they shall answer for it at another Bar, and for something else in these Proceedings.'

II. Then followed the Charge about Prohibitions; in which are many Particulars, which I shall take in order, as the several Witnesses charged them upon me.

1. The first is Mr. *Prynn*. He says, That in *An. 4to Caroli* he brought a Prohibition, and that thereupon I should say, *Doth the King give us Power, and then are we prohibited? Let us go and complain*. First, If this were *Anno 4 Caroli*, it was long before the Article; so that I could neither expect the Charge, nor provide the Answer. Secondly, I humbly conceive there's no Offence in the Words: For if a Prohibition be unjustly granted upon Misinformation, or otherwise; or if we do probably conceive it is ill-grounded, I hope 'tis no Sin to complain of it to the King, the Fountain of Justice in both Courts. Yea, but he says farther, that I said I would lay him by the Heels that brought the next: 2. And this Mr. *Burton* witnesses with him. First, If I did say so, they were but a few hasty Words; for upon second thoughts it was not done. Next, I desire your Lordships to consider what manner of Witness Mr. *Burton* is; who confesses here before your Lordships, that he brought the next with a purpose to tempt me: You know whose Office that is; and so Mr. *Burton* hath abundantly shewed himself, and proclaimed his Religion.

3. As for Mr. *Combes*, he says just the same with Mr. *Prynn*, and I give the same Answer.

Then about taking down of a Pew in a Church in *London*, (my Notes are uncertain for the Name) which Pew was set above the Communion-Table; That I required to have it pulled down; That they came to me to have an Order for it: and that thereupon I should say, *You desire an Order of Court, that you may have it to shew, and get a Prohibition; but I will break the back of Prohibitions, or they shall break mine. 4, 5*. And this is jointly witnessed by Mr. *Pocock* and Mr. *Langham*: and this they say was thirteen or fourteen Years ago. Excellent Memories, that can punctually swear Words so long after! But, my Lords, I confess to your Lordships, I could never like, that Seats should be set above the Communion-Table: if that be an Error in me, be it so. For the Words, I did not speak them of Prohibitions in general, but of such as I did conceive very illegal; as, for ought I yet know, this must have been. 'And this was the Answer which I gave Mr. *Browne*, when, in summing up the Charge, he instanced in this against me.' 6. To these *Rowland Tompson* adds new Words; *That I wondered who durst grant a Prohibition,*

tion, the High-Commission Court being above all. But he confesses, he knows not the time when this was spoken. Let him look to his Oath, for I am as confident he knows not the thing. And I farther believe, that neither he, nor any the rest of my Accusers think me so ignorant, as to say the High-Commission Court was above all.

7. *Francis Nicolas* says, That about four Years since he delivered a Prohibition, and was committed for it. 8. To this, *Quaterman* comes in and says more than *Nicolas* himself: for he says, he delivered it in upon a Stick, and was committed for it. First, if he were committed, it was not for bringing the Prohibition, but for his unmannerly Delivery of it; and to reach it into the Court upon a Stick to call the People to see it, was no handsome way of Delivery. And one that brought a Prohibition (whether this Man or no, I cannot certainly say) threw it with that violent Scorn into the Court, that it bounded on the Table, and hit me on the Breast, as I sat in Court. Howsoever his Commitment was the Act of the Court, not mine: And for *Quaterman*, he is an exasperated Man against me and that Court, as hath appeared to the World many ways.

9. *Mr. Edwards* was called up next; and he says, It was a common thing to lay them by the heels which brought Prohibitions. And they were commonly brought by bold impudent Men, picked out of purpose to affront the Court. And then if the Court made their Imprisonment as common as they their Rudeness, where's the fault? And I pray mark, this is still the Act of the Court, not mine.

10. *Mr. Welden* says, That there was a Command given to lay hold of a Man, which brought a Prohibition: But more he says not. Nor did he offer to make himself Judge of the Justice of the Court in that behalf. And considering what Affronts have been put upon the Court of High-Commission by the Bringers of Prohibitions, I hope it shall not be accounted a Crime to stay him that brings it, till the Prohibition be seen and considered.

11. 'The next Witness is *Mr. Ward*; and he is 'an angry Witness, for his Cause before mentioned about Simony.' That which he says, is, That *Ann. 1638.* he that brought a Prohibition in a Cause of *Mr. Foetroughs*, was laid by the heels: but he himself confesses, the Court then declared, that they were affronted by him; and then he was punished for that Misdemeanor in his Carriage, not for bringing the Prohibition. He says farther, That I directed some Commissioners to attend the Judges about it, and that the Party had no benefit by his Prohibition. For my directing Attendance upon the Judges, I think I did what well became me; for there came a Rule before the Prohibition, which required the Court so to do: 'And *Mr. Prynn* objected, because this was 'not done; and now I am accused, because I gave 'direction to do it.' And if the Party had no benefit by his Prohibition, it must needs follow, that either the Judges were satisfied by our Information of the Cause; or if not, that they did *Mr. Foetroughs* the wrong, and not we.

12. The last Witness about Prohibitions, was *Mr. Wheeler*. He says, that in a Sermon of mine long since, I used these words; *They which grant Prohibitions to the disturbance of the Church's Right, God will prohibit their Entrance into the Kingdom of Heaven*: And he says he writ down the Words,

that he might remember them. If this Gentleman will tell me what Text I then preached on, I will look upon my Sermon, (if that, with my other Papers, be not taken from me) and shew the Place. In the mean time, with that Limitation with which he confesses I spake them, I conceive there is no fault at all in the words. For it will be found no small fault in Judges to grant Prohibitions to the disturbance of the Rights of the Church, which no Law of God or Man warrants them to do. So the words I spake, must needs be understood of illegal Prohibitions. For they which are legal, do only stop the Church from doing wrong, but do no wrong to the Church by disturbing her Rights. 'Mr. Browne charged this 'Sermon-Note upon me also, and I gave him this 'Answer. Nevertheless, I cannot but be sorry 'to hear it from *Mr. Wheeler's* own Mouth, that 'he was so careful to write this Passage, and so 'ready to come to witness it against me, considering how many Years I have known him, and 'how freely he hath often come to my Table, and 'been welcome to me; yet never told me, this 'Passage in my Sermon troubled him. It seems 'some Malignity or other laid it up against this 'wet Day.'

Here, having thus answered all Particulars, I humbly craved leave of their Lordships, to inform them some few things concerning Prohibitions. As First, that there was a great Contestation about them, between my Predecessor, Archbishop *Bancroft*, and the then Judges, and this before King *James* and the Lords of the Council; and *Mr. Attorney Hobart* pleaded for the Church against them. *Sir Henry Martin* gave me Copies of all those Papers on both sides. No final End made, that I could ever hear of. This calling them all in question, was far more than ever was done by me, or in my time; and yet no Accusation at all, much less any of Treason, put up against Archbishop *Bancroft* for this. Secondly, I have here Papers attested of all the Prohibitions, which have been admitted in my Courts of Arches, and Audience; and I find, there are as many (if not more) admitted in my seven Years time, as in any seven Years of my Predecessor Archbishop *Abbot*. And these Papers I delivered into the Court. As for the High-Commission, the Records are all taken from us; else I make no doubt, but it would soon appear by them, that as many have been admitted there also. Thirdly, There is a great difference touching Prohibitions, and the sending of them, since the Times of Reformation, and before. For before, the Bishops Courts were kept under a foreign Power; and there were then weighty Reasons for Prohibitions, both in regard of the King's Power, and the Subjects Indemnity. But since the Reformation, all Power exercised in the Spiritual Courts is from the King, as well as the Temporal; so that now there neither is nor can be so much Cause as formerly was. And yet all that I did humbly and earnestly desire, was, that some known Bounds might be set to each Court, that the Subject might not, to his great Trouble and Expence, be hurried, as now he was, from one Court to another. And here I desired a *Salvo*, till I might bring 'Archbishop *Parker's* Book, to shew his Judgment in this Point, in the beginning of the Reformation, if it shall be thought needful. 'Accord-

Sir Timothy Baldwin hath these Papers.
W. S. A. C.

* *Ma. Parkeri Antiq. Britan. in vita Joh. Stafford.*
p. 326, 327.

'ing

ing to whose Judgment (and he proves it at large) there is open Wrong done to the Ecclesiastical Jurisdiction by Prohibitions.'

III. The next Charge is about my undue taking of Gifts: A Charge which I confess I did not think to meet here. And I must and do humbly desire your Lordships to remember, that till this Day I have not been accused, in the least, for doing any thing corruptly: And if I would have had any thing to do in the base dirty Business of Bribery, I needed not have been in such Want as now I am. But my Innocency is far more to my Comfort, than any Wealth so gotten could have been:

For I cannot forget that of *Job*, That
* Job. xv. 34. *Fire should consume the Tabernacle of Bribery.* 'And in the Roman Story,
* Calvis. Chro. p. 251. 'when *P. Rutilius*, a Man *Summa Innocentia*, of greatest Integrity, was
 'accused, condemned, and banished,
 'tis observed, by the Story, that he suffered all
 'this not for Bribery, of which he was not guilty, but *ob Invidiam*, for Envy; against which,
 'when it rages, no Innocency, no Worth of any
 'Man is able to stand.'

I But to come to the Particulars: The first is the Case of Sir *Edward Gresham's* Son, unhappily married against his Father's Will; a Suit in the High-Commission about it; and that there he had but fifty Pounds Damages given him. That was no fault of mine: My Vote gave him more; but it was carried against me. The bond of two hundred Pounds, which was taken according to

* Can. Ec. Ang. 101.

to 'Course in the Court, was demanded of me by Sir *Edward*, to help himself that way; and 'tis confessed I granted it. But then 'tis charged, That in my Reference to Sir *John Lambe*, to deliver him the Bond, I required him to demand one half of the Forfeiture of the Bond toward the Repair of *St. Paul's*. 'Tis true, I did so: But, 1st, I desire it may be consider'd, that it was wholly in my Power, whether I would have deliver'd him the Bond, or not. 2dly, That upon this gross Abuse, I might have sued the Bond in my own Name, and bestowed the Money upon what charitable Uses I had thought fit. 3dly, That I did nothing herein but what the Letters-Patent for Repair of *St. Paul's* gave me Power to do. 4thly, That this is the third time *St. Paul's* is urged against me: Which I am not sorry for; because I desire (since 'tis once moved) it may be sifted to the uttermost. And whereas, to make all Ecclesiastical Proceedings the more odious, it was urged, That the Rubrick in the *Common-Prayer Book* mentions no Licence, but Asking of Banes: That Rubrick is to be understood where no Licence is granted: For else no Licence at all for Marriage without Banes-asking can be good; which is against the Common both Law and Practice of the Kingdom. *Can. 62. Ec. Ang.*

2. The second Particular was charged by one *Mr. Stone*, of *London*; who said, He sent into *Lambeth* two Buts of Sack, in a Cause of some *Chester-Men*, whom it was then in my Power to relieve, and mitigate their Fine set upon them in the High-Commission at *York*, about *Mr. Prynne's* Entertainment, as he passed that way; and that this Sack was sent in before my Composition with him what should be mitigated, and so before my Return of the Fine mitigated into the Exchequer. The Business, my Lords, was thus: His Majesty having taken the Repair of the West-end of *St. Paul's* to himself, granted me to that end all the Fines in the

High-Commission Court, both here and at *York*, and left the Power of Mitigation in me. The *Chester-Men*, which this Witness speaks of, were deeply sentenced at *York* for some Misdemeanours about *Mr. Prynne*, then lately sentenced in the *Star-Chamber*. One or more of them were Debtors to this *Mr. Stone*, to the Value of near three thousand Pounds, (as he said.) These Men, for fear of the Sentence, kept themselves close, and gave *Mr. Stone* to know how it was with them; and that if he could not get me to moderate the Fine, they would away, and save themselves, (for they had now heard the Power was in me.) Upon this, *Mr. Stone*, to save his own Debt of three thousand Pounds, sends his Son-in-Law *Mr. Wheat* and *Dr. Bailie*, Men that were bred in the College of *St. John* under me, and had ever since good Interest in me, to desire my Favour. I at first thought this a Pretence, and was willing to preserve to *St. Paul's* as much as fairly I might. But at last, upon their earnest pleading that the Men were not rich, and that *Mr. Stone* was like (without any fault of his) to be so much damnified, I mitigated their Fines, which were in all above a thousand Pounds, to two hundred. I had great Thanks of all Hands; and was told from the *Chester-Men*, that they heartily wished I had the Hearing of their Cause from the beginning. While *Mr. Wheat* and his Brother *Dr. Bailie* were soliciting me for favour to *Mr. Stone*, he thinks upon sending Sack into my House, and comes to my Steward about it. My Steward acquaints me with it. I gave him absolute Command not to receive it, nor any thing from any Man that had Business before me: So he refuses to admit of any. *Mr. Stone* presses him again, and tells him he had no relation to the *Chester-Mens* Cause; but would give it for the great Favour I had always shewed to his Son-in-Law. But still I commanded my Steward to receive none. When *Mr. Stone* saw he could not fasten it, he watches a time when my Steward was out of Town, and myself at Court, and brings in his Sack, and tells the Yeoman of my Wine-Cellar he hath leave to lay it in. My Steward comes home, finds the Sack in the Cellar; tells me of it: I commanded it should be taken out, and carried back. Then *Mr. Stone* comes, intreats he may not be so disgraced; protests, as before, that he did it merely for my great Favour to his Son-in-Law; and that he had no relation to the *Chester-Mens* Business: And so after he protested to myself, meeting me in a Morning, as I was going over to the *Star-Chamber*. Yet afterwards this religious Professor (for so he carries himself) goes home, and puts the Price of the Sack upon the *Chester-Mens* Account. Hereupon they complain to the House of Commons; and *Stone* is their Witness.

This is the Truth of this Business, as I shall answer it to God. 'And whether this do not look like a thing plotted by the Faction, so much imbibited against me, let understanding Men judge.' *Mr. Wheat*, his Son-in-Law, was present in Court, and there avowed that he transacted the Business with me, and that he went not out of Town till I had agreed to the Mitigation; that in all that time there was no Tender of Sack, or any thing else, unto me; and he and *Dr. Bailie* were the only Men with whom I transacted the whole Business. 'And so much could *Dr. Bailie* also witness, but that (as the Times are) I could not bring him from *Oxford*.' With *Mr. Stone* himself I never treated. For my Steward, he is dead three

Years since, who could have been my Witness clean thorough the Business. And when I pressed Mr. *Stone* at the Bar with the Protestation which he made to me, that he had no relation herein to the *Chester* Men, he that remembered every Circumstance else, said he remembered not that. Then I offered to take my voluntary Oath of the Truth of it; but that was not admitted. Then it was pressed, That this Bribe must needs be before the Agreement; for he says the Sack was sent in to my House ———, and the Mitigation of the Fine into the *Exchequer* not till ———. But that is nothing; for my Agreement was passed, and I meddled no more with it. Yea, but he says, that Mr. *Holford*, my Servant, had forty Pounds more than I agreed upon, before he would finish their Business. Mr. *Holford* was the King's Officer for those Returns into the *Exchequer*: And if after my Agreement made, he either unduly delay'd their Business, or corruptly took any Money from them, he is living, and must answer for his own Fault; me it cannot concern, who did not so much as know of it.

‘Mr. *Wheat*, having thus testified in open Parliament, before the Lords, was within a Day or two called before the Committee; there re-examined in private, and very strictly, touching the time of my Agreement made: Then (not without some Harshness) commanded not to depart the Town, till he heard farther from them. This himself afterwards told me. Hereupon I resolved to call him again for farther Evidence, and, if I saw cause, to acquaint the Lords with this Usage. And I did call for it divers times after; but one Delay or other was found, and I could never obtain it. And such a kind of calling my Witnesses to a private After-reckoning, is that which was never offered any Man in Parliament. And here Mr. *Browne*, in summing up my Charge, did me a great deal of Right: For neither to the Lords, nor in the House of Commons, did he vouchsafe so much as to name this false, base, and unworthy Charge; of which my greatest Enemies are ready to acquit me.’

3. The third Particular was charged by one Mr. *Delbridge*; who says, He was oppressed at the Council-Table by the Lord Keeper *Finch*; that he was advised by Mr. *Watkins* to give my Secretary, Mr. *Dell*, Money, to get my Hand to a Petition to the Lord Keeper, who, he said, would not oppose me: That *Dell* took of him One hundred and fifty Pounds, and procured my Hand to his Petition. I remember nothing of this Business, and it lies wholly upon my Secretary; who being my Solicitor, is here present in Court, and desires he may answer the Scandal. There's no Touch at all upon me, but that (he says) my Secretary got my Hand to his Petition to the Lord Keeper. This Petition of his was either just or unjust: If just, I committed no Fault in setting my Hand to it; if unjust, he must confess himself a dishonest Man, to offer to get my Hand to boulder out his Injustice: And yet if the Injustice of it were varnished over with fair Pretences, and so kept from my Knowledge, the Crime is still his own, and nothing mine, but an Error at most. As for Mr. *Watkins*, he did me much Wrong, if he sent any Man to my House on such an Errand.

‘Here my Secretary had leave to speak: denied the whole Business; and produced Mr. *Hollis*, with whom it was said the Hundred and fifty Pounds before-named should be deposited, who

‘(to my Remembrance) said he knew of no such Thing.’

4. The fourth Instance was a Bond for the Payment of Money as a Fine: The Bond found in Sir *Jo. Lamb's* Chamber, with a Note upon the Back of it, for One hundred Pound received, and Sir *John*, by my Direction, was to call for the rest. And here it was said, That I used the Name of *St. Paul's* in an illegal way to get Money; which might well have been spared. For (as is aforesaid) I had a Broad-Seal, which gave me all Fines in the High-Commission Court to the repairing of the West End of *St. Paul's*, and with Power to mitigate. And the Fines are the King's, and he may give them by Law. The Broad-Seal is in the Hands of Mr. *Holford*, who is thereby appointed Receiver of all such Fines; but is upon Record to be seen: And if it be doubted, I humbly desire a *Salvo* till the Record can be taken out, and shewed. But I presume these Gentlemen have seen it. And Commutations for such Crimes, as Sir *James Price's* was, are according to Law, and the ancient Custom and Practice in this Kingdom, especially where Men of Quality are the Offenders. And the Power of commuting is as legal in that Court as any other: And if that be doubted, I humbly desire my Counsel may argue it.

5. The fifth Instance was a Charge concerning a Lease in *Lancashire*, held in three Lives by Sir *Ralph Ashton*. 'Tis said by his Son Mr. *Ashton*, (the only Witness in the Cause) That I by Power at *Chester* and *York*, and the High-Commission here, being Landlord in Right of my Archbishoprick, did violently wrest this Lease of the Rectory of *Whalley* in *Lancashire* out of his Hands against Law, and made him take a Lease for Years, and pay a great Fine besides, and other Fines besides towards the Repair of *St. Paul's*, and raised the Rent Sixty Pound. Truly, my Lords, I am not any whit solicitous to answer this Charge. I challenged this Lease as void, and had great reason so to do, both for the Invalidity of the Lease itself, and the Unworthiness of the Tenant, both to me and my See. If in the Preparations for Trial at Law, the Judge at *Chester* (altogether unknown to me, and unlaboured by me) did say, (as Mr. *Ashton* says he did) That for higher Powers above he durst not, he was the more unworthy. And for *York*, I needed no Power there; for I resolved to have him called into the High-Commission here: which was after done.

This Gentleman his Son came to me about the Lease: I told him plainly, it was void in Law, and that I meant to overthrow it; That if his Father would surrender, I would renew it for Years at a reasonable Rate; but if he put me to Expence in Law, I would secure myself as well as legally I might. He replied, That Mr. Solicitor *Littleton* (for so then he was) said, he durst not be against me. And there was good reason for it; he was my Counsel, and fee'd in that Particular. And what a poor Evasion was this? Were there no other Lawyers for him, because Mr. Solicitor was for me? The Truth is, all that ever I did in this Business, was not only with the Knowledge, but by the Advice of my Counsel, which were Mr. Solicitor *Littleton*, and Mr. *Herbert*.

And at last this Gentleman submitted himself and the Cause; and if (as he says) Dr. *Eden* persuaded him to it, that nothing to me. As for the Fine, I referred the Moderation of it wholly to my Counsel: they pitched upon Sixteen hundred Pounds,

Pounds, and gave such Days of Payment, as that a good part is yet unpaid: and this Sum was little above one Year's Rent; for the Parsonage is known to be well worth Thirteen hundred Pounds a Year, if not more. And after the Business was settled, my Lord *Wimbleton* came to me, and gave me great thanks for preserving this Gentleman, being (as he said) his Kinsman, whom he confessed, it was in my power to ruin.

For the raising of the Rent Sixty Pounds, it was to add Means to the several Curates to the Chapels of Ease: And I had no reason to suffer Sir *Ralph Aston* to go away with so much Profit, and leave the Curates both upon my Conscience and my Purse. And for his Fine to *St. Paul's* I gave him all the ease I could. But since his Son will force it from me, he was accused of Adultery with divers Women, and confessed all: And whether that Fine went, and by what Authority, I have already shewed. And thus much more, my Lords, at Mr. *Bridgman's* Intreaty, I turned this Lease into Lives again without Fine: But since I have this Reward for it, I wish with all my heart I had not done it. For I am confident in such a Case of Right, your Lordships would have left me to the Law, and more I would not have asked. And I think this (tho' intreated into it) was my greatest Error in the Business.

6. The last Instance was about the Conversion of some Money to *St. Paul's*, out of Administrations: By name, Two thousand Pounds taken out of *Wimark's* Estate, and Five hundred out of Mr. *Gray's*. First, whatsoever was done in this kind, I have the Broad-Seal to warrant it. And for Mr. *Wimark's* Estate, all was done according to Law, and all care taken for his Kindred. And if I had not stirred in the Business, four Men, all Strangers to his Kindred, would have made themselves, by a broken Will, Executors, and swept all away from the Kindred. Secondly, for Mr. *Gray's* Estate, after as odious an Expression of it as could be made, and as void of Truth as need be, the Proceedings were confessed to be orderly and legal, and the Charge deserted.

Then there was a sting at Sir *Charles Caesar's* getting of the Mastership of the Rolls for Money, and that I was his Means for it: And so it was thence inferred, that I sold Places of Judicature, or helped to sell them. For this they produced a Paper under my Hand: But when they had thrown all the Dirt they could upon me, they say, they did only shew what Probabilities they had for it, and what Reason they had to lay it in the end of the Fourth Original Article; and so deserted it. And well they might; for I never had more hand in this Business, than that when he came to me about it, I told him plainly, as Things then stood, that Place was not like to go without more Money, than I thought any wise Man would give for it: Nor doth the Paper mentioned say any more, but that I informed the Lord Treasurer what had passed between us.

This Day ended, I was order'd to appear again, April 4. 1644. and received a Note from the Committee, under Serjeant *Wild's* Hand, dated April 1. That they meant to proceed next upon the Fifth and Sixth Original Articles, and upon the Ninth Additional; which follow *in hæc verba*.

V. He hath traitorously caused a Book of Canons to be composed and published, and those Canons to be put in execution, without any law-

ful Warrant and Authority in that behalf. In which pretended Canons many Matters are contained contrary to the King's Prerogative, to the Fundamental Laws and Statutes of this Realm, to the Right of Parliament, to the Propriety and Liberty of the Subjects; and Matters tending to Sedition, and of dangerous Consequence; and to the Establishment of a vast, unlawful, and presumptuous Power in himself and his Successors: Many of which Canons, by the Practice of the said Archbishop, were surreptitiously passed in the late Convocation, without due Consideration and Debate; others by Fear and Compulsion were subscribed unto by the Prelates and Clerks there assembled, which had never been voted and passed in the Convocation, as they ought to have been. And the said Archbishop hath contrived and endeavoured to assure and confirm the unlawful and exorbitant Power which he hath usurped and exercised over his Majesty's Subjects, by a wicked and ungodly Oath, in one of the said pretended Canons, enjoined to be taken by all the Clergy, and many of the Laity of this Kingdom.

VI. He hath traitorously assumed to himself a Papal and Tyrannical Power, both in Ecclesiastical and Temporal Matters, over his Majesty's Subjects in this Realm of *England*, and in other Places, to the Dishonour of the Crown, Dishonour of his Majesty, and Derogation of his supreme Authority in Ecclesiastical Matters. And the said Archbishop claims the King's Ecclesiastical Jurisdiction, as incident to his Episcopal and Archiepiscopal Office in this Kingdom; and doth deny the same to be derived from the Crown of *England*: which he hath accordingly exercised, to the high Contempt of his Royal Majesty, and to the Destruction of divers of the King's liege People in their Persons and Estates.

The Ninth Additional Article.

IX. That in and about the Month of May 1641. presently after the 1640. Russian Dissolution of the last Parliament, the said Archbishop, for the ends and purposes aforesaid, caused a Synod or Convocation of the Clergy to be held for the several Provinces of *Canterbury* and *York*; wherein were made and established, by his Means and Procurement, divers Canons and Constitutions Ecclesiastical, contrary to the Laws of this Realm, the Rights and Privileges of Parliament, and Liberty and Property of the Subject; tending also to Sedition, and of dangerous Consequence. And, amongst other Things, the said Archbishop caused a most dangerous and illegal Oath to be therein made and contrived; the Tenor whereof followeth in these Words: *That I A. B. do swear, that I do approve the Doctrine and Discipline or Government established in the Church of England, as containing all things necessary to Salvation; and that I will not endeavour, by myself or any other, directly or indirectly, to bring in any Popish Doctrine, contrary to that which is so established: Nor will I ever give my consent to alter the Government of this Church by Archbishops, Bishops, Deans, and Archdeacons, &c. as it stands now established, and as by right it ought to stand; nor yet ever to subject it to the Usurpations and Superstitions of the See of Rome. And all these things I do plainly and sincerely acknowledge and swear, according to the plain and common Sense and Understanding of the same Words, without any Equivocation or mental Evasion, or secret Reservation whatsoever. And this I do heartily, willingly and truly, upon the Faith*

of a Christian. So help me God in Jesus Christ. Which Oath the said Archbishop himself did take, and caused divers other Ministers of the Church to take the same, upon pain of Suspension and Deprivation of their Livings, and other severe Penalties: And did also cause *Godfrey*, then Bishop of *Gloucester*, to be committed to Prison for refusing to subscribe to the said Canons, and to take the said Oath; and afterward the said Bishop submitting himself to take the said Oath, he was set at liberty.

On *Thursday April 4. 1644.* I was again brought to the House, made a sufficient Scorn and Gazing-stock to the People; and after I had waited some Hours, was sent back, by reason of other Business, unheard; but order'd to appear again on *Monday April 8.* Then I appeared again, and was used by the basest of the People as before. I did not appear any Day but it cost me six or seven Pounds: I grew into want. This made my Counsel and other Friends to persuade me, the next time I had admittance to speak, to move the Lords again for some necessary Allowance, notwithstanding my former Petition had been rejected. This Advice I meant to have followed that Day: But after some Hours Attendance I was sent back again unheard, and ordered to come again on *Thursday April 11.* This Day I did not come to the House; a Warrant being sent to the Tower, which stayed me till *Tuesday April 16.*

The seventh Day of my Hearing.

I. **A**PRIL 16. I appeared, and (as I remember) here Mr. *Maynard* left off (save that now and then he interposed, both in the Reply, and otherwise) and Mr. *Nicolas*, a Man of another Temper, undertook the managing of the Evidence.

And the first Charge was concerning the late Canons, which he said, were against Law to sit, the Parliament being dissolved. No, my Lords, nothing against Law that I know: For we were called to set in Convocation by a different Writ from that

which called us as Bishops to the Parliament. And we could not rise, till his Majesty sent us another Writ to discharge us: and this is well known to the Judges, and the other Lawyers here present. So we continued sitting, tho' the Parliament rose. Nor was this Sitting continued by any Advice or Desire of mine: For I humbly desired a Writ to dissolve us. But the best Counsel then present, both of Judges, and other Lawyers, assured the King we might legally sit. And here is a Copy attested under their Hands.

Then he urged, out of my Diary, at *May 29. 1640.* That I acknowledged there were seventeen Canons made, which I did hope would be useful to the Church. 'Tis true, my Lords, I did hope so. And had I not hoped it, I would never have passed my Consent unto them. And when I writ this, there was nothing done or said against them. And if by any Inadvertency, or human Frailty, any thing erroneous or unfit have slipped into those Canons, I humbly beseech your Lordships to remember, it is an Article of the Church of *England*, That General Councils may err (*Art. 21.*) and therefore this National Synod may mistake. And that

since (if any Error be) it is not wilfully, it may be rectified, and in Charity passed by.

For the Bishop of *Gloucester*'s refusing to subscribe the Canons, and take the Oath; which is here said by the Counsel, but no Proof offered; the Truth is this: He first pretended (to avoid his Subscription) that we could not sit, the Parliament risen. He was satisfied in this by the Judges Hands. Then he pretended the Oath. But that which stuck in his Stomach, was the Canon about suppressing of the Growth of Popery, (*Can. 3.*) For, coming over to me to *Lambeth* about that Business, he told me, he would be torn with wild Horses before he would subscribe that Canon. I gave him the best Advice I could; but his Carriage was such, when he came into the Convocation, that I was forced to charge him openly with it, and he as freely acknowledged it; as there is plentiful Proof of Bishops and other Divines then present. And for his Lordship's being after put to take the Oath, (which was also urged) it was thus. I took myself bound to acquaint his Majesty with this Proceeding of my Lord of *Gloucester*'s, and did so. But all that was after done about his Commitment first and his Release after, when he had taken the Oath, was done openly at a full Council-Table, and his Majesty present, and can no way be charged upon me, as my Act: For it was my Duty to let his Majesty know it, to prevent farther Danger then also discovered. But I am here to defend myself, not to accuse any man else.

Next he urged, That I had interlined the original Copy of the Canons with my own Hand. But this is clearly a Mistake, if not a wilful one. For, perusing the Place, I find the Interlining is not in my Hand, but my Hand is to it, as (I humbly conceive) it was fit it should. And the Words are in the Ratification of the Canons, and therefore were necessarily to be in the Original, howsoever slipped in the Writing of them.

As for the Oath so bitterly spoken of at the Bar, and in the Articles; either it was made according to Law or else we were wholly misled by Precedent, as that such as was never excepted against. For in the Canons made in King *James*'s Time, there was an Oath made against ^b Simony; and an Oath for ^c Church Wardens; and an Oath ^d about ^e Licences and Marriages; and an Oath for ^f Judges in Ecclesiastical Courts: And some of these Oaths as dangerous as this is accounted to be. And all these established by no other Authority than these late were. And yet neither those Canons, nor those Oaths, were ever declared illegal by any ensuing Parliament, nor the Makers of them accused of any Crime, much less of Treason. So that we had in this Synod unblamed Precedent for what we did, as touching our Power of doing it.

But, after all this, he said he would pass these things by, (that is, when he had made them as odious as he could) and would charge nothing upon me but the Votes of both Houses; namely, That these Canons contain Matters contrary to the King's Prerogative, to the Fundamental Laws of the Realm, to the Rights of Parliaments, to the Propriety and Liberty of the Subject, and Matters tending to Sedition, and of dangerous Consequence. So these Votes of the Honourable Houses made so long after (and therefore cannot well be

^a 1. for the making of which, he said it was against Law for the Convocation.

Vide supra, post init.

^b Can. 40.

^c Can. 118.

^d Can. 103.

^e Can. 127.

be an Evidence against the making of that which was done so long before) is the Task lying now upon me to answer; which with your Lordships Honourable Favour, I shall in all Humbleness address myself unto.

Before these Words were well out of my Mouth, Mr. *Nicolas* with much Earnestness interpos'd, That he hoped their Lordships would not endure that the *solemn Votes of both Houses* should be called into question by any Delinquent; and was sure the House of Commons would not endure it. Upon this the Lords presently gave their Resolution, that I might not speak to any thing that was declared by Votes; but was to answer only to the Fact, whether I made the Canons or no. To this, with Leave humbly asked, I replied, That if I might not answer to the Votes, I must yield the Evidence, which I could not do; and that if I might answer, I must dispute the Votes, which their Lordships resolved I should not do: That then I was in a Perplexity, and must necessarily offend either way; and therefore humbly besought them to consider not my Case only, but their own too. For I did conceive it would concern them in Honour, as much as me in Safety, That no Charge might be brought against me in that great Court, to which I should not be suffered to make answer: or else that they in Honour would not judge me for that, to which my Answer is not suffered to be given. With this, that all these Canons were made in open and full Convocation, and are Acts of that Body, and cannot be ascribed to me, tho' President of that Synod, but are the joint Acts of the whole Body: So by me they were not made; which is my Answer.

And according to this I framed my Answer to Mr. *Browne's* Summary of my Charge, both hinting the Canons in general, and concerning the Instance before given about the Bishop of *Gloucester*.

But tho' I was not allowed there to make any farther Answer in defence of these Canons; nor can hold it fit to insert here so long an Answer as these Votes require; I humbly desire the courteous Reader, if he please, to look upon

the Answer which I have made to a Speech^a of Mr. *Nathaniel Fiennes*, in the House of Commons, against these Canons. In which Answer, I humbly conceive, I have satisfied whatsoever these Votes contain against them. Howsoever, I cannot but observe this in present. The Words in the sixth Original Article are, as they are above cited; That the late Canons contain Matters contrary to the King's Prerogative, the Laws, &c. But in the ninth Additional all the rest of the Exceptions are in against them, but these Words about the King's Prerogative are quite left out. I would fain know, if I could, what is the reason of this Omission in these added Articles: Is it for shame, because there was

a purpose to charge me (as Serjeant *Wild* did in his Speech the first Day) That I laboured to advance the King's Prerogative above the Law? To advance it, and yet made contrary Canons against it; which is the way to

destroy it. What pretty Nonsense is this? Or is it because the Framers of these Additional (whom I conceive were some Committee, with the help of Mr. *Prynn*) thought the time was come, or coming, in which the King should have no more Prerogative? Or if there be a third Reason, let them give it themselves.

This was all concerning the Canons. Then followed the sixth Original Article about my assuming of Papal Power; where Mr. *Browne*, in summing up of his Charge, was pleased to say, 'That no Pope claimed so much as I had done. But he was here- in much mistaken: For never any Pope claimed so little. For he that claimed least, claimed it in his own Right, which was none; whereas I claimed nothing but in the King's Right, and by virtue of his Concession: between which there is a vast Latitude.' The first Proof upon this Article was read out of certain Letters sent unto me by the University of *Oxford*, I being then their Chancellor. Which great Titles were urged to prove my assuming of Papal Power, because I did not check them in my Answers to those Letters.

(1.) The first Title was *Sanctitas tua*, which Mr. *Nicolas* said, was the Pope's own Title; but he is deceived: for the Title was commonly given to other Bishops also clean thro' the Primitive Church, both *Greek* and *Latin*. He replied in great heat, (as his manner it seems is) That 'tis Blasphemy to give that Title (*Sanctitas*) in the Abstract, to any but God. And tho' by the Course of the Court I might not answer then to the Reply, yet now I may: And must tell Mr. *Nicolas*, that 'tis a great Presumption for him, a Lawyer, and no studied Divine, to charge Blasphemy upon all the Fathers of the

Primitive Church. 'Tis given to^b St. *Augustine* by *Hilarius* and *Euodius*, and in the abstract. And (which

is the charge laid to me) St. *Augustine* never checks at, or finds fault with the Title, nor with them for writing it. And

St. *Augustine* himself gives that Title to *Euodius*, answering his Letters, which I was not to do to theirs: And after that to^c *Quintianus*. Neither is any thing more

common than this Style among the all Learned Men know. And 'tis commonly given by^d St. *Gregory the Great* to divers Bishops; who being Pope himself, would not certainly have given away his own

Title (had it been peculiar to him) to any other Bishop. Nor would any of the Fathers have given this

Epithet to their Brethren, had any Savour of Blasphemy been about it. But there is a twofold Holiness, the one Original, Absolute and Essential, and that it is in God only, and incommunicable to any Creature: * the other Derivative and Relative; and that is found in the Creatures, both things and Persons; or else God should have no Saints, no Holy Ones. For no Man can be said to be *Sanctus*, Holy, but he who in some degree hath *Sanctitatem*, Holiness, residing in him. And this I answered at the present. But according to Mr. *Nicholas* his Divinity,

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* The Managers against the Archbishop in another Place pretend, that this Title was never given to any English Bishop at least: But herein they are much mistaken; for it was often given to them. To produce but one instance: Pope Leo III. gave this Title to Ethelard Archbishop of Canterbury, and that in a Letter wrote to Kenulphus King of Mercia. Ang. Sacr. par. 1. p. 460. H. W.

'we shall learn in time to deny the Immortality of the Soul: For Immortality, in the Abstract, is applied to God only, 1 Tim. 6. 16. *Who only hath Immortality*. Therefore, if it may not in an under and a qualified Sense, by Participation, be applied to the Creature, the Soul of Man cannot be immortal.'

(2.) The second Title in *Spiritu Sancto effusissime plenus*. My Lords, I had sent them many hundred Manuscripts, and in many Languages. Upon this, in Allusion to the Gifts of Tongues, (and it was about *Pentecost* too that I sent them) the luxuriant Pen of the University Orator ran upon these Phrases; which I could neither foresee before they were written, nor remedy after: And finding fault, could not remedy that which was past. Besides, all these Letters were in answer to mine; I was to answer none of theirs: that might have made me work enough, had I wanted any.

(3.) The third Style is *Summus Pontifex*. But this was in my Lord of London's Letters; and he must answer, if any thing be amiss. But *Pontifex*, and *Summus* too, is no unusual Style to and of the chief Prelate in any Nation.

(4.) The fourth Style is *Archangelus, & ne quid nimis*. Yes sure, the meanest of these Title is *multum nimis*, far too much, applied to my Person and Unworthiness: Yet a great sign it is that I deserved very well of that University in the Place I then bare, or else they would never have bestowed such Titles upon me. And if they did offend in giving such an unworthy Man such high Language, why are not they called in question for their own Fault?

(5.) The last which I remember, is, *Quo rectior non stat Regula, &c.* And this is no more than an absolute *Hyperbole*; a high one I confess; yet as high are found in all Rhetorical Authors: And what should make that Blasphemy in an University Orator, which is every where common, and not only allowed, but commendable, I know not: 'Especially since the Rule of the Interpretation of them is as well known as the Figure. Where the Words are not to be understood in their proper and literal Sense, but as St. Augustine speaks, when that which is spoken, *longè est amplius*, is far larger than that which is signified by it.' And if I had assumed any of these Titles to myself, which I am, and ever was far from doing; yet 'tis one thing to assume Papal Title, and another to assume Papal Power, (which is the thing charged) tho' I thank God I did neither. 'If I have here omitted any Title, it is mere Forgetfulness; for one part or other of the Answers given will reach it, whate'er it be. And, as I told Mr. Browne, when he charged this on me, Dr. Strowd, the University Orator, who writ those Letters, and gave those Titles, was called up before a Committee of this Parliament, examined about them, acquitted, and dismissed.'

(6.) These Titles from the Letters being past, he quoted another, which he called a blasphemous Speech too, out of my Book against *Fisher*; where, he said, I approved of *Anselme*, an Enemy to the Crown: and took on me to be Patriarch of this other World. Let any Man look into that place of my Book, and he shall find that I make use of that Passage only to prove that the Pope could not be appealed unto out of *England*, according to their own Doctrine: Which I hope is no Blas-

phemy. And for St. *Anselme*, howsoever he was swayed with the Corruptions of his Time, yet was he in other things worthy the Testimony which the Authors by me cited give him. 'And if any Man be angry that the Archbishop of *Canterbury* is called the Patriarch of this other World, he may be pleased to remember that St. *Jerom* gives St. *Augustine*, who was Bishop of *Hippo*, and no Archbishop, a greater Title than that: For he writes, *Beatissimo Papæ Augustino* more than once and again, as appears in his Epistles to St. *Augustine*.'

^c S. Hieron. apud Aug. Epist. 11. 13, 14, 17, 18, &c.

(7.) To these Sir *Nathaniel Brent's* Testimony is produced; who says, That he over-heard me say to another *That I would not so easily quit the Plenitude of my Power*, or to that effect. He confesses he was coming in, and finding me speaking with another, made stay, and stood afar off, and knows not of what I spake, (for so he said) but over-heard the Words. I beseech your Lordships observe this Witness: He confesses he knows not of what I spake, and yet comes here upon his Oath, to testify of Plenitude of Power in relation to my assuming Papal-Power. If he meant not this, his Testimony is nothing; for Plenitude of Power may extend to many other Things; and I might justly say, (if I said it) *That I would not easily part with the Plenitude of my Power*, in relation to other Bishops of my Province, who by Law have not so full Power as I have. But if he did mean this, then his Testimony is worse than nothing: Nothing, in regard he confesses he knows not of what I was speaking; and worse than nothing, that not knowing, he would give such a Testimony upon Oath.

II. The next Charge of this Day was, That I went about to exempt the Clergy from the Civil Magistrate.

1. The first Witness is Mr. *Pincen*. He says he heard me say at the High-Commission, *That the Clergy were now debased; that heretofore it was otherwise, and I hope to see it so again*. Truly, my Lords, if I did say thus (which is more than I can call to Memory) I spake Truth: They were debased; and I did hope to see it otherwise: For the debasing of the Clergy will make their Office and their Doctrine base, as well as their Persons. But here is not a word of freeing them from Laws or the Temporal Magistrate. It was replied, He did mention the Civil Magistrate. 'If he did, he mentions no time; by which I might be enabled to make Counter-proof. He is single. They are Words, and if within the Statute, then triable by it within six Months. And I desire this grave Gentleman to consider his Oath: For if I spake of any such Exemption, I must speak against my Conscience and Judgment; which, I humbly thank God, I used not to do. Nor is it altogether impossible for the Civil Magistrate sometimes to oppress poor Clergymen. But a little will be thought too much of this. And therefore to Mr. Browne's summary Charge, I gave the former Answer, That I spake of Exemption from Oppression, not from Law.'

2. The second Witness was Alderman *Railton*, about the carrying up of the Sword in the Church when he was Lord Mayor. He says, I once sent him word about it, but knows not by whom; and after heard no more of it, but refers himself to Mr. *Marsh*. He says, There was an Order of the Council-Table, May 3, 1633. concerning the submitting of the Sword in time and place of Divine Service.

^a St. Aug. 16. Civ. Dei, c. 21.

^b Cont. Fisher, § 25. p. 171.

Service. If an Order of Council, then was it no Act of mine, as I have often pleaded, and must as often as it comes. He says farther, That I spake these Words, or to this effect, *That the Church had been low for these Hundred Years; but I hoped it would flourish again in another Hundred.* But here's no one Word of Exemption from Civil Magistracy. And I hope your Lordship's will take Witnesses as they speak, not as Men shall infer and descant upon them. And then, my Lords, under favour, 'I see no harm in the Words.' Only I shall recall my Hope: For if I had then any hope to see it flourish in another Hundred Years, 'tis that which I cannot hope for now. He says, There was a Reference to the Counsel on both Sides; and that under that Reference the Business died. And if it died then, what makes it here before the Resurrection? Yea, but says Mr. *Nicolas*, Here's Agitation about the submitting of the Sword, which is the Emblem of Temporal Power. But neither to foreign nor home Power, but only to God; and that in the Place, and at the Performance of his holy Worship: At which Time and Place Christian Kings submit themselves, and therefore cannot stand upon the Emblems of their Power. Nor would the Lords of the Council have made either Order or Reference, had there been any thing of Danger, or against Law, in this kind of submitting. Mr. *Yorke* was produced as another Witness, but said just the same with *Marsh*; and so the same Answer served him.

III. Then followed a Charge about the Charter of *York* to be renewed; and that I did labour to have the Archbishop of *York*, his Chancellor, and some of the Residentiaries, named in it to be Justices of Peace within the City. To prove this, Alderman *Hoyle* is produced; who says, There was an Order of the Council about this; but cannot say that I procured it. So far then this Proof reaches not me. For the Bishop, his Chancellor, and some of the Residentiaries, to be Justices of Peace within the City; if I were of this Opinion, (as then advised) I am sure there's no Treason in it, and I believe no Crime. And, under your Lordship's Favour, I could not but think it would have made much Peace, and done much Good in all the Cities of *England* where Cathedrals are. Lastly, he says, There was a debauched Man committed about Breach of the Sabbath; and being casually smother'd, I should say, *They deserved to be hanged that killed him.* Concerning this Man; he lost his Life, that's confessed. His Debauchery; what it was, is not proved. And were he never so disorderly, I am sure he was not without legal Trial to be shut up into a House, and smother'd; that is against both Law and Conscience: And the Officers then in being had reason to smother the Business as much as they could; and, it may be, deserved somewhat, if not that which this Alderman says I said, to his best remembrance: For so, and with no more Certainty he expressed it. This I am sure I said, That if the Bishop, or any of the Church, had been then in their Charter, the poor Man's Life had not been lost.

IV. The fourth Charge was just of the same nature, concerning the Charge of *Shrewsbury*. For this there were produced two Witnesses, Mr. *Lee* and Mr. *Mackworth*. But they make up but one between them: For Mr. *Lee* could say nothing but what he acknowledges he heard from Mr. *Mackworth*. And Mr. *Mackworth* says first, That the School-Master's Business was referred to other

Lords and myself. That's no Crime: And, to my knowledge, that has been a troublesome Business for these Thirty Years. He says, I caused that there should go a *Quo Warranto* against the Town. This is but as Mr. *Owen* informed him; so no Proof. Beside, 'tis no Crime, being a Reference, if I gave legal Reason for it. Nor is it any Crime that the Bishop and his Chancellor should be Justices within the Town, as is aforesaid in the Case of *York*; considering especially, that then many Clergymen bare that Office in divers Counties of *England*. He adds, That an old Alderman gave Fifty Pound to *St. Pauls*. But out of what Consideration, I know not, nor doth he speak. And if every Alderman in the Town would have given me as much to that use, I would have taken it, and thanked them for it. Then he says, There was an Order from all the Lords Referees, for settling all Things about their Charter. So, by his own Confession, the whole Business was transacted publickly, and by Persons of great Honour, and nothing charged upon my particular. If Mr. *Owen* sent me in a Butt of Sack, and after put it upon the Town Account, (for so he also says) Mr. *Owen* did ill in both; but I knew of neither. And this the Counsel, in their Reply, said they urged not in that kind. Lastly, The Charter itself was read to both Points, of the Bishop and his Chancellor being Justices of Peace within the Town, and the not bearing up of the Sword: To both which I have answer'd already. And I hope your Lordships cannot think his Majesty would have passed such a Charter, or that his learned Counsel durst have put it to him, had this Thing been such a Crime as 'tis here made.

V. The next Charge was out of my Diary, at *March 5. 1635.* The Words are; William Juxon, Lord Bishop of London, made Lord High Treasurer of England. No Churchman had it since Henry VII's Time. I pray God bless him, to carry it so, that the Church may have Honour, and the King and the State Service and Contentment by it. And now if the Church will not hold up themselves, under God, I can do no more. I can see no Treason in this, nor Crime neither. And tho' that which I did to help on this Business was very little, yet Aim I had none in it, but the Service of the King, and the Good of the Church: And am confident it would have been both, had not such troublesome Times followed, as did.

VI. Then they instanced in the Case of Mr. *Newcommin*. But that Cause being handled before, they did only refer the Lords to their Notes: And so did I to my former Answers.

VII. Then followed the Case of *Thorn* and *Middleton*, which were fined in the High-Commission, about some Clergy-mens Business, *Thorn* being Constable. The Witnesses in this Case are three.

1. The first is *Huntford*, (if I took his Name right:) And for the Censure of these Men, he confesses, it was in and by the High-Commission; and so no Act of mine, (as I have often pleaded.) But then he says, that I there spake these Words, *That no Man of their Rank should meddle with Men in Holy Orders.* First, he is in this part of the Charge single, and neither of the other Witnesses comes in to him. Secondly, I humbly desire the Proceedings of the High-Commission may be seen, (which are taken out of our Hands.) For so far as I can remember any thing of this Cause, the Minister, Mr. *Lewis*, had hard Measure. And perhaps thereupon I might say, That Men of their Rank should not in such sort meddle with Men in Holy Orders.

Orders. But to tax the Proceedings of a violent busy Constable, was not to exempt the Clergy from Civil Magistracy.

Upon this, he falls just upon the same Words, and says, That I utter'd them about their offering to turn out a Corrector from the Printing-House. This Corrector was a Minister, and a well-deserving Man. The Trust of the Press was referred to the High-Commission Court. And I hope your Lordships will not think, that not to suffer the Printers to turn out a deserving Man at their pleasure, is to exempt the Clergy from the Civil Magistrate. The Business, my Lords, was this: This Corrector was principally entertained for the *Latin* and *Greek* Press especially, which I had then not without great Pains and some Cost erected. They were desirous to keep only one for the *English*, and him at the cheapest. Among them their Negligence was such, as that there were found above a thousand Faults in two Editions of the Bible and Common-Prayer-Book. And one which caused this Search was, that in *Exod. 20.* where they had shamefully printed, *Thou shalt commit Adultery.* For this the Masters of the Printing-House were called into the High-Commission, and censured, as they well deserved it. As for this Corrector, whom they would have heaved out, they never did so much as complain of him to any that had power over the Press, till this fell upon themselves for so gross an Abuse. Nor did they after this proceed against him, to make him appear faulty; and till that were done, we could not punish. And for this Business of the Press, he is single too. And I have told your Lordships that which is a known Truth. 'And *Hunsford* being bit in his Credit, 'and Purse, and Friends, by that Censure, for so 'gross an Abuse of the Church and Religion, 'labours to fasten his Fangs upon me in this 'way.'

2. The second Witness is Mr. *Bland*. But all that he says is, That there was once a Dismission of this Cause out of the Court, and that tho' I disliked it, yet I gave way to it, because all Parties were agreed. And no word of Proof, that I was any cause of bringing it back into the Court again. What's my fault in this?

3. The third Witness was *Thorn* in his own Cause: and 'tis plain, by his own words, that this Cause was depending in Court before my time. And I believe, were the Records of the Court here, Mr. *Lewis* would not be found so great an Offender as Mr. *Thorn* would make him. This I am sure of, both the High-Commission and myself have been quick enough against all Ministers which have been proved to be debauched in their Life and Conversation. And he says nothing against me, but that I sided with his Adversaries; which is easy to say against any Judge that delivers his Sentence against any Man. But neither of these come home to *Hunsford*.

VIII. The Next Charge is in the Case of one Mr. *Tomkins*, about the taxing of a Minister in a Case of Robbery, and Repayment by the Country.

To this Mr. *Newdigate* is produced; who says, as he remembers, that I should speak these words, *That Ministers were free from such Taxes, and I hoped to see the Times in which they might be free again.* First, This Gentleman is single. Secondly, He speaks not positively, but *as he remembers*. Thirdly, This Tax, I do humbly conceive, is not by Law to be laid upon any Minister. For no Man is subject to this Tax, but they which are to keep

Watch and Ward; which Ministers in that kind are not bound unto. And this I learned of the Lord Keeper *Coventry* at the Council-Table. So I might well then hope to see Ministers free from all such Taxes, by the right understanding and due Execution of our own Laws, without assuming any Papal Power.

IX. The last Instance of this Day was the bringing of Sir *Rich. Samuel* into the High-Commission, for doing his Office as Justice of the Peace upon some Clergymen. First, For this, this Gentleman is single, and in his own Case. Secondly, himself confesses, that his bringing into the High-Commission was long after the Fact. Therefore in all probability not for that; nor doth he say that I caused his bringing in. He says farther, That one Article for which he was called into the Commission, was, that he was an Enemy to the Clergy. But he doth not say, that I preferred these Articles against him: nor doth he tell, or can I remember, what the other Articles were, which with this may be bad enough to merit what was there laid against him. And whatsoever was done, appears by his own Narration to be the Act of the High-Commission, or the Council-Table, and so not chargeable upon me alone. And whereas he says, I blamed him much at the Council-Table; let him tell why, and then I'll give him a farther Answer: And sure if I did blame him, I had just cause so to do. Lastly, he says, I did use the word *base* to him, when he came to me. Sure I cannot believe I did; it was not my Language to meaner Men. If it did slip from me, it was in relation to his Enmity to the Clergy, not to his Person or Quality. 'And I 'conceive 'tis no genteel part, for a Man of Place 'and Power in his Country, to oppress poor Clergymen which neighbour about him. In which 'kind this Gentleman, *peffime amatebat*, heard extremely ill.'

This Day thus ended, I was ordered to appear again on Monday, *April 22.* I came, and my former Answers having taken off the edge of many Men, (for so I was told by good Hands) the Scorns put upon me at my landing, and elsewhere, were somewhat abated, tho' when it was at best I suffered enough. After I had attended the Pleasure of the House some hours, I was remitted without hearing, and commanded to attend again upon *Thursday, April 25.* but sent back again then also, and ordered to appear on *Tuesday, April 30.* And when I came, I was sent away once more unheard: no Consideration had of myself, or the great Charge which this frequent coming put me to. I was then ordered to appear again on *Saturday, May 4.* Then I was heard again: and the Day proceeded as follows.

My Eighth Day of Hearing.

SATURDAY, May 4. 1644. To raise up Envy against me, Mr. *Nucias* falls first to repeating the Titles which were given me in Letters from *Oxford*; to which I gave answer the day before. From thence he fell again upon the former Charge, my Endeavour to exempt the Clergy from the Civil Power. And very loud he was, and full of four Language upon me. To this General, I answered with another more true; That I never did attempt to bring the Temporal Power under the Clergy, nor to free the Clergy from being under it: But I do

do freely confels, I did labour all I could to preserve poor Clergymen from some Laymens Oppression, which lay heavy on them. And *de Vi Laica* hath been an old, and a great, and too just a Complaint. And this I took to be my Duty, doing it without wrong to any Man; as sincerely I did to the best of my knowledge: And assuring myself, that God did not raise me to that Place of Eminency, to sit still, see his Service neglected, and his Ministers discountenanced; nay, sometimes little better than trampled on. 'And my standing 'thus to the Clergy, and their just Grievances, is 'not the least cause of my present Condition. In 'which my Case (tho' not my Abilities) is somewhat like *Cicero's*. For having now for many Years defended the Publick State of the Church, and the private of many Church-men, 'as he had done many Citizens; when he by prevailing Factions came into danger

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'himself, *ejus Salutem defendit nemo*,
'no Man took care to defend him
'that had defended so many: which
'yet I speak not to impute any thing to Men of
'my own Calling, who, I presume, would have
'lent me their just Defence, to their power, had
'not the same Storm which drove against my
'Life, driven them into Corners to preserve themselves.'

I. The first Instance was in Mr. *Sbervil's* Case; in which Mr. *John Steevens* tells what I said to the Counsel pleading in the *Star-Chamber*, which was, That they should take care not to cause the Laws of the Church and the Kingdom to clash one against another. I see, my Lords, nothing that I spake was let fall, nor can I remember every Speech that passed from me; he may be happy that can. But if I did speak these words, I know no Crime in them: it was a good Caveat to the Counsel, for ought I know. For surely the Laws of Church and State in *England* would agree well enough together, if some did not set them at odds. And if I did farther say to the then Lord Keeper, (as 'tis charged) *That some Clergymen had sat as high as he, and might again*: which I do not believe I said: yet if I did, 'tis a known Truth. For the Lord *Coventry*, then Lord Keeper, did immediately succeed the Lord Bishop of *Lincoln* in that Office. But tho' I dare say, I said not thus to the Lord Keeper, whose Moderation gave me no cause to be so round with him, yet to the Counsel at the Bar, I remember well, upon just occasion given, that I spake to this effect; That they would forbear too much depressing of the Clergy, either in their Reputation or Maintenance, in regard it was not impossible that their Profession, now as high as ours once was, may fall to be as low as ours now is; 'if the Professors set themselves against the Church, as some of late are known to have done: 'And that the sinking of the Church would be 'found the ready way to it.'

II. The second Instance was about calling some Justices of the Peace into the High-Commission, about a Sessions kept at *Tewksbury*.

1. The first Witness for this (for three were produced) was Mr. *Jo. Steevens*. He says, That the Isle where the Sessions were kept, was joined to the Church. If it were not now a part of the Church, yet doubtless being within the Church-yard, it was consecrated Ground. He says, That Sessions were kept there heretofore. And I say, the more often the worse. He says, That I pro-

cured the calling of them into the High-Commission. But he proves no one of these things, but by the Report of Sir *Rob. Cook* of *Gloucestershire*, a Party in this Cause. He says again, That they had the Bishop's License to keep the Sessions there. But the Proof of this also is no more than that Sir *Rob. Cook* told him so: so all this hitherto is Hearsay. Then he says, the 88th Canon of the Church of *England* was urged in the Commission-Court, which seems to give leave in the close of the Canon, that Temporal Courts or Leets may be kept in Church or Church-yard. First, that Clause in the end of the Canon, is referred to the ringing of Bells, not to the Profanations mentioned in the former part of that Canon. Nor is it probable, the Minister and Church-wardens should have power to give such leave, when no Canon gives such power to the Bishop himself. And were it so, here's no Proof offered, that the Minister and Church-wardens did give leave: And suppose some Temporal Courts might upon urgent occasion be kept in the Church with leave, yet that is no Warrant for Sessions, where there may be Trial for Blood. He says farther, That the Civilians quoted an old Canon of the Pope's, and that that prevailed against the Canon of our Church, and Sentence given against them. All those Canons which the Civilians urged, are Law in *England*, where nothing is contrary to the Law of God, or the Law of the Land, or the King's Prerogative Royal: and to keep off Profanation from Churches, is none of these. Besides, were all this true which is urged, the Act was the High-Commission's, not mine. Nor is there any thing in it that looks towards Treason.

2. The second Witness is Mr. *Edward Steevens*. He confesses that the Sentence was given by the High-Commission, and that I had but my single Vote in it. And for the Place itself, he says, the Place where the Sessions were kept, was separated from the Isle of the Church by a Wall breast-high; which is an evident Proof that it was formerly a part of that Church, and continued yet under the same Roof.

3. The third Witness is Mr. *Talboyes*, (who, it seems, will not be out of any thing which may seem to hurt me.) He says, the Parish held it no part of the Church. Why are not some of them examined, but this Man's Report from them admitted? They thought no harm (he says) and got a License. But why did they get a License, if their own Conscience did not prompt them that something was irregular in that business? He says, he was informed the Sessions had been twice kept there before. And I say, under your Lordships favour, the oftner the worse. But why is not his Informer produced, that there might be Proof, and not Hearsay? Upon this, I said, (so he concludes) That I would make a Precedent against keeping it any more. If I did say so, the Cause deserved it; Men in this Age growing so bold with Churches, as if Profanation of them were no fault at all.

III. The third Instance concerning Sir *Tho. Dacres*, a Justice of Peace in *Middlesex*, and his Warrant for punishing some disorderly Drinking. The Witnesses the two Church-wardens, *Colliar* and *Wilson*; two plain Men, but of great Memories: for this Business was when I was Bishop of *London*, and yet they agree in every Circumstance, in every

Word, tho' so many Years since. Well, what say they? It seems Dr. Duck, then my Chancellor, had cited these Church-wardens into my Court? therefore either there was, or at least to his Judgment there seemed to be somewhat done in that Business against the Jurisdiction of the Church. They say then, that the Court ended, Dr. Duck brought them to me. And what then? Here is a Cause, by their own confession, depending in the Ecclesiastical Court; Dr. Duck in the King's Quarters, where I cannot fetch him to testify; no Means left me to know what the Proceedings were; and I have good cause to think, that were all the Merits of the Cause open before your Lordships, you would say, Sir *Tho. Dacres* did not all according to Law. But what is the Heart of this Charge? It is, say they, That I commanded Dr. Duck to prosecute them. And what fault was in this? For if it were just, why should not Dr. Duck go on with his Prosecution? If Dr. Duck and I were both mistaken in the Particular, 'twas easy getting a Prohibition. Yea, but they say I said, *If this must be so, Sir Thomas Dacres shall be Bishop of London, and I'll be Sir Tho. Dacres.* For ought I see in the Weight of it, this whole Charge was but to bring in this Speech. And truly, my Lords, my old decay'd Memory is not such, as that I can recal a Speech thirteen or fourteen Years since. But if I did say it, I presume 'tis not High-Treason for a Bishop of *London* to say so much of Sir *Tho. Dacres*. 'Mr. Browne, in the summing up the Charge against me, laid the Weight of the Charge in this, That these Church-wardens were prosecuted for executing the Warrant of a Justice of Peace upon an Ale-house Keeper, for tippling on the Sabbath-Day, contrary to the Statutes *Jac. 7. & Car. 3.* To which I answered, That those Statutes did concern the Ale-house Keepers only; nor were the Church-wardens called in question for that; but because being Church-officers, and a Church-man tippling there, they did not complain of that to the Chancellor of the Diocese. Mr. Browne replied, There was no Clergyman there. I am glad I was so mistaken. But that excuseth not the Church-wardens, who being Church-officers, should have been as ready to inform the Bishop, as to obey the Justice of Peace.'

IV. The fourth Instance was about Marriages in the *Tower*, which I opposed against Law. The Witness Sir *William Balfore*, then Lieutenant of the *Tower*. He says, that I did oppose those Marriages: And so say I. But I did it for the Subject of *England's* sake: for many of their Sons and Daughters were there undone. Nor Banes, nor Licence, nor any Means of Fore-knowledge to prevent it. Was this ill? He says, That when he spake with me about it, I desired him to speak with his Majesty about it, because it was the King's House. What could I do with more moderation? He confesses he did so, and that he moved the King that the Cause might be heard at the Council-Table, not at the High-Commission. To this his Majesty inclined, and I opposed nothing, so the general Abuse might be rectified. Then he says, Mr. Attorney *Noye* said at the Council-Table, it was the King's free Chapel, and that no Pope in those Times offer'd to inhibit there. First, if Mr. Attorney did so say, he must have leave to speak freely in the King's Cause. Secondly, (as I humbly conceive) the Chapel for ordinary Use of Prisoners and Inhabitants of the *Tower*, where

these disorderly Marriages are made, is not that which is called the King's free Chapel; but another, in the side of the White Tower by the King's Lodgings. Thirdly, if it be, yet I have herein not offended; for I did all that was done by the King's Leave, not by any Assumption of Papal Power. Then he tells the Lords, That in a Discourse of mine with him at *Greenwich*, about this Business, I let fall an Oath. I am sorry for it, if I did, but that's no Treason. 'And I know whom the Deponent thinks to please by this Interposition: for to the Matter it belongs not.' In conclusion, he says truly, That the King committed the Business to some Lords and Judges, that so an end might be put to it; and in the mean time ordered, that till it were ended, there should be no more Marriages in the *Tower*. How this Business ended, I know not. It began, I am sure, by Authority of his Majesty's Grant of the High-Commission, to question and punish all such Abuses, *tam in locis exemptis, quam non exemptis*. And his Majesty having graciously taken this Care for the Indemnity of the Subject, I troubled myself no more with it; my Aim being not to cut off any Privileges of that Place, but only to prevent the Abuses of that lawless Custom. 'And if *cui bono* be a considerable Circumstance, as it uses to be in all such Businesses, then it may be thought on too, that this Gentleman the Lieutenant had a considerable Share for his part out of the Fee of every Marriage. Which I believe was as dear to him as the Privilege.'

V. The next Instance is broke out of the *Tower*, and got as far as *Oxford*. The Witness, Alderman *Nixon*. He says, The Mayor, and the Watch set by him, were disturbed by the Proctors of the University, and a Constable imprisoned. The Night-Walk, and the keeping of the Watch, is the antient, known, and constant Privilege of the University for some Hundred of Years; and so the Watch set by the Town (purposely to pick a Quarrel) was not according to Law. He adds, That when the Right Honourable the Earl of *Berkshire* would have referred the Business to the King's Counsel learned, I refused, and said, I would maintain it by my own Power, as Chancellor. If I did say this (which I neither remember nor believe) I might better refuse Lawyers, (not the Law, but Lawyers) than they a sworn Judge of their own Nomination, which they did.

The Case was briefly this. There were some five or six Particulars which had, for divers Years, bred much Trouble and Disagreement between the University and the City; of which (to my best remembrance) this about the Night-Watch, and another about Felons Goods, were two of the chief. The University complained to me. I was so far from going any By-way, that I was resolved upon a Trial at *Westminster-Hall*, thinking (as I after found) that nothing but a legal Trial would set those two Bodies at quiet. The Townsmen liked not this; came some of the chief of them to *London*; prevailed with their Honourable Steward my Lord the Earl of *Berkshire*, to come to me to *Lambeth*, and, by his Lordship, offer'd to have all ended without so great a Charge at Law, by reference to any of the Judges. I said I had no mind to wrong the Town, or put them to charge, but thought they would fly off from all Awards; and therefore stuck to have a legal Trial. After this, some of the chief Aldermen came to me with my Lord, and offer'd me, That if the University

University would do the like, they would go down and bring it up under the Mayor and Aldermens Hands, that they would stand to such end as Judge *Jones*, who rode that Circuit, should, upon Hearing, make. They did so, and brought the Paper so subscribed; (and therefore I think Alderman *Nixon's* Hand is to it as well as the rest:) Upon this I gave way; the University accepted; the Judge heard and settled. And now when they saw my Troubles threatening me, they brake all, whistled up their Recorder to come and complain at the Council-Table, his Majesty present. And I remember well, I told his Lordship, (then making the aforesaid Motion to refer to the King's learned Counsel) that his Lordship well knew what had passed; and that being so used as I had been by the Townsmen, I would trouble myself with no more References to Lawyers, or to that effect. And I appeal to the Honour of my Lord, whether this be not a true Relation.

VI. The sixth Instance concerns the putting of one Mr. *Grant* out of his Right. He says, (but he is single, and in his own Cause) That Mr. *Bridges* was presented to an Impropriation; and that suing for Tythe, he (the said *Grant*) got a Prohibition, and Mr. *Bridges* a Reference to the then Lord Keeper *Coventry* and myself; That we referred them to the Law, and that there *Grant* was non-suited, and so outed of his Right. First, In all this there's nothing said to be done by me alone. Secondly, The Lord Keeper, who well understood the Law, thought it fittest to refer them to the Law; and so we did. If he were there non-suited first, and outed after, it was the Law that put him out, not we. 'Yet your Lordships see here was a Prohibition granted a Case, which the Law itself after rejected.

VII. Then follows the Instance, That I had a purpose to abolish all Impropriations. The first Proof alledged was a Passage out of Bishop *Mountague's* Book, p. 210. That Tythes were due by Divine Right, and then no Impropriations might stand. And Mr. *Prynn* witnessed very carefully, That this Book was found in my own Study, and given me by Bishop *Mountague*. And what of this? Doth any Bishop print a Book, and not give the Archbishop one of them? Or must I answer for every Proposition that is in every Book that is in my Study, or that any Author gives me? And if Bishop *Mountague* be of Opinion that Tythes are due by Divine Right, what is that to me? Your Lordships know many Men are of different Opinions in that Difficulty; and I am confident you will not determine the Controversy by an Act of Parliament. They were nibbling at

Diary, in fine,
nu. 21.

my Diary in this, to shew that it was one of my Projects to fetch in Impropriations; but it was not fit for their purpose: For 'tis expressed, That if I lived to see the Repair of *St. Paul's* near an end, I would move his Majesty for the like Grant for the buying in of Impropriations. And to buy them from the Owners, is neither against Law, nor against any thing else that is good; nor is it any Usurpation of Papal Power.

2. The second Proof was my procuring from the King such Impropriations in *Ireland*, as were in the King's Power, to the Church of *Ireland*. 'Which Mr. *Nicolas* (in his gentle Language) 'calls Robbing of the Crown.' My Lords, the Case was this. The Lord Primate of *Armagh* writ unto me, how ill conditioned the State of that

Church was for want of Means; and besought me that I would move his Majesty to give the Impropriations there, which yet remained in the Crown, for the Maintenance and Incouragement of able Ministers to live among the People, and instruct them; assuring me, they were daily one by one begged away by private Men, to the great Prejudice both of Crown and Church. And the Truth of this, the Lord Primate is now in this Kingdom, and will witness. I acquainted the King's great Officers, the Lord Treasurer, and the Chancellor of the *Exchequer* with it. And after long Deliberation, the King was pleased, at my humble Suit, to grant them in the Way which I proposed: which was, That when they came into the Clergy's Hands, they should pay all the Rents respectively to the King, and some Consideration for the several Renewings. And the Truth of this appears in the Deeds: So here was no Robbery of the Crown. For the King had all his set Rents reserved to a Penny, and Consideration for his Casualties beside. And, my Lords, the Increase of Popery is complained of in *Ireland*: Is there a better way to hinder this Growth, than to place an able Clergy among the Inhabitants? Can an able Clergy be had without Means? Is any Means fitter than Impropriations restored? My Lords, I did this, as holding it the best Means to keep down Popery, and to advance the Protestant Religion. And I with all my Heart I had been able to do it sooner, before so many Impropriations were gotten from the Crown into private Hands.

VIII. Next I was charged with another Project in my Diary, which was to settle some fixed *Commendams* upon all the smaller Bishopricks. For this, I said, *Diary, in fine,*
nu. 8. their own Means were too small to live and keep any Hospitality, little exceeding Four or five hundred Pounds a Year. I considered that the *Commendams* taken at large and far distant, caused a great Dislike and Murmur among many Men; that they were in some Cases *Materia odiosa*, and justly complained of. And hereupon I thought it a good Church-Work to settle some Temporal Lease, or some Benefice, *sine Cura*, upon the lesser Bishopricks, but nothing but such as was in their own Right and Patronage; that so no other Man's Patronage might receive Prejudice by the Bishop's *Commendam*: Which was not the least Rock of Offence, against which *Commendams* endanger'd themselves. And that this was my Intent and Endeavour, is expressed in my Diary; and I cannot be sorry for it.

IX. Then I was accused for setting old Popish Canons above the Laws. Mr. *Burton* is the sole Witness. He says, it was in a Case about a Pew, in which those Canons did weigh down an Act of Parliament. 'I did never think till now Mr. *Burton* would have made any Canons Pew-Fellows 'with an Act of Parliament.' But seriously, should not Mr. *Burton's* Testimony for this have been produced at the second Instance of this Day? For in the end of that is just such another Charge; and the Answer there given will satisfy this, and that by Act of Par- *25 Hen. VIII.*
c. 19. § ult. liament too.

X. After this came a Charge with a great Outcry; That since my coming to be Archbishop, I had renewed the High-Commission, and put in many illegal and exorbitant Clauses, which were not in the former. Both the Commissions were produced. Upon this, I humbly desired that the

the Docket might be read, by which their Lordships might see all those Particulars which were added in the new Commission, and so be able to judge how fit or unfit they were to be added. The Docket was read; and there was no Particular found, but such as highly deserved Punishment, and were of Ecclesiastical Cognizance: as Blasphemy, Schism, and two or three more of like nature.

1. In this Charge, the first exorbitant Clause they insisted on, as added to the new Commission, was the Power given in *Locis Exemptis, & non Exemptis*; as if it were thereby intended to destroy all Privileges. No, not to destroy any Privilege, but not to suffer enormous Sins to have any Privilege. Besides, this Clause hath ever been in all Commissions that ever were granted. And I then shewed it to the Lords in the old Commission there present, p. 28, 32, 35, 42. 'Nay more, this Proceeding *tam in Locis Exemptis quam non Exemptis*, is allowed to the Governors of the Church, 'in the Exercise of their Ecclesiastical Jurisdiction,

by Act of Parliament in 1 Eliz. c. 2. 'Queen Elizabeth's Time: which would never have been allowed, 'had it then been thought such a dangerous Business, as 'tis now made against me.'

2. The second Clause was Power to censure, by Fine and Imprisonment. This also I shewed in the old Commission, *Fol.* 37. and is (I conceive) in plain pursuance of the Act of Parliament upon which the High-Commission is grounded. For the King says there, *Fol.* 13. (and so 'tis in the new) That he grants this Power by virtue of his Supreme Authority, and Prerogative Royal, and of the said Act. Nay farther, 'tis added in this latter Commission, *And by our Authority Ecclesiastical*, which is not expressed in the former. And sure I would never have caused Authority Ecclesiastical to be added, had I any Plot (as 'tis urged) either to exalt the Clergy above the Laity, or to usurp Papal Power; which all Men know is far enough from ascribing Ecclesiastical Authority to the King. And as for Fine and Imprisonment, if that Power be not according to Law, why was it first admitted, and after continued in all former Commissions?

1 Eliz. c. 1.
§ 8.

^a The Words of the Statute are, By virtue of this Act.

3. The third Clause was the *Non Obstante*, which he said was against all Law, and of such a boundless extent, as was never found in Commission or other Grant in England. And he here desired the Lords that he might read it, which he did, with great Assurance of a Triumph. But after all this Noise which Mr. Nicolas had made, I shewed the same *Non Obstante* in the Old Commission, *Fol.* 62. word for word, which I humbly desired might be read and compared: It was so. The Lords looked strangely upon it; Mr. Nicolas was so startled, that he had not patience to stay till his Reply, (which he saw impossible to be made) but interrupted me, and had the face to say in that Honourable Assembly, That I need not stand upon that: for he did but name that, without much regarding it. And yet at the giving of the Charge, he insisted principally upon that Clause, and in higher and louder Terms that are before expressed. Had such an Advantage been found against me, I should have been accounted extremely negligent, if I compared not the Commissions together; or extremely impudent, if I did,

4. The fourth Exception was, That by this Commission I took greater Power than ever any Court had, because both Temporal and Ecclesiastical. First, Whatsoever Power the High-Commission had, was not taken by them, till given by his Majesty, and that according to Use and Statute, (for ought hath been yet declared.) Secondly, They have not Power of Life or Limb, therefore not so great Power as other Courts have. Thirdly, They may have more various Power in some respects, but that cannot make it greater. 'As for the Expression in which 'tis said, *I took this Power*; that is put most unworthily and unjustly too, to derive the Envy as much as he could 'upon my Person only.' For he could not hold from comparing me to Pope Boniface VIII. and saying, That I took on me the Power of both Swords. But this was only *ad faciendum Populum*. For he knows well enough, that to take both the Swords, as the Pope takes them, is to challenge them originally as due to him and his Place: Not to take both, as under the Prince, and given by his Authority; and so not I alone, but all the Commissioners take theirs.

5. Fifthly, to prove that this vast Commission (as it was called) was put in execution, Mr. Burton is produced. He says, That when he was called into the High-Commission, he appealed to the King, and pleaded his Appeal; and that thereupon I and the Bishop of London writ to the King to have him submit to the Court. He confesses he was dismissed upon his Appeal, till his Majesty's Pleasure was farther known. And it was our Duty, considering what a Breach this would make upon the Jurisdiction of the Court, to inform his Majesty of it; and we did so. The King declared that he should submit to the Court, as is confessed by himself. Then he says, Because he would not submit to the Court, he was censured notwithstanding his Appeal. And he well deserved it, that would not be ruled by his Majesty, to whom he had appealed. And the Commission had Power to do what they did. Besides, himself confesses, all this was done by the High-Commission, not by me. Nor doth he urge any Threat, Promise, or Sollicitation of mine, any way to particularize the Act upon me: And farther, he is single, and in his own Cause.

XI. Then followed the last Charge of this Day, which was the Patent granted for the Fines in the High-Commission, for finishing the West End of *St. Paul's* cried out upon as illegal, and extorted from the King, and such as took all Power from him for the space of the Ten Years, for which time it was granted. This is the fourth time that *St. Paul's* is struck at. My Lords, let it come as often as it will, my Project and Endeavour in that Work was honest and honourable to both Church and Kingdom of England. No Man in all this Search and Pursuit hath been able to charge me with the turning of any one Penny or Pennyworth to other use than was limited to me. I took a great deal of care and pains about the Work, and cannot repent of any thing I did in that Service, but of human Frailty. And whereas 'tis said, this Patent was extorted from his Majesty; as there is no Proof offered for it, so is there no Truth in it. For his Majesty's Piety was so forward, that nothing needed to be extorted from him. Thus went I on, *bona fide*, and took the prime Direction of the Kingdom for drawing the Patent, the Lord Keeper Coventry, Mr. Noy, and Sir Henry Martin. And therefore if any thing be found against Law in it, it cannot

cannot be imputed to me, who took all the care I cou'd to have it beyond Exception. And I marvel what Security any Man shall have, that adventures upon any great and publick Work in this Kingdom, if such Counsel cannot be trusted for drawing up of his Warrant. ' And whereas it was said, This Patent for the ten Years space took away both Justice and Mercy from the King; that's nothing so: For whatever the Words be, to enable me the better for that Work, yet these being inseparable from him, may be used by him, notwithstanding this or any other Patent. And if these be inseparable, (as 'tis granted they are) no inseparable thing can be taken away; or if it be taken, 'tis void in Law, and the King is where he was in the Exercise of his Right, both for Justice and Mercy. And so I answered Mr. *Browne's* summary Charge against me. And as for that which he farther urged concerning *St. Gregory's Church*, Mr. *Inigo Jones* and others were trusted with that whole Business, and were censured for it in this present Parliament. In all which Examination no part of the Charge fell on me. And because here are so many things urged about Free-Chapels, Lay-Fee, Patents, Appeals, and the like, I humbly desire a *Salvo* may be enter'd for me; and that my Counsel may be heard for Matter of Law, if any Doubt stick with your Lordships.

This Day ended, I did, according to my Resolution formerly taken, move the Lords for Means, considering my Charge in coming, and how oft I had attended, and was not heard. Their Lordships considered of my Motion, and sent me out word I should petition them. I did humbly petition their Lordships May 6. My Petition was presently sent down to the House of Commons, that so by both Houses it might be recommended to the Committee for Sequelstrations. But upon a Speech in the House of Commons, that it was fit to see what would become of me, before they troubled themselves with thinking of Means for me, my Petition was cast aside.

At my parting from the House, I was ordered to appear again on *Thursday, May 9.* but then fairly put off by an Order (sent to the Lieutenant of the Tower) to *Monday, May 13.* So the Scorn and Charge of that Day was scaped. But then I appeared according to this Order, and had Scorn plenty, for what I escaped the Day before: And, after long Attendance, was dismissed again unheard; and had *Thursday, May 16.* assigned unto me. That Day held, and proceeded thus.

The Ninth Day of my Hearing.

I MAY 16. 1644. The first Charge of this Day was about a Reversion of the Town-Clerk's Office of *Shrewsbury* to one Mr. *Lee*, which he desir'd might be inserted into the new Charter. First, Mr. *Lee* is single here, and in his own Case. Secondly, it appears by his own Confession, out of the Mouth of Mr. *Barnard*, that there was a Reference of this Business to those Lords to whom *Shrewsbury* Charter was referred; For he says, That Mr. *Barnard* told him his Business was stayed, and he thought by me; but did not know whether the Lord Keeper's Hand were not in it. So it seems by himself, this was done by the Lords Referees, and not by me. Thirdly, I did not then think, nor do now, that the Reversion of a Place, to be sold for

three hundred Pound, (as he confesses that was) was fit to be put into a Town-Charter. But yet neither I, nor the Lord-Keeper, did any thing in that Stop, but what we acquainted his Majesty with, and had his Approbation of. And whereas he says, That he acquainted the Right Honourable the Earl of *Dorset* with the stay that was made, and that thereupon his Lordship should say, *Have we two Kings?* I cannot believe that Honourable Lord would so say, unless he were much abused by Mr. *Lee's* Information, both in regard of his Love to me, and in regard it could not proceed from a Man of so great a Judgment as that Lord is. For I beseech your Lordships consider, may not Lords, to whom a Business is referred, give his Majesty good Reason to alter his Mind in some Particulars which they have debated, and not he? And may not this be done without any one of them taking on him to be a second King?

II. The second Charge was laid on me by Sir *Arthur Haselrig*, (which should have come in the Day before, as Mr. *Nicolas* said, but that Sir *Arthur* was absent in the necessary Service of the State.) Sir *Arthur*, being single and in his own Case, says, That Sir *John Lambe* presented a blind Parson to a living of his. If Sir *John* did that, or any unworthy thing else, *etatem habet*, let him answer for himself. He says farther, That this Living is an Impropriation, and so a Lay-Fee by Law; and that when he told me so much, I made him this Answer, *That if I lived, no Man should name or stand upon his Lay-Fee.* I conceive, my Lords, here's a great Mistake in the main: For I have been credibly informed, and do believe, that Benefice is presentative, and so no Lay-Fee. And then there's no Fault to present unto it, so the Clerk be fit. Secondly, There's a main Mistake in my Words, which I remember well, and where it was that I spake them. My Words, under this Gentleman's Favour, and your Lordships, were these, and no other; *That I had good Information that the Benefice was presentative; and that if I lived, I hoped to order it so, that no Man should make a presentative Benefice a Lay-Fee; there were too many of them already.* Thirdly, If I did speak the Words as they are charged, if they come within that Statute of Six Months, so often mentioned, to that I refer myself: *whatsoever the Bird at this time of the Year sings*, as Mr. *Nicolas* was pleased to put it upon me. And truly, My Lords, I could easily return all his Bitterness upon himself, could it befit my Person, my present Condition, or my Calling.

III. The third Charge was about the refusing of a Pardon, which Mrs. *Bastwick* said she produced in the High-Commission Court some nine or ten Years since: And she adds, That I should then say, it should not serve his turn. But this was no rejecting of the Pardon; for she confesses I said I would move his Majesty about it. So that if it did not serve his turn, it was from the King himself, upon Motion made, and Reason given, not from any Power assumed by the High-Commission or myself. And the Act, whatever it were, was the Act of the whole Court not mine. As for the Words, (if mine) I give the same Answer as before, notwithstanding Mr. *Nicolas* his Bird.

IV. The fourth Charge was, That whereas there was a Proclamation to be printed about the Pacification with the *Scots*, it was suddenly stopp'd: and an Order after for burning of the Pacification. First, Mr. *Hunscot* is single in this Charge. Secondly,

Secondly, Whatsoever was done in this, was by Order of Council: And himself names an Order, which could not come from me. Thirdly, He charges me with nothing but that I sent word the Proclamation was to be stayed; which, if I did, I did it by Command. Howsoever, this concerns the *Scottish* Business, and therefore to the Act of Oblivion I refer myself. ' With this, that I see ' by this Testimony, Mr. *Hunscourt* (for I took ' his Name uncertainly) hath not yet forgotten, ' *Thou shalt commit Adultery*; so desirous he is to ' catch me at the Prefs.

V. The first Charge was about a Benefice in *Northamptonshire*, in the Case of Mr. *Fautrye* and Mr. *Johnson*, and Dr. *Beal*'s succeeding them. In which broken Business, (for such it was) First, That Business was all along acted by the High-Commission, not by me. Secondly, That though in the Case of Simony the Benefice be lost, *ipso facto*, yet that must be proved before the Incumbent can be thrust up, and another instituted, else Churchmen were in a miserable Condition for their Livelihood. Excommunication is in many Cases void in Law, *ipso facto*; and yet, *ante latam Sententiam*, till Sentence be orderly pronounced against it, no Man shall be subjected to those fearful Consequences which follow upon it. ' And upon this ' ground of natural Equity, that in the Statute ' concerning the Uniformity of Common-Prayer ' proceeds: Where 'tis said, ' *That*

^a *Eliz. c. 2.* *a Party once convicted for depraving the Common Prayer-Book, and relapsing into*

the same Crime, shall be deprived of all his Spiritual Promotions, ipso facto. But how? without any legal Proceedings? No, God forbid: For the Words preceding immediately in the Statute, are, *That he must be first legally convicted of that criminal Relapse*; and then follows *ipso facto*, and not before. And therefore the Super-institution, before the Simony tried and judged, was illegal; beside the great danger to the Parishioners, while two Parsons, and their several Friends are scrambling for the Tythes. Secondly, *Fautrye* was not censured for the original Cause of Simony, but for an Intruder, and Colluder too with *James*, to abuse the King's Grant of the Benefice. Thirdly, It seems *Fautrye* had no better Opinion of his own Cause: For he went to his Benefice in *Jersey*, and set not his Title on foot again till after seven Years; and that, I think, was when he heard that Mr. *Johnson* was a Pretender to it. And his Bond upon the Sentence was to make a final Peace. For the Prohibition, which he says was refused, I have answered that before, in the Charge about Prohibitions. Besides,

it appears by ^b Law, that as Prohibitions may be granted in some Cases, so in some Cases they may be refused.

^b *13 Edw. I.* For Dr. *Beal*, there is not the least shew of Proof offered, that I brought him in, if to do so be a Crime.

Thus far Mr. *Fautrye* went. As for Mr. *Johnson*'s Title, he says, That the Lords order'd it for him; and declared that we in the High-Commission could put no Man out of his Freehold. Where first, if your Lordships have order'd this Business, I must crave to know how far I shall have leave to speak to it: For if there be any Errors charged upon the Sentence given in the High-Commission, if they may not be spoken to, they cannot be satisfied. This I am sure of, the Commission hath

^c *1 Eliz. c. 1.*
^d 8.

Power to deprive: For the ^e Statute gives it Power to use all Ecclesiastical and Spiritual Censures; of which De-

privation is known to be one: And that Power is expressly given to deprive some Offenders of all their Spiritual Promotions, by the following ^d Statute. Therefore I think ^e *1 Eliz. c. 2.* it follows necessarily, either that we have Power over Freehold in that Case, or else that a Benefice is not a Freehold. But I have no reason, howsoever, to speak any thing (were I left never so free) against your Lordships Order, which very honourably left Dr. *Beal* to the Law; as 'tis confessed by *Johnson*.

Besides these two in their own Cause, one Mr. *Jenkins* is produced; but to what end I know not, unless it be to bespatter Dr. *Beal*. He says, That seven Years since Dr. *Beal* was Vice-Chancellor of *Cambridge*; that in his Sermon then he inveighed bitterly against the Power of Parliaments, and named some unfavoury Speeches of his, both concerning their Persons and Proceedings. Surely, if Dr. *Beal* did as is testified, he was much to blame. But what is this to me? If it be said I did not punish him: How could I punish that I knew not? And I profess I heard not of it till now at Bar. If it be said I did prefer him; that I do absolutely deny. And neither Mr. *Jenkins*, nor any other, offers the least Proof that I knew the one, or did the other.

VI. The sixth Charge was concerning the Statutes of the University of *Oxford*; in which, and the Cathedrals of the new Erection, Mr. *Nicolas* says I took on me to be an universal Law-giver. Many such Offices he bestows upon me, which God knows, and I believe he too, that I never affected. No, my Lords, the great Necessities of that University called upon me for it: Their Statutes lay in a miserable confused Heap. When any Difficulty arose, they knew not where to look for Remedy or Direction. Then into the Convocation-House, and make a new Statute; and that many times proved contrary to an old one concerning the same Business: Men in the mean time sworn to both, which could not possibly be kept together. By this means Perjury was in a manner unavoidable: And themselves confess in their ^e Register, (which is now in Court (that till this was done, they did in a sort swear, that they might be forsworn.

^e *Jurati ante ut Perjuri evaderent, fol. 69.*

Besides, my Lords, I did not abolish any the old Books, in which the Statutes lay so confused, some in one Book, and some in another; but left them all intirely in the University, in case in after-times any use might be made of them. Nor did I with them, as some ancient Philosophers are said to have done with the Works of some that went before them; that is, make them away, to advance their own Honour the more, as if without any help of former Pains, they had done all themselves: Holding it Honour more than enough for me, that God had so highly blessed me in this Work, as to finish and settle those Statutes, which the greatest Men in their Times, Cardinal *Wolsey* first, and after him Cardinal *Pool*, assayed, but left as imperfect as they found them. Neither did I any thing in this Work but by the Consent of the University, and according to an Act (and a Delegacy thereby appointed) of their own Convocation.

Mr. *Nicolas* says, There is a Rasure in one of the Acts, and supplied in other Ink. I told your Lordships then presently, (being loth to lie never so little under such an Imputation) that if there be any such, it must be charged upon the University, not upon me, for those Records were never

in

in my hands? nor is it so much as said they were. And since I withdrew to make my Answer, I have viewed the Record, and an Alteration or Addition there is; and 'tis a known Hand. 'Tis Dr. *Duppa's* Hand, now Lord Bishop of *Salisbury*, and then Vice-Chancellor; who I doubt not but is able to give a good account of what he did therein, and why. And for ought appears, 'tis nothing but the Amendment of some slip, which their ignorant Register *French* had failed in, and the Vice-Chancellor thought it safest to mend with his own Hand. And for my own part, if ever I did any thing worth Thanks from the Publick in all my Life, I did it in this Work for that University. And I wish with all my Heart the Times were so open, as that I might have the University's Testimony both of me and it. 'Since I cannot, a great Lord, present in the House when this Charge was laid against me, supplied in part their Absence; for he was overheard to say to another Lord, *I think my Lord Archbishop hath done no good Work in all his Life, but these Men will object it as a Crime against him before they have done.*'

With this Charge about the Statutes it was let fall, (and I well know why, 'It was to heat a Noble Person then present,') That I procured myself to be chosen Chancellor of that University. If I had so done, it might have been a great Ambition in me, but surely no Treason. But, my Lords, I have Proof great store, might I be enabled to fetch it from *Oxford*, that I was so far from endeavouring to procure this Honour to myself, as that I laboured by my Letters for another. And 'tis well known, that when they had chosen me, I went instantly to his Majesty, so soon as ever I heard it, and humbly besought him that I might refuse it, as well foreseeing the Envy that would follow me for it; and it did plentifully every way. But this for some Reasons his Majesty would not suffer me to do.

Then were objected against me divers Particulars contained in those Statutes: As, First, The making of new Oaths. The Charters of the University are not new, and they gave Power to make Statutes for themselves, and they have ever been upon Oath. Secondly, The next Illegality is, That Men are tied to obey the Proctors in singing the Litany. This is antient, and in use long before ever I came to the University; and it is according to the Liturgy of the Church of *England*, established by Law. Thirdly, The Statute of Bannition from the University. But there is nothing more antient in the University-Statutes than this. Fourthly, That nothing should be proposed in Convocation, but what was consented unto among the Heads of Colleges first; which was said to be against the Liberty of the Students. The young Masters of Arts, void of Experience, were grown so tumultuous, that no Peace could be kept in the University, till my worthy Predecessor, the Right Honourable *William Earl of Pembroke*, settled this Order among them: As he did also, upon the same grounds, settle the present way of the Choice of their Proctors. In both which I did but follow and confirm (for so much as lay in me) the good and peaceable Grounds which he had laid in those two Businesses. And Mr. *Browne*, who, in the summing up of my Charge, urged this against me, mainly mistook in two Things. The one was, That he said this Inhibition of Proposals was in Congregations; whereas it was only in Convocations, where more weighty Businesses are handled. The other

was, That this stay of Proposals was made till I might be first acquainted with them. No; it was but till the Heads of Colleges had met, and considered of them, for avoiding tumultuary Proceedings. And when my Honourable Predecessor made that Order, it was highly commended every where: And is it now degenerated into a Crime, because it is made up into a Statute? Fifthly, That some Things are referred to arbitrary Penalties. And that some Things are so referred, is usual in that University, and many Colleges have a particular Statute for it: Nor is this any more Power than ordinary School-Masters have, which have not a Statute-Law for every Punishment they use in Schools. And in divers things the old known Statute is, That the Vice-Chancellor shall proceed *grossa modo*, that is, without the regular Forms of Law, for the more speedy ending of Differences among the Scholars. Sixthly, That the Statute made by ^{Tit. 15. § 12.} me against Conventicles is very strict:

But for these that Statute is express *de illicitis Conventiculis*; and I hope such as are unlawful may be both forbid and punished. Besides, it is according to the Charter of *Richard the Second* to that University. Seventhly, The seventh was the Power of discommuning. But this also hath ever been in power and in usage in that University, as is commonly known to all *Oxford Men*: And no longer since than King *James* his Time, Bishop *King*, then Vice-Chancellor, discommuned three or four Townsmen together. Eighthly, That Students were bound to go to Prison upon the Vice-Chancellor's, or Proctor's Command. This also was antient, and long before my coming to the University. And your Lordships may be sure the Delegacy, appointed by themselves, would not have admitted it, had it not been antient and usual. Ninthly, and last-ly, ^{Tit. 9. § 2.} About the stay of granting Graces, unless there were Testimony from the Bishop of the Diocese. This was for no Graces, but of such as live not resident in the University, and so they could not judge of their Manners and Conversation. And for their Conformity to the Church of *England*, none (as I conceive) can be a fitter Witness than the Bishop of the Diocese in which they resided. And, my Lords, for all these thus drawn up by some of their own Body, I obtained of his Majesty his Broad-Seal for Confirmation? and therefore no one thing in them is by any Assumption of Papal Power, as 'tis urged; but by the King's Power only. As for the Statutes themselves, there was scarce one urged against me, but it was either a Statute or a Prescription of that University long before I was born into the World, and could not therefore be of my new making. And this was my Answer to Mr. *Browne* in the House of Commons. And such Bannition, Discommuning, and the like, are well known to be.

VII. Then followed the seventh Charge, About the Statutes of some Cathedral Churches. First, my Lords, for this, I did it by Letters-Patents from the King, bearing date *Mar. 31. decimo Caroli*, and is extant upon Record. And all that was done, was *per juris remedia*, and so nothing intended against Law, nor done, that I know. They had extreme need of Statutes; for all lay loose for want of Confirmation, and Men did what they listed: And I could not but observe it; for I was Dean of *Gloucester*, where I found it so. In seeking to re-

medy this, I had nothing but my Labour for my Pains; and now this Accufation to boot. The Particulars urged are, 1. That I had ordered that nothing should be done in these Statutes, *me incon-sulto*. And I had great reason for it. For since I was principally trusted in that Work by his Majesty, the King, if any Complaint were made, would expect the Account from me. And how could I give it, if other Men might do all, and I not be so much as consulted before they passed?

2. That I made a Statute against letting Leases into three Livres. But first, my Lords, the Statute which makes it lawful to let Leases
 13 Eliz. c. 10. for one and twenty Years, or three
 § penult. Lives, hath this Limitation in it,

That they shall not let for many more Years than are limited by the said Colleges or Churches. Now in Winchester-Church, and some other, the old local Statute is most plain, that they shall let no Lease into Lives. Let the Dean and Prebendaries answer their own Acts, and their Consciencies, as they can. And in those Statutes which I did not find pregnant to that purpose, I did not make the Statute absolute, but left them free to renew all such Leases as were antiently in Lives before. And this gave me Leave to say to your Lordships without offence; If but a few more Leases be granted into Lives, no Bishop nor Cathedral Church shall be able to subsist. And this is considerable also, That, as the Statute of the Church yet stands, the Laity have the benefit, by the Leases which they hold, of more than five parts of all the Bishops, Deans and Chapters, and College Revenues in *England*. 'And shall it be yet an Eye-sore to serve themselves with the rest of their own? This Evidence Mr. Browne, whose part it was to sum up the Evidence against me at the end of the Charge wholly omitted: for what cause, he best knows.'

VIII. The next Charge was about my Injunctions in my Visitation of *Winton* and *Sarum*, for the taking down of some Houses. But they were such as were upon consecrated Ground, and ought not to have been built there; and yet with Caution sufficient to preserve the Lessees from over-much Damage. For it appears *apud Acta*, that they were not to be pulled down till their several Leases were expired. And that they were Houses not built long since, but by them; and that all this was to be done, to the end that the Church might suffer no damage by them: and that this Demolition was to be made *juxta Decreta Regni*, according to the Statutes of the Kingdom. Therefore nothing enjoined contrary to Law: or if any thing were, the Injunction took not place, by the very Tenour of that which was charged. 'Mr. Browne omitted this Charge also, though he hung heavily upon the like at *St. Paul's*, though there was Satisfaction given, and not here.'

IX. The ninth Charge was my intended Visitation of both the Universities, *Oxford* and *Cambridge*. For my Troubles began then to be foreseen by me, and I visited them not. 1. This was urged as a thing directly against Law. But this I conceive cannot be, so long as it was with the King's Knowledge, and by his Warrant. 2. Se-

condly, Because all Power of the King's Visitations was saved in the Warrant, and that with consent of all Parts. 3. Thirdly, Because nothing in this was surreptitiously gotten from the King, all being done at a most full Council-Table, and great Council at Law heard on both Sides. 4. Fourthly, Because it did there appear, that three of my Predecessors did actually visit the Universities, and that *Jure Ecclesie sue Metropolitice*. 5. Fifthly, No Immunity pleaded, why the Archbishop should not visit; for the Instance against Cardinal *Pool* is nothing. For he attempted to visit, not only by the Right of his See, but by his Power Legatine from the Pope; whereas the University-Characters are express, that such Power of Visitation cannot be granted *per Bullas Papales*. And yet now 'tis charged against me, that I challenged this by Papal Power*. 'Mr. Browne wholly neglected this Charge also, which making such a Shew, I think he would not have done, had he found it well grounded.'

X. The tenth Charge was my Visitation of *Merton-Collage* in *Oxford*. The Witness Sir *Nathaniel Brent*, the Warden of the College, and principally concerned in that Business. He said, First, That no Visitation held so long. But if he consult his own Office, he may find one much longer, held and continued at *All-Souls-Collage* by my worthy Predecessor Archbishop *Whitgift*. Secondly, He urged that I should say, *I would be Warden for seven Years*. If I did so say, there was much need I should make it good. Thirdly, That one Mr. *Rich. Nevil*, Fellow of that College, lay abroad in an Ale-house; that a Wench was got with Child in that House, and he accused of it; and that this was complained of to me. and Sir *Nath. Brent* accused for conspiring with the Ale-Wife against *Nevil*. I am not here to accuse the one, or defend the other. But the Case is this: This Cause between them was publick, and came to Hearing in the Vice-Chancellor's Court, Witnesses examined, Mr. *Nevil* acquitted, and the Ale-Wife punished. In all this I had no hand. Then in my Visitation it was again complained of to me. I liked not the Business; but forbore to do any thing in it, because it had been legally censured upon the Place. 'This part of the Charge Mr. Browne urged against me in the House of Commons, and I gave it the same Answer.' Lastly, When I sat to hear the main Business of that College, Sir *Nathaniel Brent* was beholden to me that he continued Warden. For in Archbishop *Warham's* time, a Predecessor of his was expelled for less than was proved against him. And I found that true which one of my Visitors had formerly told me, namely, That Sir *Nathaniel Brent* had so carried himself in that College, as that if he were guilty of the like, he would lay his Key under the Door, and be gone, rather than come to answer it. Yet I did not think it fit to proceed so rigidly. But while I was going to open some of the Particulars against him, Mr. *Nicolas* cut me off, and told the Lords, this was to scandalize their Witnesses. So I forbore.

XI. Then followed the last Charge of this Day, concerning a Book of Dr. *Bastwick's*, for which he was censured in the High-Commission. The Witnesses

* The Archbishop had collected many Papers, Decrees, and Precedents, to assert his Privilege of visiting the Universities, in Right of his See, about the Year 1635. Which being seized on by Prynne, among his other Papers at Lambeth, were by him, after the Archbishop's Death, published in his own Name, with this Title, *The Plea of the University of Oxford refuted*, &c. London 1647. eight Sheets in 4to. H. W.

nesses in this Charge were three. Mr. *Burton*, a mortal Enemy of mine, and so he hath shewed himself: Mrs. *Bastwick* a Woman and a Wife, and well tutored: for she had a Paper and all written which she had to say; tho' I saw it not till 'twas too late. And Mr. *Hunscot*, a Man that comes in to serve all turns against me, since the Sentence passed against the Printers for *Thou shalt commit Adultery*.

In the Particulars of this Charge, 'tis first said, That this Book was written *contra Episcopos Latiales*. But how cunningly soever this was pretended, 'tis more than manifest, it was purposely written and divulged against the Bishops and Church of *England*. Secondly, That I said that Christian Bishops were before Christian Kings: So *Burton* and Mrs. *Bastwick*. And with due Reverence to all Kingly Authority be it spoken, who can doubt but that there were many Christian Bishops, before any King was Christian? Thirdly, Mr. *Burton*

says, That I applied those Words in the Psalm, *Whom thou may'st make Princes in all Lands*, to the Bishops.

For this, if I did err in it, many of the Fathers of the Church mist me, who interpret that place so: And if I be mistaken, 'tis no Treason. But I shall ever follow their Comments before Mr. *Burton's*. Fourthly, Mrs. *Bastwick* says that I then said, *No Bishop, and no King*: If I did say so, I learned it of

Conf. at
Hampton-
Court, p. 84.

a wife and experienced Author, King *James*, who spake it out and plainly in the Conference at *Hampton-Court*.

And I hope it cannot be Treason in me to repeat it. Fifthly, Mrs. *Bastwick* complained, That I committed her Husband close Prisoner. Not I, but the High-Commission; not close Prisoner to his Chamber, but to the Prison, not to go abroad with his Keeper; which is all the close Imprisonment which I ever knew that Court use. Lastly, The Pinch of this Charge, is, That I said

I received my Jurisdiction from God, and from Christ; contrary to an Act of Parliament, which says, Bishops derive their Jurisdiction from the King. This is witnessed by all three, and that Dr. *Bastwick* read the Statute. That Statute speaks plainly of Jurisdiction *in Foro contentioso*, and Places of Judicature, and no other. And all this forinsecal Jurisdiction, I and all Bishops in *England* derive from the Crown. But my Order, my Calling, my Jurisdiction *in Foro Conscientie*, that is from God, and from Christ, and by Divine and Apostolical Right. And of this Jurisdiction it was that I then spake (if I named Jurisdiction at all, and not my Calling in general.) For I then sat in the High-Commission, and did exercise the former Jurisdiction under the Broad Seal, and could not be so simple to deny the Power by which I then sat. Beside, the Canons of the Church of *England*, to which I have subscribed, are plain

Can. 1.

for it. Nay farther, the Use and Exercise of my Jurisdiction *in Foro Conscientie*, may not be but by the Leave and Power of the King within his Dominions. And if Bishops and Presbyters be all one Order (as these Men contend for) then Bishops must be *Jure Divino*, for so they maintain that Presbyters are. 'This part of the Charge Mr. *Browne* pressed in his Report to the House of Commons; and when I gave this same Answer, he in his Reply said nothing but the same over and over again, save that he said, I fled to he

'knew not what inward Calling and Jurisdiction: 'which Point, as I expressed it, if he understood 'not, he should not have undertaken to judge me.'

The 16th of May I had an Order from the Lords, for free Access of four of my Servants to me.

On Friday, May 17. I received a Note from the Committee, that they intended to proceed upon part of the sixth Original Article remaining, and upon the seventh; which seventh Article follows *in hæc Verba*.

VII. That he hath traitorously endeavoured to alter and subvert God's true Religion by Law established in this Realm, and instead thereof to set up Popish Superstition and Idolatry: and to that end hath declared and maintained in Speeches and printed Books divers Popish Doctrines and Opinions, contrary to the Articles of Religion established. He hath urged and enjoined divers Popish and Superstitious Ceremonies, without any warrant of Law; and hath cruelly persecuted those who have opposed the same, by corporal Punishment and Imprisonment; and most unjustly vexed others, who refused to conform thereto, by Ecclesiastical Censures of Excommunication, Suspension, Deprivation, and Degradation, contrary to the Law of this Kingdom.

The Tenth Day of my Hearing.

MONDAY, May 20. 1644. This Day Mr. Serjeant *Wild* undertook the Business against me. And at his entrance he made a Speech, being now to charge me with Matter of Religion. In this Speech he spake of a Tide, which came not in all at once: And so he said it was in the intended Alteration of Religion. First, A Connivance, then a Toleration, then a Subversion. Nor this, nor that: but a Tide it seems he will have of Religion. And I pray God his Truth (the True Protestant Religion here established) sink not to so low an Ebb, that Men may with ease wade over to that side, which this Gentleman seems most to hate. He fears both Ceremonies and Doctrine: but in both he fears where no Fear is; which I hope shall appear. He was pleased to begin with Ceremonies.

I. In this he charged first my Chapel at *Lambeth*, and Innovation in Ceremonies there.

1. The first Witness for this was Dr. *Fealy*: he says, (1.) There were Alterations since my Predecessor's time. And I say so too, or else my Chapel must lie more undecently than is fit to express. He says, I turned the Table North and South. The Injunction says it shall be so. 'And then the Innovation

Injun. of 2.
Elix. fine.

'was theirs in going from, not mine 'in returning to that way of placing it. Here Mr. *Browne*, in his last Reply in the House of Commons, said, That I cut the Injunction short, 'because in the Words immediately following 'tis ordered, That *this Place of standing shall be altered, when the Communion is administered*. But first, 'the Charge against me is only about the Place of 'it; of which that Injunction is so careful, that it 'commands, That *when the Communion is done, it 'be placed where it stood before*. Secondly, it was 'never charged against me, that I did not remove 'it at the time of Communion, nor doth the

'Reason expressed in the Injunction require it; which is, *When the Number of Communicants is great, and that the Minister may be the better heard of them.* Neither of which was necessary in my Chapel, where my Number was not great, and all might easily hear.'

(2.) The second Thing which Dr. Featly said, was in downright Terms, That the Chapel lay nastily, all the time he served in that House. Was it one of my Faults too, to cleanse it?

(3.) Thirdly, He says, the Windows were not made up with coloured Glafs, till my Time. The Truth is, they were all shameful to look on, all diversly patched, like a poor Beggar's Coat. Had they had all white Glafs, I had not stirred them. And for the Crucifix, he confesses it was standing in my Predecessor's time, tho' a little broken: so I did but mend it, I did not set it up (as was urged against me.) 'And it was

In his Reply. 'utterly mistaken by Mr. Browne, that I did repair the Story of those Windows, by their like in the Mass-Book. No, but I and my Secretary made out the Story, as well as we could, by the Remains that were unbroken. Nor was any Proof at all offered, that I did it by the Pictures in the Mass-Book; but only Mr. Prynne testified, that such Pictures were there; whereas this Argument is of no Consequence: There are such Pictures in the Missal, therefore I repaired my Windows by them. The Windows contain the whole Story from the Creation to the Day of Judgment: three Lights in a Window; the two Side-Lights contain the Types in the Old Testament, and the Middle-Light the Antitype and Verity of Christ in the New: And I believe the Types are not in the Pictures in the Missal. In the mean time, I know

Calv. 1 Instit. c. 11. § 12. 'no Crime or Superstition in this History. And tho' Calvin do not approve Images in Churches, yet he doth approve very well of them which contain a History; and says plainly, that these have their use, *in docendo & admonendo*, in teaching and admonishing the People: And if they have that use, why they may not instruct in the Church, as well as out, I know not.

Hom. of Idol.
par. 2. To. 2.
p. 27. fine.
3 & 4 Ed. VI.
c. 10.

'Nor do the Homilies in this Particular differ much from Calvin.' But here the Statute of Edw. VI. was charged against me, which requires the Destruction of all Images, as well in Glafs-windows, as elsewhere.

'And this was also earnestly pressed by Mr. Browne, when he repeated the Sum of the Charge against me in the House of Commons.' To which I answered at both times: First, That the Statute of Edw. VI. spake of other Images; and that Images in Glafs-Windows were neither mentioned, nor meant in that Law: the Words of the Statute are, *Any Images of Stone, Timber, Alabaster or Earth, graven, carved or painted, taken out of any Church, &c. shall be destroyed, &c.* and not reserved to any superstitious Use. So here's not a Word of Glafs-windows, nor the Images that are in them. Secondly, that the contemporary Practice (which is one of the best Expounders of the Meaning of any Law) did neither destroy all coloured Windows, tho' Images were in them, in the Queen's time, nor abstain from setting up of new, both in her and King James's time. And as the Body of this Statute is utterly mistaken, so is the Penalty too; which, for the first and second Offence, is but

a small Fine, and but Imprisonment at the King's Will for the third. 'A great way short of Punishment for Treason. And I could not but wonder, that Mr. Browne should be so earnest in this Point, considering he is of *Lincolns-Inn*, where Mr. Prynne's Zeal hath not yet beaten down the Images of the Apostles in the fair Windows of that Chapel; which Windows also were set up new long since that Statute of Edw. VI. And 'tis well known, that I was once resolved to have returned this upon Mr. Browne in the House of Commons, but changed my Mind, lest thereby I might have set some furious Spirit on work to destroy those harmless goodly Windows, to the just Dislike of that worthy Society.'

But to the Statute Mr. Browne added, That the Destruction of all Images, as well in Windows, as elsewhere, was commanded by the Homilies of the Church of *England*, and those Homilies confirmed in the Articles of Religion, and the Articles by Act of Parliament. This was also urged before; and my Answer was, First, That tho' we subscribed generally to the Doctrine of the Homilies, as good; yet we did not express, or mean thereby to justify and maintain every particular Phrase or Sentence contained in them. And Secondly, That the very Words of the Article to which we subscribe, are, *That the Homilies do contain a godly and a wholesome Doctrine, and necessary for these Times.* Godly, and wholesome for all Times; but necessary for those, when People were newly weaned from the Worship of Images: afterwards, neither the Danger nor the Scandal alike. 'Mr. Browne in his Reply said, That hence the Doctrine contained in the Homilies was wholesome and good, it must needs be necessary also for all Times. But this worthy Gentleman is herein much mistaken. Strong Meat, as well spiritual as bodily, is good and wholesome; but tho' it be so, yet if it had been necessary at all Times, and for all Men, the Apostle would never have fed the *Corinthians* with Milk, and not with Meat, 1 Cor. iii. 1, 2. The Meat always good in itself, but not necessary for them which were not able to bear it.'

(4.) The fourth Thing which Dr. Featly testifies, is, That there were Bowings at the coming into the Chapel, and going up to the Communion-Table, 'This was usual in Queen Elizabeth's time, and of old, both among Jews, as appears in the Story of *Hezekiah*, 2 Chron. xxix. 28. and among Christians, as is evident in *Rhenanus's Notes upon Tertullian.*' And one of them, which have written against the late Canons, confesses it was usual in the Queen's Time; but then adds, *That that was a Time of Ignorance.* What, a Time of such a Reformation, and yet still a Time of Ignorance! I pray God the opposite be not a Time of Profaneness, and all is well. 'Mr. Browne, in the Sum of his Charge given me in the House of Commons, instanced in this also. I answered as before, with this Addition, *Shall I bow to Men in each House of Parliament, and shall I not bow to God in his House, whether I do, or ought to come to worship him? Surely I must worship God, and bow to him, tho' neither Altar nor Communion-Table be in the Church.*'

(5.) For Organs, Candlesticks, a Picture of a History at the back of the Altar, and Copes at

B. Rhenani
Annot. in
Tert. de Co-
ron. Mil. p.
40.

Bp. Morton de
Missal. l. 6. c. 5.

Com-

Communion and Consecrations; all which Dr. *Featly* named: First, These Things have been in use ever since the Reformation. And Secondly, Dr. *Featly* himself did twice acknowledge that it was in my Chapel, as it was at *Whitehall*; no difference. And it is not to be thought, that Queen *Elizabeth* and King *James* would have endured them all their Time in their own Chapel, had they been Introductions for Popery. And for Copes, they are allowed at Times of Communion, by the Canons of the Church. So that these, all or any, are very poor Motives from whence to argue an Alteration of Religion.

2. The second Witness against my Chapel was Sir *Nathaniel Brent*: But he says not so much as Dr. *Featly*; and in what he doth say, he agrees with him, saving that he cannot say, whether the Picture at the back of the Communion-Table, were not there before my time.

3. The third Witness for this Charge was one Mr. *Boreman*, who came into my Chapel at Prayers-time, when I had some new Plate to consecrate for use of the Communion; and I think it was brought to me for that end by Dr. *Featly*. This Man says first, He then saw me bow, and wear a Cope. That's answered. Secondly, That he saw me consecrate some Plate; that in that Consecration I used some part of *Solomon's* Prayer at the Dedication of the Temple; and that in my Prayer I did desire God to accept those Vessels. No Fault in any of the three. For in all Ages of the Church, especially since *Constantine's* time, that Religion hath had publick allowance, there have been Consecrations of sacred Vessels, as well as

^a Tho. p. 3.
q. 63. A. 6.
ad Secundum.

of Churches themselves. ^a And these inanimate Things are holy, in that they are deputed and dedicated to

the Service of God. And we are said to minister about holy Things, 1 Cor. ix. 13. And the Altar is said to sanctify the Gift, St. *Matth.* xxiii. 19. which it could not do, if itself were not holy. So then, if there be no Dedication of these Things to God, no Separation of them from common use, there's neither Thing nor Place holy: And then no Sacrilege; no Difference between Churches and com-

mon Houses, between Holy Tables

Injunct. of Q.
Eliz. in fine.

(so the Injunction calls them) and ordinary Tables. But I would have no Man deceive himself; Sacrilege is a

grievous Sin, and was severely punished, even among the Heathen. And St. *Paul's* Question puts it home, would we consider of it; *Thou which abhorrest Idols, committest thou Sacrilege?* Rom. ii. 22. Thou which abhorrest Idols, to the very defacing of Church-windows, dost thou, thou of all other, commit Sacrilege, which the very Worshippers of Idols punished? And this being so, I hope my use of a part of *Solomon's* Prayer, or the Words of my own Prayer (*That God would be pleased to accept them*) shall not be reputed Faults.

But here stepped in Mr. *Prynn*, and said, This was according to the Form in *Missali parvo*. But 'tis well known I borrowed nothing thence. All that I used was according to the Copy of the late Reverend Bishop of *Winchester*, Bishop *Andrews*, which I have by me to be seen, and which himself used all his time.

II. Then from my Chapel he went to my Study; and there the second Charge was, 1. That I had a Bible with the five Wounds of Christ fair upon the Cover of it. This was curiously wrought in Needle-

work. The Bible was so sent me by a Lady, and she a Protestant; I was loth to deface the Work: but the Bible I kept in my Study from any Man's Hand or Eye, that might take offence at it. 'Mr.

'*Browne* touched upon this, and my Answer was 'the same, saving that I mentioned not the Lady. '2. That I had in my Study a Missal, and divers 'other Books belonging to the *Roman* Liturgy.' My Lords, 'tis true, I had many; but I had more of the *Greek* Liturgies than the *Roman*: And I had as many of both, as I could get. And I would know, how we shall answer their Errors, if we may not have their Books? I had Liturgies, all I could get, both antient and modern. I had also the *Alcoran* in divers Copies. If this be an Argument, why do they not accuse me to be a Turk?

3. To this Charge was added my private Prayer-book, which Mr. *Prynn* had taken from me in his Search. Where first I observed, That the Secrets between God and my Soul were brought to be divulged in open Court. 'Nihil gravius dicam: 'But see whether it can be parallel'd in Heathenism.' But what Popery was found in these Prayers? Why, First, they said, My Prayers were in Canonical Hours, *Hora sexta*, & *Hora nona*, &c. I enjoined myself several Hours of Prayer; that, I hope, is no Sin: And if some of them were Church-Hours, that's no Sin neither: *Seven times a Day will I praise thee*, (Psal. cxix.) was the Prophet *David's*, long before any Canonical Hours. And among Christians they were in use before Popery got any head. God grant this may be my greatest Sin. Secondly, The Prayer which I made at the Consecration of the Chapel at *Hammer-smith*. I desired that might be read, or any other. No Offence found. Thirdly, The Word *Prostratus* in my private Devotions, before I came to the Eucharist. If I did so to God, what's that to any Man? But I pray, in all this curious Search, ('and Mr. 'Prynn here, and all along, spared no Pains) why were no Prayers to the B. Virgin and the Saints found, if I were so swallowed up in Popery?

III. From my Study he went on to my Gallery. The Serjeant would find out Popery ere he had done. Thence I was charged with three Pictures: The first of them was a fair Picture of the four Fathers of the Western Church, St. *Ambrose*, St. *Jerome*, St. *Augustine* and St. *Gregory*. It was as lawful to have this Picture as the Picture of any other Men. Yea, but there was a Dove pictured over them, and that stood for the Holy Ghost. That's more than any Witness did or durst depose. The Second, was the *Ecce Homo*, as *Pilate* brought Christ forth, and shewed him to the Jews. This Picture is common, and I yet know no hurt of it, so it be not worshipped; and that I detest as much as any Man, and have written as much against it as any Protestant hath: And it was then read in part. And for both these Pictures I answered out of *Calvin*; That it is lawful to make, and have the Picture of any Things, *quorum sint capaces Oculi*, which may be seen. Now the Dove was visible and seen, St. *John* i. 32, 33. That's for the first Picture. And for the second, the *Ecce Homo*, why did *Pilate* say *Ecce*, but that the Jews might and did see him? *John* xix. So both Pictures lawful by the Rule laid down by *Calvin*.

'Mr. *Browne* charged against both these Pictures 'very warmly. And when I had answered as before, in his Reply he fell upon my Answer; and 'said

Cont. Fisher.
§ 33. p. 279.

L. 1. Inst. c.
11. § 12.

' said it was in the Homilies, (but either he quoted not the Place, or else slipped it) That every Picture of Christ was a Lye, because whole Christ cannot be pictured. But by this Argument it is unlawful to picture any Man, for the whole Man cannot be pictured. Who ever drew a Picture of the Soul? And yet who so simple as to say the Picture of a Man is a Lye? Besides, the *Ecce Homo*, is a Picture of the Humanity of Christ only, which may as lawfully be drawn as any other Man. And it may be I may give farther Answer, when I see the Place in the Homilies.'

The third Picture found in my Gallery, I marvel why it was produced; for it relates to that of our Saviour, St. John x. 1. 2. where he says, That the Shepherd enters into the Sheepfold by the Door, but they which climb up to enter another way, are Thieves and Robbers. And in that Picture the Pope and the Friars are climbing up to get in at the Windows: So 'tis as directly against Popery as can be. Besides, it was witnessed before the Lords by Mr. *Walter Dobson*, an ancient Servant, both to Archbishop *Bancroft* and *Abbot*, That both the *Ecce Homo* and this Picture, were in the Gallery when he came first to *Lambeth-House*, which was about forty Years since: So it was not brought thither by me to countenance Popery. *And I hope your Lordships do not think me such a Fool; if I had an Intention to alter Religion, I should hang the Profession of it openly in my Gallery, thereby to bring present Danger upon myself, and destroy the Work which, themselves say, I intended cunningly. And if there be any Error in having and keeping such Pictures, yet this is no sufficient Proof that I had any Intention to alter the Religion established, which I desire may be taken notice of once for all.

IV. From my Gallery the Serjeant crossed the Water to *White-Hall*, (and sure in haste; for at that time he took no leave of Captain *Guest*, or his Wife, before he left *Lambeth*;) At the Court he met Sir *Henry Mildmay*. 1. This Knight being produced by him against me, says, That in my time Bowings were constantly used in the Chapel there. But, First, Dr. *Featly* told your Lordships, there was nothing in my Chapel but as it was in use at *White-Hall*. So all the Popery I could bring, was there before. And, Secondly, if bowing to God in his own House be not amiss, (as how it should I yet know not) then there can be no Fault in the

S. Hierom.
adversus Vi-
gilantium.

constant doing of it: *Quod semel fecisse bonum est, non potest malum esse, si frequenter fiat*: So St. *Jerome* teaches.

Thirdly, I am very sorry, that any Reverence to God in his House, and in the time of his Worship, should be thought too much. I am sure the Homilies, so often pressed against me, cry out against the Neglect of Reverence in the Church. This Passage was read; and by this it seems, the Devil's Cunning was, so soon as he saw Superstition thrust out of this Church, to bring Irreverence and Profaneness in. Here Mr. *Browne* having pressed this Charge, replies upon me in his last, That I would admit no Mean, but either there must be Superstition or Profaneness; whereas my Words can infer no such thing. I

* All these Pictures were placed in the Gallery by Cardinal Poole, when he built it, and continue there still, having not been defaced in the time of the Rebellion, as were the Windows of the Chapel, and the Chapel itself converted into a Dancing-Room. Archbishop Parker's Tomb in the middle of it being first beat down, and his Bones cast upon the Dunghill.

' said *this was the Devil's Practice*: I would have brought in the Mean between them, and preserved it too, by God's Blessing, had I been let alone.'

2. Sir *Henry* says next, That he knew of no Bowings in that Chapel before my time, but by the Right Honourable the Knights of the Garter at their Solemnity. No time else? Did he never see the King his Master offer before my time? Or did he ever see him offer, or the Lord Chamberlain attend him there, without Bowing and Kneeling too? And for the Knights of the Garter, if they might do it without Superstition, I hope I and other Men might do so too: Especially since they were ordered by *Hen. 5.* to do it with great Reverence, *ad modum Sacerdotum*: Which proves the Antiquity of this Ceremony in *England*.

In Registro
Windesorien-
si, p. 65. in
communibus
lib. the Black
Book.

3. He farther says, There was a fair Crucifix in a piece of Hangings hung up behind the Altar, which he thinks was not used before my time. But that he thinks so, is no Proof. 4. He says, This fair Piece was hanged up in the *Passion Week*, as they call it. As they call it? Which they? Will he shut out himself from the *Passion Week*? All Christians have called it so for above a Thousand Years together; and is that become an Innovation too, as they call it? 5. Fifthly, He says, The hanging up of this Piece was a great Scandal to Men but indifferently affected to Religion. Here I humbly crave leave to observe some few Particulars. First, That here's no Proof so much as offer'd, That the Piece was hung up by me, or my Command. Secondly, That this Gentleman came often to me to *Lambeth*, and professed much Love to me; yet was never the Man that told me his Conscience, or any Man's else was troubled at it: which had he done, that should have been a Scandal to no Man. Thirdly, That if this were scandalous to any, it must be offensive in regard of the Workmanship; or *quatenus tale*, as it was a Crucifix: not in regard of the Work certainly, for that was very exact. And then if it were because it were a Crucifix, why did not the old one offend Sir *Henry's* Conscience as much as the new? For the Piece of Hangings, which hung constantly all the Year at the back of the Altar, thirty Years together, upon my own Knowledge, and somewhat above, long before, (as I offer'd proof by the Vestry-Men) and so all the time of Sir *Henry's* being in Court, had a Crucifix wrought in it, and yet his Conscience never troubled at it. Fourthly, That he could not possibly think that I intended any Popery in it, considering how hateful he knew me to be at *Rome*, beyond any my Predecessors since the Reformation: For so he protested at his return from thence to myself. And I humbly desire a *Salvo*, that I may have him called to witness it: which was granted.

* Et observa-
batur ab om-
nibus. Vide
hinc (and be
no way super-
stitious). in
Ignat. Epist.
ad Philip. li-
citur. 10. c. 3.

When they had charged me thus far, there came up a Message from the House of Commons. I was commanded to withdraw: But that Business requiring more haste, I was dismissed with a Command to attend again on *Wednesday, May 22.* But then I was put off again to *Monday, May 27.* And

after

after much pressing for some Maintenance, considering how oft I was made attend, and with no small Expence, on May 25. I had an Order from the Committee of Sequestrations, to have Two hundred Pounds allowed me out of my own now sequester'd Estate: It was a Month before I could receive this. And this was all that ever was yet allowed me since the Sequestration of my Estate, being then of above two Years continuance.

The Eleventh Day of my Hearing.

I. **M**ONDAY, May 27. 1644. This Day Mr. Serjeant *Wilde* followed the Charge upon me; and went back again to my Chapel-windows at *Lambeth*: Three Witnesses against them. The first was one *Pember* a Glazier. He says, there was in one of the Glass-windows on the North-side, the Picture of an old Man with a Glory, which he thinks was of God the Father, But his thinking so is no Proof; nor doth he express in which of the North-windows he saw it. And for the Glory, that is usual about the Head of every Saint. And Mr. *Browne*, who was the second Witness, and was trusted by me for all the Work of the Windows, both at *Lambeth* and *Croydon*, says expressly upon his Oath, that there was no Picture of God the Father in the Windows at *Lambeth*. But he says, he found a Picture of God the Father in a Window at *Croydon*, and Archbishop *Cranmer's* Arms under it; and that he pulled it down. So it appears this Picture was there before my time, and continued there in so zealous an Archbishop's time, as *Cranmer* was well known to be; and it was pulled down in my time. Neither did I know till now, that ever such a Picture was there; and the Witness deposes he never made me acquainted with it. The third Witness was Mr. *Prynn*. He says, He had taken a Survey of the Windows at *Lambeth*. And I doubt not his Diligence. He repeated the Story in each Window. I have told this before, and shall not repeat it. He says, the Pictures of these Stories are in the Mafs-Book. If it be so, yet they were not taken thence by me. Archbishop *Morton* did that Work, as appears by his Device in the Windows. He says, the Story of the Day of Judgment was in a Window *in atrio*, that must not come into the Chapel. Good Lord! whither will Malice carry a Man? The Story opposite is of the Creation; and what, must not that come into the Chapel neither? The Chapel is divided into an inner and outer Chapel: in this outward the two Windows mentioned are; and the Partition or Skreen of the Chapel, which makes it two, was just in the same Place where now it stands, from the very building of the Chapel, for ought can be proved to the contrary. So neither I, nor any Man else, did shut out the Day of Judgment. He says, I had read the Mafs-book diligently. How else should I be able really to confute what is assigns in it? He says, I had also a Book of Pictures concerning the Life of Christ in my Study. And it was fit for me to have it; for some Things are to be seen in their Pictures for the People, which their Writings do not, perhaps dare not avow.

II. The second Charge of this Day, was about the Administration of the Sacrament in my Chapel. The Witnesses two.

The first was Dr. *Haywood*, who had been my Chaplain in the House. They had got from others the Ceremonies there used, and then brought him

upon Oath. He confessed he administered in a Cope; and the Canon warranted it. He confesses (as it was urged) that he fetched the Elements from the Credential (a little Side-Table as they called it) and set them reverently upon the Communion-Table. Where's the Offence? For first, the Communion-Table was little, and there was hardly room for the Elements to stand conveniently there, while the Service was in Administration: And, Secondly, I did not this without Example; for both Bishop *Andrews*, and some other Bishops, used it so all their time, and no Exceptions taken. The second Witness was *Rob. Cornwall*, one of my menial Servants: A very forward Witness he shewed himself, but said no more than is said and answered before; both of them confessing that I was sometimes present.

III. The third Charge was about the Ceremonies at the Coronation of his Majesty. And, first, out of my Diary, Feb. 2. 1625. 'tis urged, that I carried back the *Regalia*, offered them on the Altar, and then laid them up in their Place of Safety. I bare the Place at the Coronation of the Dean of *Westminster*, and I was to look to all those Things, and their safe return into Custody, by the Place I then executed; and the offering them could be no Offence: For the King himself offers upon solemn Days; and the Right Honourable the Knights of the Garter offer at their Solemnity: And the Offertory is established by Law in the Common-Prayer Book of this Church: And the Prebendaries assured me it was the Custom for the Dean so to do. Secondly, They charged a Marginal Note in the Book upon me, that the Unction was *in formâ Crucis*. That Note doth not say that it ought so to be done; but it only relates the Practice, what was done. And if any Fault were in anointing the King in that Form, it was my Predecessor's Fault, not mine; for he so anointed him. Thirdly, they say, there was a Crucifix among the *Regalia*, and that it stood upon the Altar at the Coronation, and that I did not except against it. My Predecessor executed at that time, and I believed would have excepted against the Crucifix had it stood there: But I remember not any there; yet if there were, if my Predecessor approved the standing of it, or were content to connive at it, it would have been made but a Scorn had I quarrel'd it. Fourthly, They say, One of the Prayers was taken out of the *Pontifical*. And I say, if it were, it was not taken thence by me: And the Prayers are the same that were used at King *James's* Coronation: And so the Prayer be good (and here's no Word in it, that is excepted against) 'tis no matter whence 'tis taken.

Then leaving the Ceremonies, he charged me with two Alterations in the Body of the King's Oath. One added, namely these Words (*agreeable to the King's Prerogative*;) the other omitted, namely these Words, (*quæ Populus elegerit*, which the People have chosen, or shall chuse.) For this latter, the Clause omitted, that suddenly vanished; for it was omitted in the Oath of King *James*, as is confessed by themselves in the printed Votes of this present Parliament. But the other highly insisted on, as taking off the total Assurance which the Subjects have by the Oath of their Prince for the Performance

Can. Eccles.
Angl. 24.

Heylin affirm-
eth, that the
old Crucifix
being found a-
mong the Re-
galia, was then
placed upon
the Altar.
Life of Laud,
p. 144.

* P. 706.

Performance of his Laws. First, I humbly conceive this Clause takes off none of the Peoples Assurance; none at all. For the King's just and legal Prerogative, and the Subjects Assurance for Liberty and Property, may stand well together, and have so stood for Hundreds of Years. Secondly, That Alteration, whatever it be, was not made by me; nor is there any Interlining or Alteration so much as of a Letter found in that Book. Thirdly, If any thing be amiss therein, my Predecessor gave that Oath to the King, and not I. I was merely ministerial both in the Preparation, and at the Coronation itself, supplying the place of the Dean of *Westminster*.

After this Day's Work was ended, it instantly spread all over the City, that I had altered the King's Oath at his Coronation, and from thence into all parts of the Kingdom; as if all must be true which was said at the Bar against me, what Answer soever I made. The People, and some of the Synod, now crying out, That this one thing was enough to take away my Life. And tho' this was all that was charged this Day concerning this Oath, yet seeing how this Fire took, I thought fit, the next Day that I came to the Bar, to desire that the Books of the Coronation of former Kings, especially those of Queen *Elizabeth* and King *James*, might be seen and compared, and the Copies brought into the Court, both from the *Exchequer*, and such as were in my Study at *Lambeth*, and a fuller Inquisition made into the Business; in regard I was as innocent from this Crime, as when my Mother bare me into the World. A *Salvo* was entered for me upon this. And every Day that I after came to the Bar, I called upon this Business: But somewhat or other was still pretended by them which managed the Evidence, that I could not get the Books to be brought forth, nor any thing to be done, till almost the last Day of my Hearing. Then no Books could be found in the *Exchequer*, nor in my Study, but only that of King *James*; whereas, when the Keys were taken from me, there were

^a *Pag. 706.* divers Books there, as is confessed in the printed Votes of this Parliament, and one of them with a Watcher-Sattin cover, now missing: And whether this of King *James* (had not my Secretary, who knew the Book, seen it drop out of Mr. *Prynn's* Bag) would not have been concealed too, I cannot tell. At last, the Book of King *James's* Coronation, and the other urged against me concerning King *Charles*, were seen and compared openly in the Lords House, and found to be the same Oath in both, and no Interlining or Alteration in the Book charged against me.

This Business was left by the Serjeant to Mr. *Maynard*, who made the most that could be out of my Diary against me: And so did Mr. *Browne*, when he came to give the Sum of the Charge against me, both before the Lords, and after in the House of Commons. And therefore for the avoiding of all tedious Repetition, and for that the Arguments which both used are the same, and because I hold it not fit to break a Charge of this moment into divers Pieces, or put them in different Places, I will here set down the whole Business together, and the Answer which I then gave.

Mr. *Browne*, in the Sum of the Charge against me in the Commons House, when he came to this Article, said, He was now come to the Business so much expected. And I humbly besought that

Honourable House, if it were a Matter of so great Expectation, it might be of as great Attention too, while I should follow that worthy Gentleman step after step, and answer as I went.

1. And, First, he went about to prove out of my Diary, that this Addition (*of the King's Prerogative*) to the Oath, was made by me. Thus he says, That *December 31. 1625.* I went to *Hampton-Court*. That's true. He says, That there, *Jan. 1.* I understood I was named with other Bishops to meet and consider of the Ceremonies about the Coronation; and that, *Jan. 4.* we did meet at *White-Hall* accordingly; and that, *Jan. 6.* we gave his Majesty an Answer. Not I, (as 'twas charged) but *We* gave his Majesty answer. So if the Oath had been changed by me, it must have been known to the Committee, and broken forth to my Ruin long since. Then he says, That *Jan. 16.* I was appointed to serve at the Coronation, in the room of the Dean of *Westminster*. That's no Crime: And 'tis added in the Diary, that this Charge was deliver'd unto me by my Predecessor. So he knew that this Service to attend at the Coronation was imposed upon me. He says next, That *Jan. 18.* the Duke of *Buckingham* had me to the King, to shew his Majesty the Notes we had agreed on, if nothing offended him. These were only Notes of the Ceremonies. And the other Bishops sent me, being puny, to give the Account. Then he says, *Jan. 23.* It is in my Diary, *Librum habui paratum*, I had a Book ready. And it was time, after such Meetings, and the Coronation being to follow *Feb. 2.* and I designed to assist and attend that Service, that I should have a Book ready: The Ceremonies were too long and various to carry them in Memory. And whereas 'tis urged, That I prepared and altered this Book, the Words in my Diary are *paratum habui*, I had the Book ready for my own use in that Service, Nor can *paratum habui* signify preparing or altering the Book. And, Thirdly, 'tis added there, That the Book which I had ready in my hands, did agree *per omnia cum libro Regali*. And if it did agree in all Things with the King's recorded Book then brought out of the *Exchequer*, where then is the Alteration so laboriously fought to be fasten'd on me? I humbly beseech you to mark this.

Yet out of these Premises put together, Mr. *Browne's* Inference was, That I made this Alteration of the Oath. But surely these Premises, neither single nor together, can produce any such Conclusion; but rather the contrary. Beside, Inference upon Evidence, is not Evidence, unless it be absolutely necessary; which all Men see that here it is not. But I pray observe: Why was such a sudden stay made at *Jan. 23.* whereas it appears in my Diary at *Jan. 31.* that the Bishops were not alone trusted with this Coronation-Business, *sed alii Proceres*, but other Great and Noble Men also? And they did meet that *Jan. 31.* and sat in Council about it. So the Bishops Meetings were but preparatory to ease the Lords, most of the Ceremonies being in the Churchway. And then can any Man think that these great Lords, when they came to review all that was done, would let the Oath be altered by me, or any other, so materially, and not check at it? 'Tis impossible.

2. Secondly,

2. Secondly, This Gentleman went on to charge this Addition upon me thus; There were found in my Study at *Lambeth* two Books of King *James's* Coronation, one of them had this Clause or Addition in it, and the other had it not; and we cannot tell by which he was crowned. Therefore it must needs be some wilful Error in me, to make choice of that Book which had this Addition in it, or some great Mistake. First, If it were a Mistake only, then it is no Crime: And wilful Error it could not be; for being named one of them that were to consider of the Ceremonies, I went to my Predecessor, and desired a Book, to see by it what was formerly done. He delivered me this now in question: I knew not whether he had more, or no; nor did I know that any one of them differed from other: Therefore no wilful Error. For I had no Choice to make of this Book which had the Addition, before that which had it not, but thankfully took that which he gave me. But, Secondly, if one Book of King *James's* Coronation, in which I could have no hand, had this Addition in it, (as is confessed) then was not this a new Addition of my making. And, Thirdly, it may easily be seen that King *James* was crowned by the Book which had this Addition in it; this being in a fair Carnation-Sattin Cover, the other in Paper, without a Cover, and unfit for a King's Hand, especially in such a great and publick Solemnity.

3. In the Third Place he said, There were in this Book twenty Alterations more, and all, or most in my Hand. Be it so, (for I was never suffered to have the Book to consider of) they are confessed not to be material. The Truth is, when we met in the Committee, we were fain to mend many Slips of the Pen, to make Sense in some Places, and good *English* in other. And the Book being trusted with me. I had Reason to do it with my own Hand, but openly at the Committee all. Yet two Things, as Matters of some Moment, Mr. *Browne* checked at.

(1.) The one was, That *Confirm* is changed into *Perform*. If it be so, *Perform* is the greater and more advantageous to the Subjects, because it includes *Execution*, which the other Word doth not. Nor doth this Word hinder, but that the Laws and Liberties are the People's already: For tho' they be their own, yet the King, by his Place, may and ought to perform the keeping and maintaining of them. I say, (if it be so) for I was never suffered to have this Book in my Hands, tho' roughly to peruse: Nor, under favour, do I believe this Alteration is so made, as 'tis urged. [In the Book which I have by me, and was transcribed from the other, it is *Confirm*.]

(2.) The other is, That the King is said to answer *I will*, for *I do*. But when will he? Why all the Days of his Life; which is much more than *I do*, for the present. So if this Change be made, 'tis still for the People's Advantage. [And there also 'tis *I do grant*.] And yet again, I say (if) for the Reason before given. Besides, in all the *Latin* Copies there is a Latitude left for them that are trusted, to add to those Interrogatories which are then put to the King any other that is just, in these Words, *Adjiciantur predictis Interrogationibus quæ juxta fuerint*. And such are these two mentioned, if they were made.

4. Mr. *Browne's* fourth and last Objection was, That I made this Alteration of the Oath, because it agrees (as he said) with my Judgment: For that in a Paper of Bishop *Harpsnett's* there is a

Marginal Note in my Hand, that *Salvo Jure Coronæ* is understood in the Oaths of a King. But, First, there's a great deal of Difference between *Jus Regis & Prærogativa*, between the Right and Inheritance of the King and his Prærogative, tho' never so legal. And with Submission, and until I shall be convinced herein, I must believe that no King can swear himself out of his native Right. Secondly, If this were, and still be an Error in my Judgment, that's no Argument at all to prove Malice in my Will: That because that is my Judgment for *Jus Regis*, therefore I must thrust *Prærogativam Regis*, which is not my Judgment, into a publick Oath which I had no Power to alter. These were all the Proofs which Mr. *Maynard* at first, and Mr. *Browne* at last, brought against me in this Particular. And they are all but conjectural, and the Conjectures weak. But that I did not alter this Oath by adding the *Prærogative*, the Proofs I shall bring are pregnant, and some of them necessary. They are these.

1. My Predecessor was one of the Grand Committee for these Ceremonies. That was proved by his Servants to the Lords. Now his known Love to the Publick was such, as that he would never have suffered me, or any other, to make such an Alteration. Nor would he have concealed such a Crime in me, loving me so well as he did.

2. 'Tis notoriously known that he crowned the King, and administer'd the Oath, (which was avowed also before the Lords by his antient Servants:) And it cannot be rationally conceived he would ever have administer'd such an alter'd Oath to his Majesty.

3. 'Tis expressed in my Diary, at Jan. 31, 1625. (and that must be good Evidence for me, having been so often produced against me) that divers great Lords were in this Committee for the Ceremonies, and did that Day sit in Council upon them. And can it be thought they would not so much as compare the Books? Or that comparing of them, they would endure an Oath with such an Alteration to be tender'd to the King? Especially since 'tis before confessed that one Copy of King *James's* Coronation had this Alteration in it, and the other had it not.

4. 'Tis expressed in my Diary, and made use of against me, at Jan. 23, 1625. that this Book urged against me did agree *per omnia cum Libro Regali*, in all things with the King's Book, brought out of the *Exchequer*. And if the Book that I then had, and is now insisted upon, did agree with that Book which came out of the *Exchequer*, and that in all things, how is it possible I should make this Alteration?

5. With much Labour I got the Books to be compared in the Lords House; that of King *James's* Coronation, and this of King *Charles*; and they were found to agree in all things to a Syllable. Therefore 'tis impossible this should be added by me. And this, I conceive, cuts off all conjectural Proofs to the contrary.

Lastly, In the printed Book of the Votes of this present Parliament, it is acknowledged, that the Oath given to King *James* and King *Charles* was the same. The same: therefore unaltered. And this Passage of that Book I then shewed the Lords in my Defence. To this Mr. *Maynard* then replied, That the Votes there mentioned were upon the Word *elegerit*, and the Doubt whe-

‘ther it should be *both chosen, or shall chuse*. I might not then answer to the Reply, but the Answer is plain. For, be the Occasion which led on the Votes what it will, as long as the Oath is acknowledged the same, ’tis manifest it could not be alter’d by me. And I doubt not, but these Reasons will give this Honourable House Satisfaction, that I added not this Particular of the Prerogative to the Oath.

‘Mr. Browne, in his last Reply, passed over the other Arguments I know not how. But against this, he took exception. He brought the Book with him, and read the Passage; and said, (as far as I remember) That the Votes had relation to the Word *chuse*, and not to this Alteration. Which is in effect the same which Mr. Maynard urged before. I might not reply by the Course of the Court, but I have again considered of that Passage, p. 706. and find it plain. Thus, first they say, They have consider’d of all the Alterations in the Form of this Oath, which they can find: therefore of this Alteration also, if any such were. Then they say, *Excepting that Oath which was taken by his Majesty and his Father King James*. There it is confessed, that the Oath taken by them was one and the same, called there *that Oath* which was taken by both. Where falls the Exception then? For ’tis said, *Excepting that Oath, &c.* Why it follows, *excepting that the Word chuse is wholly left out, as well hath chosen as will chuse*. Which is a most manifest and evident Confession, that the Oath of King James and King Charles was the same in all things, to the very leaving out of the Word *chuse*. Therefore it was the same Oath all along: no difference at all. For *Exceptio firmat Regulam in non Exceptis*; and here’s no Exception at all of this Clause of the Prerogative. Therefore the Oath of both the Kings was the same in that, or else the Votes would have been sure to mention it. Where it may be observed too, that Serjeant Wilde, though he knew these Votes, and was present both at the Debate and the Voting, and so must know that the Word *chuse* was omitted in both the Oaths; yet at the first he charged it eagerly upon me, that I had left this Clause of *chusing* out of King Charles’s Oath, and added the other. God forgive him. But the World may see by this, and some other Passages, with what Art my Life was sought for.

‘And yet before I quite leave this Oath, I may say ’tis not altogether improbable, that this Clause, *And agreeing to the Prerogative of the Kings thereof*, was added to the Oath in Edward VI’s or Queen Elizabeth’s time; and hath no relation at all to the *Laws of this Kingdom*, absolutely mentioned before in the beginning of this Oath; but only to the Words, *The Profession of the Gospel established in this Kingdom*: And then immediately follows, *And agreeing to the Prerogative of the Kings thereof*. By which the King swears to maintain his Prerogative, according to God’s Law, and the Gospel established, against all foreign Claims and Jurisdictions whatsoever. And if this be the meaning, he that made the Alteration, whoever it were (for I did it not) deserves Thanks for it, and not the Reward of a Traitor.’

IV. Now to return to the Day. The fourth Charge went on with the Ceremonies still. But Mr. Serjeant was very nimble; for he leaped from the Coronation at *Westminster*, to see what I did at *Oxford*.

1. There the first Witness is Sir *Nathaniel Brent*. And he says, The standing of the Communion-Table at *St. Mary’s* was alter’d. I have answered to this Situation of the Communion-Table already. And if it be lawful in one place, ’tis in another. For the Chapel of *Magdalen-College*, and *Christ-Church* Quire, he confesses he knows of no Direction given by me to either: nor doth he know whether I approved the things there done or no. So all this is no Evidence. For the Picture of the Blessed Virgin at *St. Mary’s* Door, as I knew nothing of it till it was done, so never did I hear any Abuse or Dislike of it after it was done. And here Sir *Nathaniel* confesses too, that he knows not of any Adoration of it, as Men passed the Streets or otherwise. When this Witness came not home, they urged the Statute of *Merton-College*, or the University, (§ 11.) where (if I took my Notes right) they say, I enjoined *debitam Reverentiam*. And as I know no fault in that Injunction or Statute, so neither do I know what due bodily Reverence can be given to God in his Church, without some Bowing or Genuflection.

2. The second Witness was Mr. *Corbett*. He says, That when decent Reverence was required by my Visitors in one of my Articles, he gave Reasons against it, but Sir *John Lambe* urged it still. First, My Lords, if Mr. *Corbett’s* Reasons were sufficient, Sir *John Lambe* was to blame in that; but Sir *John Lambe* must answer it, and not I. Secondly, It may be observed, that this Man by his own Confession, gave Reasons (such as they were) against due Reverence to God in his own House. He says, That Dr. *Frewen* told him from me, *That I wished he should do as others did at St. Mary’s, or let another execute his Place as Proctor*. This is but a Hearsay from Dr. *Frewen*, who being at *Oxford*, I cannot produce him. And if I had sent such a Message, I know no Crime in it. He says, That after this he desired he might enjoy in this particular the Liberty which the King and the Church of *England* gave him. He did so: and from that Day he heard no more of it, but enjoyed the Liberty which he asked. He says, Mr. *Channel* desired the same Liberty as well as he. And Mr. *Channel* had it granted as well as he. He confesses ingenuously, that the Bowing required, was only toward, not to the Altar. And to the Picture at *St. Mary’s* Door, he says he never heard of any Reverence done to it; and doth believe, that all that was done at *Christ-Church* was since my time. But it must be his Knowledge, not his Belief, that must make an Evidence.

3. The third Witness was one Mr. *Bendye*. He says, There was a Crucifix in *Lincoln-College* Chapel since my time. If there be, ’tis more than I know. My Lord of *York* that now is, when he was Bishop of *Lincoln*, worthily bestowed much Cost upon that Chapel; and if he did set up a Crucifix, I think it was before I had ought to do there. He says, There was Bowing at the Name of Jesus. And God forbid but there should; and the Canon of the Church *Can. 18.* requires it. He says, There were *Latin* Prayers in *Lent*, but he knows not who joined it. And then he might have held his peace. But there were *Latin* Sermons and Prayers on *Ash-Wednesday*, when few came to Church, but the *Lent* Proceaders, who understood them. And in divers Colleges they have their Morning-Prayers in *Latin*

^b And the third Witness agrees in this.

Latin, and had so, long before I knew the University. The last thing he said, was, That there were Copies used in some Colleges, and that a Traveller should say, upon the sight of them, *That he saw just such a thing upon the Pope's back.* This wise Man might have said as much of a Gown: He saw a Gown on the Pope's back; therefore a Protestant may not wear one. Or entering into *St. Paul's*, he may cry, *Down with it! for I saw the Pope in just such another Church in Rome.*

4. Then was urged the Conclusion of a Letter of mine sent to that University: the Words were to this effect; *I desire you to remember me a Sinner, quoties coram Altare Dei procidatis.* The Charge lay upon the Word *procidatis*; which is no more, than that when they there fall on their knees, or prostrate to Prayer they would remember me. In which Desire of mine, or Expression of it, I can yet see no Offence. No, nor in *coram Altare*, their solemnest time of Prayer being at the Communion. Here Mr. *Browne* aggravated the things done in that University; and fell upon the Titles given me in some Letters from thence: but because I have answered those Titles already, I refer the Reader thither, and shall not make here any tedious Repetition. Only this I shall add, That in the Civil Law 'tis frequent to be seen, that not Bishops only one to another, but the great Emperors of the World have commonly given that Title of *Sanctitas vestra*, to Bishops of meaner place than myself; to say no more. But here Mr. *Browne*, in his last Reply, was pleased to say, This Title was not given to any Bishop of *England*. First, If I had my Books about me, perhaps this might be refuted. Secondly, Why should so grave a Man as he so much disparage his own Nation? Is it impossible (be my Unworthiness what it will) for an *English* Bishop to deserve as good a Title as another? Thirdly, Be that as it may, if it were (as certainly it was) lawfully given to other Bishops, though they not *English*, then it is neither Blasphemy, nor Assumption of Papal Power, as was charged upon it.

V. From *Oxford* Mr. Serjeant went to *Cambridge*. And I must be guilty, if ought were amiss there too. For this fifth Charge were produced three Witnesses, Mr. *Wallis*, Mr. *Greece*, and Mr. *Seaman*. Their Testimonies agreed very near: so I will answer them together. First, they say, That at *Peter-House* there were Copes and Candlesticks, and Pictures in the Glass-Windows; and the like. But these things I have often answered already, and shall not repeat. They say, The chief Authors of these things were Dr. *Wren* and Dr. *Cofens*. They are both living, why are they not called to answer their own Acts? For here's yet no shew of Proof to bring any thing home to me. For no one of them says, that I gave direction for any of these. No, (says Mr. Serjeant) but why did I tolerate them? First, No Man complained to me. Secondly, I was not Chancellor, and endured no small Envy for any little thing that I had occasion to look upon in that place. And Thirdly, This was not the least Cause, why I followed my Right for Power to visit there. And though that Power was confirmed to me, yet the Times have been such, as that I did not then think fit to use it. It would have but heaped more Envy on me who bare too much already. As for Mr. *Greece*, who hath laboured much against me in

all this Business, God forgive him; and while he inherits his Father's ill Affections to me, God preserve him from his Father's End.

VI. From *Cambridge* he went to the Cathedrals, and first to *Canterbury*. Here the Charge is bowing *versus Altare*; the two Witnesses, two Prebendaries of that Church, Dr. *Jackson* and Dr. *Blechen-den*. And first, Dr. *Jackson* says, the bowing was *versus Altare*; so not to, but toward the Altar: and Dr. *Blechen-den* says, it was the Adoration of the high Majesty of God, to whom, if no Altar were there, I should bow. Dr. *Jackson* says, This Bowing was to his grief. Strange! I avow to your Lordships and the World, no Man did so much approve all my Proceedings in that Church, as he; and for this Particular, he never found the least fault with it to me: and if he conceal his Grief, I cannot ease it. He says, This Bowing was not in use till within this six or seven Years. Sure the old Man's Memory fails him. For Dr. *Blechen-den* says, The Communion-Table was railed about, and Bowings before it, when he came first to be a Member of that Church; and said upon his Oath, that's above ten Years ago; and that it was practised before their new Statutes were made; and that in those Statutes no Punishment is inflicted for the Breach or not Performance of this Reverence. I could tell your Lordships how often Dr. *Jackson* hath shifted his Opinions in Religion, but that they tell me their Witnesses must not be scandalized. As for the Statutes, my Secretary Mr. *Dell*, who copied them out, testified here to the Lords, that I left out divers Superstitions which were in the old Book, and ordained many Sermons in their rooms.

The next Cathedral he instanced in, was *Winchester*. But there's nothing but the old Objections, Copes. And the wearing of them is warranted by the Canon; *Can. 21.* and Reverence at coming in and going out of the Church. And that, great Kings have not (in better Ages) thought much to do. And they did well to instance in the College of *Winchester*, as well as the Church; for 'tis confessed, the Injunction sent thither requires, that the Reverence used be such as is not dissonant from the Church of *England*. So this may be a Comment to the other Injunctions. But for the Copes in Cathedrals, Mr. *Browne* in his last Reply was not satisfied. For he said, the Canon mentioned but the wearing of one Cope. Be it so: but they must have that before they can wear it. And if the Canon enjoin the wearing of one, my Injunction might require the providing and using of one. Besides, if there be no Popery, no Introduction to Superstition in the having or using of one; then certainly there can be none in the having of more for the same use: the Superstition being lodged in the Misuse, not in the Number.

VII. From the Cathedrals, Mr. Serjeant went to view some Parish-Churches. And first 'tis charged, That in a Parish-Church at *Winchester* two Seats were removed, to make way for railing in of the Communion-Table. But for ought I know, this might have been concealed. For it was liked so well, that they to whom the Seats belonged, removed them at their own Charges, that the other might be done.

The next Instance was in *St. Gregory's Church*, by *St. Paul's*. The Charge was, the placing of the Communion-Table Altar-wise. To the Charge itself,

itself, Answer is given before. The Particulars which are new, are these: the Witness Mr. *Wyan*. He says, the Order for such placing of the Table was from the Dean and Chapter of *St. Paul's*. And *St. Gregory's* is in their peculiar Jurisdiction. So the Holy Table was there placed by the Ordinary, not by me. He says next, that the Parishioners appealed to the Arches, but received an Order to command them and the Cause to the Council-board: That it was a full Board when the Cause was heard, and his Majesty present;

Q. Eliz. In-junct. sine.

and that there I maintained the Queen's Injunction about placing the Communion-Table. In all this, here's nothing charged upon me, but Maintenance of the Injunction: and I had been much to blame, if I should not have maintained it. He says, Sir *Henry Martin* came and saw it, and said it would make a good Court-Cupboard. If Sir *Henry* did say so, the Scorn ill became either his Age or Profession; tho' a Court-Cupboard be somewhat a better Phrase than a Dresser. God forgive them who have in Print called it so. He says, that hereupon I did say, *That he which spake that, had a Stigmatical Puritan in his Bosom*. This Man's Memory serves him long for Words: this is many Years since; and if I did speak any thing sounding this way, 'tis more like I should say *Schismatical*, than *Stigmatical Puritan*. But let him look to his Oath; and which Word soever I used, if Sir *Henry* used the one, he might well hear the other. For a profane Speech it was, and little becoming a Dean of the Arches. He says, That soon after this Sir *Henry* was put out of his Place. Not very soon after this; for I was at the time of this Business (as far as I remember) Bishop of *London*, and had nothing to do with the disposing of his Place. After, when I came to be Archbishop, I found his Patent was void, neither could Sir *Henry* himself deny it. And being void, and in my Gift, I gave it to another.

He says farther, That it was urged that this way of placing the Communion-Table was against the Word of God, in Bishop *Jewel's* and Mr. *Fox's* Judgment; and that I replied, *It were better they should not have these Books in Churches, than so to abuse them*. First, For ought I yet know, (and in these Straits of Time the Books I cannot come at) their Judgment, rightly understood, is not so. Secondly, Though these two were very worthy Men in their time, yet every thing which they say is not by and by the Doctrine of the Church of *England*. And I may upon good Reason depart from their Judgment in some Particulars, and yet not differ from the Church of *England*. As in this very Particular, the Injunction for placing the Table so, is the Act of the Queen and the Church of *England*. And I conceive the Queen, then upon the Act of Reformation, would not have enjoined it, nor the Church obeyed it, had it been against the Word of God. Thirdly, If I did say, *That if they could make no better use of Jewel and the Book of Martyrs, it were better they had them not in the Churches*; they gave too great occasion for the Speech: For they had pick'd divers Things out of those Books which they could not master, and with them distemper'd both themselves and their Neighbours. And yet, in hope other more modest Men might make better use of them, I never gave Counsel to have those Books removed, (nor is that so much as charged) but said only thus, That if no better use would be made of them, then that

last Remedy; but never till then. 'This last Passage Mr. *Browne* insisted upon; The taking of good Books from the People. But as I have answered, there was no such Thing done, or intended; only a Word spoken to make busy Men see how they abused themselves and the Church, by misunderstanding and misapplying that which was written for the good of both.' Lastly, It was urged, he said, that the Communion-Table must stand Altar-wise, that Strangers which come and look into these Churches, might not see such a Disproportion; the holy Table standing one way in the Mother-Church, and quite otherwise in the Parochial annexed. And truly, to see this, could be no Commendation of the Discipline of the Church of *England*. But howsoever, Mr. *Clarke* (the other Witness with *Wyan*, and agreeing with him in the most) says plainly, that it was the Lord of *Arundel* that spake this, not I; and that he was seconded in it by the Lord *Weston*, then Lord Treasurer, not by me.

VIII. The last Charge of this Day was a Passage out of one Mr. *Shelford's* Book, p. 20, 21. *That they must take the Reverend Prelates for their Examples, &c.* And Mr. *Prynn* witnessed the like was in the *Missal*, p. 256. Mr. *Shelford* is a mere Stranger to me, his Book I never read; if he have said any thing unjust or untrue, let him answer for himself. As for the like to that, which he says, being in the *Missal*, tho' that be but a weak Argument, yet let him save it.

Here this Day ending, I was put off to *Saturday, June 1*. And then again put off to *Thursday, June 6*. which held.

My Twelfth Day of Hearing.

Thursday, June 6. 1644. This Day Serjeant *Wilde*, instead of beginning with a new Charge, made another long Reply to my Answers of the former Day. Whether he found that his former Reply, made at the time, was weak, and so reputed, I cannot tell. But another he made, 'as full of premeditated Weakness, as the former was of sudden. Mr. *Prynn*, I think, perceived it, and was often at his Ear; but Mr. Serjeant was little less than angry, and would on.' I knew I was to make no Answer to any Reply, and so took no Notes; indeed holding it all as it was, that is, either nothing, or nothing to the purpose. This tedious Reply ended;

I. Then came on the First Charge about the Window of coloured Glass set up in the new Chapel at *Westminster*. It was the History of the coming down of the Holy Ghost upon the Apostles. This was charged to be done by me, and at my Cost: the Witnesses, Mr. *Browne*, employ'd in setting up the Window, and Mr. *Sutton* the Glazier.

These Men say, That Dr. *Newell*, Sub-Dean of *Westminster*, gave order for the Window, and the setting of it up; but they know not at whose Cost, nor was any Order given from me. So here's nothing charged upon me. And if it were, I know nothing amiss in the Window. As for the King's Arms being taken down (as they say) let them answer that did it. Tho', I believe, that the King's Arms standing alone in a white Window, was not taken down out of any ill Meaning, but only out of Necessity to make way for the History.

II. The Second Charge was the Picture of the Blessed Virgin set upon a new-built Door at *St. Mary's* in *Oxford*. Here Alderman *Nixon* says, That some

some Passengers put off their Hats, and, as he supposes, to that Picture. But, my Lords, his Supposal is no Proof. He says, that the next Day he saw it. But what did he see? Nothing, but the putting off the Hat; for he could not see why, or to what, unless they which put off, told it. They might put off to some Acquaintance that passed by. He farther says, he saw a Man in that Porch upon his Knees, and, he thinks, praying; but he cannot say to that. 'But then (if the Malice he hath long borne me, would have suffer'd him) he might have staid till he knew to whom he was praying, for till then 'tis no Evidence.' He says, he thinks that I countenanced the setting of it up, because it was done by Bishop Owen. But Mr. Bromfeild, who did that Work, gave Testimony to the Lords, that I had nothing to do in it. He says, there was an Image set up at Carfax Church, but pulled down again by Mr. Widdows, Vicar there. But this hath no relation at all to me. 'This Picture of the Blessed Virgin was twice mentioned before: and Sir Nath. Brent could say nothing to it but Hearsay. And Mr. Corbett did not so much as hear of any Abuse. And now Alderman Nixon says, he saw Hats put off; but the wise Man knows not to what. Nor is there any Shew of Proof offer'd, that I had any Hand or Approbation in the setting of it up; or that ever any Complaint was made to me of any Abuse to it, or Dislike of it. And yet Mr. Browne, when he gave the Sum of the Charge against me, insisted upon this also, as some great Fault of mine, which I cannot yet see.'

III. In the next Charge, Mr. Serjeant is gone back again to *Whitehall*, as in the former to *Oxford*. The Witnesses are Mrs. Charnock, and her Daughter. They say, they went (being at Court) into the Chapel, and it seems a Woman with them, that was a Papist; and that while they were there, Dr. Brown, one of the King's Chaplains, came in, bowed toward the Communion-Table, and then at the Altar kneeled down to his Prayers. I do not know of any Fault Dr. Brown committed, either in doing Reverence to God, or praying there. And yet if he had committed any Fault, I hope I shall not answer for him. I was not then Dean of the Chapel, nor did any ever complain to me. They say, that two Strangers came into the Chapel at the same time, and saw what Dr. Brown did, and said thereupon, *That sure we did not differ much, and should be of one Religion shortly*: And that the Woman which was with these Witnesses, told them they were Priests. First, This can no way relate to me; for neither did these Women complain to me of it, nor any from them. Secondly, If these two Men were Priests, and did say as is testified, are we ever a whit the nearer them in Religion? Indeed, if all the Difference between *Rome* and us consisted in outward Reverence, and no Points of Doctrine, some Argument might hence be drawn; but the Points of Doctrine being so many and great, put stop enough to that. Thirdly, If Recusants, Priests especially, did so speak, might it not be said in Cunning, to discountenance all external Worship in the Service of God, that so they may have opportunity to make more Profelytes? And 'tis no small Advantage, to my knowledge, which they have this way made. 'And this was the Answer which I gave Mr. Browne, when he charged this upon me in the House of Commons.'

Here, before they went any farther, Mr. Serjeant Wilde told the Lords, That when Sir Nathaniel

Brent was employed in my Visitation, he had Instructions for particular Churches, of which some were tacit Intimations, and some express. I know not to what end this was spoken; for no coherent Charge followed upon it. But sure he thinks Sir Nathaniel Brent very skilful in me, that he can understand my tacit Intimations, and know to what particular Church to apply them. 'And as I said no more at the Bar, so neither did I think to say any more after; yet now I cannot but a little bemoan myself. For ever since Mr. Maynard left off, who pleaded, tho' strongly, yet fairly, against me; I have been in very ill Condition between the other two. For, from Mr. Nicolas I had some Sense, but extreme virulent and foul Language: And from Serjeant Wilde Language good enough sometimes, but little or no Sense. For let me answer what I would, when he came to reply, he repeated the Charge again, as if I had made no Answer at all: or as if all that I expressed never so plainly, had been but tacit Intimations; which I think he understood as much as Sir Nathaniel Brent.'

IV. In the Fourth Charge he told the Lords he would not trouble them with repeating the Evidence, but only put them in mind of some things in the Case of *Ferdinando Adams of Ipswich*; of the Men of *Lewes* suffering in the High-Commission; of the Parishioners of *Beckington*, and some others heard before, but would leave the Lords to their Memory and their Notes: Yet read over their Sentences given in the High-Commission, and made a Repetition of whatsoever might but make a Shew to render me odious to the People. 'And this hath been their Art all along, to run over the same thing twice and again, (as they did here in the second Charge about the Picture of the Blessed Virgin) to the end, that as the Auditors changed, the more of them might hear it; and that which wrought not upon some, might upon others. In all which I patiently referred myself to my former Answers, having no other way to help myself; in regard they pretended that they renew'd the same Instances, but not the same way; but in one Place, as against Law; and in another, as against Religion. But why then did they in both Places run over all Circumstances applicable to both?' And on they went too with the Men of *Lewes*; where,

1. One Mr. Parnlye (they say) was censured cruelly in the High-Commission, for not removing the Communion-Table. The Business was but this: Sir Nathaniel Brent, and his own Ordinary Dr. Nevill, ordered the Remove of the Table; he would not. For this Contumacy he was censured, but enjoined only to make his Submission to Dr. Nevill. Which, I think, was a Sentence far from any barbarous Cruelty, as 'tis called.

2. Another Instance, and the next, was Mr. Burket. He says, he was censured also about removing the Communion-Table, and for that only. But first, this was not simply for removing the Holy Table; but it was for abetting the Churchwardens to remove it back again from the Place, where lawful Authority had set it. And secondly, whereas he says, he was censured for this only, the very Charge itself confutes him. For there 'tis said, that this, about removing the Communion-Table, appears in the sixth Article that was against him. Therefore there were five other Articles at least more against him: and therefore not this only.

3. The third Instance was Mr. *Chancey*: And he likewise is said to have suffered very much only about railing in of the Communion-Table. But this is not so neither: For he confesses that he spake reproachful Words against Authority, and in contempt of his Ordinary; that he said the Rails were fit to be set up in his Garden; that he came Fifty Miles from his own Church, on purpose to countenance this Business: And all this he acknowledges upon his Oath in his Submission. And yet nothing laid upon him but Suspension; and that no longer than till he submitted. And all this the Act of the High-Commission, not mine. 'And so I answered Mr. *Browne*, who urged this 'against me also.' And the Truth of all this appears *apud Aetia*; tho' they were taken away, and kept ever since from my use, yet many Things done in that Court have been charged against me. And here stepped in a Testimony of Mr. *Genebrard's*, that I threaten'd openly in the High-Commission to suspend Dr. *Merrick*. And why might I not do it, if he will be over-bold with the Proceeding of the whole Court? I have known ere now a very good Lawyer committed from the *Chancery-Bar* to the *Fleet*, tho' I shall spare Names.

4. The fourth Instance was in Mr. *Workman's* Case; charged as if he were sentenced only for preaching a Sermon to the Judges against Images in Churches. (1.) The first Witness in the Cause was Mr. *Langly*. He says, Mr. *Workman* was censured for this Sermon, and other Things. Therefore not for this Sermon only: The High-Commissioners were no such Patrons of Images. He says, That when I was Dean of *Gloucester*, I told them in the Chapel, that King *James* had heard of many Things amiss in that Church, and required me to take care of them. 'Tis true, he did so. He says farther, that hereupon I placed the Communion-Table Altar-wise, and commanded due Reverence at the coming into the Church. This I did, and I have given my Reason often already for it out of the Injunctions of Queen *Elizabeth*. He says, that Bishop *Smith* took offence at this, and would come no more to the Cathedral. First, my Lords, this Gentleman was then School-master there, and had free Access unto me: He never discovered this. Secondly, the Bishop himself never said a Word to me about it. If he had, I would either have satisfied his Lordship in that, or any thing else that I did; or if he had satisfied me, I would have forborn it. He says, That Mr. *Workman*, after he was put from his Lecture, was not suffered to teach Children. First, If he had been suffered, this Man had been like to make the first Complaint for decay of his own School. But, Secondly, the Commission thought it no way fit to trust him with the Education of Children, who had been factious among Men; especially not in that Place, where he had so shewed himself. 'And this Answer I gave to Mr. *Browne*; who, in 'summing the Evidence, stood as much, and inveighed as earnestly against this cruel Proceeding 'with Mr. *Workman*, as upon any one Thing in the 'Charge. At which time he added also, that he 'would not be suffered to practise Physick, to get 'his Living. But, First, no Witness evidenceth 'this, that he was denied to practise Physick. 'And, Secondly, he might have taught a School, 'or practised Physick, any where else. But he had 'done so much Harm, and made such a Faction in 'Gloucester, as that the High-Commission thought 'it not fit to continue him there: And he was not

'willing to go from thence, where he had made 'his Party.' He says farther, That some few of the Citizens of *Gloucester* were called into the High-Commission, for an Annuity of Twenty Pound a Year allowed Mr. *Workman* out of the Town-Stock. For the Thing itself, it was a gross Abuse and Scorn put upon that Court; that when they had censured a Schismatical Lecturer, (for such he was there proved) the Townsmen should make him an Allowance of Twenty Pound a Year: A Thing (as I humbly conceive) not fit to be endured in any settled Government. And whereas Clamour is made, that some few of the Citizens were called to an Account for it, that's as strange on the other Side: For where there are many Offenders, the Noise would be too great to call all. And yet here's Noise enough made for calling a few. Here it was replied by Mr. *Maynard*, That this was done by that Corporation, and yet a few singled out to answer; and that therefore I might be singled out to answer for Things done in the High-Commission. 'But, under favour, this learned and worthy Gentleman is mistaken: For here the Mayor and 'Magistrates of *Gloucester* did that which was no 'way warrantable by their Charter, in which Case 'they may be accountable, all or some. But in 'the High-Commission we meddled with no Cause 'not cognoscible there; or if by Misinformation 'we did, we were sure of a Prohibition to stop 'us. And meddling with nothing but Things 'proper to them, I conceive still no one Man can 'be singled out to suffer for that which was done 'by all. And this may serve to answer Mr. *Browne* 'also, who in his last Reply upon me, when I 'might not answer, made use of it.'

(2.) The Second Witness was Mr. *Purye* of *Gloucester*. He says, That Mr. *Bretcher*, and Mr. *Giles* the Town-Clerk, were called to the Council-Table about this Annuity; and that I desired it might be farther examined at the High-Commission. If this were true, I know no Offence in it, to desire that such an Affront to Government might be more thoroughly examined, than the Lords had leisure to do. But the Witness doth not give this in Evidence: For he says no more, than that he heard so from Mr. *Bretcher*. And his Hear-say is no Conviction. He says farther, That the High-Commission called upon this Business of the Annuity, as informed that the Twenty Pound given to Mr. *Workman*, was taken out of the Monies for the Poor. And this I must still think was a good and a sufficient Ground justly to call them in Question. He says also, that these Men were fined, because that which they did was against Authority. So by their own Witness it appears, that they were not fined simply for allowing Means to Mr. *Workman*, but for doing it in opposition to Authority. Lastly, he says, they were fined Ten Pound a-piece; and that presently taken off again. So here was no such great Persecution, as is made in the Cause. And for the cancelling of this Deed of Annuity, it was done by themselves, as Mr. *Langly* witnesses.

After these two Witnesses heard, the Sentence of the High-Commission Court was read, which I could not have come at, had not they produced it. And by that it appeared evidently, that Mr. *Workman* was censured as well for other Things, as for his Sermon about Images in Churches. As first he said, So many Places in Dancing, were so many to Hell. This was hard, if he meant the Measures in the Inns of Court at *Christmas*; and he excepted none. Then he said, and was no way able to prove it,

it, That Drunkards, so they were conformable, were preferred. Which was a great and a notorious Slander upon the Governors of the Church, and upon orderly and conformable Men. Then he said, That Election of Ministers was in the People. And this is directly against the Laws of *England*, in the Right of all Patrons. Then constantly, in his Prayer before his Sermon, he prayed for the *States* and the King of *Sweden* before his Majesty, which was the Garb of that Time among that Party of Men. Then, that one of his common Themes of preaching to the People, was against the Government of the Church. And then, that Images in Churches were no better than Stews in the Commonwealth; which at the best is a very unfavoury

** Hom. against the Peril of Idolatry. p. 3. p. 92.*

Comparison. But here it was replied, That Images were Idols, and so called in the ** Homilies*; and that therefore the Comparison might hold. Yea, but in the second Homily against the Peril of Idolatry, Images or Pictures in Glasse or Hangings are expressly and truly said not to be Idols, till they be worshipped. And therefore Mr. *Workman* should not have compared their setting up, to Stews, till he could have proved them worshipped. And in all this, were the Act good or bad in the censuring of him, it was the Act of the High-Commission, not mine.

V. After this followed the fifth Charge; which was Mr. *Sherfield's* Case, his Sentence in the *Star-Chamber* for defacing of a Church-Window in or near *Salisbury*. The Witnesses produced were two.

1. The first was Mr. *Carill*. He said that Mr. *Sherfield* defaced this Window because there was an Image in it, conceived to be the Picture of God the Father. But first, this comes not home: For many a Picture may be conceived to be of God the Father, which yet is not, nor was ever made for it. And then suppose it were so, yet Mr. *Sherfield* in a settled Government of a State, ought not to have done it but by command of Authority. He says, That in my Speech there in the Court, I justified the having of the Picture of God the Father, as he remembers, out of *Dan. vii. 22*. This (as he remembers) came well in: For I never justified the making or having that Picture. ** For*

** Calv. 1 Inst. c. 11. §. 12.*

** Calvin's Rule*, that we picture that which may be seen, is grounded upon the Negative, that no Picture may be made of that which was never, never can be seen. And to ground this Negative, is the Command given by *Moses*, *Deut. iv. 15 & 16*. *Take good heed to yourselves*. For what? That you make not to yourselves this Picture. Why? *For that you saw no manner of Similitude in the Day that the Lord spake unto you out of the midst of the Fire*. Out of the midst of the Fire; and yet he still reserved himself in thick Darknes, *Exod. xx. 21*. So no Picture of him, because no Similitude ever seen. And this Rule having ever possessed me wholly, I could not justify the having of it. I said, indeed, that some Men in later superstitious Times were so foolish as to picture God the Father, by occasion of that Place in *Daniel*: But for myself, I ever rejected it. Nor can that Place bear any Shew of it: For *Daniel* says there, *That the Antient of Days came*. But in what Shape or Similitude he came, no Man living can tell. And he is called the *Antient of Days*, from his Eternity, not as if he appeared like an old Man. The Text hath no Warrant at all for that.

2. Yet the second Witness, Mr. *Tomlyns*, says also, That I did justify this Picture. ** God for-* give him the Malice or Ignorance of this Oath, ** be it which it will.* He might have been as wary as Mr. *Carill*, and added (*as he remembers*;) For so many Years since, as this Hearing was, he may easily mistake. But if I did say any such thing, why are not my own Papers here produced against me? I had that written which I than spake, and the Paper was in my Study with the rest, and came (for ought I know) into their Hands which follow the Charge against me. I ask again, why is not this Paper produced? Out of all doubt it would, had there appeared any such thing in it. He says also, That I said then, that if the Idol of *Jupiter* were set up, yet it were not lawful to pull it down in a popular Tumult, but by Order and Authority. I did say so, or to that effect, indeed; and must say it still. For I find in *St. Augustine*, almost the very Words. And Bishop *Davenant*, a Man very learned, cites this Place of *St. Augustine*, and approves it. And they both prove this Doctrine from *Deut. vii. 5. & xii. 2*. Where the Command given for destroying of the Idols, when they came into the Land of *Canaan*, was not left at large to the People, but settled in *Moses* the Chief Magistrate, and his Power. And according to this Rule, the Temple of *Æsculapius*, tho' then grown very scandalous, was not pulled down but by ** Constantine's* Command. Which Place I then shewed the Lords. But this Witness added, That Mr. *Sher-*

** Euseb. 3. de vita Constan. c. 54.*

feild had Authority to do this from the Vestry. If he had, that's as good as none; for by the Laws of *England* there is yet no Power given them for that, or any thing else. And all that Vestries do, is by Usurpation, or Consent of the Parish, but reaches not this. The Bishop of the Diocess had been fitter to be consulted herein than the Vestry.

Here, as if these Witnesses had not said enough, Mr. *Nicolas* offered himself to be a Witness; and told the Lords he was present at the Hearing of this Cause; and that four Witnesses came in clear, that the Picture broken down, was the Picture of God the Father; and that yet the Sentence of the Court passed against Mr. *Sherfield*. First, if this be so, it concludes against the Sentence given in the *Star-Chamber*, not against me: And he calls it here the *Sentence of the Court*. Secondly, be it that it were undoubtedly the Picture of God the Father; yet he ought to have taken Authority along with him, and not to go about it with Violence; which he did, and fell, and brake his Leg in the Business. Thirdly, By his own Description of the Picture, it seems to me to be some old fabulous Picture out of a Legend, and not one of God the Father: For he then told the Lords, it was the Picture of an old Man with a Budget by his Side, out of which he was plucking *Adam* and *Eve*. ** And I believe* no Man ever saw God the Father so pictured any where. Lastly, Let me observe how Mr. *Nicolas* takes all parts upon him wherein he may hope to do me mischief.

VI. The sixth Charge was concerning a Bible that was printed with Pictures, and sold. The Witness was Mr. *Walsal* a Stationer; who says, That this Bible was licensed by Dr. *Weeks*, my Lord of *London's* Chaplain, not mine: so thus far it concerns not me. ** Yes*, says Mr. *Browne* in his last Reply; for it appears in a List of my Chaplains, under my own Hand, that Dr. *Weeks* was

** one*

'one. 'Tis true, when I was Bishop of *Bath* and *Wells*, he was mine; but my Lord of *London* had him from me, so soon as ever he was Bishop; and was his, not mine, when he licensed that Book. And Mr. *Browne* knew that I answered it thus to the Lords.' He says, That I gave him Direction that they should not be sold openly upon the Stalls, but only to discreet Men that knew how to use them. The Case was this: As I was at Prayers in the King's Chapel, I there saw one of them in Mrs. *Kirk's* Hand. She was far enough from any Affection to *Rome*. And this being the first Knowledge I had of it, many were vended and sold before I could prevent it. Upon this I sent for one, (whether to this Witness or another, I cannot say) and acquainted the Lords of the Council with it, and craved their Direction what should be done. It was there ordered, that I should forbid the open Sale of them upon their Stalls, but not otherwise to learned and discreet Men. And when I would have had this Order stricter, no Man stuck to me but Mr. Secretary *Cook*. So according to this Order I gave Direction to Mr. *Walsal*, as he witnesseth.

Here Mr. *Maynard* replied, That I ought to have withstood this Order, in regard it was every way faulty. For, said he, either these Pictures were good or bad. And if they were good, why should they not be sold openly upon the Stalls to all that would buy? And if they were bad, why should they be sold privately to any? 'To this Reply I was not suffered to answer. But when I heard Mr. *Browne* charge this Bible with Pictures against me, then I answered the thing as before, and took occasion thereby to answer this Dilemma thus: Namely, That this kind of Argument concludes not, but in things necessary, and where no Medium can be given. For where a Medium can be given, the Horns of this Argument are too weak to hurt; and so 'tis here. For Pictures in themselves are things indifferent; not simply good, nor simply bad, but as they are used. And therefore they were not to be sold to all Comers, because they may be abused, and become Evil; and yet might be sold to learned and discreet Men, who might turn them to good. And that Images are things indifferent of themselves, is granted in the Homilies,

Hom. par. 1.
p. 11.

'which are against the very Peril of Idolatry.' He said, There were some inconvenient Pictures among them, as the Assumption and the Dove. Be it so, the Book was not licensed by me nor mine: And yet, as I then shewed the Lords, they were not so strict at *Amsterdam* against these Pictures; for the Book which Mr. *Walsal* shewed me, was printed and sent thence, before it was printed here. Besides, our old *English* Bibles in the Beginning of the Queen were full of Pictures, and no fault found. As for that which was added at the Bar, That one of these Bibles was found in Secretary *Windebank's* Trunk, and another in Sir *John Lamb's*; that's nothing to me.

VII. The last Charge of this Day was, That something about Images was expunged out of Dr. *Featly's* Sermons by my Chaplain, Dr. *Bray*, before they could be suffered to be printed. But, First, he himself confesses, That I told him he might print them, so nothing were in them contrary to the Doctrine and Discipline of the Church of *England*. Secondly, He confesses, That when Dr. *Bray* made stay of them, he never complained to

me; and I cannot remedy that which I do not know. Thirdly, He confesses, That all the time he was in *Lambeth-House*, my Predecessor ever left that Care of the Press upon his Chaplains; and why I might not do it as well as my Predecessor, I do not yet know. But he said, That he complained to Sir *Edmund Scott*, and desired to be advised by him what he should do; and that he answered, He thought I would not meddle with that troublesome Business, more than my Predecessors had done. 'Be this so, yet Sir *Edmund Scott* never told me this; nor is there any the least Proof offer'd that he did. But because this and the like Passages about expunging some things out of Books, makes such a great Noise, as if nothing concerning Popery might be printed; and because Mr. *Browne*, in summing up of the Charge in the House of Commons, warmly insisted upon this Particular; I thought it necessary to answer as follows: That what moved my Chaplain to expunge that large Passage against Images, I know not; nor could I now know, my Chaplain being dead. But that this I was sure of, that elsewhere in those very Sermons there was as plain a Passage, and full against Images left in. And in another Place a whole Leaf together spent to prove them Idolaters; and that as gross as the *Baalists*, and so he terms them. Yea, and that the Pope is Antichrist too; and not only called so, but proved by divers Arguments: only, but in plain Terms, that he is *the Whore of Babylon*. And these Passages I then read out of the Book itself in the House of Commons: and many other like to these there are. So my Chaplain might see good Cause to leave out some Passages, where so many upon as good Cause were left in.'

^a Dr. *Featly's*
Sermons, p.
447.

^b P. 791.

^c P. 808.

And not so

^d P. 810.

But to the Business of leaving the Care of these Books, and the Over-view of them to my Chaplain, it was then urged, That the Commissary of *John Lord* Archbishop of *York*, had excommunicated the Lord Bishop of *Durham*, being then in the King's Service; and that the Archbishop himself was deeply fined for this Act of his Commissary; and that therefore I ought much more to be answerable for my Chaplain's Act, whom I might put away when I would, than he for his Commissary, who had a Patent, and could not be put out at Pleasure.' Mr. *Browne* also followed this Precedent close upon me. But, first, there is a great deal of Difference in the thing itself: My Chaplain's Case being but the leaving out of a Passage in a Book to be printed; but his Commissary's Case being the Excommunicating of a great Bishop, and he in the King's Service of whose Honour the Laws of this Realm are very tender. And, Secondly, the Bishop and his Official, (call him Chancellor or Commissary, or what you will) make but one Person in Law; and therefore the Act of the Commissary, to the full Extent of his Patent, is the Act of the Bishop in legal Construction, and the Bishop may be answerable for it. But the Bishop and his Chaplain are not one Person in any Construction of Law. 'And say he may put away his Chaplain when he will, yet that cannot help what is past, if ought have been

This was done long before the Reformation; when the Patents of Chancellors and Commissaries were revocable at the pleasure of the Bishop, H. W.

'been done amiss by him. And this was the Answer I insisted on to Mr. Browne.'

Upon my entrance on this Day's Defence, I found myself aggrieved at the *Diurnal*, and another Pamphlet of the Week, wherein they print whatsoever is charged against me, as if it were fully proved; never so much as mentioning what or how I answer'd. And that it troubled me the more, because (as I conceived) the Passages, as there expressed, trenched deep upon the Justice and Proceedings of that Honourable House; and could have no aim but to incense the Multitude against me. With some difficulty I got these Pamphlets received, but there they died, and the weekly Abuse of me continued to keep my Patience in breath.

The Thirteenth Day of my Hearing.

I. **W** *Hilson-Tuesday, June 11. 1644.* The first Charge of this Day, was the Opinion which was held of me beyond the Seas. The first Witness was Sir Henry Mildmay, who (as is before related) told me without asking, That I was the most hateful Man at *Rome*, that ever sat in my See since the Reformation. 'Now he denied not this, but being helped on by good Preparation, a flexible Conscience, and a fair leading Interrogatory by Mr. Nicolas,' (Mr. Serjeant Wilde was sick, and came no more till the last Day, when I made my Recapitulation) he minced it. And now he says, That there were two Factions at *Rome*, and that one of them did indeed speak very ill of me, because they thought I aimed at too great a Power here in *England*; but the other Faction spake as well of me, because they thought I endeavoured to bring us in *England* nearer to the Church of *Rome*. But, First, my Lords, this Gentleman's Words to me were round and general; That I was hated at *Rome*, not of a Party or Faction there; and my Servants heard him at the same time, and are here ready to witness it, That he then said the Pope was a goodly Gentleman, and did use to ride two or three great Horses in a Morning; and, but that he was something taller, he was as like Auditor Philips (who was then at Dinner with me) as could be. But I pray mark what wise Men he makes them at *Rome*. One Faction hates me, because I aim at too much Power; and the other loves me, because I would draw *England* nearer *Rome*. Why, if I went about to draw *England* nearer *Rome*, can any among them be such Fools as to think my Power too great? For if I used my Power for them, why should any there condemn me? And if I used it against them, why should any here accuse me? '*Non sunt hæc bene divisa temporibus*; these things suit not with the Times, or the Dispositions of *Rome*: But the plain Truth is, 'I do not think that ever he was at *Rome*; I after heard a Whisper, that he only stepped into *France* for another Cure, not to *Rome* for Curiosity, which was the only Cause he gave the Lords of his going thither.'

2. The second Witness was Mr. Challoner. He says not much of his own Knowledge, but of Fame, that tattling Gossip; yet he told the Lords, I was a very obscure Man, till within these fifteen Years. Be it so, if he please; yet I have been a Bishop above Three and Twenty Years: and 'tis Eighteen Years since I was first Dean of his Majesty's Chapel-Royal. He says, That after this

time there was a strong Opinion of Reconciliation to *Rome*. A strong Opinion, but a weak Proof For it was an Opinion of Enemies, and such as could easily believe, what they over-much desired. He farther said, That some of them were of Opinion, that I was good *Roman Catholick*, and that I wrought cunningly to introduce that Religion by Inches? and that they prayed for me. First, My Lords, the Opinion of Enemies is no Proof at all, that I am such as they think me. And secondly, this is a notable, and no unusual piece of Cunning, for an Enemy to destroy by commending; for this was the ready way, and I doubt not but it hath been practised, to raise a Jealousy against me at home, thereby either to work the Ruin of my Person, or utterly to weaken and disable me from doing harm to them, or good for the Church of *England*. Besides, if the Commendation of Enemies may in this kind go for Proof, it shall be in the power of two or three practising Jesuits, to destroy any Bishop or other Church-man of *England* when they please. At last he told a Story of one Father John, a Benedictine; that he asked him how Church-Livings were disposed in *England*, and whether I had not the disposing of those which were in the King's Gift? And concluded, That he was not out of hope to see *England* reduced to *Rome*. Why, my Lords, this is not Father John's Hope alone; for there is no * *Roman Catholick* but hath some Hope alive in him to see this Day. And were it not for that Hope, there would not have been so many, some desperate, all dangerous Practices upon this Kingdom to effect it, both in Queen Elizabeth's time, and since. But if this I know not what Father John hope so, what is that to me?

3. The third Witness was Mr. Anthony Mildmay; a Man not thought on for a Witness, till I called for his Brother Sir Henry. But now he comes laden with his Brother's Language. He says just as Sir Henry did before, That there were two Factions at *Rome*, the Jesuits, and they abhorred me; but the other, the secular Priests, they wished me well, as he was informed. First, This is so one and the same Testimony, that any Man that will, may see, that either he informed his Brother, or his Brother him. Secondly, Here's nothing affirmed, for it is but as he was informed: And he doth not tell you by whom. It may be, my Lords, it was by his Brother. Then he says, This was to make myself great, and tells a Tale of Father Fitton, as much to the purpose as that which Mr. Challoner told of Father John. But whatsoever either of these Fathers said, it was but their own Opinion of me, or Hearsay; neither of which can prove me guilty of any thing. 'Thus much Mr. Anthony made a shift to say by Five of the Clock at Afternoon, when I came to make my Answer. And this (as I have sufficient Cause to think) only to help to shoar up his Brother's Testimony. But in the Morning, when he should have come, as his Brother did, he was by nine in the Morning so drunk, that he was not able to come to the Bar, nor to speak common Sense, had he been brought thither: *Nobile Par Fratrum*.'

II. The second Charge was the Consecration of two Churches in London; St. Catharine Cree-Church, and St. Giles in the Fields. The Witnesses two.

1. The first Witness was one Mr. Willingham. And he says, That I came to these Churches in a

* The Archbishop calls the English Papists Roman Catholicks; not as allowing them to be such, but referring to that Name, which some of them were before said to have affixed to him. H. W.

pompous manner: But all the Pomp that he mentions, is, that Sir Henry Martin, Dr. Duck, and some other of the Arches, attended me, as they usually do their Diocesans in such Solemnities. He says, he did curiously observe what was done, thinking it would one Day be called to an account, as now it is. So this Man (himself being Judge) looked upon that Work with a malevolent Eye, and God preserve him from being a malicious Witness. He says, that at my Approach to the Church-door, was read, *Lift up your Heads, O ye Gates, and be ye lift up, ye everlasting Doors, and the King of Glory shall come in*, Psal. xxiv. 7. And this was urged over and over, as a Jeer upon my Person. But this Place of Scripture hath been antiently used in Consecrations: And it relates not to the Bishop, but to God Almighty, the true King of Glory, who, at the Dedication, enters by his Servant to take possession of the House, then to be made his. He says, that I kneeled down at my coming in, and after used many Bowings and Cringings. For my kneeling down at my entrance, to begin with Prayer, and after to proceed with Reverence, I did but my Duty in that; let him scoffingly call it *Cringing*, or *Ducking*, or what he please.

He says farther, That at the beginning I took up Dust, and threw it in the Air, and after used divers Curses. And here Mr. Prynne put Mr. Nicolas in mind to add, that *spargere Cinerem* is in the Form of Consecration used in the *Pontifical*. And Mr. Browne, in his summary Account of my Charge, laid the very Consecration of these Churches as a Crime upon me, and insisted on this Particular. But here my Answer to all was the same; That this Witness had need look well to his Oath, for there was no throwing up of Dust, no Curses used throughout the whole Action: Nor did I follow the *Pontifical*, but a Copy of Learned and Reverend Bishop Andrews, by which he consecrated divers Churches in his Time; and that this is so, I have the Copy by me to witness, and offered them to shew it. Nor can this howsoever favour any way of Treason. No, said Mr. Browne, but the Treason is, to seek, by these Ceremonies, to overthrow the Religion established. Nor was that ever sought by me: And God of his Mercy preserve the true Protestant Religion amongst us, till the Consecration of Churches, and Reverence in the Church, can overthrow it; and then I doubt not, but, by God's Blessing, it shall continue safe to the World's end.

He says also, that I did pronounce the Place Holy. I did so: And that it was in the solemn Act itself of the Consecration, according to the usual Form in that behalf. And no Man will deny, but that there is a Derivative and a Relative Holiness in Places, as well as in Vessels, and other Things dedicated to the Honour and Service of God. Nor is any thing more common in the Old Testament; and 'tis express in the New, both for Place and Things: 1 Cor. ix. 13.

Then it was urged at the Bar, that a Prayer which I used, was like one that is in the *Pontifical*. So in the *Missal* are many Prayers like to the Collects used in our *English* Liturgy, so like, that some are the very same, translated only into *English*; and yet these confirmed by Law. And for that of

Psal. xcv. 6. Venite, proclamamus, &c. then also excepted against, that hath been of very antient use in the Liturgies of the Church. From which *rejecimus Paleam, numquid & Grana?* We have separated the Chaff, shall we cast away the Corn too? If it come to that, let us take heed we fall not upon the Devil's winnowing, who labours to beat down the Corn; 'tis not the Chaff that troubles him, St. Luke xxii. 31. Then they urged my Predecessor Archbishop Parker, that he found fault with the Consecration of new Churches. I answered then upon Memory, that he did not find fault simply with Consecrations of Churches, but only with the superstitious Ceremonies used therein. And this since, upon perusal of the Place, I find to be true. For after he had in some sort commended the Popes for taking away some gross and superstitious Purgations, he adds, that yet, for want of Piety or Prudence, their later *Pontifical* and *Missal-books* did outgo the antient *in multitudine Ceremoniarum, & peragendi Difficultate, & Tædio, & Exorcisationis Amentia*. So these were the Things he found fault with, not the Consecration itself; which he could not well do, himself being then a consecrated Bishop.*

2. The second Witness was Mr. Hope. He says, That he agrees with the former Witness, and saw all, and the throwing up of the Dust, &c. Since he agrees with the former Witness, I give him the same Answer. Yet with this Observation upon him and his Oath: The former Witness says, that at the beginning of this Action, I took Dust and threw it up; this Man agrees with him, and saw all; and almost in the very next Words confesses, he was not there at the Beginning. Not there; yet he saw it. My Lords, if you mark it, this is a wholesome Oath. He says, that then the Churchyard was consecrated by itself. It was ever so; the one Act must follow the other, tho' both done the same Day: for the Places being different, the Act could not pass upon them at the same time. Then he said, there were Fees required, and a good Eye had to the Money. This is a poor Objection against me: if the Officers did exact any Money without Rule, or beyond Precedent, let them answer for it. But for that which was said to belong to me, I presently gave it to the Poor of the Parish: and this Mr. Dell my Secretary, then present, attested to the Lords. Lastly he said, they were not new Churches; let him look to his Oath again; for 'tis notoriously known, they were both new built from the Ground, and St. Giles not wholly upon the old Foundation.

III. The third Charge was laid on me only by Mr. Nicolas, and without any Witness. It was, That I out-went Popery itself; for the Papists consecrated Churches only, but I had been so ceremonious, that I had consecrated * Chapels too. My Lords, the use of Chapels and of Churches, in regard of God's Service, is the same. Therefore if Consecration be fit for the one, it must needs be for the other. And the Consecrations of Chapels was long before Popery came into the World. For even Oratories newly built were consecrated in or before Eusebius's Time: and he flourished about the Year of Christ 310. So antient they are in the Courie of Christianity; and for any Prohibition

In Antiq. Britannicis, p. 85.

* Objectiva & adhaerens. Jo. Prideaux, Concio in S. Luc. xix. 46.

a Relative Holiness in Places, as well as in Vessels, and other Things dedicated to the Honour and Service of God. Nor is any thing more common in the Old Testament; and

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* Here in England, both before and since the Reformation, Chapels newly erected were always solemnly consecrated, as well as Churches. I could produce innumerable Instances of the Time preceding, many of the Time succeeding the Reformation. H. W.

Euseb. l. 10. Hist. c. 3.

Prohibition of them, there is neither Law nor Canon in the State or Church of *England* that doth it.

The Chapels they instance in are three. First, they say I consecrated a Chapel of the Right Honourable the Lord Treasurer *Weston's*. I did so, and did no harm therein. As for the Touch given by the way upon that Honourable Person, he is gone to God, I have nothing to do with it. Secondly, they instanced in a Chapel of Sir *John Worstenham's* building. 'Tis true, I consecrated that too, but that was a Parish-Church, built in the Place where he was born, and it was in my Diocese, and so the Work proper for me. The third Instance was in my own Chapel, in my House at *Aberguilly*, when I was Bishop of *St. Davids*; the Room lay waste and out of repair, and I fitted it at my own cost, and consecrated it into a Chapel, that House having no Oratory before. Here they farther aggravated many Circumstances; as First, That I named it at the Dedication, *The Chapel of St. John the Baptist*. I did so name that Chapel, in memory of the College where I was bred, which bears the same Name; but I dedicated it to God and his Service. And to give the Names of Angels and Saints to Churches, for distinction-sake, and for the honour of their Memory, is very antient and usual in the

Tho. 2. 28 q.
85. A. 2. ad 3.

Church, as appears in *St. Augustine*, and divers others of the Fathers; but dedicated only to God: 'Which in the midst of Superstitious Times, the School itself confesses.' So yet no Offence. Secondly, That I did it upon the 29th of *August*. And why might I not do it that Day, as well as upon any other? But resolving to name the Chapel as I did, I the rather made choice of that Day, both because it was the Day of the Decollation of *St. John the Baptist*, and because as upon that Day God had wonderfully blessed me, in the Hearing of my Cause concerning the Presidentship of *St. John's College in Oxford*, by King *James* of ever-blessed Memory: So yet no Offence. Thirdly, There was a Paper read, and avowed to be mine, in which was a fair Description of Chapel-Furniture and rich Plate, and the Ceremonies in use in that Chapel, and Wafers for the Communion. At the reading of this Paper I was a little troubled. I knew I was not then so rich, as to have such Plate or Furniture; and therefore I humbly desired sight of the Paper. So soon as I saw it, I found there was nothing in it in my hand but the Indorsement, which told the Reader plainly, that it was the Model of the Reverend Bishop *Andrews's* Chapel, with the Furniture, Plate, Ceremonies therein used, and all things else. And this Copy was sent me by the Household Chaplain to that famous Bishop. 'This I laid open to the Lords, and it would have made any Man ashamed, but Mr. *Prynn*, who had delivered upon Oath, that it was 'a Paper of my Chapel-Furniture an *Aberguilly*, 'contrary to his Conscience, and his own Eye-sight of the Paper.' And for Wafers, I never either gave or received the Communion, but in ordinary Bread. At *Westminster* I knew it was sometimes used, but as a thing indifferent. As for the Slur here given to that Reverend dead Bishop of *Winchester*, it might well have been spared; he deserved far better Usage for his Service to the Church of *England*, and the Protestant Cause.

IV. The Fourth Charge was the publishing the Book of Recreations: and it was ushered in with this Scorn upon me, That I laboured to put a Badge of Holiness, by my Breath, upon Places; and to take it away from Days. But I did neither; the King commanded the printing of it, as is therein attested, and the Warrant which the King gave me, they have. And tho' at Consecrations I read the Prayers, yet it was God's Blessing, not my Breath, that gave the Holiness. And for the Day, I ever laboured it might be kept holy, but yet free from a superstitious Holiness. And first it was said, That this was done of purpose to take away Preaching. But first, there is no Proof offered for this. And Secondly, 'tis impossible; for till the Afternoon-Service and Sermon were done, no Recreation is allowed by that Book, nor then to any but such as have been at both: therefore it could not be done to take it away. Thirdly, the Book names none but *Lawful Recreations*; therefore if any unlawful be used, the Book gives them no warrant. And that some are lawful (after the publick Service of God is ended) appears by the Practice of *Genova*, where after Evening-Prayer, the elder Men bowl, and the younger train. And *Calvin* says in express Terms, That one Cause of the Institution of the Sabbath, was, * *That Servants might have a Day of Rest and Remission from their Labour*. And what time of the Day fit, if not after Evening-Prayer? And what Rest is there for able young Men, if they may use no Recreation? Then it was urged, That there was a great Riot and Disorder at Wakes kept on the Lord's-Day. That is a very sufficient Cause to regulate and order those Feasts, but not quite to take them away. I make no doubt for my part, but that the Feasts of the Dedication was abused by some among the *Jews*: and yet Christ was so far from taking it away for that, as that he honoured it with his own Presence: *St. John* x. 22. As for the Paper which was read, containing three Causes why that Book was published, that was a Note taken for my own private Use and Memory.

Then came in Mr. *Prynn*, who said, That the Lord Chief Justice *Richardson* had made an Order in his Circuit against these Wakes, and was forced to revoke it. This was done by Authority, as is before answered; to which I refer myself. Here 'tis added, to help fill up the Noise. But Mr. *Prynn* says, That all the Gentlemen in the Country petitioned on the Judge's behalf. No; there was a great Faction in *Somersetshire* at that time, and Sir *Robert Phillips* and all his Party writ up against the Judge and the Order he made, as was apparent by the Certificates which he returned. And Sir *Robert* was well known in his time to be neither Popish nor Profane. He says farther, That *William* then Earl of *Pembroke* was out of Town, and the Book printed in the interim by my Procurement. But for this last, here's not one word of Proof offered, and so I leave it.

V. The Fifth Charge was, That some Ministers were punished for not reading this Book. Witnesses for this were produced.

1. The first was Sir *Nathaniel Brent*; who says, He had charge from me to call for an account of not reading this Book, both in my Province at my Visitation, and in my Diocese. His Majesty having commanded this, I could do little, if I had not so much as inquired what was done. And

* Tertio, Servis & iis qui sub aliorum degerent imperio, quietis Diem indulgendum censuit, quo aliquam haberent a labore remissionem. *Calv. L. 2 Inst. c. 8. § 28.*

he confesses, That for my Province he gave time to them which had not read it, and then never asked more after it. So here was no eager Prosecution. But then he says, that three in my Dioceses stood out, and asked time: and confesses that I granted it; but adds, that when he asked more time for them, I denied; and that they were then suspended *ab officio* only. I thought I had reason to deny, when I saw they did but dally by asking time. And it was then evident, that in the Dioceses of other Bishops far more than three were punished, and their Punishment greater. 'How-
'ever, this my Proceeding was far from Rigour.
'And this was the Answer that I gave Mr. Browne,
'who in the Sum of his Charge instanced in this
'Particular against me.'

2. The second Witness was Mr. Culmer, one of the three Ministers that was suspended. He says, That he was suspended by Sir Nathaniel Brent, and that when he came to me about it, I said, *If you know not how to obey, I know not how to grant your Petition.* Truly, my Lords, finding him both wilful and ignorant, I cannot tell what I could say less. He says, that his Patron took away his Benefice. Why, my Lords, he had none: he was only a Curate, and, God knows, unfit for that. So being suspended from his Office, this must needs be done. He says, he was not absolved till the Scots came in, and that he was conformable in all things else. For the time of his Absolution, I leave that to the Record: but for his Conformity in other Things, 'tis more than ever I heard of any.
'This I can say for him, he is good at purchasing
'a Benefice; for he offered a Servant of mine One
'hundred and fifty Pound, so he could procure
'me but to name him to the Parliament for *Char-*
'*tham* in Kent. Since, I have heard he is as good
'at doing Reverence in the Church:
'for he pissed in the Body of the
Antidotum Culmeria-
num. p. 11.
Ibid. p. 35.
'Cathedral at Canterbury at Noon-
'day, as will be justified by Oath.
'And for this very Particular, the
'Book of Recreations, he informed
'at the Council-Table against a Gentleman of
'Quality, for saying, *It was unfit such Books should*
'*be sent, for Ministers to read in the Church.* And
'was himself laid by the Heels, for the Falshood
'of this Information. So he is very good at the
'point of Conscience too, that can refuse to read
'the Book, as being unfit, and complain to have
'another punished for saying 'tis so.'

3. The third Witness is Mr. Wilson. He says, that I sent to Sir Nath. Brent to suspend him. That is true, but it was when he would neither obey, nor keep in his Tongue. He says, his Living was sequestred for almost four Years. But it was not for not reading this Book. For himself confesses it was done in the High-Commission; and that for Dilapidations, in not repairing his House.

4. The fourth Witness was one Mr. Snelling, a Minister in the Diocese of Rochester. All that was done against this Man, was openly in the High-Commission Court: and there he was censured for other things, as well as for this. Himself confesses his open refusing to bow at the Name of Jesus, tho' the Canon of the Church command it. I kept him off from being sentenced a long time, and when he was sentenced, he confesses I was not

present. He says, somewhat was expunged out of his Brief. If it were, it was with the consent of his Counsel; which in that Court was ordinary. Howsoever it cannot touch me: for those Things were done at Informations, where I was not present. He says, that when I heard of the Nature of his Defence, I said, *If any such Defence were put in, it should be burnt.* This was upon just Complaint of the Judge then present at Informations, affirming it was against all the Course of that Court. He says, there is no Penalty mentioned in that Declaration. And I say, his Obedience, and other Mens, should have been the more free and chearful. Well, I pray God keep us in the Mean, in this Business of the Sabbath, as well as in other Things; that we run not into a *Jewish* Superstition, while we seek to shun Profaneness. This Calvin hath in the mean time assured me, *That those Men who stand so strictly upon the Morality of the Sabbath, do, by a gross and carnal Sabbatization, three times out-go the Superstition of the Jews.*

Cras carnali-
que Sabbatis-
mi Superstiti-
one ter Judæos
superant.
Calv. 2. Inst.
c. 8. § 34.

Here it was inferred, That there was a Combination for the doing of this in other Dioceses. But no Proof at all was offered. Then Bishop Mountague's Articles, and Bishop Wren's, were read, to shew that Inquiry was made about the reading of this Book; and the Bishop of London's Articles named, but not read. But if I were in this Combination, why were not my Articles read? Because no such thing appears in them; and because my Articles gave so good Content, that while the Convocation was sitting, Dr. Brown and Dr. Holdsworth came to me, and desired me to have my Book confirmed in Convocation, to be general for all Bishops in future, it was so moderate, and according to Law. But why then (say they) were other Articles thought on, and a Clause that none should pass without the Approbation of the Archbishop? Why; other were thought on, because I could not in modesty press the Confirmation of my own, tho' solicited to it. And that Clause was added, till a standing Book for all Dioceses might be perfected, that no *Quære* in the interim might be put to any, but such as were according to Law.

VI. The sixth Charge was about reversing of a Decree in Chancery (as 'tis said) about Houses in Dr. Walton's Parish, given (as was said) to superstitious Uses.

1. The first Witness was Serjeant Turner. He says, He had a Rule in the King's-Bench for a Prohibition in this Cause. But by reason of some Defect (what, is not mentioned) he confesses he could not get his Prohibition. Here's nothing that reflects upon me. And if a Prohibition were moved for, that could not be personally to me, but to my Judge in some Spiritual Court, where it seems this Cause depended, to which the Decree in Chancery was directed. And indeed this Act, which they call a Reversing, was the Act and Seal of Sir Nath. Brent, my Vicar-General: And if he violated the Lord Keeper's Decree, he must answer it. But the Instrument being then produced, it appeared concurrent in all Things with the Decree. The Words are, *Juxta scopum Decreti hac in parte in Curia Cancellariæ factum, &c.*

2. The

^a This Mr. Culmer not only pissed in the Church of Canterbury, but also demolished the noble Glass-windows of it with his own Hands. The like he did in the Parish-Church of Minister in Thanet; which Benefice he usurped during the Rebellion.

2. The second Witness was Mr. *Edwards*. And wherein he concurs with Serjeant *Turner*, I gave him the same Answer. For that which he adds, That Dr. *Walton* did let Leases of these Houses at an under Value, and called none of the Parishioners to it: If he did in this any thing contrary to Justice, or the Will of the Donor, or the Decree, he is living to answer for himself; me it concerns not. For his Exception taken to my Grant (of Confirmation, I think he means) and to the Words therein, *Omnis & Omnimoda, &c.* 'tis the antient Style of such Grants for I know not how many Hundred Years; no Syllable innovated or altered by me.

VII. Then followed the Charge of Mr. *Burton* and Mr. *Prynn*, about their Answer, and their not being suffered to put it into the *Star-Chamber*. Which, tho' Mr. *Prynn* pressed at large before, yet here it must come again, to help to fill the World with Clamour. Yet to that which shall but seem new, I shall answer. Two Things are said: (1.) The one, that they were not suffered to put in their Defence *modo & forma*, as it was laid. There was an Order made openly in Court to the Judges to expunge scandalous Matter. And the two Chief Justices did order the expunging of all that which was expunged, be it more or less; as appears in the Acts of that Court. (2.) The other is, that I procured this Expunging. The Proofs that I procured it, were these: First, Because Mr. *Cockshot* gave me account of the Business from Mr. Attorney. I had reason to look after the Business, the whole Church of *England* being scandalized in that Bill, as well as myself. But this is no Proof that I either gave Direction, or used any Solicitation to the Reverend Judges, to whom it was referred. Secondly, Because I gave the Lords Thanks for it. It was openly in Court: It was after the Expunging was agreed unto. And what could I do less in such a Cause of the Church, tho' I had not been personally concerned in it? Thirdly, Because I had a Copy of their Answer found in my Study. I conceive it was not only fit but necessary for me to have one, the Nature of the Cause considered. But who interlined any Passages in it with Black-lead, I know not: For I ever used Ink, and no Black-lead all my Life. These be strange Proofs that I procured any thing.

Then Mr. *Prynn* added, That the Justice and Favour which was afforded Dr. *Leighton* was denied unto him. As far as I remember, it was for the putting in of his Answer under his own Hand. This, if so, was done by Order of the Court; it was not my Act.

VIII. The last Charge followed: And that was taken out of the Preface to my Speech in the *Star-Chamber*. The Words are, *That one Way of Government is not always either fit or safe, when the Humours of the People are in a continual Change, &c.* From whence they inferred, I laboured to reduce all to an arbitrary Government. But I do humbly conceive no Construction can force these Words against me for an arbitrary Government: For the Meaning is, and can be no other, for sometimes a stricter, and sometimes a remisser holding and ordering the Reins of Government; yet both according to the same Laws, by a different use and application of Mercy and Justice to Offenders. And so I answer'd to Mr. *Browne*, who charged this against me as one of my ill Counsels to his

Majesty. But my Answer given is Truth: For it is not said, That there should not be one Law for Government, but not one Way in the ordering and execution of that Law.

And the ^b Observator upon my Speech, (an *English* Author, and well enough known, tho' he pretends 'tis a Translation out of *Dutch*) tho' he spares nothing that may be but carped at; yet to this Passage he says, 'tis a good Maxim, and wishes the King would follow it. And truly, for my part, I learned it of a very wise and an able Governor, and he a King of *England* too, it was of *Henry VII.* of whom the Story says, ^c That in the Difficulties of his Time and Cause he used both Ways of Government, Severity and Clemency; yet both these were still within the Compass of the Law. He far too wise, and I never yet such a Fool, as to imbrace arbitrary Government.

^b *Divine and Politick Observations upon my Speech,* p. 78.

^c Speed in *Hen. VII.* § 16.

June 14. 1644. This Day I received a Note from the Committee, that they intended to proceed next upon the Remainder of the Seventh, and upon the Eighth and Ninth Original Articles: Which follow *in hæc verba*.

VIII. That for the better advancing of his Traitorous Purpose and Design, he did abuse the great Power and Trust his Majesty reposed in him: and did intrude upon the Places of divers great Officers, and upon the Right of other of his Majesty's Subjects: whereby he did procure to himself the Nomination of sundry Persons to Ecclesiastical Dignities, Promotions and Benefices, belonging to his Majesty, and divers of the Nobility, Clergy, and others; and hath taken upon him the Commendation of Chaplains to the King; by which Means he hath preferred to his Majesty's Service, and to other great Promotions in the Church, such as have been popishly affected, or otherwise unsound and corrupt both in Doctrine and Manners.

IX. He hath for the same traitorous and wicked Intent, chosen and employed such Men to be his Chaplains, whom he knew to be notoriously disaffected to the Reformed Religion, grossly addicted to Popish Superstition, and erroneous and unsound both in Judgment and Practice. And to them, or some of them, he hath committed the Licensing of Books to be printed; by which Means divers false and superstitious Books have been published, to the great Scandal of Religion, and to the seducing of many of his Majesty's Subjects.

The Fourteenth Day of my Hearing.

MONDAY, June 17. 1644. At the ending of the former Day's Charge, I was put off to this Day, which held.

I. The first Charge was concerning Mr. *Dampart's* leaving his Benefice in *London*, and going into *Holland*.

1. The first Witness for this was *Quaterman*, a bitter Enemy of mine; God forgive him. He speaks as if he had fled from his Ministry here for fear of me. But the second Witness, Mr. *Dukefwell*, says, that he went away upon a Warrant that came to summon him into the High-Commission. The Truth is, my Lords, and 'tis well known,

^a My Speech in the *Star-Chamber*, Prefat. versus finem.

^a *That one Way of Government is not always either fit or safe, when the Humours of the People are in a continual Change, &c.*

known, and to some of his best Friends, that I preserved him once before, and my Lord Vere came and gave me thanks for it. If after this he fell into danger again, *majus Peccatum habet*; I cannot preserve Men that will continue in dangerous Courses. He says farther, (and in this the other Witnesses agrees with him) That when I heard he was gone into *New-England*, I should say my Arm should reach him there. The Words I remember not. But for the Thing, I cannot think it fit that any Plantation should secure any Offender against the Church of *England*. And therefore if I did say my Arm should reach him, or them so offending, I know no Crime in it; so long as my Arm reached no Man but by the Law.

2. The second Witness, Mr. *Dukefwell*, adds nothing to this, but that he says, Sir *Maurice Abbot* kept him in before. For which Testimony I thank him. For by this it appears, that Mr. *Dampart* was a dangerous factious Man, and so accounted in my Predecessor's time, and it seems prosecuted then too, that his Brother Sir *Maurice Abbot* was fain (being then a Parishioner of his) to labour hard to keep him in.

II. The second Charge was concerning *Nathaniel Wickens*, a Servant of Mr. *Prynn*.

1. The first Witness in this Cause was *William Wickens*, Father to *Nathaniel*. He says, his Son was nine Weeks in divers Prisons, and for no cause but for that he was Mr. *Prynn*'s Servant. But it appears *apud Aetia*, that there were many Articles of great Misdemeanour against him. And afterwards himself adds, That he knew no cause, but his refusing to take the Oath *ex Officio*. Why, but if he knew that, then he knew another cause, beside his being Mr. *Prynn*'s Servants: unless he will say all Mr. *Prynn*'s Servants refuse that Oath, and all that refuse that Oath are Mr. *Prynn*'s Servants. As for the Sentence which was laid upon him, and the Imprisonment, that was the Act of the High-Commission, not mine. Then he says, That my Hand was first in the Warrant for his Commitment. And so it was to be of course.

2. The second Witness was *Sarah Wayman*. She says, That he refused to take the Oath. Therefore he was not committed for being Mr. *Prynn*'s Servant. She says, That for refusing the Oath, he was threatened he should be taken *pro Confesso*: And that when one of the Doctors reply'd, *That could not be done by the Order of the Court*, I should say, *I would have an Order by the next Court Day*. 'Tis manifest in the Course of that Court, that any Man may be taken *pro Confesso*, that will not take the Oath, and answer. Yet seeing how that Party of Men prevailed, and that one Doctor's doubting might breed more difference, to the great scandal and weakning of that Court; I publicly acquainted his Majesty and the Lords with it: who were all of opinion, that if such Refusers might not be taken *pro Confesso*, the whole Power of the Court was shaken. And hereupon his Majesty sent his Letter under his Signet, to command us to uphold the Power of the Court, and to proceed: She says farther, That he desired the sight of his Articles, which was denied him. It was the constant and known Course of that Court, that he might not see the Articles till he had taken the Oath which he refused to do.

3. The third Witness was one *Flower*. He agrees about the business of taking him *pro Confesso*: But that's answered. He adds, That there was nothing laid to his charge; and yet confesses, that

Wickens desired to see the Articles that were against him. This is a pretty Oath: There were Articles against him, which he desired to see, and yet there was nothing laid to his charge.

4. Then was produced his Majesty's Letter sent unto us. And herein the King requires us by his Supreme Power Ecclesiastical to proceed, &c. We had been in a fine case, had we disobeyed this Command. Besides, my Lords, I pray mark it, we are enjoined to proceed by the King's Supreme Power Ecclesiastical; and yet it is here urged against me, that this was done to bring in Popery. An excellent new way of bringing in Popery by the King's Supremacy. Yea, but they say, I should not have procured this Letter. Why? I hope I may by all lawful ways preserve the Honour and just Power of the Court in which I sit. And 'tis expressed in the Letter, that no more was done, than was agreeable to the Laws and Customs of the Realm. And 'tis known that both an Oath, and a taking *pro Confesso* in point of refusal, are used both in the *Star-Chamber* and in the *Chancery*.

5. The last Witness was Mr. *Prynn*; who says, that his Man was not suffered to come to him, during his Soreness, when his Ears were cropt. This Favour should have been asked of the Court of *Star-Chamber*, not of me. And yet here is no Proof that I denied him this, but the bare Report of him, whom he says he employed. Nor do I remember any Man's coming to me about it.

III. The third Charge followed; it was concerning stopping of Books from the Prefs, both old and new, and expunging some things out of them.

1. The first Instance was about the *English Bibles* with the *Geneva Notes*. The Bibles with those Notes were tolerated indeed both in Queen *Elizabeth's* and King *James's* time; but allowed by Authority in neither. And King *James* said plainly, *That he thought the Geneva Translation was the worst, and many of the Notes very partial, untrue, seditious, and favouring too much of dangerous and traitorous Conceits*: and gave Instance. This Passage I then read to the Lords; and withal told them. They now of late these Notes were more commonly used to ill Purposes than formerly, and that that was the Cause why the High-Commission was more careful and strict against them than before.

Here *Michael Sparks* the elder came in as Witness, and said, He was called into the High-Commission about these Books: but he confesses, it was not only for them. He says, *The Restraint of those Bibles was for the Notes*: but he adds, *as he supposes*. And his Supposal is no Proof. Besides, he might have added here also, that the Restraint was not for the Notes only: for by the numerous coming over of Bibles, both with and without Notes, from *Amsterdam*, there was a great and a just Fear conceived, that by little and little Printing would quite be carried out of the Kingdom. For the Books which came thence, were better Print, better bound, better Paper, and, for all the Charges of bringing, sold cheaper. And would any one buy a worse Bible dearer, when he might have a better cheaper? And to preserve Printing here at home, as well as the Notes, was the cause of stricter looking to those Bibles. And this appears by a Letter of Sir *William Boswell's*, his Majesty's Agent in the *Low-Countries*; the Letter written to me, and now produced against me: but makes for me, as I conceive. For therein he sends

Conference at
Hampton-
Court, p. 47.

sends me word of two Impressions of the Bible in *Englisch*, one with Notes, and the other without; and desires me to take care to regulate this Business at home. What should I do? Should I sleep upon such Advertisements as these, and from such a Hand? Especially since he sends word also, that Dr. *Amyes* was then printing of a Book wholly against the Church of *England*. So my Care was against all Underminings, both at home and abroad, of the established Doctrine and Discipline of the Church of *England*, for which I am now like to suffer. And I pray God that Point of *Arminianism*, *Libertas Prophetandi*, do not more Mischief in short time, than is expressible by me.

2. The second Instance was about the new Decree of the *Star-Chamber*, concerning Printing. Four Articles of this Decree were read, namely, the 1st, 2d, 18th, 24th. What these are, may be seen in the Decree: And, as I think, that whole Decree made *Anno* 1637, useful and necessary; so, under your Lordship's favour, I think those four Articles as necessary as any.

Mr. *Waly* and Mr. *Downes*, two Stationers, Witnesses in this Particular, say, That they desired some Mitigation of the Decree, and that Judge *Bramston* said, he could not do it without me. I saw my Lord Chief Justice *Bramston* here in the Court but the other Day; why was not he examined, but these Men only, who oppose all regulating of the Press, that opposes their Point? And sure that grave Judge meant, he could not do it alone without the Consent of the Court. Or

Frigidè dictum. W. S. A. C.

if he would have me consulted, it was out of his judicious Care for the Peace of this Church, almost pressed to death by the Liberty of Printing.

The chief Grievance they expressed against the new licensing of Books, was only for Matter of Charges; but that is provided for in the Eighteenth Article. And Mr. *Downes* takes a fine Oath, which was, That he makes no doubt, but that all was done by my Direction; and yet adds, that he cannot say it. So he swears that, which, himself confesses, he cannot say. And manifest it is in the Preface, that this Decree was printed by Order of the Court, and so, by their Command, sent to the *Stationers-Hall*: And the end of it was to suppress seditious, schismatical, and mutinous Books, as appears in the first Article.

3. The third Instance was, That I used my Power to suppress Books in *Holland*. This was drawn out of a Letter which *John le Mare*, one of the prime Preachers in *Amsterdam*, writ to me; expressing therein, That since the Proclamation made by the States, no Man durst meddle with printing any seditious Libels against either the State or Church of *England*. Where's the Fault? For this Gentleman did a very good Office to this Kingdom and Church, in procuring that Proclamation: For till this was done, every discontented Spirit could print what he pleased at *Amsterdam*, against either. And if he had any Direction from me about it (which is not proved) I neither am, nor can be sorry for it. And the Fear which kept Men in from printing, proceeded from the Proclamation of the States, not from any Power of mine.

4. The fourth Instance was in the *Book of Martyrs*. But that was but named to credit a base Business, an Almanack made by one Mr. ^a *Genebrand*; in which he had left out all the Saints, Apostles and all, and put in those which

^a His Name was Gelli-brand. W. S. A. C.

are named in Mr. *Fox*, and yet not all of them neither; for he had left out the solemn Days, which are in *Fox*, as *Feb. 2. Feb. 25. Mar. 25.* And *Cranmer* translated to *Mar. 23.*

In this Particular Mr. *Genebrand*, Brother to this Almanack-Maker, witnesseth, that the Queen sent to me about this new Almanack. If her Majesty did send to me about it (as 'tis probable she would disdain the Book) is that any Crime in me? Could I prevent her Majesty's sending, who could not know so much as that she would send? He says, His Brother was acquitted in the High-Commission, but charged by me, that he made a Faction in the Court. If I did say so, surely, my Lords, I saw some practising by him in this new-found Way. He says, The Papists bought up a great Number of these Almanacks, and burnt them. It seems he could not hinder that, nor I neither; unless it shall not be lawful for a Papist to buy an Almanack: for when he hath bought him, he may burn him if he please.

But since the *Book of Martyrs* was named, I shall tell your Lordships how careful I was of it. It is well known how easily Abridgements, by their Brevity and their Cheapness, in short time work out the Authors themselves. Mr. *Young* the Printer laboured me earnestly and often for an *Abridgment of the Book of Martyrs*; but I still withstood it (as my Secretary here present can testify) upon these two Grounds: The one, lest it should bring the large Book itself into disuse; and the other, lest if any material Thing should be left out, that should have been charged as done of purpose by me, as now I see it is in other Books. And I humbly pray your Lordships cast your Eyes upon the Frontispiece of the *Book of Martyrs*, printed *Anno* 1642: since this Parliament began, and when I was safe enough from having any hand in the Business, and there you shall see as dangerous Pictures as have been charged upon me, or any my Chapel-Windows.

Upon occasion of Mr. *Genebrand's* Calendar, Mr. *Prynn* took occasion to tell the Lords, That I had made Notes upon the Calendar in the *Missal*. I desired they might be read: it was thought too tedious. They were nothing but some Additions of my own reading to the Occurrences on some Days. And because the Calendar in the *Missal* was open and large, I thought fit to write them there.

5. The fifth Instance is in Dr. *Pocklington's* Centure of ^b and of *Flaccius Illyricus*; and that this Book was licensed by my Chaplain Dr. *Bray*; and he was censured in this Honourable House for that and like Slips of his. Then it was inferred at the Bar, That it must be taken as my Act, if it were done by my Chaplain: But Inferences are no sworn Proof. And, I conceive, no Man can by Law be punished criminally for his Servant's Fact, unless there be Proof that he had a hand in it. Then it was urged, but without any Proof too, that Dr. *Pocklington* was preferred by me. To which I shall answer when Proof is made; and if I had, 'tis far enough from Treason.

^b I believe the Name here wanting is Mr. Fox the Martyrologist. W. S. A. C.

6. The next Instance was about the calling in of *Thomas Beacon's* Disputation of the Mass. The Witness Mr. *Prynn*. He says, The Book was licensed, and that a Papist thereupon said, Doth my Lord of *Canterbury* license such Books? That I was informed of these Words, and the Book called in the next Day. First Mr. *Prynn* is single in this

part

part of the Testimony for the Words. Secondly, if any Papist did say so, it was not in my Power to stop his Mouth; and they which license Books, must endure many and various Censures, as the Readers of them stand affected. Thirdly, If any Papist did so speak, I have Reason to think it was to do me a Mischief, as much as in him lay. Fourthly, This is a very bold Oath; for he swears, that I was informed of these Words. He was not present to hear it, and then he can have it but by Hearsay; and no Religion teaches him to swear that for Truth, which he doth but hear. Lastly, The Book was called in, because it was slipt out contrary to the late Decree for Printing. Yea, but Mr. *Prynn* swears, and so doth *Michael Sparks* the other Witness, That the Book was sent to the Printer before the Decree. But First, *Sparks's* Oath is uncertain; for he says, Mr. *Prynn* sent him the Book before the Decree; and then by and by after says, it was about that time. Now the Book is somewhat large, so that it might be sent him before the Decree, and yet not be printed till after, and that a good Space too. And, Secondly, Mr. *Prynn* himself confesses, the Book was sent when the Decree was in Agitation.

7. The seventh Instance was about *Arminianism*, as maintained by me against the Declarations of both Houses of Parliament, and of King *James*, concerning *Vortius* and *Bertius*. First, I have nothing to do to defend *Arminianism*, no Man having yet charged me with the abetting any Point of it. Secondly, King *James's* Declaration is very learned: But under Favour, he puts a great deal of Difference between *Vorstius* and *Bertius*; and his Majesty's Opinion is clear with the Article of the Church of *England*, and so expressed by himself;

*Confer. at
Ham. Court,
p. 29, 30.*

and to which I ever consented. And the Passage in the Conference at *Hampton-Court* was then read to the Lords: and yet for the Peace of Christen-

dom, and the strengthening of the Reformed Religion, I do heartily wish these Differences were not pursued with such Heat and Animosity, in regard that all the *Lutheran Protestants* are of the same Opinions, or with very little Difference from those which are now called *Arminianism*.

And here comes in *Michael Sparks*, who says, He was called into the High-Commission about a Book of Bishop *Carleton's*. I cannot punctually remember all Particulars so long since; but he confesses the Business was in the High-Commission, and so not singly chargeable against me. Besides, he is single in this Business. He says, He was Eleven Years in the High-Commission, and never sentenced. 'This is more than I know: But if 'it be so, he had better luck than some honest Men; for a bitterer Enemy, to his Power, the 'Church-Government never had.' He was Mr. *Prynn's* Printer. He says, I was a Dean then, and he thinks of *Hereford*. I was never Dean of *Hereford*: But howsoever, this is a dangerous Oath; let him think of it. He swears that I was a Dean then, and a High-Commissioner, or else what had I to do in the Business? Now it is well known I was never a High-Commissioner, till I had been a Bishop some Years. For the Book itself, *Sparks* says nothing what was the Argument of it; but (so far as I remember) it was expressly against the King's Declaration. 'And so I answered Mr. 'Browne, when he summed up the Evidence 'against me in the House of Commons. And tho' 'in his Reply he seemed to deny this, yet I remember no Proof he brought for it.'

8. The last Instance was pregnant, and brought forth many Particulars. 1. As First, Dr. *Fealy's* Parallels against Bishop *Mountague*: but this was still-born; at least it says nothing of me. 2. Secondly, Mr. *Prynn's* Perpetuity, and against Dr. *Cofens*, both burnt. But he doth not say absolutely burnt, but as he is informed; and he may be informed amiss. And howsoever he says, it was done by the High-Commission, not by me. 3. Thirdly, Some Sheets of Dr. *Succliff's* Book prohibited the Press at *Oxford*. I hope *Oxford* is able to give an Account for itself. And whereas it was here said at the Bar, They hoped I would shew some repressing of the contrary Part; I would satisfy their Hopes abundantly, could I bring Witnesses from *Oxford*, how even and steady a Hand I carried to both Parts. 4. Fourthly, Mr. *Burton* questioned about his Book called, *The Seven Vials*: But himself confesses, That upon Sir *Henry Martin's* Information, that, as that Cause was laid, the High-Commission had no Power in it, he was dismissed. 5. Fifthly, That about his Book, intitled, *Babel*, no *Bethel*, he was questioned at a Court out of Term. This was very usual, whensoever the Court was full of Business, to hold one Court-day out of Term. This is warranted by the Commission; and Warning of it was always publicly given the Court-day before, that all, whom it concerned, might take notice of it, and provide themselves. 6. Sixthly, He says he was there railed at by Bishop *Harsnet*. 'Tis more than I know that Bishop *Harsnet* railed at him; but if he did, I hope I am not brought hither to answer all Men's Faults. 7. Seventhly, He says, He claimed the Petition of Right, yet was committed. This is more than I know or believe; yet if it were so, it was done by the High-Commission Court, not by me. 8. He says next, That he could never be quiet. But I am sure, my Lords, the Church for divers Years could never be in quiet for him and his Associates. 9. Lastly, They say, Some Passages against *Arminianism*, were left out of two Letters; one of Bishop *Davenant's*, and the other of Bishop *Hall's*, sent to be printed. First, Here's no Proof at all offer'd, that I differ'd in any thing from the Doctrine expressed in those Letters. And, Secondly, for the leaving out of those Passages, it was (it seems) done to avoid kindling of new Flames in the Church of *England*. And it appeared on the other Side of the Paper, which was produced against me, and so read to the Lords, that these Passages were left out by the express Order from those Bishops themselves, under Bishop *Hall's* own Hand, and with Thanks to Dr. *Turner*, then my Chaplain, for his Letter to them. And here this Day's Business ended; and I received Command to attend again the Twentieth of the same Month.

The Fifteenth Day of my Hearing.

Thursday, June 20, 1644. This Day I came again to the House. A Day or two before, as now also, the Landing-Place at *Westminster* was not so full of People; and they which were there, much more civil towards me than formerly. My Friends were willing to persuade me, that my Answer had much abated the Edge of the People, saving from the violent and factious Leaders of the Multitude, whom it seems nothing would satisfy but my Life, (for so I was after told in plain Terms by a Man deeply interested in them;) when I presently saw *Quaterman* coming towards

me; who, so soon as he came, fell to his wonted railing, and asked aloud, *What the Lords meant, to be troubled so long and so often, with such a base Fellow as I was? they should do well to hang me out of the way.* I heard the Words with Grief enough, and so left them and him in the Hands of God. My Servants were earnest to have me complain to the Lords. I remembered my late Complaint about the Pamphlets had no Redress, and so forbore it. They notwithstanding, out of their Zeal, complained to Mr. Lieutenant of the *Tower*, who presently went forth, and said he would school him; but I hearkened no more after it.

When I came to the Bar, Mr. *Nicolas* began with great Violence, and told the Lords, the Business grew higher and higher against me. What the Business did, will after appear; but I am sure he grew higher and higher: and from this time forward, besides the Violence of Expression, gave me such Language, as no Christian would give a Jew. But God, I humbly thank him, blessed me with Patience; and so I made my Ears obedient. That which made him say *the Business grew higher and higher*, was this: Upon my often calling to have the Oaths at the Coronation of King *James* and King *Charles* compared, some of them repaired again to my Study at *Lambeth*, to search for all such Copies of Coronation-Books as could there be found. In this diligent and curious Search ('for Mr. *Prynne's* Malice made it') they found some Papers concerning Parliaments, no other (I praise God for it) than such as with indifferent Construction might (I hope) well pass; especially, considering what Occasion led me, and what Command was upon me. And, as I have been told by able and experienced Men, they would have been nothing, had they been found in any, but this troublesome and distracted time about the Rights of Parliaments (as 'tis said.) Howsoever, I was most unfortunate they should be now found; and I had not left them a Being, but that I verily thought I had destroyed them long since: But they were unhappily found among the Heaps of my Papers. And so,

I. An Answer to the Remonstrance made *June* 17, 1628. (which is sixteen Years since) was made the first Charge against me.

II. And the second Charge was, a Paper concerning a *Declaration*, *Jan.* 28, 1628. To both which I then answered; but because these are urged more than once, to help fill the People with new Clamour, and because they are more closely pressed against me at the last Day of my Hearing, and because Mr. *Browne*, in his summary Charge, laid and charged all these Papers together; to avoid tedious Repetition, I will also make my whole and entire Answer together, when that time comes.

III. The third Charge of this Day was, a Letter of a Jesuit to his Superior, found in my Study, dated *March* 1628. Let the Letter be dated when it will, I hope the Archbishop may get and keep the Letters of any Jesuits or others. How shall I be able to know or prevent their Plots upon the Religion by Law established, if this may not be done? Yet this I desire all Men to take Notice of, that this Letter was not directed to me. I was then Bishop of *London*: The Letter was found in a Search. But when by all possible Care taken by the High-Commission, the Author could not be found, I had (as I humbly conceive) great Reason to keep it. And I then humbly desired the whole Letter might be read. There was in it, That *Ar-*

minianism (as 'twas urged) was their Drug, and their Plot against us, &c. The Jesuit seeing a Fire kindling about these Opinions, might write what he pleased to help on his Cause: Yet this Drug, which he says is theirs, is the received Opinion of all the *Lutherans*, and they too Learned Protestants to use their Drugs. And if it be their Drug, why do the *Dominicans* so condemn it? Nay, why doth the *Master of the Sentences*, and the School after him, for the most, determine rigidly against it? And whereas 'tis said, That these Men had Instruments at the Duke's Chamber-Door; that belongs not to me, I was not Porter there. As for that Power which I had (called by Mr. *Nicolas* the Command of his Ear) I used it as much as I could to shut such Instruments thence. Beside, 'tis barely said, no Proof at all offer'd, that such Instruments were about the Duke's Chamber-Door. Other Papers were found in my Study, above sixty at least, expressing my continued Labours for some Years together, to reconcile the divided Protestants in *Germany*, that so they might go with united Forces against the *Romanists*. 'Why are not these produced too? Would not Christianity and Justice have my Innocence cleared, as well as my Faults accused?'

IV. The fourth Charge was Bishop *Montague's* Preferment. The Parliament (they say) called him in question, and the King called in his Book; yet, in Affront to the Parliament, that he was preferred by me. No, it was then publicly known in Court (whether now remembered or no, I cannot tell) that he was preferred by my Lord Duke; but being a Church-Business, the King commanded me to signify his Pleasure to the Signet-Office: And the Docket (which is all the Proof here made) mentions him only by whom the King's Pleasure is signified, not him that procures the Preferment: So the Docket in this Case is no Proof at all.

V. The fifth Charge was a Paper, intitled, *Considerations for the Church*. Three Exceptions against them. *The Observation of the King's Declaration*, Art. 3. *The Lecturers*, Art. 5. *And the High-Commission and Prohibitions*, Art. 10, 11. The Paper I desired might be all read: nothing in them against either Law or Religion. And for Lecturers a better Care taken, and with more Ease to the People, and more Peace to the Church, by a Combination of conformable neighbouring Ministers, in their Turns, and not by some one humorous Man, who too often misleads the People. Secondly, My Copy of *Considerations* came from Archbishop *Harsnett*, in which was some four Expression concerning *Emanuel* and *Sidney* Colleges in *Cambridge*, which the King in his Wisdom thought fit to leave out. The King's Instructions upon these *Considerations*, are under Mr. *Baker's* Hand, who was Secretary to my Predecessor; and they were sent to me to make Exceptions to them, if I knew any, in regard of the Ministers of *London*, whereof I was then Bishop. And by this, that they were thus sent unto me by my Predecessor, 'tis manifest, that this Account from the several Diocesses to the Archbishop, and from him to his Majesty once a Year, was begun before my time. Howsoever, if it had not, I should have been glad of the Honour of it, had it begun in mine. For, I humbly conceive, there cannot be a better or a safer Way to preserve Truth and Peace in the Church, than that once a Year every Bishop should

I suppose these Considerations are those published in Prynne's Compl. Hist. p. 287. W. S. A. C.

give an Account of all greater Occurrences in the Church to his Metropolitan, and he to the King: Without which, the King, who is the Supreme, is like to be a great Stranger to all Church Proceedings.

VI. The sixth Charge was about Dr. *Sibthorp's* Sermon, That my Predecessor opposed the printing of it, and that I opposed him, to affront the Parliament. Nothing so, my Lords: Nothing done by me to oppose, or affront the one or the other. This Sermon came forth when the Loan was not yet settled in Parliament. The Lords, and the Judges, and the Bishops, were some for, some against it. And if my Judgment were erroneous in that Point, it was misled by Lords of great Honour and Experience, and by Judges of great Knowledge in the Law. But I did nothing to affront any. 'Tis said, that I inserted into the Sermon, *That the People may not refuse any Tax that is not unjustly laid.* I conceive nothing is justly laid in that kind but according to Law, God's and Man's: And I dare not say, the People may refuse any thing so laid. For *Jus Regis*, the Right of a King, (which is urged against me too) I never went farther than the Scriptures lead me; nor did I ever think that *Jus Regis*, mentioned 1 Sam. viii. is meant of the ordinary and just Right of Kings, but of that Power which such as *Saul* would be, would assume unto themselves, and make it Right by Power, 1 Sam. viii. 12.

Then they say I expunged some Things out of it; As, First, the *Sabbath*, and put instead of it the *Lord's-Day*. What's my Offence? *Sabbath* is the *Jews* Word, and the *Lord's-Day* the *Christians*. Secondly, About evil Counsellors, to be used as *Haman*. The Passage (as there expressed) was very scandalous, and without just Cause, upon the Lords of the Council. And they might justly have thought I had wanted Discretion, should I have left it in. Thirdly, That I expunged this, *That Popery is against the first and the second Commandment.* If I did it, it was because it is much doubted by Learned Men, whether any thing in Popery is against the first Commandment, or denies the Unity of the God-head. And Mr. *Perkins* (who charges very home against Popery) says not the Breach of the first Commandment upon them. 'And when I gave Mr. *Browne* this answer; in his last Reply he asked why I left out both? Why, I did it because its being against the second is common and obvious, and I did not think it worthy the standing in such a Sermon, when it could not be made good against the first.'

But they demanded, Why I should make any Animadversions at all upon the Sermon? It was thus: The Sermon being presented to his Majesty, and the Argument not common, he committed the Care of printing it to Bishop *Mountain*, the Bishop of *London*, and four other; of which I was one. And this was the Reason of the Animadversions now called mine; as also of the Answer to my Predecessor's Exceptions (now charged also) and called mine. But it was the Joint-Answer of the Committee. And so is that other Particular also, in which the whole Business is left to the Learned in the Laws: For tho' the Animadversions be in my Hand, yet they were done at and by the Committee, only I being puny Bishop, was put to write them in my Hand.

VII. The seventh Charge was Dr. *Marwaring's* Business and Preferment. It was handled before, only resumed here to make a noise, and so passed it over.

VIII. The eighth Charge was concerning some Alterations in the Prayers made for the Fifth of *November*, and in the Book for the Fast, which was published *Anno* 1636. and the Prayers on the *Coronation-Day*.

1. First, For the Fast-Book: The Prayer mentioned was altered, as is expressed; but it was by him that had the ordering of that Book to the Press, not by me. Yet I cannot but approve the Reason given for it, and that without any the least Approbation of Merit: For the Abuse of Fasting, by thinking it meritorious, is the Thing left out; whereas in this Age and Kingdom, when and where set Fastings of the Church are cried down, there can be little fear of that erroneous Opinion of placing any Merit in Fasting.

2. Secondly, For the Prayers published for the Fifth of *November* and *Coronation-Day*; the Alterations were made either by the King himself, or some about him when I was not in Court: And the Book sent me, with a Command for the printing, as there altered. I made stay till I might wait upon his Majesty. I found him resolved upon the Alterations; nor in my Judgment could I justly except against them. His Majesty then gave Warrant to the Books themselves, with the Alterations in them; and so by his Warrant I commanded the Printing. And I then shewed both the Books to the Lords, who viewed them, and acknowledged his Majesty's Hand, with which, not his Name only, but the whole Warrant was written.

And here I humbly desired three Things might be observed, and I still desire it. First, With what Conscience this Passage out of my Speech in the *Star-Chamber* was urged against me, (for so it was, and fiercely by Mr. *Nicolas*) to prove that I had alter'd the Oath at the King's Coronation, because the Prayers appointed for the Anniversary of the Coronation were altered. 'Which is absolute Non-sense.' Secondly, He charged me that the Word *Antichristian* was left out. But that is visibly untrue: for it is left in. Thirdly, That tho' it be in, yet that the Alteration takes it off from the Papist, as also their Rebellion. Neither: For the Change is this; *That Antichristian Sect*, alter'd into *The Antichristian Sect of them which*, &c. and, *whose Religion is Rebellion*, alter'd into *who turn Religion into Rebellion*. By which it is manifest, that the Alteration takes off neither Imputation from the Papist, but moderates both. And for ought I yet know, 'tis necessary it should: For if their Religion be Rebellion, see what it will produce. Is not this the Syllogism? The Religion of the Papist is Rebellion; but Christianity is the Religion of the Papist: Therefore Christianity is Rebellion. I may not enlarge; but you may see more, if you please, in my Speech in the *Star-Chamber*. 'And when Mr. *Browne* in

the Sum of his Charge pressed these Alterations hard against me, he did not so much as mention that I had the King's both Warrant and Command to all that I did in that Particular. 'And besides urged this as a great Innovation; because the Prayers mentioned had continued unaltered for the space of above thirty Years; not remembring therewith, that the Liturgy of the Church, established by Act of Parliament, must be taken away, or alter'd, tho' it hath continued above fourscore. Nay and Episcopacy must be quite abolished, tho' it have con-

tinued

continued in the Church of Christ above sixteen hundred.'

IX. The ninth Charge was from Sir *Edward Hungerford*, who came to *Lambeth* to have a little Book licensed at the Prefs. The Author was Sir *Anthony Hungerford*, whether Sir *Edward's* Grandfather or his Uncle, I remember not the Relation. He says he came to my Chaplain Dr. *Bray* to license it; and that Dr. *Bray* told him there were some harsh Phrases in it, which were better left out, because we were upon a way of winning the Papists. First, I hope I shall not be made answerable for my Chaplain's Words too. And Secondly, I hope there is no harm in winning the Papists to the Church of *England*; especially, if so easy a Cure as avoiding harsh Language would do it. He says my Chaplain expressed a dislike of *Guicciardin's* Censure of Pope *Alexander* the Sixth. Sure, if the Censure be false, he had reason to except against it: If true, yet to publish such an unfavoury Business to the common People.—He says, he came and complained to me; and that I told him I was not at leisure, but left it to my Chaplain. So the Charge upon me was, that my Chaplain was in an Error concerning this Book, and I would not redress it. To this I answered, First, That my Chaplain was dead; and I not knowing the Reasons which moved him to refuse licensing this Book, can neither confess him to be in an Error, nor yet justify him. Secondly, for my own refusing to meddle with it. Sir *Edward* took me in a time of Business, when I could not attend it. Thirdly, If I had absolutely refused it, and left it to my Chaplain, I had done no more than all my Predecessors did before me. And Dr. *Featly* then witnessed to the Lords, that Archbishop *Abbot*, my immediate Predecessor, and to whom the Doctor was Household Chaplain, would never meddle with licensing Books, but ever referred them to his Chaplains. And Dr. *Moket*, another of his Chaplains, (well known to Dr. *Featly*) suffered for a Book sharply; yet not one Word said to my Predecessor about it. Fourthly, As the Liberty of the Prefs is in *England*, and of the Books which are tendered to the Prefs, the Archbishop had better grind than take that Work to his own Hands, especially considering his many and necessary Avocations. Lastly, No Man ever complained to me in this kind, but this Gentleman only. So it is one only single Offence, if it be any. But how this, or the rest, should be Treason against Sir *Edward Hungerford*, I cannot yet see. And so I answered Mr. *Browne*, who in his summary Charge forgot not this. But Mr. *Nicolas* laid load upon me in his Reply, in such Language as I am willing to forget.

X. The tenth Charge was out of a Paper of Considerations to Dr. *Potter*, about some few Passages in his Answer to a Book intitled *Charity mistaken*. The Business this: Dr. *Potter* writ to me for my Advice. I used not to be peremptory; but put some few Things back to his farther Consideration: Of which three were now charged upon me. The first was, he used this Phrase, *Believe in the Pope*. I desired him to consider of (*In.*) And in this I yet know not wherein I offend. The second was this Phrase, *The Idol of Rome*. I advised him to consider this Phrase too, that Men might not be to seek what that Idol was, 'And here Mr. *Nicolas* cried out with Vehemency, That every Boy in the Street could tell the Pope was the Idol. I had not Dr. *Potter's* Book now at Hand, and so

could not be certain in what Sense the Doctor used it; but else, as many at least think the Mass the Idol of *Rome*, as the Pope; unless Mr. *Nicolas's* Boys in the Streets think otherwise, and then I cannot blame him for following such mature Judgments.' The third was, that I bid him consider whether the Passage, p. 27. (as I remember) did not give as much Power to the Parliament in matter of Doctrine, as the Church. 'But my Answer to this I shall put off to the Charge against me concerning Parliaments, because there Mr. *Browne* began with this. The two former he charged also, and I answered them as before. But he omitted that I obtained of the Lords the reader of Dr. *Potter's* Letter to me; by which he drew from me those Things which I determined not, but only put to his second Thoughts and Consideration. In which way (I humbly conceive) I cannot be in Crime, tho' I were in Error. Here ended the Business of this Day; and I was ordered to attend again June 27.'

The Sixteenth Day of my Hearing.

THURSDAY, June 27, 1644. I appeared this Day again: And the first Charge laid against me, was my Chaplain Dr. *Bray's* Expurgings out of Dr. *Featly's* Sermons. The same Charge *ad verbum* which was before; and I give it the same Answer. These Repetitions of the same Things being only to increase Clamour, and to fill more Mens Ears with it.

II. The second Charge was certain Expurgations of some Things against the Papists in Dr. *Clark's* Sermons. The Witness which swore to the Passages left out was one Mr. *White*, a Minister, and it seems some near Acquaintance of Dr. *Clark's*. But, First, this Witness is single. Secondly, he brought only a Paper, in which he had written down what was expunged; but Dr. *Clark's* Sermons he brought not with it: So 'tis not possible he might be mistaken. Howsoever, I not having the Book, could not possibly make an absolute and a perfect Answer. Thirdly, this Witness confesses that Dr. *Weeks*, then Chaplain to my Lord of *London*, had the View of Dr. *Clark's* Sermons, and took Exceptions against some Passages; as well as my Chaplain Dr. *Haywood* did. So it seems there was Cause for it. Fourthly, I answer, That for this, and for all other of like nature, my Chaplain must answer for his own Act, and not I. He is living, and an able Man: I humbly desire he may be called to his Account. For 'tis not possible for me to tell your Lordships upon what Grounds he did expunge these many and different Passages, which are instanced against me. Lastly, In all the Passages of Dr. *Clark's* Sermons it is not any where distinguished which were expunged by my Chaplain, and which by Dr. *Weeks*. So that the Charge in that behalf is left very uncertain.

For the Passages themselves, as they are many, so they are such as may easily be mistaken, the most of them. And whether Dr. *Clark* handled them in such manner as was not justifiable, either against *Arminius*, or the Papists, cannot possibly be known, till each Place in the Book be examined for the Thing, and my Chaplain, Dr. *Haywood*, for the Meaning. 'This made a great Noise in Mr. *Browne's* summary Charge against me: He alledging, that two and twenty Passages about

‘Points of Popery were dashed out of Dr. Clark’s Sermons. To which I answered, That I conceived my Chaplain would be able to make it good, there were Two hundred left in for Two and twenty left out; and that they which were left out, were not some way or other justifiable against the Papists, as set down and expressed by him. And if so, they are better out than in: For we gain nothing by urging that against the Papists, which, when it comes to the Touch, cannot be made good against them.’

One Passage is here added out of Dr. Featly’s Sermons, *Pag.* 225. where he inveighs against too much imbellishing and beautifying the Church, and not the Souls of Men, &c. First, If there be not a care to beautify the Soul, let Men profess what Religion they will, ’tis a just Exception; and I believe no Fault found with that. But, Secondly, for the over-much beautifying of the Church, ’tis a Point that might be well left out. Little Necessity, God knows, to preach or print against too much adorning of Churches among us, where yet so many Churches lie very nastily in many Places of the Kingdom, and no one too much adorned to be found. Nay, the very Consecration of Churches cried down, (as is before expressed.) And this Opinion, that no Place is holy but during the Service in it, made Mr. Culmer, tho’ a Minister, to piss in the Cathedral Church of *Canterbury*; and divers others to do so, and more against the Pillars of *St. Paul’s*, nearer hand, as may daily be both seen and smelt, to the shame of that which is called Religion. ‘Here Mr. Nicolas would fain have shovel’d it to the Out-side of the Church, (which had been bad enough;) but it was the Inside I spake of, and the thing is known.’

Then an Instance was made in a Book of Dr. Jones. The Witness that any thing was expunged out of this, was only Mr. Chetwin. And he confesses, that this Book was licensed by Dr. Baker, and he my Lord of London’s Chaplain, not mine. Here my Friends at the Bar infer, that Dr. Baker was preferred by me. First, That’s not so, he was preferred by his own Lord. Secondly, If he had been preferred by me, it could have made no Charge, unless Proof had been made that I preferred him for abusing Dr. Jones’s Book. And for the Docket, which is the only Proof offered that I preferred him I have already shewed, that that is no Proof. Yea but they say, Dr. Baker was employed by me as one of my Visitors. And what then? Must I be answerable for every Fault that is committed by every Man that I employ in my Visitation, tho’ it be a Fault committed at another Time and Place? tho’ I humbly desire Dr. Baker may answer for himself, before I acknowledge any Fault committed by him. ‘And tho’ I conceive this Answer abundantly satisfactory for any Thing that may concern me, yet Mr. Browne omitted not this Instance against me.’

III. The third Charge was personally against myself, and taken out of my ^aSpeech in the *Star-Chamber*. The Words these: *The Altar is the greatest Place of God’s Residence upon Earth, greater than the Pulpit; for there ’tis Hoc est Corpus meum, This is my Body; but in the other it is at most but Hoc est Verbum meum, This is my Word: And a greater Reverence is due to the Body, than the Word of the Lord.* Out of this Place, Mr. Nicolas would needs inforce,

that I maintained Transubstantiation; because I say, there ’tis *Hoc est Corpus meum*. First, I perceive by him, he confounds (as too many else do) Transubstantiation with the Real Presence, whereas these have a wide Difference. And Calvin grants a Real and True Presence, yea, and he grants *realiter* too; and yet no Man a greater Enemy to Transubstantiation than he: as I

have proved at large in my Book against *Fisher*, and had leave to read the Passage therein to the Lords. And Mr. Perkins avows as much.

Cont. Fisher, p. 202. Perkins’s Opera in fol. p. 590.

And secondly, the Word *there* makes nothing against this. For after the Words of Consecration are past, be the Minister never so unworthy, yet ’tis infallibly *Hoc est Corpus meum* to every worthy Receiver. So is it not *Hoc est Verbum meum*, from the Pulpit to the best of Hearers, nor by the best of Preachers since the Apostles time. ‘And as Preaching goes now, scarce is any thing heard from many in two long Hours, that favours of the Word of God.’ And St. Paul tells us, *1 Cor.* xi. 29. of a great Sin committed in his time of *not discerning the Lord’s Body*, when unworthy Communicants received it. Where was this? Why it was *there*, at the holy Table or Altar where they received, yet did not discern. I hope, for all this, St. Paul did not maintain Transubstantiation. ‘Mr. Browne in his summary Charge pressed this also upon me. I answer’d as before, and added, That in all Ages of the Church the Touch-stone of Religion was not to hear the Word preached, but to communicate. And, at this Day, many will come and hear Sermons, who yet will not receive the Communion together. And as I call the Holy Table the greatest Place of God’s Residence upon Earth, so doth a late learned Divine of this Church call the Celebration of the Eucharist, *the Crown of Publick Service, and the most solemn and chief Work of Christian Assemblies*: and he a Man known to be far from affecting Popery in the least. And all Divines agree in this, which our Saviour himself teaches, *St. Mat.* xxvi.

‘26. *That there is the same Effect of the Passion of Christ, and of this Blessed Sacrament worthily received.*’

Thorndike of Assemblies, c. 8. p. 260.

Idem est Effectus Passionis Christi & Eucharistiae. Thorn. p. 3. q. 79. A. 1. c. 6. Pag. 49.

Another Passage taken out of my Speech, was, *That due Reverence be given to God, and to his Altar.* Hence Mr. Nicolas infers again, this Reverence is one joint Act, therefore ’tis Divine to the Altar, as well as to God, and so Idolatry. First, The very next Words in my Speech are, that this Reverence to the Altar comes *far short of Divine Worship*. What can prevent an Objection, if such plain Words cannot? Secondly, Having thus plainly expressed it, he may infer too if he will, that I do not then worship God. For this Reverence is one joint Act; but ’tis confessed, that ’tis not Divine Worship to the Altar, and therefore not to God. ‘But Thirdly, This Gentleman, by his favour, understands not the Mysteries which lie hid in many Parts of Divinity. In this for one.’ For when this Reverence is performed, ’tis to God as to the Creator, and so Divine; but ’tis only toward, and not to the Altar, and so far short. And tho’ in outward Performance it be one joint Act, yet that which is not separated, is, and must be distinguished one from the other. ‘To make

In bono opere
Deo accepta-
bili, Fides &
Charitas dis-
tinguantur, non
separantur.
Qui loquitur,
simul facit vo-
cem & ver-
bum. *St. Aug.*
l. 1. de Gen.
ad Lit. c. 15.

‘ a good Work acceptable to God,
‘ there must be both Faith and
‘ Charity ; they cannot be separated
‘ one from the other : what shall
‘ they not therefore be distinguish-
‘ ed ? He that speaks (saith *St. Au-*
‘ *gustine*) by one joint Act sends
‘ out his Voice and his Word ; se-
‘ parated they cannot be, shall not
‘ they be distinguished therefore ?
‘ But I have lived long enough, and
‘ taken pains to small purpose, if
‘ Mr. *Nicolas*, or any Layman else, at his by
‘ and leisure Hours from a busy Profession, shall
‘ be able to teach me in that which I have la-
‘ boured all my Life. And God blefs the poor
‘ Bishops and Clergy of *England*, if falling into a
‘ Storm (as I now am) they must have such Judges
‘ as Mr. *Nicolas*.’

IV. The fourth Charge is the licensing of *Sales*,
and other Books which had Popery in them, by
my Chaplain Dr. *Haywood*.

1. To this Mr. *Prynn* (who is the single Wit-
ness) says, That he tender’d a Bill to the then
Lord Keeper against my Chaplain for licensing
this Book, and that his Lordship refused it. If
the Lord Keeper *Coventry* refused his Bill, I be-
lieve, were he living, he would assign just Cause
why he did it. But whatever Cause he had, it
concerns not me, that he rejected the Bill. Mr.
Prynn says farther, that this Book of *Sales* was
printed heretofore, but purged first by Dr. *James* ;
but licensed now by Dr. *Haywood*, not according
to that Purgation, but with all the Points of Po-
pery in. For this he produces Mr. *Oakes*, whose
Son printed it. And says farther, that his Cor-
rector at the Press found fault with some Passages,
and thereupon he was sent to Dr. *Haywood*, who
returned answer (as they say) *That if he licensed it,*
he would justify it : and that his Son told him this.
First, my Lords, this Under-testimony of Mr.
Oakes, produced by Mr. *Prynn*, is nothing but a
Hearsay from his Son, who is now dead, and can-
not be examined ; and while he was living, ran
away, and would not be examined. Secondly,
This was a most notable Piece of Villany practi-
sed against my Chaplain, and, thro’ his Sides, a-
gainst me. It was thus, my Lords : Whether the
Bill were rejected or no, I cannot tell ; but the
Complaint of printing this Book came publickly
into the *Star-Chamber*. And then was the first time
that ever I heard of it. I then humbly desired
their Lordships, that Dr. *Haywood* might answer
whatever he had done amiss, either there, or
where they pleased. The Court presently com-
manded Mr. Attorney *Banks* to call all Parties be-
fore him, examine them thorowly, and then give
his Account what he found ; that the Court might
proceed farther according to Justice. Dr. *Haywood*
appeared, and shewed Mr. Attorney how he had
corrected *Sales* in all Popish Points before he li-
censed it. But young *Oakes*, and he which brought
Sales to be licensed, (who was then thought to be
some Jesuited Recusant, and, as I remember,
lodged for that time of printing in *Oakes*’s House)
ran both away, or hid their Heads, and would
not be found. And this was a mere Plot of this
Recusant, if not Priest, to have *Sales* printed with
all his Points of Popery in him, to work Mischief
to my Chaplain and myself : And young *Oakes* was
in all likelihood well paid for his pains. This Ac-
count Mr. Attorney brought into that Court, and

this Relation Dr. *Haywood* (who I obtained might
be after sent for) attested at this Bar.

One Circumstance my old decayed Memory
mistook. For I thought, and so at first told the
Lords, that for this Clamour raised upon him in
this way, I did soon after dismiss him my House.
But after, I found that he was gone out of my
House before. Howsoever, I left him without
any Mediation to the Justice of the Court. And
here I may not forget that which I then observed
to the Lords, that whereas ’tis urged, that many
Points of Popery have passed the Press ; ’tis no
wonder, if such Art be used as was here to get
out *Sales*. And this farther is observable, that all
these Quotations of Popish Opinions, mentioned
here to fill up the Noise, are out of four or five
Books at the most, of which more are out of this
Sales than all the rest. ‘ And called in he was, as
‘ soon as known. Which Mr. *Browne* in the Sum
‘ of his Charge acknowledges.’

2. After *Sales*, the next Instance was in a Book
intituled, *Christ’s Epistle to the devout Reader*. Four
particular Points were urged out of this : but nei-
ther I nor my Chaplains had ought to do with it.
For it was licensed at *London-House* by Dr. *Weeks*.
Nor was there ever any Complaint brought to me
to have it called in : nor was any such Proof so
much as offer’d.

4. The third Instance was of a Book called *The*
Female Glory, where Mr. *Prynn* (who is single a-
gain) said, that Dr. *Heylin* answered Mr. *Burton*,
and justified all the Passages in this Book : And
added, that this was by my Direction. But upon
my Motion at the Bar concerning the Boldness of
this Oath, Mr. *Prynn* recalled himself, and said,
that I appointed him to answer Mr. *Burton*. But
it is one Thing to appoint him to answer Mr. *Bur-*
ton, and another to direct him to justify all Pas-
sages in *The Female Glory*.

4. The fourth Instance was in a Letter sent to
me from one *Croxton*, a young Divine in *Ireland*.
He was bred in *St. John’s-College* in *Oxford*. At the
Lord *Mountnorris*’s Intreaty, I sent *Croxton* into
Ireland to be his Chaplain. If he miscarried there,
I could not help it, nor hinder his writing of a
Letter to me, nor prescribe what he should write
in it. But to my remembrance, I never heard of
any Miscarriage of his in Matter of Religion :
And whether he be living or dead, I know not.
That Letter indeed hath a Cross at the Top of it.
But then was another Letter of his shewed without
a Cross, in which he calls *Rome*, *Monstrum Abo-*
minandum. Howsoever, I conceive all this is no-
thing to me.

5. The fifth Instance was a Book, which they
said was licensed by Dr. *Weeks*. And if so, then
not by my Chaplain. But upon perusal, I find no
License printed to it, nor to any of the other, but
only to *Sales*, which is answered.

6. The sixth Instance was in Bishop *Mountague*’s
Books, the *Gagg* and the *Appeal*. Here they said,
that Dr. *White* told Dr. *Fealy*, *That five or six Bi-*
shops did allow these Books. But he did not name me
to be one of them. Then Mr. *Prynn* urged upon
his Oath, that these Books were found in my
Study. And I cannot but blefs myself at this Ar-
gument. For I have *Bellarmino* in my Study, there-
fore I am a *Papist* ; or I have the *Alcoran* in my
Study, therefore I am a *Turk*, is as good an Ar-
gument as this : I have Bishop *Mountague*’s Books
in my Study, therefore I am an *Arminian*. May
Mr. *Prynn* have Books in all kinds in his Study, and
may

may not the Archbishop of *Canterbury* have them in his? Yea, but he says, There is a Letter of the Bishop's to me, submitting his Books to my Censure. This Letter hath no date, and so belike Mr. *Prynn* thought he might be bold both with it and his Oath, and apply it to what Books he pleased. But as God would have it, there are Circumstances in it as good as a Date. For 'tis therein expressed, that he was now ready to remove from *Chichester* to *Norwich*. Therefore he must needs speak of submitting those his Books to me, which were then ready to be set out, which were his *Origines Ecclesiasticæ*; not the *Gagg*, nor the *Appeal*, which are the Books charged, and which were printed divers Years before he was made a Bishop: and my Receipt indorsed upon it, is Mar. 29. 1638. And I hope Mr. *Nicolas* will not call this the Colour of an Answer, as he hath called many of the rest given by me.

7. The seventh Instance was in a Book licensed by Dr. *Martin*, then my Chaplain in *London-House*. This Book, Mr. *Prynn* says, was purposely set out to countenance *Arminianism*, as if it had been some Work of moment, whereas it was answered twice in the Queen's time. If Dr. *Martin* did this, 'tis more than I remember; nor can I so long after give any account of it. But Dr. *Martin* is living, and in Town, and I humbly desired he might be called to answer. He was called the next day, and gave this Account.

[*The Account is wanting; a Space left for it, but not filled up.*]

Mr. *Prynn* says farther, That after this he preached *Arminianism* at *St. Paul's Cross*. Why did not Mr. *Prynn* come then to me, and acquaint me with it? Which neither he nor any Man else did. And I was in Attendance at Court, whither I could not hear him. And the Charge which came against him upon the next Day's Hearing, was this and no more, That one then preached at the *Cross* Universal Redemption; but he that gave testimony, knew him not: only he says, one told him 'twas Dr. *Martin*.

1. The last Instance was of a Bible commonly sold, with a Popish Table at the end of it. This is more than I know, or ever heard till now; nor was any Complaint ever brought to me of it. And I cannot know all things that are done abroad for Gain; for that will teach them to conceal, as well as move them to act. Yet one of the Popish Heads mentioned in that Table, was *Confirmation*, which is commanded in our Church-Liturgy, and ratified by Law.

Here this Day ended, and I was ordered to appear again July 4. That Day I received a Note, under Mr. *Nicolas*'s hand, that they meant to proceed upon the Eighth, Ninth, Tenth, Eleventh, Twelfth, and Fourteenth Original Articles, and the Sixth and Seventh Additionals. The last Warrant for other Articles, came under Serjeant *Wilde*'s Hand, and Mr. *Nicolas* signing this, it seems, mistook: for the Eighth and Ninth Original Articles are in part proceeded on before. Now they go forward with these, and then on to the rest; which I will write down severally, as they come to them.

The same Day, being *Thursday*, all my Books at *Lambeth* were by Order of the House of Commons taken away by Mr. Secretary to

the Right Honourable the Earl of *Warwick*, and carried I know not whither, but are (as 'tis commonly said) for the use of Mr. *Peters*. Before this time, some good number of my Books were delivered to the use of the Synod; the Ministers which had them giving no Catalogue under their hands, which or how many they had. And all this was done contrary to an Order of the Lords, bearing date *Novemb. 9. 1642.* for the safe keeping of my Books there; and before I was convicted of any Crime. This Day also I received an Order, which put off my Hearing to the next Day.

The Seventeenth Day of my Hearing.

I. **F**RIDAY, July 5. 1644. This Day I appeared again: And the First Charge against me was, That I had preferred none to Bishopricks, Deaneries, Prebends, and Benefices, but Men popishly affected, or otherwise unworthy. And some they named:

1. As First, Dr. *Manwaring*, disabled by the Parliament.

2. Secondly, Mr. *Mountague*, excepted against by Parliament. But for these, no Proof was now brought: They referred themselves to what was said before, and so do I. And where they go to prove only by Dockets, I desire it may still be remembered that the Docket is a full Proof who gave Order for drawing the Bill at the Signet-Office, but no Proof at all who procured the Preferment.

3. Thirdly, Bishop *Corbett*. But the Earl of *Dorset* got my Lord Duke of *Buckingham* to prefer him, to make way for Dr. *Duppa*, his deserving Chaplain, into *Christ-Church*. Nor was any thing charged against Dr. *Corbett*, but that he was preferred by me.

4. Fourthly, Bishop *Pierce*: against whom there was no Proof offered neither. And he is liking to answer it, if any be.

5. Nor was there now any Proof offered against Bishop *Wren*, who was named also; at the least not till he was made a Bishop. So if I did prefer him, it seems I did it when nothing was laid against him. And if after he had his Preferment, he did any thing unworthily, that could not I foresee; and he is living to answer it.

6. The Sixth was Bishop *Lindsey*, a Man known to be of great and universal Learning, but preferred by the then Lord Treasurer *Portland*, not by me. Him they charged with *Arminianism*. The Witnesses two: The first, Mr. *Smart*; he is positive, he was his Fellow-Prebendary at *Durham*. There was Animosity between them. 'And *Smart*, not able to judge of *Arminianism*.' Secondly, Mr. *Walker*, who could say nothing, but that he heard so much from some Ministers, and Dr. *Bastwick*. 'So here is as Learned a Man as *Christendom* had any of his time, debased in this great and honourable Court, by Ignorance, and a Hearsay; and that, when the Man is gone to that which should be his Quiet, the Grave.'

7. The Seventh was Archbishop *Neile*, a Man well known to be as true to, and as stout for, the Church of *England* established by Law, as any Man that came to Preferment in it. Nor could his great Enemy Mr. *Smart* say any thing now against him, but a Hearsay from one Dr. *Moor* of *Winchester*. And I cannot but profess, it grieves me much, to hear so many honest and worthy Men

so used, when the Grave hath shut up their Mouths from answering for themselves.

8. The next was Dr. *Cofens*, to be dean of *Peterborough*. I named four of his Majesty's Chaplains to him, as he had commanded me: and the King pitched upon Dr. *Cofens*, in regard all the Means he then had, lay in and about *Duresm*, and was then in the *Scots* hands; so that he had nothing but Forty Pound a Year by his Headship in *Peter-House*, to maintain himself, his Wife and Children.

9. The Ninth was Dr. *Potter*, a known *Arminian*, to the Deanery of *Worcester*. What Proof of this? Nothing but the Docket. And what of the Crime? Nothing but Dr. *Featly's* Testimony; who says no more but this, That Dr. *Potter* was at first against *Arminianism*; (that's absolute:) But afterwards he defended it, as he hath heard; (there's a Hearsay.)

10. The Tenth was Dr. *Baker*.

11. The Eleventh Dr. *Weeks*. Both very honest and able Men; but preferred by their own Lord, the Lord Bishop of *London*.

12. The Twelfth was Dr. *Bray*. He had been my Chaplain above ten Years in my House; I found him a very able and an honest Man, and had reason to prefer him to be able to live well; and I did so. Here is nothing objected against him, but his Expungings, and not Expungings of some Books; which if he were living, I well hope he would be able to give a good account for.

13. The Thirteenth Dr. *Heylin*. He is known to be a learned and an able Man; but for his Preferment, both to be his Majesty's Chaplain, and for that which he got in that Service, he owes it under God to the Memory of the Earl of *Danby*, who took care of him in the University.

14. After these, they named some, whom they said I preferred to be the King's Chaplains. The Witness here Mr. *Oldsworth*, the Lord Chamberlain's Secretary. He says, The Power and Practice of naming Chaplains was in the Lord Chamberlain for these 25 Years. And I say, 'tis so still, for ought I know. He says, That in all things concerning which the Lord Chamberlain's Warrant went in this Form, *These are to will and require you, &c.* that there his Lordship did it without consulting the King; and that the Warrants for Chaplains run all in this Form. First, This is more than I know, or ever heard of till now. Secondly, Be it so; yet 'tis hard to deny the King to hear Men preach, before they be sworn his Chaplains, 'if his Majesty desire it, since it argues a great Care in the King, especially in such a factious time, as began to overlay this Church.' Thirdly, He confesses, that he knows not who put the King upon this way, but believes that I did it. He is single, and his Belief only is no Evidence. 'And whosoever gave the King that Advice, deserved very well both of his Majesty and the Church of *England*; That none might be put about him in that Service, but such as himself should approve of. But that which troubled this Witness, was another thing. He had not Money for every one that was made Chaplain; nor Money to get them a Month to wait in; nor Money to change their Month, if it were inconvenient for their other Occasions; nor Money for sparing their Attendance when they pleased. In which, and other things, I would he had been as careful of his Lord's Honour, as I have been in all things. For 'tis well known in

'Court, I observed his Lordship as much as any Man.'

The Men which are instanced in, are Dr. *Heylin*. But he was preferred to that Service by my Lord the Earl of *Danby*. Then Dr. *Potter*. But the Lord-Keeper *Coventry* was his means. Dr. *Cofens* was preferred by Bishop *Neile*, whose Chaplain he had been many Years, and he moved the Lord Chamberlain for it. Dr. *Lawrence* was my Lord Chamberlain's own Chaplain, and preferred by himself; and in all likelihood, by Mr. *Oldsworth's* means: for he was Fellow of *Magdalen-College* in *Oxford*, as Mr. *Oldsworth* himself was, and he once (to my knowledge) had a great opinion of him. Dr. *Haywood* indeed was my Chaplain; but I preferred him not to his Majesty, till he had preached divers times in Court with great Approbation; nor then, but with my Lord Chamberlain's Love and Liking. As for Dr. *Pocklington*, I know not who recommended him; nor is there any Proof offered that I did it.

15. Then they proceeded to my own Chaplains. They name four of them: First, Dr. *Weeks*. But he was never in my House, never meddled with the licensing of any Books, till he was gone from me to the Bishop of *London*: So he is charged with no Fault, so long as he was mine. The Second, Dr. *Haywood*. But he is charged with nothing but *Sales*, which was a most desperate Plot against him, as is before shewed. The Third was Dr. *Martin*. Against him came Mr. *Prynn*, for his *Arminian* Sermon at *St. Paul's-Cross*. But that's answered before. And Mr. *Walker*, who said, He proposed *Arminian* Questions to divers Ministers. Belike, such as were to be examined by him. But he adds, *As these Ministers told him*. So 'tis but a Hearsay. And say he did propose such Questions, may it not be fit enough to try how able they were to answer them? The Fourth was Dr. *Bray*. Against him Dr. *Featly* was again produced, for that which he had expunged out of his Sermons. But when I saw this so often inculcated to make a noise, I humbly desired of the Lords, that I might ask Dr. *Featly* one Question. Upon leave granted, I asked him; whether Nothing were of late expunged out of a Book of his written against a Priest? and desired him to speak upon the Oath he had taken. He answered roundly, That divers Passages against the Anabaptists, and some in defence of the Liturgy of the Church of *England*, were expunged. I asked, by whom? He said, by Mr. *Rouse* and the Committee, or, by Mr. *Rouse* or the Committee. Be it which it will, I observed to the Lords, that Mr. *Rouse* and the Committee might expunge Passages against the Anabaptists, nay, for the Liturgy established by Law; but my Chaplains may not expunge any thing against the Papists tho' perhaps mistaken.

From thence they fell upon Men whom they said I had preferred to Benefices. They named but two. Dr. *Heylin* was one again, whom I preferred not. The other was Dr. *Jackson*, the late President of *Corpus Christi-College* in *Oxford*. Dr. *Featly*, being produced, said, Dr. *Jackson* was a known *Arminian*. If so to him, 'tis well; the Man is dead, and cannot answer for himself. Thus far I can for him, without meddling with any of his Opinions: He was very honest and very learned, and at those Years he was of, might deserve more than a poor Benefice.

16. Here Mr. *Prynn* came in again, and testified very boldly, That I gave many Benefices, which were

were in the Gift of the Master of the Wards: and all Preferments only to such Men as were for Ceremonies, Popery, and Arminianism. For the first of these two, the Business was thus: There arose a Difference between the then Lord Keeper *Coven-try*, and the Lord *Cottingham*, then Master of the Wards, about the disposing of those Benefices. It grew somewhat high, and came to Hearing by the King himself: His Majesty, upon Hearing, gave the Right of Sealing to the Lord Keeper; but for the time, till more might appear, reserved the Giving to himself, that he might have some of those lesser Preferments to bestow on such Ministers as attended upon his Navy then at Sea. I never gave any one of these Benefices in my Life. And that this Story is of Truth, the Lord *Cottingham* is yet living, and can witness it. 'And this very Answer I gave to Mr. *Browne*, who in summing up the Charge laid this also upon me, and without mentioning what Answer I gave to it.' For the second, That I preferred none but such Men; 'tis known I preferred Bishop *Hall* to *Exeter*, Dr. *Porter* to *Carlisle*, Dr. *Cook* to *Bristol* first, and then to *Hereford*; that I gave Dr. *Westfield* the Archdeaconry of *St. Albans*; that I was Dr. *Fell*'s means for *Christ-Church*, and Dr. *Higgs*'s for the Deanery of *Litchfield*; that I settled Dr. *Downing* at *Hackney*, and Mr. *Herrick*, at *Manchester*, when the Broad-Seal formerly given him was questioned: That I gave two of my own Benefices to Mr. *Palmer* and Mr. *Taylor*, two of the now Synod; an Hospital to Dr. *Jackson* of *Canterbury*, and a Benefice to his Son-in-Law, at his Suit. I could not name all these upon the sudden, yet some I did; and no one of them guilty of this Charge in the least. 'Mr. *Browne* in his Summary said, I could name but one or two. And when in my Answer made in the House of Commons, I specified more, among which Mr. *Palmer* was one; Mr. *Browne* said in his Reply, That Mr. *Palmer* had indeed his Benefice of my giving, so himself told him, but it was at the Intreaty of a great Nobleman. Say it were; Mr. *Palmer* was then a Stranger to me: somebody must speak, and assure me of his Wants and Worth, or I cannot give. But if upon this I gave it freely, is it worth no thanks from him, because a Nobleman spake to me? Let Mr. *Palmer* rank this Gratitude among his other Virtues.'

17. From hence they stepped over into *Ireland*, and objected my preferring of Dr. *Chappel* to be Master of the Collage at *Dublin*. Here the first Witness is Mr. *Walker*. He says, That all his Scholars were *Arminians*. This is a great Sign, but not full Proof. He says, That Dr. *Chappel* was at first fierce against them, but afterwards changed his Mind. Dr. *Featly* said the like of Dr. *Potter*. Some say *Arminius* himself was at first zealous against those Opinions, but studying hard to confute them, changed his own Mind. 'Take heed, Mr. *Walker*, do not study these Points too hard.' For my own Part, Dr. *Chappel* was a *Cambridge* Man, altogether unknown to me, save that I received from thence great Testimony of his Abilities and fitness for Government, which that College then extremely wanted; and no Man ever complained to me, that he favoured *Arminianism*.

The other Witness was Dr. *Hoyle*, a Fellow of the College in *Dublin*. He says, That the Doctor did maintain, in that College, *Justification by Works*; and in *Christ-Church*, *Arminianism*. In this he is

single: But if it be true, why did not the Lord Primate of *Armagh* punish him? for he says, he knew it. That he opposed some things in the Synod: And it may be there was just Cause for it. Lastly, he says, The late Lord Deputy liked not the *Irish* Articles, but gave them an honourable Burial, as (he says) the Lord Primate himself confessed. I am a Stranger to all this; nor doth Dr. *Hoyle* charge any thing against me; but says, That they which did this, were supposed to have some Friend in *England*. And surely their Carriage was very ill, if they had none.

18. Then were Letters read of my Lord Primate's to me, in which is testified my Care of the Patrimony of that Church. And then a Paper of Instructions given by me to the Lord Deputy at his first going into that Kingdom. For the first, tho' it be thrust in here, among Matters of Religion, yet I pray your Lordships to consider, 'tis about the Patrimony of that Church only; and I thank them heartily for producing it. For in this Letter is a full Confession of my Lord Primate's, That the Motion of getting the Impropropriations from his Majesty, (formerly objected against me) proceeded from him, as I then pleaded: And the Letter was read. For the second; my Lord Deputy, a little before his first going into *Ireland*, asked me what Service I would command him for the Church there? I humbly thanked him, as I had Reason, and told him I would bethink myself, and give him my Thoughts in writing: These are they which are called *Instructions*. They are only for the good of that poor Church, as your Lordships have heard them. This was all; and herein my Lord shewed his Honour, and I did but my Duty. 'Tho' I very well understand why this Paper is produced against me.'

After this, they proceeded to the Eleventh Original Article, which follows in *hec verba*.

XI. He in his own Person, and his Suffragans, Visitors, Surrogats, Chancellors, or other Officers, by his command, have caused divers Learned, Pious, and Orthodox Preachers of God's Word to be silenced, suspended, deprived, degraded, excommunicated, or otherwise grieved and vexed, without any just and lawful Cause; whereby, and by divers other Means, he hath hindred the preaching of God's Word, caused divers of his Majesty's Loyal Subjects to forsake the Kingdom, and increased and cherished Ignorance and Profaneness amongst the People; that so he might the better facilitate the Way to the effecting of his own wicked and traitorous Design of altering and corrupting the true Religion here established.

1. The first Instance to make good this Article, was a Repetition of some Lecturers before-named. But when they thought they had made Noise enough, they referred the Lords to their Notes; and so did I to my former Answers.

2. The second Instance was out of some Articles of Bishop *Mountague* and Bishop *Wren*, and their Account given to me. Bishop *Wren*, Art. 16. speaks of the Afternoon-Sermons being turned into Catechising: And Art. 5. (of his Account, I take it) That no Lecture in his Diocese after, &c. It was made plain to the Lords, that this was spoken of some single and factious Lecturers; and that they had their Lectures read by a Company of Learned and Orthodox Ministers by turns; as appeared by the *Monday* Sermon at *Bury*, during that Learned

Learned Bishop's time. Nor were any forbid to preach in the Afternoon, so the Catechising were not omitted, before it, or with it: And the Bishop is living to answer it, if ought were then done amiss by him. In all which he did nothing as any Deputy or Surrogat of mine, but as Dioceſan of the Place. As for the yearly Account to the King, according to his Royal Instructions in that Behalf, tho' it were preſſed here again to multiply Noiſe, yet nothing being new, I gave my Answer as before, and to that I refer myſelf.

3. The third Answer was concerning Mr. Lee of *Wolverhampton*. The Evidence was a Letter of my Secretary Mr. Dell, written by my Command, to my Viſitors there, to this Effect; That whether there were Cauſe or no, they ſhould either puniſh Mr. Lee, or bring him into the High-Commiſſion. Had the Words or the Senſe been thus, they might well ſay, It was hard for the Judge before whom the Party was to answer, to write thus. But I called to have the Letter read again, and the Words were theſe; If there were found againſt him that which might juſtly be cenſured, then they ſhould puniſh, &c. And the Reason why this ſtrict Care was taken, was, becauſe the Dean of *Windſor* his Ordinary complained unto me, That Mr. Lee's Carriage was ſo factious there, that he could contain him in no Order. If he were a Man after this approved at *Shrewsbury* (as Mr. Walker witneſſes) I hope the Proceedings at *Wolverhampton* did him good. But, my Lords, had it ſo fallen out, that my Secretary had forgotten my Inſtructions, and himſelf too, and expreſſed himſelf amiſs, ſhall that Slip of his (had it been ſuch) be imputed to me? I believe your Lordſhips would not willingly answer for every Phraſe of your Secretaries Letters, which yet you command them to write.

4. The laſt Inſtance was the Sentence in the High-Commiſſion againſt Mr. Barnard, for Words about *Pelagian* Errors and Popery. Firſt, if he were ſentenced in the High-Commiſſion, it was the Act of the Court, and not mine; as has been often ſaid. Secondly, No Proof is offer'd that he was ſentenced for thoſe Words only. Thirdly, The Recantation (howſoever reſuſed by him, as Mr. Prynne ſays it was) makes mention of four Points for which he was cenſured, of which theſe Words are one: But not the Words themſelves, but his unjuſt and ſcandalous Application of them to me, which deſerves them not. And laſtly, Dr. Cumber, Maſter of *Trinity-College* in *Cambridge*, was Proſecutor againſt him; which Office, ſo grave and worthy a Man would not (I ſuppoſe) have undertaken, had there not been great and juſt Cauſe for it.

Hence they proceeded to the Sixth Additional Article, which follows in theſe Words:

VI. That whereas divers Gifts and Diſpoſitions of divers Sums of Money were heretofore made by divers charitable and well-diſpoſed Perſons, for the buying in of divers *Impropriations* for the Maintenance of Preaching the Word of God in ſeveral Churches; the ſaid Archbishop about Eight Years laſt paſt, wilfully and maliciously cauſed the ſaid Gifts, Feoffments and Conveyances, made to the Uſes aforeſaid, to be overthrown in his Maſteſty's Court of *Exchequer*, contrary to Law, as things dangerous to the Church and State, under the ſpecious Pretence of buying in *Impropriations*; whereby that pious Work was ſuppreſſed and trodden down, to the great Diſhonour of God, and Scandal of Religion.

VOL. I.

This Article is only about the *Feoffments*. That which I did, was this. I was (as then adviſed, upon ſuch Information as was given me) clearly of Opinion, that this was a cunning Way, under a glorious Pretence, to overthrow the Church-Government, by getting into their Power more Dependency of the Clergy, than the King, and all the Peers, and all the Biſhops in all the Kingdom had. And I did conceive the Plot the more dangerous for the Fairneſs of the Pretence, and that to the State as well as the Church. Hereupon, not maliciously (as 'tis charged in the Article) but conſcientiouſly I reſolved to ſuppreſs it, if by Law it might be done. Upon this, I acquainted his Maſteſty with the thing, and the Danger which I conceived would, in few Years, ſpring out of it. The King referred me to his Attorney and the Law. Mr. Attorney Noy, after ſome Pauſe upon it, proceeded in the *Exchequer*, and there it was by judicial Proceeding and Sentence overthrown. If this Sentence were according to Law and Juſtice, then there's no Fault at all committed: if it were againſt Law, the Fault, whate'er it be, was the Judges, not mine; for I ſolli-cited none of them. And here I humbly deſired, that the Lords would at their Leiſure read over the Sentence given in the *Exchequer*, which I then delivered in; but by Reason of the Length, it was not then read: whether after it were, I cannot tell.

I deſired likewiſe that my Council might be heard in this, and all other Points in Law.

1. The firſt Witneſs was Mr. Kendall. He ſays, That ſpeaking with me about *Preſteen*, I thanked God that I had overthrown this *Feoffment*.

2. The ſecond Witneſs Mr. Millar ſays, he heard me ſay, They would have undone the Church, but I have overthrown their *Feoffment*. Theſe two Witneſſes prove no more than I confeſs: For in the Manner aforeſaid, I deny not but I did my beſt in a legal Way to overthrow it. And if I did thank God for it, it was my Duty to do ſo, the thing being in my Judgment ſo pernicious as it was.

3. The third Witneſs was Mr. White, one of the *Feoffees*. He ſays, That coming as Counſel in a Cauſe before me, when that Buſineſs was done, I fell bitterly on him as an Underminer of the Church. I remember well his coming to me as Counſel about a Benefice; and 'tis very likely I ſpoke my Conſcience to him, as freely as he did his to me, but the Particulars I remember not; nor do I remember his coming afterwards to me to *Fulham*, nor his Offer to change the Men or the Courſe, ſo the thing might ſtand. For to this I ſhould have been as willing as he was: and if I remember right, there was order taken for this in the Decree of the *Exchequer*; and his Maſteſty's Pleaſure declared, That no Penny ſo given ſhould be turned to other Uſe. And I have been, and ſhall ever be as ready to get in *Impropriations*, by any good and legal Way, as any Man, (as may appear by my Labours about the *Impropriations* in *Ireland*.) But this way did not ſtand either with my Judgment or Conſcience.

1. Firſt, Becauſe little or nothing was given by them to the preſent Incumbent, to whom the Tythes were due, if to any; that the Pariſhioners which paid them, might have the more cheerful Inſtruction, the better Hoſpitality, and more full Relief for their Poor.

Sir Leolin
Jenkins hath
a Copy of it,
out of the Re-
cords of the
Exchequer.
W. S. A. C.

‘ 2. Secondly, Because most of the Men they put in, were Persons disaffected to the Discipline, if not the Doctrine too, of the Church of *England*.

‘ 3. Thirdly, Because no small Part was given to School-Masters, to season Youth *ab Ovo*, for their Party; and to young Students in the Universities, to purchase them and their Judgments to their Side, against their coming abroad into the Church.

‘ 4. Fourthly, Because all this Power to breed and maintain a Faction, was in the Hands of Twelve Men, who were they never so honest, and free from Thoughts of abusing this Power, to fill the Church with Schism; yet who should be Successors, and what Use should be made of this Power, was out of human Reach to know.’

Fifthly, Because this Power was assumed by, and to themselves, without any legal Authority, as Mr. Attorney assured me.

He farther said, That the *Impropriation* of *Presteen* in *Radnorshire*, was specially given to *St. Antolins* in *London*. I say, the more the Pity, considering the Poorness of that Country, and the little Preaching that was among that poor People, and the Plenty which is in *London*: Yet because it was so given, there was care taken after the Decree, that they of *St. Antolins* had Consideration, and I think to the full. He says, That indeed they did not give any thing to the present Incumbents, till good Men came to be in their Places. Scarce one Incumbent was better’d by them. And what then? In so many Places not one good Man found? ‘ Not one factious enough against the Church, for Mr. *White* to account him good?’ Yet he thinks I disposed these things afterwards to unworthy Men. ‘ Truly, had they been at my disposal, I should not wittingly have given them to Mr. *White*’s Worthies.’ But his Majesty laid his Command upon his Attorney, and nothing was done or to be done in these things, but by his Direction. For Dr. *Heylin*, if he spake any thing amiss concerning this *Feoffment*, in any Sermon of his, he is living to answer it; me it concerns not. ‘ Mr. *Browne*, in the Sum of the Charge, omitted not this; and I answered as before: And in his Reply he turned again upon it, That it must be a Crime in me, because I projected to overthrow it. But, under favour, this follows not: for to project (tho’ the Word *Projector* sound ill in *England*) is no more than to forecast and forelay any Business. Now, as ’tis lawful for me, by all good and fit Means, to project the Settlement of any thing that is good; so is it lawful, by good and legal Means, to project the Overthrow of any thing that is cunningly or apparently evil. And such did this *Feoffment* appear to my Understanding, and doth still.’ As for reducing of *Impropriations* to their proper Use, they may see (if they please) in my Diary (whence they had this) another Project to buy them into the Church’s Use; for given they will not be. But Mr. *Prynne* would shew nothing, nor Mr. *Nicolas* see any thing, but what they thought would make against me.

Here this Day ended, and I was commanded to attend again *July 15*. But was then put off to *July 17*, which Day held.

The Eighteenth Day of my Hearing.

WEDNESDAY, *June 17, 1644*. This Day they charged upon me the Twelfth Original Article; which follows in these Words:

XII. He hath traitorously endeavoured to cause Division and Discord between the Church of *England* and other Reformed Churches; and to that end hath suppressed and abrogated the Privileges and Immunities, which have been by his Majesty and his Royal Ancestors granted to the *French* and *Dutch* Churches in this Kingdom: And divers other ways hath expressed his Malice and Disaffection to those Churches, that so by such Disunion the Papists might have more Advantage for the Overthrow and Extirpation of both.

I. The first Charge is, That I deny them to be a Church: For they say that I say plainly in my Book against *Fisher*, that ^{a Cont. Fisher,} *No Bishop, no Church*. Now ’tis well ^{§. 25. p. 176.} known they have no Bishops, and therefore no Church. The Passage in my Book is an Inference of *St. Jerom*’s Opinion, no Declaration of my own. And if they, or any other, be aggrieved at *St. Jerom* for writing so, they may answer him. Mr. *Nicolas* added, That this was seconded by Bishop *Mountague*’s Book, which Mr. *Prynne* (carefully) ^{Mount. Orig. Eccles. p. 464.} witnessed was found in my Study, and licensed by Dr. *Bray*. Is this Argument come again, that Bishop *Mountague*’s Book was in my Study? ‘ Leave it for shame.’ But they have now left me never a Book in my Study; so I cannot make them any fuller Answer, without viewing the Place, than themselves help me to by their own Confession: which is, that he adds this Exception, That none but a Bishop can ordain, but *in casu necessitatis*, which is the Opinion of many learned and moderate Divines. ‘ Yet this is very considerable in the Business, whether an inevitable Necessity be cast upon them, or they pluck a kind of Necessity upon themselves.’

II. The second Charge is out of a Letter of mine to Bishop *Hall*, upon a Letter which he had formerly sent me. In which, it seems, is something about the Case of Necessity in point of Ordination, which (they say) I disliked. And it seems I disliked upon good Ground: For he had given me Power, under his Hand, to alter what I would in that which he sent unto me. I would not take that Power; but writ back to him what Passages I thought might be better expressed, if it could agree with his Judgment also. Hereupon he sent me another Letter of *Jan. 18, 1639*. in which he altered those Things which I put to his farther Consideration. Could any thing be more fairly carry’d? And this Letter was read to the Lords. Yea, but they say, I disliked the giving of this Title *Antichrist* to the Pope. No, I did not simply dislike it; but I advised Bishop *Hall*, if he thought it good, not to affirm it so positively. And the Reason I gave was this; That King *James* being pressed upon a great Occasion that he had maintained that the Pope was *Antichrist*, which might much trouble, if not quite cross some Proceedings much desired by that prudent King, his Majesty made answer, *I maintain it not as a Point of Faith,*

Faith, but as a probable Opinion: And for which I have more Grounds than the Pope hath for his Challenge of Temporal Power over Princes. Let him recall this Opinion, and I'll recall that. This I writ to the Bishop, but left him free to do what he pleased.

Here Mr. *Nicolas* fell extremely foul upon me, inſomuch that I could not but wonder at their Patience which heard him. Among other Titles beſtowed upon me, many and groſs, he called me, over and over again, *Pander to the Whore of Babylon*. I was much moved; and humbly deſired the Lords, that if my Crimes were ſuch as that I might not be uſed like an Archbiſhop, yet I might be uſed like a Chriſtian; and that were it not for the Duty which I owe to God and my own Innocency, I would deſert my Defence before I would endure ſuch Language in ſuch an Honourable Preſence. Hereupon ſome Lords ſhewed their Diſlike, and wiſhed him to leave, and purſue the Evidence.

Mr. *Browne* in ſumming up the Charge made this a great Matter, the Denial of the Pope to be Antichriſt. But I did not deny it, nor declare any Opinion of my own: and many Proſeſtants, and thoſe very learned, are of Opinion that he is not. 'Tis true, I did not, I cannot approve foul Language in Controverſies. Nor do I think that the calling of the Pope *Antichriſt*, did ever yet convert an underſtanding Papiſt. And ſure I am, *Gabriel Powel's* Peremptorineſs (to ſay no worſe) in this Point, did the Church of *England* no good, no honour in foreign Parts: For there he affirms*, *That he is as certain that the Pope is Antichriſt, as that Jeſus Chriſt is the Son of God, and Redeemer of the World.* As for the thing itſelf, I left it free to all Men to think as their Judgment guided them; as appears by the licenſing of Dr. *Featly's* Sermons, where he proves the Pope, in his Opinion, to be Antichriſt; where he calls him alſo the *Whore of Babylon*. Which ſurely I ſhould never have ſuffer'd to be printed, had I been her Pander. And for Biſhop *Hall*, I only told him what King *James* had ſaid, and left him to make what uſe he pleaſed of it.

III. The third Charge was out of a Paper, which Biſhop *Hall*, about the time when he wrote his Book in Defence of Episcopacy, ſent unto me, containing divers Propoſitions concerning Episcopical Government. In which either he or I, or both, ſay, (for that Circumſtance I remember not) *That Church-Government by Biſhops is not alterable by human Law.* To this I anſwer'd, That Biſhops might be regulated and limited by human Laws, in thoſe Things which are but Incidents to their Calling: But their Calling, ſo far as it is *Jure Divino*, by Divine Right, cannot be taken away. They charge farther, That I ſay this is the Doctrine of the Church of *England*. And ſo I think it is: For Biſhop *Bilſon* ſet out a Book in the Queen's time, intitled, *The Perpetual Government*. And if the Government by Biſhops be perpetual, as he there very learnedly proves thro' the whole Book, it will be hard for any Chriſtian Nation to out it. Nor is this his Judgment alone, but of the whole Church of *England*. For in the Preface to the Book of Ordination are theſe Words; *From the Apoſtles*

time there have been three Orders of Miniſters in the Church of Chriſt, Biſhops, Priests, and Deacons. Where 'tis evident, that in the Judgment of the Church of *England*, Episcopacy is a different, not Degree only, but Order from Prieſthood, and ſo hath been reputed from the Apoſtles times. And this was then read to the Lords. And the Law of *England* is as full for it, as the Church: For the Statute of 8 *Eliz. cap. 1.* abſolutely confirms all and every Part of this Book of Ordination: Where alſo the Law calls it, *The high Eſtate of Prelacy*. And *Calvin*, (if my old Memory do not fail me) upon thoſe Words of St. *John*, ver. 20, 21. *As my Father ſent me, ſo ſend I you, &c.* ſays thus upon that Place, *Eandem illis imponit Perſonam ac idem Juris assignat.* And if our Saviour Chriſt put the ſame Perſon upon the Apoſtles, and aſſigned to them the ſame Right which his Father gave him, it will prove a ſour Work to throw their Succeſſors the Biſhops out of the Church, after ſixteen hundred Years continuance; and in the mean time cry out againſt Innovation. For either Chriſt gave this Power to his Apoſtles only, and that will make the Goſpel a Thing temporary, and confined to the Apoſtles times; or elſe he gave the ſame Power, tho' not with ſuch eminent Gifts, to their Succeſſors alſo, to propagate the ſame Goſpel to the end of the World, as St. *Paul* tells us he did, *Ephes. iv. 11.* Now all the Primitive Church all along gives Biſhops to be the Apoſtles Succeſſors; and then it would be well thought on, what Right any Chriſtian State hath (be their abſolute Power what it will) to turn Biſhops out of that Right in the Church which Chriſt hath given them.

IV. The fourth Charge was an Alteration made in a Brief for a third Collection for the diſtreſſed Miniſters and others in the *Palatinate*. The Queen of *Bohemia* was pleaſed to do me the Honour to write to me about this: And becauſe two Collections had been before, her Maſteſty deſir'd that this third might be only in *London*, and ſome few Shires about it. I out of my Deſire to relieve thoſe diſtreſſed Proteſtants, and to expreſs my Duty to the Queen, became an humble Suitor to his Maſteſty that this Collection alſo might go thro' *England*, as the reſt had done. And 'tis acknowledg'd by all, that this I did. Now the Witneſſes which accuſe me for ſome Circumſtances in this Buſineſs, are two.

I. The firſt is Mr. *Wakerly*. He ſays, That Mr. *Ruly* (who was employed by the Queen of *Bohemia* about this Collection) was roughly uſed by me upon Occaſion of this Clauſe put into the Brief, and which, he ſays, I cauſed to be altered. This, Firſt, is a bold Oath; for Mr. *Wakerly* was not preſent, but ſwears upon Hearſay. Secondly, What Kindneſs I ſhewed him and the Buſineſs, is mentioned before; and if for this Kindneſs he had been praſtiſing with Mr. *Wakerly* about the Brief, (as I had probable Reaſon to ſuſpect) I cannot much be blamed, if I altered my Countenance towards him, and my Speech too; which yet theſe Witneſſes (for the other agrees in this) have no Reaſon to call rough Carriage, only upon Mr. *Ruly's* unthankful Report.

He ſays, That theſe Words, *the Antichriſtian Yoke*, were left out. Firſt, this is more than I remem-

* Tam certo ſcio Papam eſſe magnum illum Antichriſtum, quam Deum ipſum eſſe in Cœlis Creatorem, & Jeſum Chriſtum verum Meſſiam. *Gab. Pow. de Antichriſto. Epiſt. ad Lectorem.*

ber; and the Briefs I had not to compare: Nor is there any Necessity that two Briefs, coming for the same Thing, with some Years distance between, should agree in every Phrase or Circumstance. Secondly, If I did except against this Passage, it was partly because of the fore-recited Judgment of King *James*, of which I thought his Son King *Charles* ought to be tender; and partly because it could move nothing but Scorn in the common Adversary, that we should offer to determine such a Controversy by a Broad-Seal. I remember well, since I had the Honour to sit in this House, the naming of Tythes to be due *Jure Divino* cast out the Bill; a prudent Lord asking the Peers, whether they meant to determine that Question by an Act of Parliament. The other part of the Clause, which they say was altered, was, *The Religion which we with them profess*. Whence they infer, because (*with them*) was left out, that I would not acknowledge them of the same Religion; which follows not: For we may be and are of the same Religion, and yet (*agree*) not with them in those Opinions, in which we differ from them. And Mr. *Wakerly* confesses that the Words as altered are, *That they are persecuted for their Religion*; and their Religion is the Protestant Religion, and so is ours. And therefore I could have no Intention to make the Religions different, but the Opinions under the same Religion.

For Mr. *Wakerly*, he is a *Dutchman* born; and how far the Testimony of an Alien may be of force by the Law, I know not: And a bitter Enemy to me he hath ever shewed himself, since I complained to the King and the Lords that a Stranger born and bred should be so near a Secretary of State, and all his Papers and Cyphers, as he was known to be to Mr. Secretary *Coke*. A Thing which few States would endure. And how far the Testimony of such a canker'd Enemy should be admitted, let the World judge. Admitted he was.

2. The second Witness was Mr. *Hartlip*. He acknowledges my Improvement of the Collection, and my great Readiness therein; which doubtless I should not have shewed, had I accounted them of another Religion. He says, There was no Alteration but in that Clause; and that implies a manifest Difference. But that is but in his Judgment; in which I have already shewn that *Wakerly* is mistaken, and so is he. Beside, he comes here as a Witness of the Fact, not as a Judge of my Intentions or Thoughts. He adds, that, if he remember well, the Alteration was drawn by me. But if he do not remember well, what then? Surely here's no Evidence to be grounded upon *Is*s. Here, upon the Point of Antichrist, Mr. *Nicolas* stiled me as before, and was furious till he foamed again. But I saw a Necessity of Patience. Mr. *Browne* also in his summary Charge followed this Business close: But I gave it the same Answer.

5. The fifth Charge, and the last under this Article, was the calling in of a Book, Anno 1637. shewing the Doctrine and Discipline of the Church in the *Palatinate*; but called in only because against Arminianism. The single Witness *Michael Sparks*. He says this Book was called in; but he knows not by whom, nor mentions he for what. But he says the Pursuivants which searched for it were mine. He means such as belonged to the High-Commission; for other than such I had none. And there was cause enough for calling in the Book, without thinking of Arminianism.

But what is the reason why here's nothing urged against me about abrogating the Immunities and Privileges of the *French* and *Dutch* Churches, which fill the Body of this Article? Why, I conceive there may be two Reasons of it. One, because there was taken by Mr. *Prynn*, among other Papers for my Defence, a Letter under Queen *Elizabeth's* own Hand to the Lord *Pawlet*, Marquis of *Winchester*, then Lord Treasurer; in which she expresses her Willingness that those Strangers, distressed in and for point of Conscience, should have Succour and free Entertainment; but should conform themselves to the *English* Liturgy, and have that translated into their own Language. And they knew I would call to have this Letter produced, proved, and read. And had this Letter been stood unto, they had never been able to do the Church of *England* half the Harm they have since. The other was, because they found by their own Search against me, that all which I did concerning those Churches was with this Moderation; that all those of their several Congregations in *London*, *Centerbury*, *Sandwich*, *Norwich*, or elsewhere, which were of the second Descent, and born in *England*, should repair to their several Parish-Churches, and conform themselves to the Doctrine, Discipline, and Liturgy of the Church of *England*; and not live continually in an open Separation, as if they were an *Israel* in *Aegypt*, to the great Distraction of the Natives of this Kingdom, and the assisting of that Schism which which is now broke forth. And as this was with great Moderation, so was it with the joint Approbation of his Majesty and the Lords of his Council, upon the Reasons openly given and debated. And all this before I proceeded to do any thing; as appears *apud Acta*.

Then they went to the Thirteenth Original Article; which here follows.

XIII. He hath traitorously and wickedly endeavoured to reconcile the Church of *England* with the Church of *Rome*: And for the effecting thereof, hath consorted and confederated with divers Popish Priests and Jesuits; and hath kept secret Intelligence with the Pope of *Rome*: And by himself, his Agents and Instruments, treated with such as have from thence received Authority and Instruction. He hath permitted and countenanced a Popish Hierarchy or Ecclesiastical Government to be established in this Kingdom. By all which traitorous and malicious Practices this Church and Kingdom have been exceedingly endangered, and like to fall under the Tyranny of the *Roman* See.

The Seventh Additional Article.

That the said Archbishop at several times within these ten Years last past, at *Westminster*, and elsewhere within this Realm, contrary to the known Laws of this Land, hath endeavoured to advance Popery and Superstition within the Realm: And for that end and purpose hath wittingly and willingly received, harboured, and relieved divers Popish Priests and Jesuits; namely, one called *Sancta Clara*, alias *Dampport*, a dangerous Person and *Franciscan* Friar: who having written a Popish and Seditious Book, entitled, *Deus, Natura, Gratia*, wherein the Thirty-nine Articles of the Church of *England*, established by Act of Parliament, were much traduced and scandalized; the said Archbishop had divers Conferences with him, while

while he was in writing the said Book : and did also provide Maintenance and Entertainment for one Monsieur *St. Giles*, a Popish Priest, at *Oxford*, knowing him to be a Popish Priest.

I. The first Charge (they say) was to be laid as a Foundation ; and it was, That I was generally reputed a Papist in Heart, both in *Oxford*, and since I came thence.

1. The first Witness for this was Dr. *Featly*. He says, There was such an Opinion of me Thirty Years since there. But he says, he never heard any Popish Opinion maintained by me. So here's nothing of Knowledge. And if I should say that above Thirty Years ago there was an Opinion that Dr. *Featly*, then in *Oxford*, was a Puritan, this could make no Proof against him : Nor can his saying that I was reputed a Papist, make any Proof against me. He says farther, That one Mr. *Ruffel*, who had been bred in *St. John's-College*, told him in *Paris*, that I maintained some Catholick Opinions. First, Mr. *Nicolas* would have it that this Mr. *Ruffel* was my Scholar : But the whole College can witness it is not so ; nor had he ever any relation to me in the least degree. After his Father's Death he left the College, and went beyond-Sea ; where the weak Man (for such he was) lost his Religion. Secondly, Dr. *Featly* says expressly, that Mr. *Ruffel* said I was no Papist ; which, for the Countenance of his own Charge, he would never have said, had he thought me one. Thirdly, If he did say that I maintained some Catholick Opinions ; yet he named none, by which there might be Trial and Judgment whether they were such or no, in the Sense he meant them. Lastly, Mr. *Perkins*, in his *Reformed Catholick*, sets down divers Opinions in which they of *Rome* and we agree : Shall he be a Papist for this ? Or shall not that which is lawful for him, be as lawful for me ?

2. The second Witness was one *Harris*. He says, That Mr. *Ireland* (who was some time Student of *Christ-Church* in *Oxford*, and after School-master at *Westminster*) told him that I would leave the Church of *England*. This is a bare Report from Mr. *Ireland*, with whom I never had any Acquaintance, nor was scarce in his Company twice in all my Life. Nor is it in my power to hinder what Mr. *Ireland* will say, or Mr. *Harris* from him. He says, That one that called himself *Leander*, came over on purpose to make this Reconciliation. If he did, (which is more than I know or believe) I think he would hardly make such a one, as *Harris* is reported to be, acquainted with it. But howsoever, if he did come with that purpose, was it in my power to hinder his coming ? And here is no proof offered that I did help on his Purpose, or so much as know of it. He says he often petitioned me for Relief, but had none. It may be ; I well knew he deserved none : And your Lordships know that by Law I might not afford him any. Had I given him any, I should now have heard it with both Ears. For I am informed he is a Priest, and condemned in a *Præmunire*, and was let out of Prison on purpose to be a Witness against me. And having set that which is aforesaid, under his Hand, is now slipped away, and gone. Who got him out of Prison for this good purpose, I know not ; but sure somewhat there is in it, for your Lordships see his Testimony is now read, but he appears not.

3. The third Witness was Sir *Nathaniel Brent*, (now absent, but came in the next Day.) He

says, I was esteemed Popishly-affected in *Oxford* ; and he gave three Instances very carefully, to prove it. The first was, that in the Divinity-School there, I maintained the Necessity of Baptism. I did so ; and my Predecessor Archbishop *Abbot* was then Vice-Chancellor, and present, and approved my Opinion : and my Grace passed for my Degree to be Batchelor of Divinity, without any one Man's Opposition. He says, that Mr. *Dale* of *Merton-College* then shewed him all my Supposition taken out of *Bellarmino*. This is a bold and a dangerous Oath : He might swear that Mr. *Dale* shewed him in *Bellarmino*, that which he said was my Supposition ; but that he shewed him all my Supposition there, is a strange Oath for a Man of Learning and Law to make, in such a Presence. Besides, I have my Supposition, which I then made, yet by me ; and if my Tenet of that Question be the same with *Bellarmino's*, or that there be any Line taken out of him, but what I cite for my own Advantage against him, I will utterly forfeit my Reputation of any Learning to your Lordships. His second Instance was, that I was acquainted with one Mr. *Brown*, Fellow of *Corpus-Christi-College* in *Oxford*, who was suspected to be a Papist, and after his Death proved to be one, by a Book that was found in his Study, proving that a Man might be a Roman Catholick, and yet go to Church, and conform in *England*. I was acquainted with this Man ; he was a very good Scholar, and an honest Man, and a good Protestant, for ought I know. For the Tract found after his Death among his Papers, that's no Proof : for Scholars get all the Papers they can, especially such as belong to their own Profession. And the more strange the Opinions are, the more do they labour to get them. Nor is it any Proof that the Tract was of his making, because written in his own Hand, as 'tis urged. For the Argument being so foul and dangerous, it could not be safe for him, nor any way fit, to commit it to any other to write for him. Nor is there any Proof that I knew he had such a Tract by him ; neither indeed did I. The Opinion is very base and unworthy, and was first broached by the Jesuit *Azorius*, and it seems some of the Fellows had enlarged him, and made this Tract out of his Principles. His third Instance was, that I petitioned King *James* in this Business. I was complained of to King *James* by a great Person, that I had inward Acquaintance with this Man. Hereupon, my waiting Month being *June*, and not long after the Complaint made, I took occasion in my first Sermon to confute this Opinion, and then petitioned his Majesty that it might be examined, that such an Imputation might not lie upon me. His Majesty referred it to the Lord Archbishop of *Canterbury*, Bishops of *London*, *Winchester*, and *Duresm* ; where, after full Examination, I was acquitted.

II. The second Charge was, that the same Opinion was held of me beyond the Seas, that I was a cunning Promoter of the *Roman Cause*. And here the Witnesses are the same which were produced before ; Mr. *Challoner*, who told over his old Tale again of I know not what Plot he heard from a Jesuit : nothing but Hearsay at the best. And it favours like an Almanack *de post facto*, ' or ' rather of somewhat else, which I will spare to ' name, because he is upon his Oath.' The other Witness is Mr. *Anthony Mildmay*, who also tells

Instit. Moral.
p. 1. l. 8. c. 27.

* Abbot, King,
Mountague,
Niele.

over

over his old Tale of his Father *Fitton*. But he was out of the way again, and appeared not till the next Day, with Sir *Nathaniel Brent*. So here's a Repetition again of the same Witnesses, and same things to multiply the noise. 'Only noble Sir *Henry Mildmay* appeared not the second time; but whether it were because he had enough at his first appearance, or whether his Face was scratched then (as since Men say it was) I cannot tell.'

III. The Third Charge was, That I had a damnable Plot, to reconcile the Church of *England* with the Church of *Rome*. If to reconcile them with the Maintenance of Idolatry, it were a damnable Plot indeed. But if Christian Truth and Peace might meet and unite together, all *Christiendom* over, were that a Sin too? Were I able to plot and effect such a Reconciliation, I would think myself most happy, whatever I suffered for it. But how is this damnable Plot proved? Pope *Gregory* writ a Letter to his Nuncio in *Spain*, and a Letter also to King *Charles*; which Letter is printed: Copies of these Letters were found in my Study. Could I hinder the Pope from writing to whom he pleased? Shall not I get Copies of any Letters I can, to see what practising is abroad for private Interest? Shall it be lawful for all my Predecessors to get and keep Copies of such Letters by them, and shall it be unlawful for me only? And here I produced Mr. *Dobson*, an antient Servant to my Predecessors, who witnessed that Archbishop *Bancroft* had store of them, and kept them all his time. Nor do I know, how this Charge can fall upon me: for there is no one word in any of the Letters produced, that reflects upon me, or any Plot of mine. Nor indeed had I ever any such to reflect upon.

IV. The Fourth Charge is, That I had a hand in the Plot for sending the King, when he was Prince, into *Spain*, to be perverted in his Religion. They follow their Proof of this out of my Diary: And they begin with my Friendship with the Lord Duke of *Buckingham*, who waited on the Prince in this Journey. And first they urged my Diary at *June 9. 1622.* where I mention, that there were then Particulars, which are not for Paper. But the Words, which lead these in, were his Entrance upon a near Respect to me, the particular Expressions whereof were not for Paper: Nor Word, nor Thought, of either Plot or Popery. Then they urged *June 15. 1622.* where 'tis said, that I became C. that is, Confessor to the Lord Duke. First, If my Lord Duke would honour me so much as to make me his Confessor, as I know no Sin in it, so it is abundantly proof, that the Passages before-mentioned were not for Paper. Should I venture them so, there's never a Person of Honour present, but would think me most unworthy of that Trust. Next, they pressed *June 13. 1623.* where I confess, that I received Letters from my Lord Duke out of *Spain*. I did so; and I then held it great honour to me, and do so still. But then, and long before, it was known to all Men whither he was gone, and with whom; nay, it was commonly known to all Men of Quality hereabout within three or four Days: And till it was so commonly known, I knew it not. Yea, but then they inforced out of *Febr. 17. 1623.* That the Prince and the Marquis of *Buckingham* set forward very secretly for *Spain*. And *Febr. 21.* That I writ to his Lordship into *Spain*. 'Tis true, they went away that Day, and very secretly; but I neither

did, nor could set it down, till afterwards that I came to know it. And then so soon as I came to know it, which was about the 21st, I did write. To these was cunningly (how honestly let all the World judge) pieced a Passage out of a Letter of mine to Bishop *Hall*. But that Letter was read, at my humble Motion to the Lords, and the Date of it was in 1634. So many Years after this Business of *Spain*. And the Passage mentioned, was only about King *James's* manner of defending the Pope to be Antichrist, and how he saved it while the Prince was in *Spain*. But King *James* related it after. Nor could any Words of that Letter be drawn to the King's going thither, much less to any knowledge I had of it.

V. The Fifth Charge was concerning his Majesty's Match with *France*. And here again they urge my Diary at *Mar. 11. 1625.* That the Duke of *Buckingham* was then and there employed. And at *May 19, & 29.* That I then writ Letters to him. First, My Lords, I hold it my great honour, that my Lord Duke would write to me, and give me leave to write to him. Secondly, I have committed some Error in these Letters, or none. If none, why are they charged? If any, why are they not produced, that I may see what it is, and answer it?

VI. The Sixth Charge was, That I was an Instrument of the Queen's. This they endeavoured to prove by my Diary in three places. First, at *Aug. 30. 1634.* Upon occasion of some Service done, she was graciously pleased to give me leave to have immediate Access unto her, when I had occasion. This is true, and I most humbly thanked her Majesty for it: for I very well knew what belonged to Addressees at second-hand in Court. But what Crime is in this, that the Queen was pleased to give me Access unto her, when I had occasion? Here's no word of Religion. Secondly, at *May 18. 1635.* where 'tis said, That I gave her Majesty an account of something committed to me. If her Majesty sent or spake to me to do any thing, as it seems she did, shall I want so much Duty, as not give her an account of it? So belike I must be unmannerly with her Majesty, or lie open to no less than a Charge of High-Treason. Thirdly, at *April 3. 1639.* 'tis made a great matter, That I should then dispatch a great Business for the Queen, which I understood she would not move for herself: and that for this her Majesty gave me great Thanks. Mr. *Nicolas's* Inference upon this was, That they conceive wherefore. But his Conceit makes no Evidence: he must not only conceive, but prove wherefore, before it can work any thing against me. As for Religion, as there is no word of it in my Diary, so neither was it at this time thought on. Her Majesty would therein have moved for herself: But it seems it must be a Crime if I be but civil and dutiful towards the Queen, though it be but thrice mentioned in so many Years.

VII. The Seventh Charge was, That I forbad Ministers praying for the Queen's Conversion, and punished others. The first Witness, Mr. *Ratcliff*, says, That Sir *Nath. Brent* gave it in charge at *Bow-Church* in my Visitation. The more to blame he, if so he did. Yea, but he says, it was by my Command delivered unto him by Sir *John Lambe*. Was it so? How doth Mr. *Ratcliff* know that? he doth not express. He was not present, when I spake with Sir *John Lambe*. And if Sir *Nath. Brent* told him of it, 'tis but Hearsay. And Sir *Nath.*

Nath. having been so ready a Witness against me, why is he not examined to this Particular? And as for the Paper which was shewed, it appears plainly there, that it was no Paper of Instructions sent to my Visitors by me, but of particular Informations to me: of which one was, That the Queen was prayed for in a very factious and scandalous way. And this appeared, when that Paper was read. And this I referred to my Visitors, as I not only might, but ought: not forbidding the Prayers, but the scandalous manner of them. The second Witness was Mr. *Prynn*; who says, That one Mr. *Jones* was punished for praying for the Queen. He was punished in the High-Commission for scandalous abusing the Queen, under a Form of praying for her, and for divers other Articles that were against him. 'And this Answer I gave to Mr. *Browne*, who forgot not this 'in summing up my Charge.'

VIII. The Eighth Charge was, That I punished Men for praying to preserve the Prince. No, God forbid. The High-Commission-Book was shewed, and that there in the Year 1634, one Mr. *Howe* was censured for it. I got this Act of the High-Commission to be read to the Lords: His Prayer went thus, *That God would preserve the Prince in the true Religion, of which there was Cause to fear.* Could this Prayer have any other Operation upon the People, than to make them think his Majesty was careless in the Education of the Prince, especially in point of Religion? And this was so grievous and graceless a Scandal cast upon a Religious King, as nothing could be greater. Upon the matter, it was the shew of a Prayer for the Prince, but was indeed to destroy the King in the Hearts of his People. And had I not there consented to his Punishment, I had deserved to be punished myself. 'Mr. *Browne*, when he repeated the Sum 'of the Evidence, laid this Charge upon me, 'but spake not one word (to my remembrance) of this Answer given to it.'

IX. The Ninth Charge, That I did extol Queen *Mary's* Days. The Proof for it was taken out of the Preface to the Statutes of the University of *Oxford*. I took a great deal of pains about those Statutes, and might justly have expected Thanks for it, not such an Accusation. But as for the Preface, it was made and printed at *Oxford*: I meddled not with it. I could trust the University with little, if not with the making of a Preface. If they have done any thing amiss in it, let them answer it. The Passage was about certain Offers made to amend those confused old Statutes, both in *Edward VI's* and Queen *Mary's* Days; but no effect came of the pains then taken, *Recruduit Labor*, says the Preface. So that this I can answer for them: There's not a word spoken of Religion, but of Manners only, and that as much in relation to the Times of Princes following, as hers. For the Words, to my remembrance, are *Interim optanda Temporum Felicitate*, &c. And that *Interim* cannot be restrained to Queen *Mary's* Days only, but must include the whole *Interim*, or middle distance of time, to that present in which I settled the Body of their Statutes; that is, all Queen *Elizabeth's* and King *James's* days, which I think no Man can deny was *Optanda Temporum Felicitas*.

X. Here Mr. *Nicolas* confessed there was no downright Proof against me. That was his Phrase; But he added, that was not to be expected in such a Work of Darkeness. Then he produced a Paper found in my Study, printed at *Rome*. So were divers of my Books printed there: what of this? They may print what they will at *Rome*, I cannot hinder it: and I may have and keep whatever they print, no Law forbidding it. Then he shewed a Letter sent unto me from Mr. *Graves*. The Gentleman is at this present Fellow of *Merton-College* in *Oxford*, a great Traveller, and a Man of great Worth. As far as I remember, his Letter came to me from *Alexandria*. It was fit to be sent, and kindly received; as by me it was. I desired it might be read. Then were mentioned Sir *William Boswell's* Letters, and the Papers sent by *Andreas ab Habernfeld*, about a great Plot to destroy the King and Religion, and that I concealed these Papers. 'I might have been amazed at the Impudence of this Charge above all the rest: *Diaboli Impudentia*, the Devil's Impudence, 'and no less, as St. *Augustine* speaks S. Aug. Epist. 'in another Case.' Did I conceal 167.

these Papers? First, the same Day that I received them, I sent them by an Express to his Majesty. I had a speedy Answer from his Majesty, and that I returned with equal speed to his Majesty's Agent Sir *William Boswell*, as I was commanded. And this Mr. *Prynn* and Mr. *Nicolas* knew: For Mr. *Prynn* took all these Letters and Papers from me, when he searched me at the Tower; and out of them made his Book called * *Rome's Master-piece*: excepting the Slanders, which he hath juggled in of his own. So soon as his Majesty came home, I humbly besought him, that he would be pleased to appoint a time, and call some Lords to him, to hear and examine the Business; and this Examination continued till I was committed. What was after done, I cannot account for. Besides, my Lords, it appears by those Papers, that my Life was sought for, because I would not give way to the Change of Religion; and Mr. *Prynn* himself hath printed this: and yet now Mr. *Nicolas*, from his Testimony, presses these Papers against me. But the King, and the Lords, and both Secretaries of State then present, can witness, that I took all the care and pains above-mentioned, to have it sifted to the bottom. 'Notwithstanding 'all this, Mr. *Nicolas* falls upon this Plot again 'upon the next Day of my Hearing, as if nothing 'had been said unto it: and was so shameless, as 'to say, That I followed this Business so long as 'I thought the Plot was against the Puritans; but 'so soon as I found it was against the Papists, I 'kept it secret, till Mr. *Prynn* discovered it in his 'Search of my Papers. Where, First, there's no 'Word in all the Papers to make me or any Man 'think the Puritans were concerned in it. And 'Secondly, I did not sleep upon the Receipt of 'these Papers, till I had sent them to his Majesty. But I had reason to keep the Papers as safe 'as I could, considering how much they justify 'me against these foul Calumnies put upon me.'

XI. Then followed the Charge of *Santa Clara's* Book, alias Monsieur *St. Giles*: so they expressed it; and I must follow the way they lead me.

1. First,

* This Book was published by *Prynn* in the Year 1643. in five Sheets in Quarto. A Copy whereof being by his Endeavours conveyed to the Archbishop, then a Prisoner in the Tower, the Archbishop wrote Notes in the Margin of it, so far, and so much, as to vindicate himself from the Aspersions laid upon him therein. This Copy, with the said Notes, is now in the Hands of that knowing and learned Antiquary Mr. *Anthony Wood*.

1. First, then they charge, That I had often Conference with him, while he was writing his Book, intitled, *Deus, Natura, Gratia*. No, he never came to me, till he was ready to print that Book. Then some Friends of his brought him to me. His Suit then was, That he might print that Book here. Upon Speech with him, I found the Scope of his Book to be such, as that the Church of *England* would have little Cause to thank him for it: and so absolutely denied it. Nor did he ever come more at me after this, but twice or thrice at most, when he made great Friends to me, that he might print another Book, to prove that Bishops are by Divine Right. My Answer then was, That I did not like the way which the Church of *Rome* went, in the Case of Episcopacy. And howsoever, that I would never give way, that any such Book should be printed here from the Pen of a Romanist; and that the Bishops of *England* were able to defend their own Cause and Calling, without calling in Aid from *Rome*, and would in due time. Maintenance he never had any from me, nor did I then know him to be a Priest. Nor was there any Proof so much as offered in contrary to any of this.

2. Secondly, They did specially except against a Passage in the Licenſer, and another at the end of the Book. The Book was printed at *Lyons*, where I could not hinder the printing, either of the whole, or any part. This might have been something, had I licenſed it here; but that I constantly denied.

3. Thirdly, They produced a Letter written to me from *Venice*, by one Mr. *Middleton*, Chaplain there to the Right Honourable the now Earl of *Denbigh*, his Majesty's Ambassador. Therein he writes, *That S. Clara was Homo nequissimus, and that one Monsieur S. Giles was the Author of that Book. That Clara and S. Giles were the same Person, is but Mr. Middleton's Opinion. Such News as he there heard, some true, some false, he thought fit to write unto me: and he being absent, here's no Proof upon Oath, that they are one and the same Person. And I hope a young Man's Letter from Venice, or any other Place, signifying only such things as he hears, shall not stand for good Evidence in a Case of Life. And he was mainly deceived in this Particular, as appears, First, Because what Clara is, I know not: but Monsieur S. Giles is a great Scholar, and a sober Man; and one that gave the late Lord Brooke so good Content, that he allowed him One Hundred Pound a Year during his Life. Secondly, Because 'tis commonly known that Clara is an Englishman, and S. Giles a Frenchman born and bred.*

The 7th Additional.

Thirdly, Because their own Article, upon which they bring this Charge, acknowledges them two distinct Persons. Fourthly, Because both Mr. Prynne and Mr. Nicolas had Monsieur S. Giles before them in Examination, and could not but know him to be a Frenchman: as appears by a Warrant given to him by Mr. Prynne, to secure him after his Examination; which Warrant follows in these Words:

THESE are to certify those whom it may concern, That the Committee of the House of Commons,

'appointed to prosecute the Archbishop of Canterbury, have examined and received Satisfaction from Monsieur S. Giles, a Domestick Servant to the Resident of Venice; and therefore he is no farther to be examined or molested concerning the same.'

'This License came to my Hands since my answering was past, so I could not then shew it. Monsieur S. Giles was never the Man that gave me notice of any of this, not so much as that he had been examined; but my Secretary Mr. Dell came to hear of it by chance, and went to him, and had this Copy (with some Labour) from him, and will make Oath it is a true Copy. This is not the thankfullest Part that ever S. Giles played, considering my Carriage towards him.'

4. Then they charged upon Monsieur S. Giles directly, That I knew him to be a Priest, and yet maintained him at *Oxford*. The * Case was this: Mr. S. Giles was in good Place about the Queen's Majesty at her first coming: Here he did so good Services to this State, that he lost himself in *France*, and durst not go thither when the *French* were sent away. All this while the Man was unknown to me, till his Majesty one Day at St. James's told me this, and that he was a Priest, and that it lay upon him in Honour to allow him some Maintenance, and prescribed me a Way how to order it, that he might receive One Hundred Marks a Year as from him; and gave me charge, if the Pension were at any time behind, I should acquaint him with it. After this Mr. S. Giles, by his Friends, petition'd his Majesty, that being a Stranger, he might live in *Oxford*, to have the Use of the Library there, being resolved to meddle no more with the Controversies of the Time, but to apply himself to *Metaphysical* Learning. His Majesty was desirous to have him plac'd in some College, to save Charges: But this I most humbly deprecated, because it might be dangerous to the Youth there, and scandalous to his Majesty, the Church, and the University; and dangerous to myself, being Chancellor: to the rest I submitted. So he was left to place himself in some Town-House, as he could: And for this his Majesty gave me his Warrant, which Mr. Prynne, in his Search, took from me. But here follows the true Copy of it.

'Charles Rex.

*'C*anterbury, Mr. S. Giles by serving Us and this State, hath lost all his Hopes in *France*, and desires to spend his time here at his private Studies. I would have you think upon some way for his Maintenance, and to place him in *Oxford*, that he may have use of that Library, which he much desires. And you may so order it, that his Profession in Religion may do no harm.'

And according to this Direction of his Majesty I did take order, but with Assurance from himself, and with Spies upon him there, besides the special Care of the Vice-Chancellor, that he should not converse with young Students, nor exercise his Priestly Office, nor do any thing against the Laws. Nor did I ever hear that he failed in any of these Assumptions.

5. Then

* The Archbishop related this Case more at large, and therewith defended himself in a written Paper; which being read by Prynne in the Tower, was now produced and read before the Lords. It may be found in Prynne's Compl. Hist. p. 428. tit. 17.

5. Then they produced one Mr. Broad, who testified, That while *S. Giles* lived at *Oxford*, some Doctors came to him. Doctors were able to deal well enough with him; but all Resort of young Scholars was forbidden. He says farther, That Mr. *S. Giles* should say, That the Bishops of *England* were cordially of his Religion, but that he feared their Rigidity would spoil all. First, This is but a Report of his Speech. Secondly, Why was not *S. Giles* at his Examination asked, whether he said it or no? And if he did, what Ground he had for it? At the most, it was but his Opinion of the Bishops, who were never the more cordial to Popery for his thinking so. And Thirdly, I doubt it appears by this time, that all is overthrown, or near it, not by the Rigidity, but by Over-Remissness of some Bishops, who never would believe any Danger could come from the *Goody*, as they were called.

6. Lastly, What's the Reason of this great Endeavour, upon nothing but News in a Letter, to make *Clara* and Mr. *S. Giles* to be one and the same Man? Doubtless, nothing but an Hydriopical 'Thirst after my Blood.' For Resort of Priests to *Lambeth*, was usual in both my last Predecessors times, *Bancroft's* and *Abbot's*, and some lay in the House and had Relief. This was proved to the Lords by two antient Servants of that House: Neither of which have been done in my time. Archbishop *Abbot* made a Warrant (this Warrant was shew-

^a Confer. at Hamp. Court, p. 51. ed) to secure Mr. *Preston* an *English* Priest, upon a ^a Command of King *James*: Why may not I a *French* one, by the Warrant of King *Charles*?

King *James* justified Bishop *Bancroft* for doing this, when he was Bishop of *London*, and no Privy-Counsellor: And may not I do it, being Archbishop and Privy-Counsellor, with as much Privy of the King and the State, as he did? But to let these pass, why should I say here was a Thirst

^{27 Eliz. c. 2.} for Blood? I'll tell you why? The ^{§. 3.} Statute of 27 *Eliz.* makes it Felony

without Benefit of Clergy, to maintain or relieve any *Romish* Priest born in *England*, or any other of her Majesty's Dominions, knowing

^{Art. 7. Addit.} him to be such. Now they had laid their Article, That I had given Maintenance to one Monsieur *S. Giles*, a Popish Priest at *Oxford*, knowing him to be such. But when, upon Examination of *S. Giles*, they found him to be a *Frenchman*, and so not within the Statute; (as the Words of that Statute are

^{L. 3. Inst. c. 37.} most plain, and so is Sir *Edw. Coke's* Judgment upon them; both which I

then read to the Lords:) I say, when they saw this, then they cast about how to make * *S. Clara* and Mr. *S. Giles* to be one Man. And tho' they could find no Shadow of Proof of a thing that is not, but a Letter of News from *Venice*; yet against their own Knowledge and Conscience, they give that in Evidence to reach my Life any way.

Here Mr. *Nicolas*, so soon as he had discovered whither I tended, would have broken me off saying, They did not urge it for that now, they were not yet come to it. I replied, if they came to it after, I would be at the Pains to answer again: But since it concerned my Life, I would not slip

it now, nor leave it unanswered in any Circumstance. So I went on, but they never mentioned it after; and by this way meant certainly to have involved me within the Law, *Clara* being an *Englishman* born. God of his Mercy grant, that this Thirst after my Blood lie not too heavy another Day upon their Souls. Mr. *Browne*, in summing up the Charge, fell upon this also. I made a brief Answer out of that which is afore-said: Yet after in his Reply, he fell upon this Letter of Mr. *Middleton's*, and cites his News for Evidence, That *S. Clara* and Mr. *S. Giles* were the same Man: Which I much wonder so able and grave a Man as he is, should swallow from Mr. *Prynn*, who doubtless (being present) was angry to see himself so laid open in the House of Commons.

XII. At last came in the last Charge of this Day, That a Cardinal's Hat was offer'd unto me. My Diary quoted for this, at Aug. 4, & 21, 1633. I could hinder no Offer, unless I could prophesy what each Man came about, and so shun them. But why is not my Answer, there set down, expressed too? My Answer was, That somewhat dwelt in me, which would not suffer me to accept that till Rome were other than now it is. Besides, I went presently

to his Majesty, and acquainted him with it; which is all that ^b the Law ^b Sir Ed. Coke, L. 3. Inst. c. 3. requires at my Hands. And his Majesty very prudently and religiously

(yet in a calm Way, the Persons offering it having Relation to some Ambassador) freed me speedily of that, both Trouble and Danger. They urged farther out of the Papers of *Andreas ab Habernfeld* (which Mr. *Prynn* took from me in his Search) That Signior *Con* had Power to offer me a Cardinal's Hat. The Words which they cite, are (for I could never get sight of those Papers since) *Mandatum habuit offerre, sed non obtulit*. What Power he had to make me such an Offer, I know not; but themselves confess he did not offer it. Nor had I ever any Speech with him during all the time he staid here. I was solicited as much by honourable Friends to give him Admittance to me at *Lambeth*, with Assurance he should speak nothing about Religion, as ever I had about any thing in my Life. I still refused, and could not persuade myself to do other; and yet could not but inwardly (*in Verbo Sacerdotis*, this is true) condemn myself of gross Incivility for refusing; for which yet now I see I am much bound to God for that Unmannerliness. Had I held a Correspondence with him, tho' never so Innocent, where had I now been? Besides, I would not have it forgotten, that if to offer a Cardinal's Hat, or any like thing, shall be a sufficient Cause to make a Man guilty of Treason, it shall be in the Power of any *Romanist* to make any *English* Bishop a Traytor when he pleases: a Mischiefe not to be indured. And thus this long and tedious Day ended; and I had order to attend again on July 24, which I did accordingly.

The Nineteenth Day of my Hearing.

I. MONDAY, July 24, 1644. This Day they went on with the same Article: And the first Charge was, my denying the Pope to be Antichrist. The Proofs, the Alteration of the Clause

* After all *Prynn* would insinuate, that *S. Giles* was the same Man with *Sancta Clara*, and wrote the Book, intituled, *Deus, Natura, & Gratia*, altho' he fully knew the contrary, Compl. Hist. p. 427, 429. Nay, he hath the Confidence at last (p. 430.) to add, that it is most apparent. H. W.

in the Letters Patents for the *Palatinate*, and the Letters between Bishop *Hall* and me. These Proofs are answer'd before, and repeated here only to make a Noise. Nor did I in any of these deny the Pope to be Antichrist: For, to forbear that Word, for some both Temporal and Ecclesiastical Respects, is one thing; and to deny the Thing itself, is another.

II. The second consists of a great many Particulars, and most of them urged before, repeated only to help to make the Ignorant clamorous and wild against me. God forgive them this Practice.

1. The first Particular was *Shelford's Book: The whole Book*. And Mr. *Prynne* very gravely said, That this Book, and the other two following, were found in my Study. Is he not yet ashamed of this Argument? May I have no Book in my Study, but I must be of the same Judgment with the Author in all Things? The Author is altogether unknown to me; the Book was licensed at *Cambridge*: so nothing faulty in me, but the having of the Book in my Study.

2. The second was Dr. *Heylin's* Book against Mr. *Burton*. This Book was printed by my Command (they say) and in it is a Passage for Absolute Obedience to Kings, p. 229. This was before also. And I did command the printing of the Book, but gave no Warrant to put any thing unjustifiable into it. This Passage I caused to be read to the Lords; and the Doctor there says no more than what he learned of King *James* in the Conference at *Hampton-Court*. But if any thing be amiss, he is ready to answer it: But I find not one word in him, that this Absolute Obedience ought to be in any thing that is against Law. 'That's one of Mr. *Nicolas's* Stretches.'

3. The third Particular is Bishop *Montague's* Appeal, p. 141. But nothing hence charged upon me, but only, that the Book was found in my Study. I would Mr. *Prynne* could find any Books there now.

4. The fourth was, That divers Books of like nature were licensed by my Chaplains. But none was of all they then named, but Dr. *Heylin's* and *Sales*, of which your Lordships have heard the Plot how it came to be licensed. And for Dr. *Heylin*, he is ready to make all good, which he hath therein done.

5. The fifth Particular is, That the Homilies which are authorized in the Church of *England*, make the Pope Antichrist, p. 216. And the *Babylonish* Beast of *Rome*, p. 316. But, First, this is nothing against me, till it be proved, (which yet is not done) that I have positively denied the Pope to be Antichrist. And, Secondly, I do not conceive, that the Article of the Church of *England*, which confirms the Homilies, doth also confirm every Phrase that is in them. Nor, Thirdly, do I conceive, that the Homilies in those Places which are cited, do make the Pope the great Antichrist. For in the first place, the Words are, *to the beating down of Sin, Death, the Pope, the Devil and all the Kingdom of Antichrist*: Which Words cannot possibly imply, that the Pope is that Antichrist. In the second place, he is only called the *Babylonical* Beast of *Rome*; which Phrase doth not necessarily signify the great Antichrist. For the Beast so often

mentioned in the *Revelation* (Chap. xi. 7.) is nowhere called the *Babylonical* Beast of *Rome*. And if that Beast do stand for the great Antichrist, I say *If*, because those Scriptures are very dark) then ^a the Beast is primarily the *Roman* Empire in the Judgment of the *Geneva* Noters. ^a Annot. in Apoc. 17. 8.

'And that there should be two great Antichrists, is more than any Man hath yet said. Here Mr. *Nicolas* was up again with *Pander to the Whore of Babylon*, and other foul Language; not remembring all this while, (which yet I was loth to mind him of) that one of his zealous Witnesses against the *Whore of Babylon*, and all her Superstitions, got all his Means (which are great) by being a *Pander* to other leud Women; and loved the Buff-ness itself so well, as that he was (not long since, Men say) taken in Bed with one of his Wife's Maids. Good Mr. *Nicolas*, do not dispense with all Whores, save the Whore of *Babylon*.'

6. The sixth Particular was the Articles of *Ireland*, which call the Pope the *Man of Sin*. But the Articles of *Ireland* bind neither this Church, nor me. And some learned Protestants do not understand that noted Place of the Apostle, 2 *Thess.* ii. as meant of Antichrist or the Pope.

7. The seventh and last Particular is a Repetition of *Sancta Clara* and Mr. *S. Giles*, and the *Letter of News*, (which were News indeed) to make them one Man; tho' this were answered at large but the last Day, and Sir *Ed. Hungerford's* Testimony brought up again. It's a sign Mr. *Nicolas* hath indeed no downright Proof, (as he said before) that so tumbles up and down in repeating the same Things.

III. The third Charge is, That I say in my ^b Book that the Religion of the Church of *Rome* and ours is all one. This is spoken only in opposition to other Religions, in regard of Christianity. The Words are, *Nor do the Church of Rome and the Protestants set up a different Religion; for the Christian Religion is the same to both, &c.* And the like Passage to this is in my ^c Speech in the Star-Chamber, and these Pages were read to the Lords. So that either Papists must be denied to be Christians, or else this Charge can work nothing against me. ^b My Book contra Fisher, p. 376. ^c Pag. 36.

IV. The fourth Charge is out of *Cbouneus's* Book, p. 45, & 46. licensed by my Chaplain Dr. *Bray*; where (they say) 'tis said, *That Rome is a true Church, and differs not in Fundamentals*. And that at the High-Commission, when this Book was question'd by some, I did say, *That the Church of Rome and the Protestants did not differ in Fundamentals, but in Circumstances*. And this latter part was testified by Mr. *Burton* and one Mr. *Lane*, who said they were present. First, Suppose this be false, and that they do differ in Fundamentals, yet this then is but my Error in Divinity, no Practice to overthrow Religion. Secondly, I suppose, if I did so say, I did not err: For the Foundation of Christian Religion are the Articles of the Creed; and the Church of *Rome* denies no one of them. Therefore there is no Difference in the Fundamentals. If they of *Rome* differ in Exposition of some of these, that must needs be a Superstructure upon or beside the Article, not the Article or Foundation itself. Nor did I follow my own Judgment herein, but ^{*} *Calvin's*; who says expressly

* Quemadmodum saepe diruuntur aedificia, ut fundamenta & ruinae maneat; ita non passus est Ecclesiam suam ab Antichristo vel à fundamento subverti, vel solo aequari, &c. sed ab ipsa quaque vastatione semirutum aedificium superesse voluit. *Calv. L. 4. Inst. c. 2. § 11.*

pressly, *That in despite of Antichrist, the Foundations of the Church remain'd in the Papacy itself, that the Church might not wholly perish.* And this Passage was then read to the Lords. Thirdly, these two learned Witnesses (as they would be reputed) are quite mistaken in their very Terms: For they report me, as if I said, *Not in Fundamentals, but in*

Circumstantials; whereas these are not *Membra opposita*,^a but Fundamentals and Superstructures, which may sway quite beside the Foundation.

And this, tho' not the only, yet is a main Failing in the *Roman* Fabrick; in which many Things are built upon unwarrantable Tradition, as is expressed in my^b Book at large, and their many Superstitions named: and that Passage read also to

the Lords. For tho' they differ not in the prime Foundations, yet they in many things grate close upon them, and in some things fall beside them, to no small hazard of their own Souls. As for

Circumstantials, it seems these Men have forgotten, or never knew, that many times Circumstantials in Religion do quite destroy the Foundation. For Example: The Circumstances are these; *Quis? Quid? Ubi? Quibus Auxiliis? Quomodo? Quando?*

1. *Quid?* What Man believes; and that contains Fundamentals, and in the first place,

2. *Ubi?* Place, a mere Circumstance; yet to deny that Christ took our Flesh of the Blessed Virgin, and that in *Judea*, denies the Foundation, and is flat Judaism.

3. *Quibus Auxiliis?* By what Helps a Man believes, and in some measure obeys as he is commanded? For to believe that a Man doth this by the Strength of Nature only, and not by Aid and Assistance of Grace, is with the *Pelagian* to deny the Foundation, and to overthrow the Grace of Christ.

4. *Quando?* When? That's Time, a mere Circumstance: Yet to deny that Christ is already come in the Flesh, denies the Foundation utterly, and is flat Judaism, and an inseparable Badge of the great Antichrist, 1 *John* iv. 3. And in the case of the Resurrection, to say 'tis past already, (which is Time) *St. Paul* tells us, 2 *Tim.* ii. 18. is no less than the Overthrow of Faith. And the Rule is general, That some^d Circumstances,

dant Speciem, give the very Kind and Form to a moral Action. 'This for their Ignorance: But for the Malice of their Oath, I leave them to God's Mercy. Here Mr. Browne, when he summed up the Evidence against me, fell upon this; and said,

'That when I gave divers Instances what dangerous Errors Circumstances did sometimes breed in Religion, I gave no Instance in any Point of Popery. But to this I answered, First, That it was not material what Instances I made, so I was able to make some. Secondly, That it was not possible for me, or perhaps a readier Man, to have all Instances so present with his Memory. Thirdly, If an Instance in Popery, rank Popery, will serve the Turn, you may take it in Transubstantiation. That is either a Fundamental Point, or it is not: If it be not fundamental, why did the Papist put the Protestant to death for it? And why did the Protestant suffer death? If it be fundamental, (as it seems by both Sides

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it was accounted) it is upon the bare Circumstance of *Quomodo*, how Christ is present in the Sacrament.'

As for that which was said in the Beginning of this Charge, *That Rome is a True Church*: I ever did, and ever must grant it, that such it is, *Veritate Entis*, in the Truth of its Entity and Being. For; as I have said against^e *Fisher, Ens & Verum, Being and True* are convertible

^e § 20. p. 128. one with another. And every Thing that hath a Being, is truly that Being which it is in Truth of Substance. But a Right or an Orthodox Church I never said it was, either in Doctrine or Manners. As a Thief is a true Man in Verity of his Essence, that is, he is a Creature indued with Reason: But it doth not therefore follow and that he is a true Man, *Veritate Moris*, in his Life and Conversation. 'And this I answered first to the Lords, and after to Mr. Browne's summary Charge; who in his last Reply said two Things: First, 'That when I said *Rome* was a True Church, I spake it generally, without this Distinction. But 'this is quite beyond the Proof; for no Witness says so. Besides, it is manifest by Distinction of Fundamentals from other Doctrines (acknowledged by both the Witnesses) that I did not speak it absolutely, but plain enough to any ordinary Understanding. Secondly, (which I was very sorry to hear from so grave a Man) he added, That there was no Truth of a Church, but in the Verity of Doctrine and Manners; and that in *Veritate Entis*, a Company of *Turks* were a True Church. Now God be merciful to us, whether are we posting? 'Tis known that the *Greek* Word *Ἐκκλησία*, which signifies *Church*, signifies also in Heathen Authors any kind of Company or Congregation of Men, *Turks* if you will. But in Ecclesiastical Writers, and among all Christians, the Word *Church* is used only (and *Ἐκκλησία* too) for a Company of Men which profess the Faith of Christ, and are baptized into his Name. And will any Man say that a Company of *Turks* are such a Church in *Veritate Entis*, in the Verity of this Being, as all the World knows Papists are? Or if he will not speak *de Ente tali*, but change the *Suppositum*, he may say what he please. But I was very much troubled to hear this, and from him.' I had almost forgot that Mr. Nicolas here pressed the Authority of the *Homilies* upon me again;

^f *Hom. Par. 2.* where 'tis said, *That the Bishop of* p. 213.

Rome and their Adherents are not the true Church. But the Answer is easy: For I say as the *Homily* doth, and as it means too in that Place; namely, that the Church of *Rome* is not the True; that is, not the Catholick Church, nor the Head thereof. But there is a great deal of Difference between the *Church* and a *Church*: The one is the General, the other a Particular. The *Church* it cannot be: A *Church* it is; and a true one too, in the Sense before specified. Upon occasion of this, Mr. Nicolas's Mouth was open again, and said, That at the beginning I reckon'd up some that I had converted; but if this were my Opinion, and that if this might stand for good, I might convert the Devil and all. My Ears had been so beaten with his Language, that I was patient, and left him to insult. And to help on this Business, while he was in these loud Expressions, the Earl of *Pembroke* came to Mr. *Burton* to the Bar, and in my hearing desired him to repeat the Testimony he had given; which Mr. *Burton* did, and his Lordship seemed to

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be much pleased with it. Not long before, when the News was come hot to the House that *York* was taken, when I came at Five in the Afternoon to make my Answer, I was no sooner come to the Bar, but the same Lord came and sat just before me, and there with much Joy told Mr. Lieutenant the News. I presume he did it in favour to me, because he thought it would put me in very good Heart, being then instantly to begin to make my Answer. God forgive this Lord; for I have deserved in my time far better of him, if he understood himself, or any Man else.

V. The next Charge was out of Dr. *Pocklington's Altare Christianum*, p. 49, 50. where he speaks (they say, for I now have not his Book) of a Happiness that the Bishops of *England* can derive their Succession from St. *Peter*; which, in great Scorn, Mr. *Nicolas* called the *Archbishop's Pedigree*. First, If there be any Crime in this, Dr. *Pocklington* is to answer it, not I. Secondly, he may scorn what he will; but wise Men know 'tis a great Honour to the Church of *England*, and a great Stopple in the Mouths of the *Romanists*, that her Bishops can derive their Calling successively from St. *Peter*; especially considering how much they stand upon personal Succession. Thirdly, Dr. *Pocklington* in this says no more for me and the Bishops, than * St. *Augustin* urged for himself and his Brethren against the *Donatists* in the same Words, save that St. *Augustin* begins at St. *Peter*, and descends to his own Time; and the Doctor begins at his own Time, and ascends to St. *Peter*. 'But it seems, 'an upstart Clergy, without a Calling, will serve 'Mr. *Nicolas* well enough.'

VI. The sixth Charge was, That Books were written of purpose to maintain these Opinions; and such Men as writ them only preferred. He named Mr. *Shelford*, Mr. *Butterfield*, Dr. *Cofens*, and Dr. *Pocklington*. This hath been clamoured upon already: If any have set out unworthy Books, they may be called to account for it; I hope I shall not answer for all the Divines in the Kingdom. 'They whom I preferred were worthy and 'able Men, and it will not be in the power of 'Mr. *White's* Centuries to blast a Man of them among any that know them.' For these that are named, Mr. *Shelford* I know not, Mr. *Butterfield* I saw punished in the High-Commission; neither of them preferred, that I know. 'The two last, 'by whomsoever they were preferred, deserved all 'the Preferment they had, and more.'

VII. The seventh Charge is out of my Diary at June 15, 1632. where 'tis said, That I preferred Mr. *Secretary* Windebank, my old Friend. And here Mr. *Nicolas* laid all the Correspondency open, which (he said) that Gentleman had with the Pope's Agents, with Priests and Jesuits: And when he had made him this way as foul as he could, then I must be guilty of all, for preferring such a Man to the King. This Gentleman was indeed my antient Friend: In my many Years Acquaintance with him, I saw nothing in him but Honesty and Worth. If when he was preferred, he deceived my Opinion, he is living to answer for himself. Many in all Ages have been preferred to Princes, which do not answer the Hopes and Desires of them which prefer them; and yet they not made answerable for them neither. But whether he did fail in any publick Trust, or no, I am not his Judge. Yea, but some

Letters were found from his Son *Thomas*, what Entertainment he had in foreign Parts for his Father's sake. But these Letters were read to the Lords, and there is not one Word in them that relates to me: And 'tis both likely and fit the Son of a Secretary of State should be worthily used in his Travels. Yea, but his Son *Christopher* was at *Rome*, and sent thither to insinuate himself with the Pope: So *Andreas ab Harnfeld* writes in the Papers which Sir *William Boswell* sent over to me. If he did send his Son to that end, then I discovered his Plot; for I caused those Papers to be examined by the King and the Lords, as is before related. Besides, in my poor Judgment, the Pope must be a very simple Man, ('it may be Mr. *Nicolas* thinks 'him so, compar'd with himself') that a Youth of Seventeen at the most, should insinuate himself to fish any thing out of him for his Father's Service. Lastly, he pressed, that my Interest continued with Mr. Secretary in all these Courses of his. 'Tis well known in Court the old Interest did not continue between us: But for old Friendship's sake I will not be drawn to say more. As for his releasing of any Priests, he must give an Account of that himself. But for myself, I was so careful in this Particular, that I never put my Hand, tho' publick at Council-Table or Star-Chamber, to any Release in all my Time. I might be named, as present when such Release was made, (which I could not avoid;) but act in any I did not. Nay, I was so careful, that I refused to set my Hand to any Licence to travel, lest, if any young Man should be perverted abroad in his Travels, any thing might be imputed to me. And this all the Clerks of the Council can witness. 'But I see no 'Wariness, no Care, can prevent the Envy and 'the Malice of the Many and the Mighty.'

VIII. The eighth Charge was my Correspondence with Popish Priests. And for Proof of this, they produced divers Witnesses.

1. The first Witness was one *Wadsworth*, one of the common Messengers used to attach such Persons. He says, That *Smith alius Fludd*, bragged to him that he had Acquaintance with me. Here's nothing but a bragging Report of *Smith*; who, what he is, I know not. So here's no Proof. He says, That four Pound was sent to himself, to free him out of Prison; and that *Davis* told him it came from me. This is but a Hearsay from *Davis*, as the former was from *Smith*. But say, my Lords, if I did send him four Pound to free him out of Prison, doth he not now very thankfully reward me for it? The truth is my Lords, I did send him four Pound: And the Motive that made me send it, was because I heard he was a Convert from Popery to be a Protestant, and that his Imprisonment was as much for that as for any thing else. And this was attested to the Lords by my Servant Mr. *Snath*, who was one of them that moved me for him.

2. The second Witness was *Francis Newton*, another Messenger. He says, that when he had taken *Henry Mors*, a Priest, he should have been carried to a private Committee; that he disliked it, and complained to Mr. *Secretary Cook*, who (he says) sent him to me; and that when he came to *Lambeth*, Mr. *Dell* told him I was in my Garden with Sir *Toby Matthew*. My Servant Mr. *Dell* being

* Petro successit Linus, Lino Clemens, &c. Et sic que ad Anastasium, qui nunc sedet. Et in hoc ordine successionis nullus Donatista Episcopus invenitur. S. Aug. Epist. 165.

ing appointed my Solicitor, was now present in Court, and denied all this. And well he might; for Sir *Toby* was never in my Garden with me in all his Life. And if Mr. *Dell* told him that I would not meddle in the Business, (as he says he did) Mr. *Dell* must give the Account for it, not I. Yet if there were a Reference of this *Mors* to a private Committee, the hindring of that was more proper to Mr. Secretary than to me. Howsoever, here was no hurt done: For he confesses that *Mors* was sent back to *Newgate*. And if (as he farther says) he was discharged by Mr. Secretary *Windebank*, that is nothing to me. He says, he was informed by *Stukely*, that *Smith*, alias *Fludd*, was acquainted with me. But if he were but informed so himself, that's no Proof to inform your Lordships. He says, that *Brown* a Priest was dismissed out of the High-Commission. Thus it was: He was called in thither for very foul Uncleaness. In process of this Business, he there openly confessed himself a Priest. Hereupon that Court sent him to *Newgate*. 'What became of him after, I know not, save that I know he was strictly examined by Mr. *Pym* and others concerning me.' This *Newton*, upon what Grudge I know not, calls me Rogue, and all to naught in all Companies; and with so much I acquainted the Lords.

3. The third Witness was *Tho. Mayo*, a Messenger also. He says, that Sir *Toby Matthew* was accounted a Priest when he was in Parts beyond the Seas; and that he saw him in a Coach with me, and that he went over with me in my Barge. First, I gave in two Exceptions against this Witness: One, that he was a Man of no Conscience; for he had shifted his Religion from Protestant to Papist, and back again three or four times: Which was a Thing known. The other was, that he kept a Brothel-House at this present, and that his Fellow *Wadsworth* knew this, and called him pimping Knave, saying he kept a Brace of Wenches at this time in his House. And these Words he spake of him but the fifth of this present *July*, in the *Bull Tavern* in the *Palace-Yard*. So I thought him no fit Witness. But he was heard for all this. 'And afterward *Wadsworth* meeting my Servant Mr. *Snath*, he told him that he did say so to *Mayo*, and wonder'd how I should come to hear it.' Being admitted, and saying as he did, I told the Lords that he began with a very bold Oath, and like a Shifter of his Religion: For I had four Servants there, three of which usually attended me when I went and returned from Court, Mr. *Dell*, Mr. *Snath*, Mr. *Goodwin*, and Mr. *Dobson*, and they all attested the contrary; and I never went, but one of these, at least, was with me. Besides, he is single in this Testimony. He says, that he saw Sir *Toby* several times in my House. But he confesses withal, that he never saw him near me. For my own part, I cannot say that ever he was within my Doors. But if he, or others of his Quality, do come to pry out any thing in my House, how is it possible for me to hinder it? My Porter could not see it written in their Foreheads, who they were. He says, that one *Price* was often seen at my House. But he doth not say he was seen with me, or there with my Knowledge. He says, that one *Leander* was reported to have been my Chamber-Fellow in *Oxford*. First, This is but a Report, and so no Evidence. Secondly, If he were my Chamber-Fellow in *Oxford* when we were Boys together, I am sure he was then no Priest; and he was but a Boy when he left the

College. He confesses that I gave Order to observe who and how many resorted to Ambassadors Houses, and Signior *Con's*, and says he thought I could prove it. But I believe he would never have confessed it, but that he knew I could prove it. And thereupon I shewed the Lords many Papers certifying me what Numbers were found resorting to each Place respectively; and *Thomas Mayo's* Hand to many of those Papers. He says, he took one *Peter Wilford*, and brought him to me to *Whitehall*, while Sir *John Lambe* was with me. But he confesses withal, that *Wilford* then shewed Mr. Secretary *Windebank's* Warrant to discharge him: And then what could I do to him? Nay, I have some cause to think he would never have apprehended him, had he not known he had that Warrant. Lastly, he says, that once at the Star-Chamber I told him he was too quick and nimble for me. And I hope it is no Treason, if I did say so. Nor could I mean he was too quick in apprehending Priests, for I found both him and his Fellows, after *Crosse's* death, slow enough at that: But if I said so, it was because I could not tell how to trust his Shifting and his Wiliness.

4. The fourth Witness was *Elizabeth Graye*, Wife to another Messenger. And this is a very fine Witness. For first, she says, her Husband was committed, by my means. And then with a Breath she says, She doth not know by whom he was committed, but she thinks by Secretary *Windebank* and me. But since she doth not know, but think only, I hope her thinking can be no Evidence. She says, that she delivered me a Petition, and that I flung it away, saying, *I would not meddle with any Priest-catching Knave*. The Witness single, and I doubt doating, and the Words far from Treason.

5. The fifth Witness was *John Cooke*, a Messenger too, and one that for his Misdemeanor had stood in the Pillory. This I urged against him, as unfit to witness against me: 'My Witness that saw him in the Pillory, was so threatened, that he sent me word he durst not come. I may not say from whom this Threatning came.' But the thing was so true, that *Cooke* himself confessed it, but excused the Cause; and his Testimony received. He told how *Fisher* the Jesuit was taken by *Graye*; that when he was brought to the Council-Table, Secretary *Cook* and I went to the King to know his Pleasure about him; that we brought back word from his Majesty to the Lords, that he should be banished. All this while here's no hurt done. Then he says, that notwithstanding this Order of his Majesty, *Graye* and he met *Fisher* at liberty, by a Warrant from Secretary *Windebank*: That hereupon *Graye* repaired to Secretary *Cook*, and to me, and that *Dell* told him I would not meddle with it. My Secretary must answer this, I remember it not. But if Mr. *Dell* received any such Answer from me, that I would not meddle with it; there were two apparent Reasons for it: One, that I would not meddle with it alone, his Majesty's Order being to all the Lords: The other, that *Fisher* was the Man I had written against, and Men would have been apt to say, that when I could not answer, I sought means to destroy. So I no way fit (alone at least) to meddle with him of all Men. He says, that *Graye* was committed to the *Fleet*, for railing on me in my own House. Yet he confesses, that he was not committed by me. And I presume your Lordships will think there was Cause of his Commitment,

The Pop.
Roy. Favou-
rit. p. 31.

Commitment, if he did rail upon me. And 'tis confessed by Mr. *Prynn*, (tho' he had then received no Answer from myself) That he said he saw now how the Game went, and hoped ere long to see better Days, &c. He says, That *Smith*, alias *Fludd*, desired Sir *Kenelm Digby*, as he was going to *Lambeth*, to tell me that he could not dine with me that Day, but desired his Business might be remembered. No such Man ever dined at my Table, to my knowledge. And if any Priest would say so to Sir *Kenelm*, how could I possibly hinder it? And Sir *Kenelm*, when this *Cooke* was examined, was a Prisoner in *Winchester-House*; why was not he examined to sift out this Truth, if Truth be in it?

6. The sixth Witness was *John Threshler*, a Messenger too: He says, that he took *Mors* and *Goodwin*, too Priests; and that Secretary *Windebank* took away his Warrant, and dismissed them, saying, he would speak with me about it: And that when he came to me, I was angry with him about the Warrant. Mr. Secretary *Windebank* will, I hope, be able to answer for his own Actions. Why he dismissed the Priests, I know not; but he had great reason to take away his Warrant, and I a greater reason to be angry with him for it. For no Warrant can issue from the High-Commission Court, but under three of their Hands at least. Now *Threshler* having gotten my Hand to the Warrant, never goes for more Hands, but proceeds in his Office, upon this unwarrantable Warrant. Had not I reason to be offended at this? He says, That at the same time I said that *Graye* was an ill-tongued Fellow, and that if he kept him company, I should not regard him. I had good cause to say this and more, considering how *Graye* had used me: and I believe no Archbishop would have borne his words. Lastly, he says, That by a Warrant from me he arrested Sir *Toby Matthew*, and that the Earl of *Strafford* stayed him from going to Prison, saying, he should answer it before the Lords. Here by the Witness himself it appears that I did my Duty. And Sir *Toby* did appear before the Lords, as was^a assumed he should. In the mean time,

I was complained of to the Queen: and a great Lady (who perhaps made the Complaint) stood by, and made herself merry to hear me chid. The Queen was pleased to send to the Lords, and Sir *Toby* was released. Where my fault was in all this, I do not yet see.

7. The last of these famous Witnesses, was *Goldsmith*; who says nothing, but that one Day before the High-Commission Court began, I forewarned the Messengers of that Court of *Graye*, in regard he was openly spoke against at the Council-Table. Which, all things considered, I had great reason to do. He says likewise, That then *Graye's* Wife tender'd me a Petition, which I rejected, saying, *I would meddle with no Priest-catching Knaves*. I think his Carriage deserved no better of me, than to reject his Petition: But as for the Words,

Frigidè dictum. W. S. A. C.

I cannot own them; let the *Goldsmith* look to it that he have not forged them. And I would very willingly know, whether when the Apostle required, that an Accusation should not be received against an Elder, but under two or three Wit-

nesses, (1 Tim. v. 19.) he had any meaning they should be such as these?

IX. The ninth Charge was about the ordering of Popish Books that were seized, and the disposing of them. The sole Witness here, is *John Egerton*: he says, These Books were delivered to Mr. *Mattershead*, Register to the High-Commission. And I say so too; it was the constant Course of the High-Commission to send them thither, and have them kept in that Office, till there was a sufficient number of them, and then to burn them. Yea, but he adds, That *Mattershead* told him they were re-delivered to the Owners. This is but a Report, and *Mattershead* is dead, who should make it good. 'And tho' this be but a single Witness, and of a dead Man's Report; yet Mr. *Browne* thought fit to sum it up with the rest. But surely if any Books were re-delivered to the Owners, it was so ordered by the High-Commission, in regard the Books were not found dangerous: From me, *Mattershead* had never any such Command.' Lastly, he says, He met Sir *Toby Matthew* twice at *Lambeth*. But he confesses, he never saw him with me; and then me it cannot concern.

X. The Tenth Charge was concerning the Priests in *Newgate*; the Witnesses are Mr. *Deuxel*, and *Francis Newton*. They both agree, and they say, That the Priests there had the best Chambers, and Liberty to go abroad without Keepers. I hope these Men do not mean to make the Archbishop of *Canterbury* Keeper of *Newgate*. If any Man gave them this Liberty, he is to be blamed for it, not I, who never knew it till now. Nor do either of these Witnesses say, that they called on me for remedy, or ever did so much as acquaint me with it. And they say this was twelve Years since; and I had been Archbishop but seven Years when I was committed.

XI. The Eleventh Charge was about Words in my Epistle Dedicatory before my Book against Mr. *Fisher*. The Words these: *For, to my remembrance, I have not given him, or his, so much as coarse Language*. So the Charge is, because I have not given ill Words. And here Mr. *Nicolas* fell foul upon me again for taking such care, that the Whore of *Babylon* may have nothing but good Words, &c. But first, my Lords, I have always thought, and do still, that ill Language is no Proof against an Adversary: All the good it can do, is, it may bring Scorn upon the Author, and work Hardness of Heart in the Adversary, whom he doth or should labour to convert. And this I learned of two eminent Fathers in the Church, * *Gregory Nazianzen*, and † *St. Augustine*. The first would not use it, no not against the *Arians*, who (as he saith) made open War against the Deity of Christ. Nor would the other against the same Adversaries. The one accounts it Ignorance, tho' a Fashion taken up by many; and the other Loss of Time. And here I desired the Lords, that I might read what immediately followed this Passage, which was granted: And there, as their Lordships did, so may the Reader see, if he please, that tho' my Words were not uncivil, yet in the matter I favoured neither him nor his. And to avoid Tediousness, thither I refer the Reader, with this, that sometimes Men apt enough to accuse me, can plead

* Non imperitè docemus, nec Adversarios Contumeliis incessimus, ut plerique faciunt, &c. *Greg. Naz. Orat. 32.*

† Abstineamus nos à conviciis, nō tempus inaniter impendamus, &c. *Aug. Epist. 177.*

* In the *Antiquaries to Mr. Prun*, p. 12.
 b Sid. Simpson's *Anatomist*, p. 2, &c.
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plead for this Moderation in their own Cases, and tell each other that *a Christ will not own Bitterness in maintaining any way, tho' consonant to his Word.* And *b another finds just fault both with Papist and Martin Mar-Prelate, for this reproachful Language.*

And yet it must be a Crime in me not to use it.

XII. The last Charge was the Commitment of one *Ann Hussy* to the Sheriff of *London*. The Business was this. She sent one *Philip Bambridge* to tell me of I know not what Plot against the King, (nor I think she neither.) *Bambridge* came to *Whitehall* toward the Evening, and could make nothing of this dangerous Plot. Yet because it pretended so high, I sent him presently to Mr. Secretary *Windebank*; I being the next Morning to go out of Town. The Business was called to the Council-Table. When I came back, I was present there. *Bambridge* produced *Ann Hussy*, but she could make nothing appear. She says, I thought she was out of her Wits. Not so, my Lords; but I did not think she was well in them; nor do I yet. And whereas she complains of her Imprisonment, it was her own desire she might be committed to the Sheriff; and Mr. *Hearn* (my Counsel here present) was assigned by the Lords to take her Examination. Therefore if any Particular in this Charge stick with your Lordships, I humbly desire Mr. *Hearn* may supply my Want of Memory. But it passed over, as well it might. Here this Day ended, and I was ordered to attend again *July 29*.

The twentieth, and the last Day of my Hearing.

MONDAY, *July 29, 1644*. This Day I appeared again, and they proceeded upon the Fourteenth Original Article, which follows in these Words.

XIV. That to preserve himself from being questioned for these, and other his traitorous Courses, he hath laboured to subvert the Rights of Parliaments, and the antient Course of Parliamentary Proceedings, and by false and malicious Slanders to incense his Majesty against Parliaments. By which Words, Counsels and Actions, he hath traitorously, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majesty, to set a Division between them, and to ruin and destroy his Majesty's Kingdoms. For which they do impeach him of High-Treason against our Sovereign Lord the King, his Crown and Dignity.

I. The First Charge of this Day was prefaced with a Note out of my Diary at *May 8, 1626*. That *the Duke of Buckingham was that Day impeached to the Lords by the House of Commons.* And at *May 25. The Difference arising in the House of Peers about the Earl of Arundel's Commitment to the Tower without a Cause declared.* No use

See Heylin's *Life of Archbishop Laud*.
 p. 152.

made of these, but that I then Bishop of *St. Davids* took notice of these things. Then the Charge followed; and the first of it was, That I then being of the Lords House, and so to be one of the Duke's Judges, made a Speech for him, and corrected his Speech in some particulars; and of a Judge made myself an Advocate. Which Mr. *Nicolas* said

was a great Offence. I saw not these Papers, and therefore can say nothing, what is, or is not under my Hand. But to the thing itself I say first, That if in that Speech any particular Fault had been found, impeaching any Right or Power of Parliament, that I must have answered; but none is charged, but only the bare making of one Speech, and the mending of another. And this is a very poor Argument of any Enmity against Parliaments. Secondly, Seeing no Fault is charged upon me in particular, it was but the Office of a poor Friend to a great one, to whom being so much bound as I was I could not refuse so much Service, being intreated to it. And Thirdly, I do humbly conceive, that so long as there was nothing done against Law, any Friend may privately assist another in his Difficulties. And I am persuaded, many Friends in either House do what they justly may, when such sad Occasions happen. And this Answer I gave to Mr. *Browne*, when he summed up my Charge in the House of Commons.

But Mr. *Browne* did not begin with this, but with another, here omitted by Mr. *Nicolas*; tho' he had pressed it before in the fifteenth Day of my Hearing. Dr. *Potter* writ unto me for my Advice in some Passages of a Book writ by him, (as I remember against a Book intitled, *Charity mistaken* :) I did not think it fit to amend any thing with my own Pen, but put some few things back to his second Thoughts, of which this was one; That if he expresses himself so, he will give as much Power to the Parliament in Matters of Doctrine, as to the Church. This Mr. *Browne* said, took away all Authority from Parliaments, in that kind. But, under favour, this takes away not all, nor any that is due unto them. Not all, for my Words are about giving so much Power: Now he that would not have so much given to the one, as the other, doth not take away all from either: Not any that is due to them; for my Words not meddling simply with Parliamentary Power, (as appears by the Comparative Words *so much*) my Intention must needs be to have Dr. *Potter* so to consider of his Words, as that, that which is proper to the Church, might not be ascribed to Parliaments. And this I conceive is plain in the very Letter of the Law. The Words of the Statute, are, *Or such as shall hereafter be ordered, judged, or determined to be Heresy, by the High-Court of Parliament in this Realm, with the Assent of the Clergy in their Convocation.* Where 'tis manifest, that the judging and determining Part, for the Truth or Falshood of the Doctrine, is in the Church. For the Assent of the Church or Clergy cannot be given, but in Convocation, and so the Law requires it. Now Assent in Convocation cannot be given, but there must precede a Debate, a Judging, a Voting; and a Determining. Therefore the determining Power for the Truth or Falshood of the Doctrine, Heresy or no Heresy, is in the Church: But the judging and determining Power, for binding to Obedience, and for punishing, is in the Parliament, with this Assent of the Clergy. Therefore I humbly conceive the Parliament cannot by Law, that is, till this Law be first altered, determine the Truth of Doctrine without this Assent of the Church in Convocation; and that such a Synod and Convocation, as is chosen and assembled as the Laws and Customs of this Realm require.

To

' To this Mr. Browne, in his Reply upon me in
' the House of Commons, said two Things. The
' one, That this Branch of the Statute of 1 Eliz.
' was for Heresy only, and the adjudging of that ;
' but meddles not with the Parliament's Power in
' other Matters of Religion. If it be for Heresy
' only, that the Church alone shall not so deter-
' mine Heresy, as to bring those grievous Punish-
' ments which the Law lays upon it, upon the
' Neck of any Subject, without Determination in
' Parliament ; then is the Church in Convocation
' left free also in other Matters of Religion, ac-
' cording to the first Clause in *Magna Charta*, which
' establishes the Church in all her Rights. And
' her main and constant Right when that Charter
' was made and confirmed, was Power of deter-
' mining in Matters of Doctrine and Discipline of
' the Church. And this Right of the Clergy is not
' bounded or limited by any Law, but this Cause
' of 1 Eliz. that ever I heard of.

' The other was, That if this were so, that the
' Parliament might not meddle with Religion, but
' with the Assent of the Clergy in Convocation,
' we should have had no Reformation : for the
' Bishops and the Clergy dissented. First, it is not
' (as I conceive) to be denied, That the King and
' his High Court of Parliament may make any
' Law what they please, and by their absolute
' Power may change Religion, *Christianity* into
' *Turcism*, if they please, (which God forbid :) And
' the Subjects, whose Consciences cannot obey, must
' fly, or endure the Penalty of the Law. But both
' King and Parliament are *sub graviore Regno*, and
' must answer to God for all such Abuse of Power.
' But beside this Absolute, there is a Limited Pow-

Id possumus,
quod jure pos-
sumus.

' er ; Limited, I say, by natural Jus-
' tice and Equity, by which no Man,
' no Court, can do more, than what
' he can by right : And according to
' this Power, the Church's Interest must be con-
' sidered, and that indifferently, as well as the
' Parliament's. To apply this to the Particular of
' the Reformation. The Parliament, in the begin-
' ning of Queen Elizabeth, would not endure Po-
' pish Superstition, and by Absolute
' Power abolished it, without any
' Assent of the Clergy in Convoca-
' tion. And then in her first Year,
' Anno 1559, she had a Visitation,
' and set out her *Injunctions*, to direct
' and order such of the Clergy as
' could conform their Judgments to the Refor-
' mation.

a By the Ad-
vice of her
Honourable
Council. Pre-
fat. to the In-
junctions.

' But then so soon as the Clergy was settled,
' and that a Form of Doctrine was to be agreed
' upon, to shew the Difference from the Roman Su-
' perstition, a Synod was called ; and in the Year
' 1562, the Articles of Religion were agreed up-
' on, and they were determined and confirmed by
' Parliament, with the Assent of the Clergy in
' Convocation, and that by a just and orderly
' Power. Nor is the Absolute Power of King
' and Parliament any way unjust in itself, but
' may many ways be made such, by Misinforma-
' tion, or otherwise. And this gives the King
' and the Parliament their full Power, and yet pre-
' serves this Church in her just Right : Just, and

b Discourse,
§. 1. c. 9. p. 51.

c in Church.

' acknowledged by some that loved
' her not over-well. For the Lord
' Brooke tells us, That what a Church
' will take for true Doctrine, lies only
' in Church. Nay, the very Heathen saw clear-

' ly the Justice of this ; for M.
' Lucullus was able to say in Tully,
' That the Priests were Judges of Re-
' ligion, and the Senate of Law.

c Religionis
Judices Pontifi-
ces sunt, Le-
gis Senatus.
Cic. L. 4. E.
lib. ad Alt.
Ep. 2.

II. The second Proof is, That I
made two Speeches for the King, to
be spoken or sent to the Parliament
that then was ; and that they had some four and
ill Passages in them. These Speeches were read
' to the Lords ; and had I now the Copies, I
' would insert them here, and make the World
' Judge of them.' First, I might
shuffle here, and deny the making
of them : For no Proof is offer'd,
but that they are in my Hand, and
that is no necessary Proof ; for I had
then many Papers by me written in
my own Hand, which were not my making, tho'
I transcribed them, as not thinking it fit to trust
them in other Hands. But, Secondly, I did make
them, and I followed the Instructions which were
given me, as close as I could, to the very Phrases ;
and being commanded to the Service, I hope it
shall not now be made my Crime that I was trust-
ed by my Sovereign. Thirdly, As I did never
endeavour to imbitter the King this way ; so the
smart Passages which Mr. Nicollas says are there, I
hope will not be thought such, when 'tis consider'd
whose Mouth was to utter them, and upon what
Occasion : Yet if such they shall be thought, I am
heartily sorry for them, and humbly desire they
may be pass'd by. Howsoever, they can make no
Proof that I am an Enemy to Parliaments. And
' this Answer I gave Mr. Browne in the House of
' Commons, for he there omitted it not.'

See the Diary
at March 26,
29. May 11,
Anno 1626.
H. W.

III. The third Proof that I am an Enemy to
Parliaments, is the Testimony of one Mr. Bland : A
forward Witness he hath been against me in other
Particulars. Here he says, That Sir Sackvil Crowe
shewed him a Paper, in which were fifteen or six-
teen Passages concerning Parliaments, with some
four Aspersions to boot ; and that this Paper was
subscribed W. Laud. First, my Lords, this Man
is but a single Witness. Secondly, He says, He
had this Paper from Sir Sackvil Crowe, and he is
now in Turkey, and cannot be produced, that the
Truth may be known. Thirdly, As I never gave
Sir Sackvil any such Paper, so had he come by any
such, 'tis more than probable somebody else
might have seen it beside Mr. Bland, to make a
second Witness. Fourthly, This is a very bold
Oath ; for he swears, the Paper was subscribed
with my own Hand, W. Laud : Whereas I being
then Bishop of St. Davids, never writ my Name
to any thing other than *Guil. Meneven*. Let him
bethink himself of this Oath, *ne quid gravius di-
cam*. Besides, it may be considered too, that this,
with some Particulars mentioned by Mr. Bland,
was charged in the first Additional Article, and
now brought in upon the fourteenth Original ;
partly to confound me, that I might not see how,
or against what to defend myself ; and partly to
make me secure, because they had
quite passed over the first Additional : But especially, because they had
therein charged me, that these Pro-
positions of mine had caused that Parliament to be
dissolved ; and yet in the same Article, and with-
in three Lines, 'tis said expressly, That my Pro-
positions were delivered to my Lord Duke of
Buckingham after that Parliament was dissolved.
' So this Article hangs as well together as Mr.

Art. 1. Addi-
tional.

Bland's

Bland's Testimony concerning it. Mr. Browne pressed this also hard against me; but I answered according to the Sum of that which is above-written. And as for the Particular said to be in that Paper, (were it mine, as it is not) or were the Words thought treasonable, (as well they cannot be) yet the Statute of Queen Mary, c. 1. *Mary* makes it, that no Words, nor Writings, nor Cypherings, nor Deeds, shall be Treason, but only such as are within the Statute of 25 *Edw.* 3. and no other. And this Statute I then read to the Lords, tho' I conceive there was no need of it.

IV. The fourth Proof was out of my Diary, at June 15, 1626. The Words these: *Post multas agitationes privata Malitia in Ducem Buckinghamiæ superavit & suffocavit omnia publica negotia; nihil actum est, sed Parliamentum solutum.* And this was applied first by Mr. *Nicolas*, and after by Mr. Browne, as if I had charged this private Malice upon the Parliament. But this is utterly mistaken: For I spake not this of the Parliament, but of some few particular Men, some of the House, 'Men well enough known to the World;' and more, not of the House, but Sticklers at large, who went between, and did very ill Offices, and so wronged both the King and the Parliament: which is no new thing in *England*. That my Words there cannot be meant of the Parliament, is two ways apparent. First, in that I say, *privata Malitia*, private Malice did it; but name not the Parliament nor charge any thing upon it. Secondly, Because had I spoken this of the Parliament, it could not have been called *private*, but *publick Malice*; nothing being more publick in this Kingdom, than what is done in and by the Parliament.

V. The fifth Proof was, That a Proclamation for calling in of the Remonstrance, was found in my Study: And Mr. *Nicolas* said, They conceived I had a hand in it. It was as lawful for me to have and keep this Proclamation, as for any other Subject. And their Conceit that I had a hand in it, is no Proof. Mr. *Nicolas* says, That my Preferments followed very quick upon this; and infers, That I was preferred for my ill Services in this kind. But all the Proof that he brings for this his uncharitable Inference, is the Comparing of the Times; and I shall be content to be tried by that. For by his own Acknowledgment this Proclamation came out June 16, 1622. I being then Bishop of *St. Davids*: And he confesses I was not made Bishop of *Bath and Wells* till June 20, 1626. full four Years after; nor a Privy-Counsellor till April 29, 1627. which was five Years after. Whereas Rewards for such Services are found to come much quicker. And Mr. Browne, when he made his summary Charge, slighted this, and passed it over.

VI. The sixth Proof of my Enmity to Parliaments, was a Paper of Reasons, Mr. *Nicolas* said, against Parliaments. But, First, when this Paper was shewed and read to the Lords, it was found otherwise, and was but a Paper of Hopes and Fears, which were conceived of a Parliament: Not Reasons against them. Secondly, These Fears and Hopes were not of a Parliament then in Being, but of one in Deliberation, whether it should be or not at that time; which all Men know is often disputed, and without offence. And any considering Man may privately do it, for his own use and trial of his Judgment. Thirdly, In this Deliberation, I was not the Author of these Fears and

Hopes, but an *Amanuensis* to higher Powers, in regard their Hands were slower; tho' commanded also to set down my own Opinion, which I did. Fourthly, I was then either a Counsellor, or a sworn Servant to the King, and required, upon my Oath, to deliver truly, both my Fears and my Hopes; and I durst not perjure myself: And I hope the keeping of my Oath, and doing my Duty in that kind, shall not now prejudice my Life. Fifthly, These Fears and Hopes, whatever they contain, did relate to the being or not being of that one Parliament only, as appears in the very Paper itself; and the Hopes prevailed, and that Parliament sat. And this Answer I gave to Mr. Browne, who made all the use of this Paper, that could be, against me.

Here Mr. *Nicolas* brings in Mr. *Bland* again, who says, That the four last Heads in this Paper, were in that Paper also which was shewed him. This single Witness hath an excellent Memory, that can remember four Heads of a Paper punctually sixteen Years ago. I asked why he did not complain of me then, when his Memory was fresher, and his Witness Sir *Sackvil Crow* nearer. 'Twas replied, *He durst not for my Greatness.* Why, but he knows well enough, that Parliaments, when they have a just Cause of Proceeding, do neither fear nor spare any Man's Greatness. And is it probable, that they which spared not the Duke of *Buckingham's* Greatness, would have feared mine, being then a poor Bishop of *Bath and Wells*? And a Parliament was held again in the very next Year, 1627. so that he wanted not opportunity to complain. Nor can I believe any Opinion of my supposed Greatness stopped him: Let him look into himself.

Then Mr. *Nicolas* told the Lords with great vehemency, what Venom there was in this Paper which, he said, was in every Particular. A right Spider I see now he is, Venom out of anything.

[Here is a void space left, I suppose, with design to have the Paper (here mentioned) to be inserted: which was not done.]

VII. The seventh Proof out of my Diary at March 1628. where the Words are, *That the Parliament which was dissolved March 10, 1628. sought my Ruin.* 'This had been a better Argument to prove Parliaments an Enemy to me, than me to them.' But nothing can be meant by this, but that my Ruin was sought in that Parliament by some particular Men whose Edge was too keen against me. And this appears in my Diary at June 14. preceding; at which time I was put into a Remonstrance, which, had I been found any way guilty, must needs have ruin'd me. But by God's Blessing, the very same Day I did clearly acquit myself in open Parliament, of all the Aspersions cast upon me about Dr. *Manwaring's* Sermons. 'This Particular Mr. Browne charged upon me, and I answer'd as before: But Mr. *Nicolas* did not touch upon it this Day.'

VIII. The eighth Proof that I was an Enemy to Parliaments, was taken from some Marginal Notes, which I had made upon a printed Speech of Sir *Benjamin Rudyard*, which he spake in the Parliament held Anno 1627. Mr. *Nicolas* named four; but Mr. Browne, in summing up my Charge, insisted only upon two. The word *Reducing*; and the Aim of gaining from the King. Sir *Benjamin Rudyard* is my old Acquaintance, and a very wor-

thy Member of that House, both now and then. But be a Man never so worthy, may he not use some Phrase amiss? Or if he do, may not I or another observe, yea, check at it, but by and by I must be an Enemy to Parliaments? Is there any Argument in this; I said a *Gentleman* in the House of Commons used an ill Phrase in a Speech of his in that House, therefore I am an Enemy to the Parliament in which he spake it? Say I am mistaken, and not he, and that the Phrase is without Exception; yet this is but my Error in Judgment, no Proof of Enmity, either to the Parliament, or him that spake it. That which I said was this: First, That the Word Reducing, as there placed, was a *hard Phrase*. Let any Man view that Speech considerately, and tell me whether it be not so. Secondly, That I disliked the Word Gaining, being between the King and his People in Parliament. For (as I humbly conceive) there will always be Work enough for both to join for the publick Good; and well it can never be, if they which should so join, do labour only to gain one from another. For if the King shall labour to gain upon the Liberty or Property of the Subject, or the Subjects in Parliament labour to gain from the just Power and Prerogative of the King; can any prudent Man think the publick can thrive there-while? Yea, but they say, That my Marginal Note upon this Phrase was, That this *Gaining* was the Aim of the lower House. If my Note be so, yet that cannot be otherwise understood, than that according to this Expression, this must be their Aim. And the Reason why I found fault with this Phrase was, because I saw this must follow out of it. So, under favour, I was not so bold with this Gentleman, as he was with the House in using this Speech.

IX. The next Proof was, That I found fault with eight Bills that were then in the House. This is a very poor Proof of my Enmity to Parliaments, that I disliked some Bills proposed in them; tho' there be no Proof of this urged at all, save only that I writ the time, May 27, 1628. upon the Paper where the Bills were mentioned. And I hope, to mention the time when any Bills were proposed, is not to dislike the Bills. But say I did dislike them, what then? It is lawful for any Member of the House (and such was I then) to take Exceptions, which he thinks are just, against any Bill before it pass. And shall not that which is lawful for any Man to do, be lawful for me? Beside, almost all Bills are put in by private Persons: The House is not interested in them, till they are passed and voted by them: So that till then any Man may spend his Judgment upon the Bill, without any Wrong at all to the Parliament. Mr. Browne saw this well enough, and therefore vouchsafed not so much as to name it.

X. The tenth Proof was, That I made an Answer to the Remonstrance set out by Parliament, Anno 1628. This was pressed before, and here 'tis laid hold of on all hands, to make as full a Cry as it can against me. Mr. Nicolas presses it here aloud (as he doth all things) and Mr. Browne lays it close in summing up the Charge. My Answer the same to both. 1. They charge me, That I made that Answer to the Remonstrance which came forth Anno 1628. I did this by the King's Command, and upon such Instructions as were given me. And as I obeyed the Command, so did I closely pursue my Instructions: and I durst do no

other, for I was then upon my Oath as a sworn Counsellor, and so employed in that Service. And I hope no Man will conceive, that I would, without such a Command, have undertaken such a kind of Service. 2. Yea, but they say, It doth not appear that I had any such Command. Yes, that appears as plainly as that I made it. For they bring no Proof that I made it, but because the Indorsement upon that Paper is in my Hand, and calls it my Answer: And the same Indorsement says, I made it by his Majesty's Command. So either the Indorsement is no sufficient Proof for the one, or if it be, 'tis sufficient for both; and must needs witness the one for me with the same Strength that it doth the other against me. For a kind of Confession that Indorsement is, and must therefore not be broken, but be taken with all its Qualities. 3. Thirdly, They say there are some sour and bitter Passages in the Answer. 'Tis more than I perceived, if it be so. Nor was any Sourness intended. And I hope no such Passages found in it, the Person consider'd in whose Name the Answer was made. The Expressions indeed might have been too big for a Subject's Mouth. 4. Fourthly, They say I was displeased that this Answer was not printed; but all the Proof they brought for it is, That it is written upon the Paper, that there was an Intention to print it, but that I know not what hinder'd it. But this Argument can never conclude: *Johna Nokes* knows not who hinder'd the printing of a Jewish Catechism in England, therefore he was displeased the Catechism was not printed. But I see every Foot can help trample him that is down. Yea, but they instanced in three Particulars, which they charged severally upon me. The first Particular was, That by this Remonstrance they sought to fill our People's Hearts more than our Ears. A second was, That they swelled to that bigness, till they brake themselves. But neither of these strike at any Right or Privilege of Parliaments; they only tax some Abuses, which were conceiv'd to be in the Miscarriage of that one Parliament. And both these Particulars were in my Instructions. And tho' I have ever honoured Parliaments, and ever shall, yet I cannot think them infallible. General Councils have greater Promises than they, yet they may err. And when a Parliament, by what ill Accident soever, comes to err, may not their King tell them of it? Or must every Passage in his Answer be sour, that pleases not? And for that Remonstrance, whither it tended, let the World judge; the Office is too dangerous for me. The third Particular, was the excusing of Ireland, and the Growth of Popery there, of which that Remonstrance Anno 1628, complained. This was in the Instructions too. And I had reason to think, the King and his Council understood the State of Ireland, for Religion and other Affairs, as well as other Men. And I was the more easily led into the belief, that Religion was much at one state in Ireland in Queen Elizabeth's and King James's time, and now; because ever since I understood any thing of those Irish Affairs, I still heard the same Complaints that were now made. For in all these times they had their *Romish* Hierarchy; submitted to their Government; paid them Tythes; came not to the Protestant Churches; and rebelled under Tyrone, under pretence of Religion. And I do not conceive they have gone beyond this now. If they have, let them answer it, who have

‘ have occasioned it.’ But to prove this great new Growth of Popery there, they produced first a Proclamation from the State in *Ireland*, dated *April 1, 1629*. Then a Letter of the Bishop of *Kilmore*’s to myself, dated *April 1, 1630*. Thirdly, A Complaint made to the State there, *Ann. 1633*. of this Growth, so that I could not but know it. Most true; when these Informations came. I could not but know it: But look upon their Date, and you shall find that all of them came after this Answer was made to the Remonstrance, and therefore could not possibly be foreseen by me, without the Gift of Prophecy. Then they produced a Letter of the Earl of *Strafford*’s, in which he communicated to me, *Mar 1633*. That to mould the Lower House there, and to rule them the better, he had got them to be chosen of an equal number of Protestants and Papists. ‘ And here Mr. Maynard, who pressed this Point of Religion hard upon me, began to fall foul upon this Policy of the Earl of *Strafford*, and himself yet brake off with this, *But he is gone*.’ Then he fell upon me as a Man likely to approve those ways, because he desired the Letter might be communicated to me. This Letter was not written to me, as appears by the Charge itself: for if it had, no Man else needed to communicate it to me. And I would fain know, how I could help any of this? If that Lord would write any thing to me himself, or communicate any thing to another that should acquaint me with it, was it in my power to hinder either of these? And there were other Passages in this Letter, for which, I conceive, his Lordship desired the Communication of that Letter to me, much more than the Particular urged, which could no way relate unto me. ‘ And Mr. Browne in his Sum said very little, if any thing, to this Business of *Ireland*.’

XI. After this Mr. *Nicolas*, who would have nothing forgotten, that might help to multiply Clamour against me, fell upon five Particulars, which he did but name, and left the Lords to their Notes. Four of these five were handled before. As First, the Words, *If the Parliament prove peevish*. Secondly, *That the King might use his own Power*. Thirdly, the Violation of the Petition of Right. Fourthly, The Canons. Fifthly, That I set Spies about the Election of Parliament-Men in *Gloucestershire*: And for this last, they produced a Letter of one *Allibon* to Dr. *Heylin*. To the four first, I referred the Lords to their Notes of my Answers, as they did. To this last, that Mr. *Allibon* is a mere Stranger to me, I know not the Man. And ’tis not likely I should employ a Stranger in such a Business. The Letter was sent to Dr. *Heylin*, and if there were any discovery in it of Jugglings there in those Elections, (as too often there are) and if Dr. *Heylin* sent me those Letters, as desirous I should see what Practices are abroad, what fault is there in him or me for this?

XII. Then Mr. *Nicolas* would not omit that which he thought might disgrace and discontent me, tho’ it could no way be drawn to be any Accusation: ’twas out of my Diary, at *Oct. 27, 1640*. this Parliament being then ready to begin. The Passage there is, *That going into my upper Study, to send away some Manuscripts to Oxford, I found my Picture which hung there privately, fallen down upon the face, and lying on the Floor; I am almost every day threatened with my Ruin, God grant this be no*

Omen of it. The Accident is true; and having so many Libels causelessly thrown out against me, and hearing so many ways as I did, that my Ruin was plotted, I had reason to apprehend it. But I apprehended it without Passion, and with looking up to God, that it might not be ominous to me. ‘ What is this Man angry at? Or why is this produced?’

XIII. But tho’ I cannot tell why this was produced, yet the next was urged only to incense your Lordships against me: ’tis in my Diary again, at *Feb. 14, 1640*. where Mr. *Nicolas* says confidently, I did abuse your Lordships, and accuse you of Injustice. My Lords, what I said in my Diary, appears not; if it did appear whole and all together, I doubt not but it alone would abundantly satisfy your Lordships. But that Passage is more than half burnt out (as ^a It was viewed. is ^a to be seen) whether of purpose by Mr. *Prynn*, or casually, I cannot tell; yet the Passage as confidently made up, and read to your Lordships, as if nothing were wanting. For the thing itself, the Close of my Words is this; *So I see what Justice I may expect, since here’s a Resolution taken, not only before my Answer, but before my Charge is brought up against me*. Which Words can traduce no Man’s Justice: First, Because they depend upon an *If*; if the Parliament-Man there mentioned told me truth, that such a Resolution was taken. And Secondly, Because it can be no Justice in any Men, be the Sentence never so moderate in itself, to take up a Resolution what Sentence shall pass, before Answer given, or Charge put it: for else a Man may be punished first, and tried after, which is contrary ^b to all Rules of Justice. And therefore if such a Resolution were taken (as I believe not) I might well say that which followed after.

XIV. Then was produced a Paper concerning the Subsidies or Aids which had been given in divers Parliaments, in which it is said, at the beginning of it, *That Magna Charta had an obscure Birth, and was fostered by an ill Nurse*. ‘ I believe that no Man that knows Mr. *Nicolas*, thinks that he spake softly upon this.’ No, he spake loud enough: What Laws would I spare, that spake thus of *Magna Charta*? First, Here is no Proof offered that this Paper is my Collection, but only that it is in my Hand: by which Argument (as is said before) I may be made the Author of any thing; and so may any Scholar, that is able and willing to inform himself. Secondly, The main Draught of that Paper is not in my Hand, tho’ some Notes upon it be. Thirdly, There are *Littleton*, and other Lawyers, quoted in that Paper, Authors which I never read. Nor is this now any disgrace to *Magna Charta*, that it had an obscure Birth: for say the Difficulties of the Times brought it obscurely forth, that’s no blemish to the Credit and Honour to which it hath for many Ages attained. Not only their Laws, but the greatest Empires that have been in the World, some of them have had obscure Beginnings: witness the *Roman Empire*. Fourthly, What if our Stories agree upon it, that it had an obscure Birth, and a worse Nurse? What if some Law-Books (which Mr. *Nicolas* never read) and those of good account, use almost the same words of *Magna Charta*, which are in that Paper? Shall the same Words be History and Law in them, and

^b Potentia sequi debet Justitiam, non præire. Aug. L. 13. de Trin. c. 13.

*Here is a void
Space left in
the Margin,
with design (I
suppose) to in-
sert therein
some Passages
out of Law-
Books concern-
ing the obscure
Bit of Mag-
na Charta:
which Space
was not filled
up. H. W.*

and Treason in me? And some-
what certainly there is in it, ' that
' Mr. Browne, when he gave his
' summary Charge against me, first,
' to the Lords, and after in the
' House of Commons, quite omitted
' this Particular. Sure I believe he
' found nothing was in the Paper
' but known Truth, and so passed
' it over, else he would never have
' denied a Vindication to *Magna
' Charta.*'

XV. After all this, Mr. *Nicolas* con-
cludes with a Dream, which he says was mine. The
Dream (he says) was, that I should come to greater
Preferment in the Church, and Power in the State,
than any Man of my Birth and Calling had done
before me, but that in the end I should be hanged.
First, My Lords, if I had had any such a Dream, 'tis
no proof of any thing against me. Dreams are
not in the power of him that hath them, but in
the Unruliness of the Fancy, which in broken
Sleep wanders which way it pleases, and shapes
what it pleases; *Numb. 11.* But this Dream is
brought in, as the Fall of my Picture was, to make
me a Scorn to your Lordships and the People, and
to try whether any thing will yet at last break my
Patience. This Dream is reported here according
to Mr. *Prynn's* Edition of my Diary, somewhat
different from that which Mr. *Prynn* printed in a
former Book of his: but the beginning and the
end agree. From Mr. *Prynn*, *Culmer* hath taken
and printed it, And Mr. *Prynn* confessed before the
Lords, that one Mr. *Badger* an Attorney at Law,
a Kinsman of mine, told it him. The truth, my
Lords, is this. This *Badger* married a near Kin-
woman of mine; he was a notorious Separatist,
and so nearer in Affection to Mr. *Prynn*, than to
me in Alliance. This Man came one day to me
to *Lambeth*, and told me privately (which was more
Manners than usually the bold Man had) that he
heard I had such a Dream when I was young, in
Oxford: I protested to him there was no such
thing, and that some malicious Fellow or other
had set him on work to come and abuse me to my
face. He seemed satisfied: but going to visit
Mr. *Prynn* then in the *Tower*, he told it him; and
Mr. *Prynn*, without further proof, prints it in the
next Book he set out. When I saw it in print,
and found that some in Court took notice of it, I
resolved to acquaint his Majesty how I was used;
and meeting with the Earl of *Pembroke*, then Lord
Chamberlain, and my great Friend, as he pre-
tended, (the King being not then come forth of
his Chamber) I told his Lordship how I was used;
and when the King came forth, I told it him also.
But the Earl of *Pembroke*, then present in the
House, and called up by them for a Witness, for-
getting the Circumstances, but remembering the
Thing, took it upon his Honour, that I said nothing
of Mr. *Prynn's* printing it, but that I told him ab-
solutely I had this Dream. Now God forgive his
Lordship. I was much troubled in myself to hear
him to take it upon his Dishonour, (for so it was)
and yet unwilling (knowing his Violence) to con-
test with him in that Place, and in my Condition;
and observing what Spleen he hath lately shewed
against me, I stood a little still to gather up my-
self. When Mr. *Nicolas*, before I could make any
Reply, fell on with great earnestness, and told the
Lords, That the fore-part of my Dream was found
true, to the great hurt both of Church and State;

and that he hoped they would now make good the
latter, *That I might be hanged.* To which I an-
swered, That I had not forgotten our Saviour's
Prediction, *St. John xvi. 33. That in the World we
should be sure to meet with Affliction.* Nor his Prayer;
*Father, forgive these Men, for they know not what they
do; St. Luke xxiii. 24.* No, nor is that out of my
memory which *St. Paul* speaks, *1 Cor. iv. 3. de Hu-
mano Die.* But for the Publick, with this I shall
conclude: *God of his infinite Mercy blefs the King and
his People with Love, and Peace, and Piety, and Plen-
ty, which is the worst I ever wished or endeavoured,
whatsoever it shall please God shall become of me; to
whose blessed Will and Pleasure, in all humanity I submit
myself.* And here ended this last Day of my
Trial. But before I went from the Bar, I made
three Motions to the Lords: The one, That I
might have a Day to make a Recapitulation of
this long and various Charge, or of the chief
Heads of it, that it might appear in a Body to-
gether. The other, That after this, my Counsel
might have a Day to speak to all Points of Law,
incident to my Cause. The third, That they would
be pleased to remember, that I had pleaded the
Act of Oblivion to the thirteenth Original Arti-
cle. Mr. *Nicolas* said they would acquaint their
House with it. And the Lords promised to take
all into Consideration. And so I was dismissed
sine Die.

' But here I may not go off from this Dream so,
' since Mr. *Prynn* hath printed it at the end of my
' Diary: Where he shamelessly says, This Dream
' was attested from my own Mouth at my Trial
' in the Lords House. For I have set down all
' that passed exactly. Nor did I then give any At-
' testation to it; only before I could gather up my-
' self to answer the Earl of *Pembroke* in a fitting
' manner, and not to hurt myself, Mr. *Nicolas* fell
' upon me with that unchristian Bitterness, as di-
' verted me from the Earl, to answer him. But
' once for all, and to satisfy any Man that desires
' it, that is all true which I have here set down
' concerning this Dream: And upon my Christia-
' nity and Hope of future Salvation, I never had
' this Dream, nor any like it; nor did I ever tell
' it this Lord, or any other, any other way than
' in relation to *Badger* and *Prynn*, as is before relat-
' ed. And sure if I had had such a Dream I should
' not have had so little Discretion as to tell it any
' Man, least of all to pour it into that Sieve,
' the Earl of *Pembroke*. For that which follows,
' and wherein his Charity and Words are almost
' the same with those of Mr. *Nicolas*, I gave him
' the same Answer, and (forgiving him all his
' most unchristian and insatiable Malice against
' me) leave myself in the Hands of God, not in
' his.'

Aug. 23, 1644. I received an Order from the
Lords, That if I had a mind to make a Recapitu-
lation (as I had formerly desired) of my long and
various Charge, I should provide myself for it
against *Monday* next, (this Order came upon *Fri-
day*;) and that I should give in my Answer the
next Morning what I meant to do. The next day,
Aug. 24, in obedience to this Order, I gave in my
Answer; which was humble Thanks that I might
have Liberty to make it, referring the Day to their
honourable Consideration, with this, that *Monday*
next was a very short Time for such a Collection.
Upon this Answer an Order was presently made,
that I should provide to make my Recapitulation
upon

upon *Monday, September* the second. And about this time (the certain Day I know not) it was resolved in the House of Commons, that according to my Plea I should enjoy the Benefit of the Act of Oblivion, and not be put to answer the thirteenth Original Article, concerning the *Scotish* Business. And truly, I bless God for it, I did not desire the Benefit of that Act for any Sense of Guiltiness which I had in myself; but in consideration of the Times, and the Malice of the now potent Faction, which being implacable towards me, I could not think it Wisdom to lay by any such Power as might help to secure me. Yet in the former part of my History, when I had good reason to think I shou'd not be called to answer such general Articles, I have set down my Answer to each of them, as much as Generals can be answered. And thereby I hope my Innocency will appear to this thirteenth Article also.

Then came *Monday, Sept. 2.* And, according to the Order of the Lords, I made the Recapitulation of my whole Cause, in Matters of greatest Moment, in this Form following. But so soon as I came to the Bar, I saw every Lord present with a new thin Book in *Folio*, in a blue Coat. I heard that Morning, that Mr. *Prynn* had printed my Diary, and published it to the World to disgrace me. Some Notes of his own are made upon it. The first and the last are two desperate Untruths, besides some others. This was the Book then in the Lords Hands; and I assure myself that time picked for it, that the sight of it might damp me, and disenable me to speak. I confess I was a little troubled at it. But after I had gathered up myself, and looked up to God, I went on to the Business of the Day, and thus I spake.

My Recapitulation.

MY Lords, my Hearing began *March 12.* 1641 and continued to the end of *July.* In this time I was heard before your Lordships, with much Honour and Patience, twenty Days; and sent back without hearing, by reason of your Lordships greater Employments, twelve Days: The rest were taken up with providing the Charge against me.

And now, my Lords, being come near an end, I am by your Grace and Favour, and the Leave of these Gentlemen of the Honourable House of Commons, to represent to your Lordships and your Memories, a brief Sum of my Answers to this long and various Charge: In which I shall not only endeavour, but perform also all possible Brevity. And as with much Thankfulness I acknowledge myself bound to your Lordships for your Patience; so I cannot doubt but that I shall be as much obliged for your Justice, in what I am innocent from Crime; and for your Clemency, in what the common Frailty of Mankind hath made me err. And I humbly desire your Lordships to look upon the whole Business with honourable Care of my Calling, of my Age, of my long Imprisonment, of my Sufferings in my Estate, and of my Patience in and thro' this whole Affliction; the Sequestration having been upon my Estate above two Years. In which, notwithstanding, I may not omit to give Thanks for the Relief which my Petitions found, for my

present Necessities in this Time of my Hearing; at your honourable Hands.

1. First then, I humbly desire your Lordships to remember the Generality, and, by occasion of that, the Incertainty of almost every Article charged upon me: which hath cast me into great Streights all along in making my Defence.

2. Next, That your Lordships will be pleased to consider what a short Space, upon each Day's Hearing, hath been allow'd me to make my Answer to the many Charges in each several Day laid against me: Indeed, some Days scarce Time enough to peruse the Evidence, much less to make, and then to review and weigh my Answers. Especially considering (to my greatest Grief) that such a Charge should be brought up against me from so great and honourable a Body as the Commons of *England.* In regard of which, and all other sad Occasions, I did at first, and do still in all Humility desire, that in all Particulars concerning Law, my Counsel may be heard before your Lordships proceed to Sentence; and that a Day may be assigned for my Counsel accordingly.

3. Thirdly, I heartily pray also, that it may be taken into your honourable Consideration how I have all manner of ways been sifted to the very Bran, for that (what'er it amounts to) which stands in Charge against me.

(1.) The Key and Use of my Study at *Lambeth*, Books, and Papers, taken from me.

(2.) A Search upon me at the *Tower*, made by Mr. *Prynn*, and one and twenty Bundles of Papers, prepared for my Defence, taken from me, and not three Bundles restored to me again. This Search made before any particular Articles were brought up against me. My very Pockets searched; and my Diary, nay, my very Prayer-Book taken from me, and after used against me: And that in some Cases not to prove, but to make a Charge. Yet I am thus far glad, even for this sad Accident: For by my Diary your Lordships have seen the Passages of my Life; and by my Prayer-Book the greatest Secrets between God and my Soul. So that you may be sure you have me at the very bottom. Yet, blessed be God, no Disloyalty is found in the one; no Popery in the other.

(3.) That all Books of Council-Table, Star-Chamber, High-Commission, Signet-Office, my own Registeries, and the Registeries of *Oxford* and *Cambridge*, have been most exquisitely searched for matter against me, and kept from me and my Use, and so affording me no Help towards my Defence.

4. I humbly desire your Lordships to remember in the fourth Place, That the Things wherein I took great pains, and all for the publick Good and Honour of this Kingdom and Church, without any the least Eye to my own Particular, nay, with my own great and large Expences, have been objected against me as Crimes: As, namely, the Repair of *St. Paul's*, and the settling of the Statutes of the University of *Oxford.*

(1.) For *St. Paul's*: Not the Repair itself, they say, (no, for very Shame they dare not say that, tho' that be it which galls the Faction) but the demolishing the Houses which stood about it. Yea, but without taking down of these Houses, it was not possible to come at the Church to repair it; which is a known Truth. And they

‘ they were taken down by Commission under the
 ‘ Broad-Seal. And the Tenants had valuable Con-
 ‘ sideration for their several Interests, according to
 ‘ the Number of their Years remaining, and ac-
 ‘ cording to the Judgment of Commissioners nam-
 ‘ ed for that purpose, and named by his Majesty
 ‘ and the Lords, not by me: Nor did I ever so
 ‘ much as sit with them about this Business. And
 ‘ if the Commission itself were any way illegal, (as
 ‘ they urge it is) that must reflect upon them whose
 ‘ Office was to draw and seal it; not on me, who
 ‘ understood not the Legality or Illegality of such
 ‘ Commissions: Nor did I desire that any one Cir-
 ‘ cumstance against Law should be put into it;
 ‘ nor is any such thing so much as offered in proof
 ‘ against me. And because it was pressed, That
 ‘ these Houses could not be pulled down but by
 ‘ order of Parliament, and not by the King’s Com-
 ‘ mission alone; I did here first read in part, and
 ‘ afterwards, according to a *Salvo* granted me,

^a 1 Pars Pat.
 de An. 45 Ed.
 III. m. 34.

‘ deliver into the Court three Re-
 ‘ cords, two in *Edward I*’s Time,
 ‘ and one in *Edward III*’s Time, in
 ‘ which are these Words; *Authori-
 ‘ tate nostra Regali, prout opus fuerit, cessantibus
 ‘ quibuscunque Appellationum & reclamationum diffu-
 ‘ giis, Juris, Scripti, aut Patriæ strepitu procedatis;
 ‘ Nova Ædificia quæ, &c. amoveri, & diwel-
 ‘ li penitus faciatis, &c.* And a little after,
 ‘ *Quousque per nos cum deliberatione & avisamento
 ‘ nostri Consilii super hoc aliter fuerit ordinatum, &c.*
 ‘ Here’s no staying for a Parliament; here’s no
 ‘ Recompence given; here’s barring of all Ap-
 ‘ peal, nay, all Remedy of Law, tho’ written,
 ‘ And all this by the King’s own Authority, with
 ‘ the Advice of his Council. And is a far more
 ‘ moderate way taken by me, yet under the same
 ‘ Authority, and for the Removal of far greater
 ‘ Abuses, and for a more noble End, become
 ‘ Treason?

‘ (2.) As for the Statutes of *Oxford*, the Cir-
 ‘ cumstances charged against me are many; and
 ‘ therefore I crave leave to refer myself to what I
 ‘ had already answered therein.

‘ 5. Fifthly, Many of the Witnesses brought
 ‘ against me in this Business are more than sus-
 ‘ pected Sectaries and Separatists from the Church;
 ‘ which by my Place I was to punish, and that ex-

^b Cod. L. 1.
 Tit. 5. L. 12.
 & 21 Confer.
 at Hampton-
 Court, p. 26.

‘ asperated them against me, where-
 ‘ as by ^b Law no Schismatick ought
 ‘ to be received against his Bishop.
 ‘ And many of these are Witnesses in
 ‘ their own Causes, and pre-exami-
 ‘ ned before they come in Court;
 ‘ at which Pre-examination I was not present, nor
 ‘ any for me, to cross-interrogate. Nay, many
 ‘ Causes which took up divers Days of Hearing
 ‘ in Star-Chamber, High-Commission, and at
 ‘ Council-Table, are now upon the sudden easily
 ‘ overthrown by the Depositions of the Parties
 ‘ themselves. And upon what Law this is ground-
 ‘ ed, I humbly submit to your Lordships. And
 ‘ such as these are the Causes of Mr. *Prynn*, Mr.
 ‘ *Burton*, Mr. *Wilson*, Alderman *Chambers*, Mr.
 ‘ *Vassal*, Mr. *Waker*, Mr. *Huntly*, Mr. *Foxlye*, and
 ‘ many other. Where I humbly represent also,
 ‘ how impossible it is for any Man that sits as a
 ‘ Judge to give an account of all the several Mo-
 ‘ tives which directed his Conscience in so divers

‘ Causes, and so many Years past, as these have
 ‘ been, and where so many Witnesses have been
 ‘ examined, as have been here produced against
 ‘ me: My Lords, above an hundred and fifty Wit-
 ‘ nesses, and some of them three, four, six times
 ‘ over; and Mr. *Prynn* I know not how often.
 ‘ Whereas the Civil Law says expressly, That ^{*} *the
 ‘ Judges should moderate Things so, that no Man
 ‘ should be oppressed by the Multitude of Witnesses;
 ‘ which is a kind of Proof too, that they which so do,
 ‘ distrust the Truth and Goodness of their Cause.* Be-
 ‘ sides, my Lords, in all Matters which came
 ‘ before me I have done nothing, to the uttermost
 ‘ of my Understanding, but what might conduce
 ‘ to the Peace and Welfare of this Kingdom, and
 ‘ the Maintenance of the Doctrine and Discipline
 ‘ of this Church established by Law; and under
 ‘ which God hath blessed this State with so great
 ‘ Peace and Plenty, as other neighbouring Nations
 ‘ have looked upon with Admiration. And
 ‘ what Miseries the Overthrow of it (which
 ‘ God in Mercy forbid) may produce, he alone
 ‘ knows..

‘ 6. Sixthly, My Lords, there have been many
 ‘ and different Charges laid upon me about Words.
 ‘ But many of them (if spoken) were only passio-
 ‘ nate and hasty; and such, upon what occasion so-
 ‘ ever drawn from me, (and I have had all man-
 ‘ ner of Provocations put upon me) may among
 ‘ human Errors be pardoned unto me) if so it
 ‘ please your Lordships. But for such as may
 ‘ seem to be of a higher nature, as those witnes-
 ‘ sed by Sir *Henry Vane* the Elder, I gave my
 ‘ Answer again now fully to the Lords, but shall
 ‘ not need to repeat it here.

‘ 7. Seventhly, Then, my Lords, for my Acti-
 ‘ ons: Not only my own, but other Mens have
 ‘ been heavily charged against me in many Parti-
 ‘ culars, and that criminally, and I hope your
 ‘ Lordships will think illegally: As Secretary *Win-
 ‘ debank*’s, Bishop *Montague*’s, my Chaplains, Dr.
 ‘ *Heylin*’s, Dr. *Cosen*’s, D. *Pocklington*’s, Dr. *Dove*’s,
 ‘ Mr. *Shelford*’s, and divers others: And many of
 ‘ these Charges look back into many Years past.
 ‘ Whereas the Act made this present Parliament
 ‘ takes no notice of, nor punishes any Man for any
 ‘ thing done and past at the Council-Table, Star-
 ‘ Chamber, or High-Commission, much less doth
 ‘ it make any thing Treason. And out of this Act
 ‘ I am no way excepted. Besides (as I have often
 ‘ pleaded) all Acts done in the Star-Chamber, at
 ‘ Council-Table, High-Commission, or Convoca-
 ‘ tion, are all joint Acts of that Body in and by
 ‘ which they were done; and cannot by any Law
 ‘ be singly put upon me, it being a known Rule of
 ‘ the Law, *Refertur ad universos quod publice fit per
 ‘ majorem partem.* And ^c Mr. *Prynn*

‘ himself can stand upon this Rule
 ‘ against the *Independents*, and tell us
 ‘ that the major Voice or Party ought
 ‘ to over-rule and bind the less; and
 ‘ he quotes ^d Scripture for it too.
 ‘ In which Place, that which is done
 ‘ by the major Part is ascribed to

^c Prynn in his
 Independency
 examined, p. 4.

^d 1 Chron. 13-
 4, 5. Acts 15-
 22.

‘ all; not laid upon any one, as here upon me.
 ‘ And in some of these Courts, Star-Chamber espe-
 ‘ cially, and Council-Table, I was accompanied
 ‘ with Persons of great Honour, Knowledge, and
 ‘ Experience, Judges, and others: And tis to me
 ‘ strange,

* *Judices moderentur, &c. ne effrenata potestate ad vexandos Homines superflua multitudo Testium protrahatur. Dig. L. 22. Tit. 5. L. 1. § 2. Adde & hanc rationem, quod qui prædicta licentia abutuntur, veniunt in suspicionem, quod non satis confidunt veritati. Gloss. Ibid.*

‘ strange, and will seem so to future Ages, that
 ‘ one and the same Act shall be Treason in me,
 ‘ and not the least Crime, nay, nor Misdemeanour
 ‘ in any other. And yet no Proof hath been
 ‘ offered that I solicited any Man to concur with
 ‘ me, and almost all the Votes given preceded
 ‘ mine, so that mine could lead no Man.

8. After this I answered to divers other Particulars,
 as namely, to the Canons, both as they concerned
 Aid to the King, and as they looked upon
 Matters of the Church and Religion.

9. To the Charge about Prohibitions.

10. To the base Charge about Bribery. But
 pass them over here, as being answered before:
 Whether I may refer the Reader now, tho’ I could
 not the Lords then.

‘ 11. My Lords, after this came in the long
 ‘ and various Charge of my usurping Papal Power,
 ‘ and no less than a Design to bring in all the
 ‘ Corruptions of Popery, to the utter Overthrow
 ‘ of the Protestant Religion established in England.

‘ And this they went about to prove,

‘ (1.) By my Windows in the Chapel: An Argument
 ‘ as brittle as the Glass in which the Pictures
 ‘ are.

‘ (2.) By Pictures in my Gallery: Which were
 ‘ there before the House was mine, and so proved
 ‘ to your Lordships.

‘ (3.) By Reverence done in my Chapel: As if it
 ‘ were not due to God, especially in his Church;
 ‘ and done it was not to any other Person or
 ‘ Thing.

‘ (4.) By Consecration of Churches: Which was
 ‘ long before Popery came into the World; as was
 ‘ also the Care of safe laying up of all hallowed

‘ and sacred Things. For which, I
 ‘ desire your Lordships I may read a
 ‘ short Passage out of Sir ^aWalter Raleigh’s
 ‘ History; the rather because
 ‘ written by a Lay-Man, and since
 ‘ the Times of Reformation.’

But this Mr. Maynard excepted against, both as
 new Matter, and because I had not the Book present,
 tho’ the Paper thence transcribed was offered to be
 attested by Oath to be a true Copy. But tho’ I could
 not be suffered to read it then, yet here it follows:
 ‘ So sacred was the moveable
 ‘ Temple of God, and with such Reverence guarded
 ‘ and transported, as 22000 Persons were dedicated
 ‘ to the Service and Attendance thereof, of which
 ‘ 8580 had the peculiar Charge, according to their
 ‘ several Offices and Functions, the Particulars
 ‘ whereof are in the Third and Fourth of Numbers.
 ‘ The reverend Care which Moses the Prophet
 ‘ and chosen Servant of God had, in all that belonged
 ‘ even to the outward and least Parts of the
 ‘ Tabernacle, Ark, and Sanctuary, witnessed
 ‘ well the inward and most humble Zeal borne
 ‘ toward God himself. The Industry used in the
 ‘ framing thereof, and every and the least part
 ‘ thereof, the curious Workmanship thereon bestowed,
 ‘ the exceeding Charge and Expence in the Provisions,
 ‘ the dutiful Observance in laying up and preserving
 ‘ the holy Vessels, the solemn removing thereof,
 ‘ the vigilant Attendance thereon, and the provident
 ‘ Defence of the same, which all Ages have in some
 ‘ degree imitated, is now so forgotten and cast
 ‘ away, in this superfine Age, by those of the
 ‘ Family, by the Anabaptists,

‘ Brownists, and other Sectaries, as all Costs and
 ‘ Care bestowed and had of the Church, wherein
 ‘ God is to be served and worshipped, is accounted
 ‘ a kind of Popery, and as proceeding from an
 ‘ idolatrous Disposition. Infomuch, as Time would
 ‘ soon bring to pass (if it were not resisted) that
 ‘ God would be turned out of Churches into Barns,
 ‘ and from thence again into the Fields and Mountains,
 ‘ and under the Hedges; and the Office of the
 ‘ Ministry (robbed of all Dignity and Respect) be
 ‘ as contemptible as those Places; all Order, Discipline,
 ‘ and Church-Government, left to Newness of
 ‘ Opinion and Mens Fancies: Yea, and soon after
 ‘ as many Kinds of Religions would spring up, as
 ‘ there are Parish-Churches, &c. Do ye not think
 ‘ some body set Mr. Maynard on to prohibit the
 ‘ reading out of this Passage, as foreseeing
 ‘ whither it tended? For I had read one third
 ‘ part of it, before I had the Stop put upon
 ‘ me.

‘ (5.) But they went on with their Proof, by my
 ‘ censuring of good Men, that is, Separatists and
 ‘ refractory Persons.

‘ (6.) By my Chaplains expunging some Things
 ‘ out of Books which made against the Papists.
 ‘ It may be, if my Chaplains (whom it concerns)
 ‘ had Liberty to answer, they were such Passages
 ‘ as could not be made good against the Papists;
 ‘ and then ’tis far better they should be out than
 ‘ in. For as * St. Augustin observed in his, and
 ‘ we find it true in our Time, *The Inconvenience*
 ‘ *is great, which comes to the Church and Religion*
 ‘ *by bold Affirmers.* Nay, he is at a *satis dici non*
 ‘ *potest*, the Mischief is so great as cannot be
 ‘ expressed.

‘ (7.) Then by altering some Things in a Sermon
 ‘ of Dr. Sibthorp’s. But my Answer formerly
 ‘ given will shew I had cause.

‘ (8.) By my Preferment of unworthy Men. So
 ‘ unworthy, as that they would be famous both for
 ‘ Life and Learning, were they in any other
 ‘ Protestant Church in Christendom. And they are
 ‘ so popishly affected, as that having suffered much
 ‘ both in State and Reputation (since this
 ‘ Persecution of the Clergy began; for less it hath
 ‘ been) no one of them is altered in Judgment, or
 ‘ fallen into any liking with the Church of Rome.

‘ (9.) By the Overthrow of the Feoffment: But
 ‘ that was done by Judgment in the Exchequer, to
 ‘ which I referred myself. And if the Judgment
 ‘ there given be right, there’s no Fault in any
 ‘ Man: If it were wrong, the Fault was in the
 ‘ Judges, not in me; I solicited none of them.

‘ (10.) By a Passage in my Book, where I say,
 ‘ *The Religion of the Papists and ours is one*: But that’s
 ‘ expressed at large, only because both

‘ are Christianity; and no Man, I hope, will deny
 ‘ that Papists are Christians. As for their notorious
 ‘ Failings in Christianity, I have in the same
 ‘ Book said enough to them.

‘ (11.) By a Testimony of Mr. Burton’s and Mr.
 ‘ Lane’s, That I should say, *We and the Church of*
 ‘ *Rome did not differ in Fundamentals, but in Circum-*
 ‘ *stantials.* [This I here followed at large; but, to
 ‘ avoid tedious Repetition, refer my Reader to the
 ‘ Place where ’tis answered.]

‘ (12.) By my making the Dutch Churches to be
 ‘ of another Religion. But this is mistaken (as
 ‘ my

* Quid Molestia & Tristitia ingerunt Prudentibus Fratribus temerarii Assertores, satis dici non potest. Aug. 1. de Gen. ad Lit. C. 19.

‘ my Answer will shew the Reader;) and if they
‘ do not make themselves of another Religion, I
‘ shall never endeavour to make them.

‘ (13.) By a Pack of such Witnesses, as were ne-
‘ ver produced against any Man of my Place and
‘ Calling; Messengers and Pursuivants, and such
‘ as have shifted their Religion to and again; Pil-
‘ lory-Men and Bawds; and these the Men that
‘ must prove my Correspondence with Priests.

‘ (14.) In the midst of these, upon occasion of the
‘ Ceremonies at the Coronation, it was pressed
‘ against me, That *I had altered the King’s Oath.*

‘ (15.) And last of all, That *I had shewed myself
‘ an Enemy to Parliaments.* [Upon both these I
‘ did very much enlarge myself: But here also,
‘ that I may not be a Burden in repeating the same
‘ things, I desire the Reader to look upon them in
‘ their proper Places, where I doubt not but my
‘ Answer will give him full Satisfaction, that I did
‘ not the one, nor am the other.]

‘ But, my Lords, there are other strange Argu-
‘ ments produced against me, to prove my Com-
‘ pliance with *Rome*, which I most humbly desire
‘ your Lordships may not be forgotten.

‘ 1. As, First, my Lords, it hath been charged
‘ upon me, That I made the Oath recited in the
‘ first of the late Canons; one Clause whereof is
‘ this: *That I will never give my Consent to subject
‘ this Church to the Usurpations and Superstitions of
‘ the Church of Rome.* Whence the Argument drawn
‘ against me must be this, and can be no other;
‘ That I did endeavour to bring in *Papery*, because
‘ I made and took a solemn Oath, never to give
‘ my Consent to subject this Church of *England* to
‘ the Usurpations and Superstitions of the Church
‘ of *Rome.* I beseech your Lordships mark the
‘ Force of this Argument; and they which fol-
‘ low are as pregnant against me.

‘ 2. Secondly, My Book against *Fisber*, hath
‘ been charged against me; where the Argument
‘ must lie thus: I have endeavoured to advance
‘ *Papery*, because I have written against it: And
‘ with what Strength I have written against it, I
‘ leave Posterity to judge, when the Envy which
‘ now overloads me, shall be buried with me.
‘ This I will say with *St. Gregory Nazianzen* (whose
‘ Success at *Constantinople* was not much unlike

* Non studea-
mus paci in
vera doctrinae
detrimentum,
Greg. Naz.
Orat. 32.

‘ mine here, save that his Life was
‘ not sought) *I * never laboured for
‘ Peace to the Wrong and Detriment of
‘ Christian Verity*; nor I hope ever
‘ shall.’ [And let the Church of *Eng-
‘ land* look to it: for in great Hu-
‘ mility I crave to write this (tho’

then was no time to speak it) That the Church
of *England* must leave the way it’s now going,
and come back to that way of Defence which I have
followed in my Book, or she shall never be able to
justify her Separation from the Church of *Rome.*]

‘ 3. Thirdly, All the late Canons have been
‘ charged against me; and the Argument which
‘ is drawn from thence, must lie thus: The third of
‘ these Canons for suppressing the Growth of *Po-
‘ pery*, is the most full and strict Canon that ever
‘ was made against it in the Church of *England*;
‘ therefore I that made this Canon to keep it out,
‘ am guilty of endeavouring to keep it in.

‘ 4. Fourthly, I have by my Industry, and God’s
‘ great Blessing upon my Labours, stayed as many
‘ from going, and reduced to the Church of *Eng-
‘ land* as many that were gone to *Rome*, as I be-
‘ lieve any Minister in *England* can truly say he
‘ hath done: I named them before, and had Scorn

‘ enough put upon me for it, as your Lordships
‘ could not but both see and hear; where the Ar-
‘ gument lies thus: I converted many from *Papery*,
‘ and settled them in the Religion established in
‘ *England*; therefore I laboured to bring in *Papery*,
‘ which out of all doubt can be no sober Man’s way.

‘ 5. Fifthly, The Plot discovered to Sir *William
‘ Boswell* and myself, by *Andreas ab Habernfield*,
‘ hath been charged against me: That Plot for
‘ altering of Religion, and by what ways, your
‘ Lordships have heard already, and
‘ is to be seen at full in *Rome’s Master-
‘ Piece.* Now if this Plot in the

Mr. Pryn’s
Rome’s Master-
Piece.

‘ Issue proved nothing but a confused
‘ Information, and no Proof of any Particular, as
‘ indeed it did; what’s become of *Rome’s Master-
‘ Piece*? But if it had any Reality in it, as it ap-
‘ peared to be a sad Plot, not only to me, but to
‘ all Men that saw the short Propositions which
‘ were first sent, with an absolute Undertaking to
‘ prove them; then it appears expressly, that I was
‘ in danger of my Life, for stiffly opposing the
‘ bringing in of *Papery*? and that there was no
‘ hope to alter Religion in *England*, till I was ta-
‘ ken out of the way. And tho’ in Conclusion
‘ the Proofs failed, yet what was consulted, and
‘ it seems resolved, concerning me, is plain e-
‘ nough. And then the Argument against me lies
‘ thus: There’s no hope to bring in *Papery*, till I
‘ am taken out of the way; therefore I did la-
‘ bour to bring it in. Do not these things, my
‘ Lords, hang handsomely together?

‘ 6. Lastly, There have been above threescore
‘ Letters and other Papers, brought out of my Stu-
‘ dy into this Honourable House; they are all about
‘ composing the Differences between the *Lutherans*
‘ and *Calvinists* in *Germany*. Why they should
‘ be brought hither, but in hope to charge them
‘ upon ’em, I know not; and then the Argument
‘ will be this: I laboured to reconcile the *Pro-
‘ testants* in *Germany*, that they might unanimously
‘ set themselves against the *Papists*; therefore I
‘ laboured to bring *Papery* into *England*.

‘ Now that your Lordships have heard the Ar-
‘ guments, and what Proof they make against me,
‘ I must be bold to put you in mind of that which
‘ was said here at the Bar, *April 16, 1644.* That
‘ they did not urge any of these particular Actions
‘ as Treason against me; but the Result of them
‘ altogether amounted to Treason. For Answer to
‘ which, I must be bold to tell your Lordships,
‘ That if no Particular which is charged upon me be
‘ Treason, the Result from them cannot be Treason,
‘ which will appear by these Reasons following:

‘ 1. First, The Result must be of the same
‘ Nature and Species with the Particulars from
‘ which it rises. But ’tis confessed no one of the
‘ Particulars are Treason: Therefore neither is
‘ the Result that rises from them. And this holds
‘ in *Nature*, in *Morality*, and in *Law*.

‘ In *Nature*, and that both for Integral and Es-
‘ sential Parts: for neither can the Body of a Bear
‘ and the Soul of a Lion, result into a Fox; nor
‘ the Legs of a Bull, the Body of a Horse, and the
‘ Head of an Ass, result into a Man.

‘ In *Morality*, and that is seen both in Virtues
‘ and Vices: For neither can many Actions of Li-
‘ berality, Meekness and Sobriety, rise up into a
‘ Result of Fortitude; neither can many Actions
‘ of Malice, Drunkenness and Covetousness, result
‘ into Treason.

‘ In *Law* ’tis so too: For be there never so ma-
‘ ny particular Crimes, yet there is no Law in
‘ this

‘ this Kingdom, nor any where else that I know, that makes a Result of different Crimes to be Treason, where none of the Particulars are Treason by Law. So this imaginary Result is a Monster in Nature, in Morality, and in Law; and if it be nourished, will devour all the Safety of the Subject of *England*, which now stands so well fenced by the known Law of the Land. And therefore I humbly desire your Lordships, not for mine, but for the Publick’s sake, to weigh this Business well, before this Gap be made so wide, as there will hardly be Power left again to shut it.

‘ 2. My second Reason is joined to the Answer of an Objection: For when this Result was spoken of, it was added, That the Particulars charged against me, are of the same kind, and do all tend to the Subversion of Law and Religion, and so become Treason. But, first, suppose that all the Particulars charged, do tend to the Subversion of Law, yet that cannot make them to be all of one kind: For all Crimes tend more or less to the Overthrow of Virtue; yet no Man can say, that all Crimes are of the same kind. Secondly, be they of the same, or different kinds; yet neither all, nor any of these charged against me, do tend to the Subversion of the Law: For ’tis one thing to break, dislike or speak against some particular Laws, and quite another to labour the Subversion of the whole Body of the Law, and the Frame of Government. And that I have done this by Conspiracy, Force, or any overt Action, is not so much as offered in Proof. And for the Breach of any particular Law, if I be guilty, I am to be punished by the Sanction of that Law which I have broken.

‘ 3. Thirdly, Whereas it hath been said, That many Actions of the same kind make a Habit. That’s true: But what then? For, First, the Actions urged against me are not of the same kind, but exceeding different. Secondly, if the Habit be treasonable, then all those particular Actions which bred that Habit, must be several Treasons, as well as the Result or Habit itself; whereas it hath been granted all along, that my particular Actions are not Treasons. And, Thirdly, a Habit in itself, neither is nor can be Treason; for all Treason is either *Thought, Word or Overt-*

‘ *Act*; but no Habit is either of these, therefore not Treason. For a Habit is that in the Soul which inclines the Powers of it, and makes a Man apt and ready to think, speak, or do that to which he is habituated. So an ill Habit against Sovereign Power, may make a Man apt and forward to fall into Treason; but Treason it is not.

‘ 4. Fourthly, Nor can this Result be Treason at the Common Law, by which alone, I conceive, there is no Treason at all this Day in *England*: For the main end of that excellent Statute of 25 *Ed. III.* was for the Safety of the Subject, against the manifold Treasons which variously fell upon them by the Common Law; and bounded all Treasons, and limited them to the things expressed to be Treason in and by that Statute. And in all times of difficulty since, Recourse hath still been had to that Statute: And to that Statute I refer myself, with this; That this Result must be something within this Statute, or some other known Statute, or else it cannot be Treason: And no Proof at all hath been so much as offered, that this Result is Treason by any Law.

VOL. I.

‘ My Lords, I do with all humble Submission desire, that when the Reply is made to this Matter of Fact, a Day may be assign’d for my Counsel to be heard in Matter of Law, in all and every Particular which they shall find necessary for my just Defence.

‘ And now, my Lords, I do in all Humility lay myself low at God’s Mercy-seat, to do with me as he pleases; and under God, I shall rely upon your Lordships Justice, Honour and Clemency, of which I cannot doubt, And without being farther tedious to your Lordships (who have with very honourable Patience heard me thro’ this long and tedious Trial) I shall conclude with that which *St. Augustine* said to *Romanianus*, a Man that had tried both Fortunes as well as I: *‘ If the Providence of God reaches down to us (as most certain it doth) Sic tecum agi oportet, sicut agitur: It must so be done with thee (and so with me also) as it is done. And under that Providence, which will, I doubt not, work to the best to my Soul that loves God, I repose myself.’*

b S. Aug. I. 1. cont. Academ. c. 1. S. Mat. x. 29. Rom. viii. 28.

Here ended my *Recapitulation*, and with it the Work of that Day: And I was ordered to appear again the *Saturday* following, to hear Mr. *Browne* sum up the whole Charge against me. But upon *Tuesday, Septemb. 3.* this was put off, to give Mr. *Browne* more time, to *Wednesday, Septemb. 11.*

ON *Wednesday, Septemb. 11.* Mr. *Browne* made in the Lords House, a Sum or Brief of the Charge which was brought against me, and touched, by the way, at some things in my *Recapitulation*. But in regard I might not answer him, I took no perfect Notes, but stood still, and possessed my Soul in Patience; yet wondering at the bold, free, frequent, and most false Swearing that had been against me. When Mr. *Browne* had ended, I humbly desired again, that my Counsel might be heard in Point of Law. And they were hereupon ordered to deliver in Writing under their Hands, what Points of Law they would insist upon, and that by *Saturday, Septemb. 14.*

This Day my Counsel, according as they were ordered, delivered into the Lords House, these two Points following by Way of Question. First, Whether in all, or any of the Articles charged against me, there be contained any Treason by the established Laws of this Kingdom? Secondly, Whether the Charge of the said Impeachment and Articles, did contain such Certainty and Particularity as is required by Law, in a Case where Treason is charged? This Day I petitioned the Lords, that my Counsel might have access to, and take Copies of all such Records as they thought necessary for my Defence; which was granted and order’d accordingly.

My Counsel’s *Queries* having been formerly sent down to the House of Commons, they were there referred to a Committee of Lawyers to consider of: And on *Friday, Septemb. 27.* they were earnestly called upon to hasten their Report. And on *Friday, Octob. 4.* Mr. *Nicolas* made a great Noise about me in the House, and would have had me presently censured in the House; and no less would serve his turn, but that I must be *hanged*; and was at *Suf. per Coll.* till upon the Reasons before given, that if they went on this way, they must condemn me unheard: this violent Clamour ceased

6 D

for

for that time. And a Message was sent up to the Lords for my Counsel to be heard, as touching the first Question concerning Treason; but not concerning any Exception that they shall take against the Articles in point of Certainty. This Message the Lords took into present Consideration, and order'd it accordingly: And appointed the Friday following, being Octob. 11. for my Counsel to be heard, and myself to be present.

This Day, according to this Order of the Lords, I and my Counsel attended. My Counsel were Mr. *Hern* and Mr. *Hale* of *Lincoln's-Inn*, and Mr. *Gerard* of *Gray's-Inn*. When we were called into the House, and the Lords settled in their Places, Mr. * *John Hern* (who was the Man that spake what all had resolved on) delivered his Argument very freely and stoutly, proving that nothing which I have either said or done according to this Charge, is Treason, by any known established Law of this Kingdom. The Argument follows in these Words, according to the Copy which Mr. *Hern* himself delivered me.

My Lords,

A short Introduction.

THE Work of this Day, we humbly conceive, is in many respects of very great and high

Concernment.

1. In that it concerns Matter of Life, a thing of the highest Consequence.

2. The Life of an Archbishop, a Person who had attained the highest Dignity conferred in the Church of *England*.

3. Those happy Laws, many Years since enacted and confirmed by several Parliaments, to be the Boundaries what was Treason; a Crime before so various, as it had no Bounds; and so odious, that the Punishment of it was an infamous Death, a total Confiscation, with a Brand of Infamy to all Posterity.

4. In that the Charge against him moves from no less a Body than the whole Commons of *England*, which presents him now a Prisoner at this Bar before your Lordships, in the High and Supreme Court of Judicature in Parliament.

And if any thing shall fall from us, subject to any doubtful Construction, we shall humbly crave your Lordships Pardon, and Leave to make our Explication: For as there is upon us a Duty to be wary, not to offer any thing which may minister just Offence; so neither may we be unfaithful, to omit what may justly tend to our Client's Defence.

The Charge upon what it consists.

The Titles of the several Parcels of the Articles, upon which the Charge against the ABp was made up.

The Charge against him, we find to be made up of two several Parcels of Articles, exhibited by the Honourable House of Commons.

1. The first, *In Maintenance of their Accusation, whereby he stands charged with High Treason.*

2. The latter, intitled, *Further Articles of Impeachment of High-Treason, and divers High Crimes and Misdemeanours; for all which Matters and Things they have impeached*

him of High-Treason, and other High Crimes and Misdemeanours, tending to the Subversion of Re-

ligion, Laws and Liberties, and to the utter Ruin of this Church and Commonwealth.

Concerning this Charge, and the

Archbishop's Defence he hitherto

made before your Lordships, we

(by your Lordships Command assigned his Counsel) neither have

nor could (by reason of the mix'd

Charge, without distinguishing what

was thereby intended to be a Charge

of Treason, and what of Misdemeanour only) be farther useful to

him, than to advise the Form of

his Plea and Answer, which we received from

him, as to all the Matters of Fact, to be a Not

Guilty.

We have not in all or any the Facts charged

or evidenced against him, in any sort intermed-

dled. But the same (how proved and how ap-

plicable to the Charges, without mention of any

of them) shall wholly leave to your Lordships

Notes and Memories.

What Defence he hath offered hitherto, hath

been wholly his own: he without us in that,

and we without consulting him in the Work of

this Day.

Wherein, having received your Lordships Com-

mands, we did present in Writing the Points in

Law we then humbly conceived fit for us to in-

sist upon.

I. Whether in all, or any the

Articles charged against him, there

was contained any Treason by the

established Laws of this Kingdom.

II. Whether the Charge of the

said Impeachment and Articles, did

contain such Certainty and Particu-

larity, as is required by Law in a

Case where Treason is charged.

But being enjoined by your ho-

nourable Order, to speak only to

the former; we shall, as in Duty

becomes, conform thereunto.

For our Method herein shall fol-

low the Course holden in the Reply

made upon the whole Articles,

whereby we conceived the Charges contained in

them were reduced to these three Generals.

1. A traiterous Endeavour to

subvert the Fundamental Laws of

the Realm; and instead thereof, to

introduce an Arbitrary and Tyrannical Govern-

ment against Law; contained in the first Original and first Additional Articles.

2. Secondly, A traiterous Endeavour to sub-

vert God's true Religion by Law established;

and instead thereof, to set up Popish Superstition

and Idolatry: this contained in the seventh Original and seventh Additional Articles.

3. Thirdly, That he laboured to subvert the

Rights of Parliament, and the antient Course of

Parliamentary Proceedings, and by false and ma-

licious Slanders to incense his Majesty against

Parliaments. And this contained in the four-

teenth Original and tenth Additional Articles.

All other the Articles, we humbly conceive

to be but Instances, conducing and applied to

some of those Generals.

The Straits upon his Counsel by reason of the mix'd Charge, without distinguishing what was intended to be a Treason, what a Misdemeanour.

The two Points presented by Counsel in writing, to be insisted upon for his Defence in point of Law.

The first only admitted.

The Method proposed.

The three general Charges.

Concerning

* The Lord Chancellor Finch told me, that this Argument was not Mr. *Hern's*, (tho' he pronounced it) for he could not argue; but it was Mr. *Hale's*, afterward Lord Chief Justice. And he said farther, that being then a young Lawyer, he stood behind Mr. *Hern*, when he spoke at the Bar of the Lords House, and took Notes of it; and that it will be published among his Reports. W. S. A. C.

Concerning those three General Heads of the Charge, we shall crave leave to propose two Questions to be debated.

Two general Questions to be insisted upon.

Whether there be at this Day any other Treason, than what is declared by the Statute of 25 Ed. III. cap. 2. or enacted by some subsequent particular Statute; which we humbly conceive, and shall endeavour to satisfy your Lordships, there is not any.

Whether any the Matters in any of the Articles charged, contain any of the Treasons declared by that Law, or enacted by any subsequent Law; which we likewise conceive they do not. And for the clearing of both these, shall humbly insist, That,

(1.) An Endeavour to subvert the Laws, an Endeavour to subvert Religion, a Labouring to subvert the Rights of Parliaments; are not Treasons, either within the Statute of 25 Ed. III. or by any other particular Statute.

(2.) That not any of the Particulars, instanced in any other the Articles, is a Treason within the Statute 25 Ed. III. or any other Statute.

In Maintenance of our first Tenet upon the first Question.

And to make good our Tenet upon our first Question, shall humbly offer,
That before this Statute of 25 Ed. III. Treasons at the Common Law were so general and uncertain, that almost any Crime, by Inferences and Constructions, might be, and was often extended to be a Treason; insomuch as we find in 22^o of the Book of Assize, killing the King's Messenger was Treason. And in the Parliament-Roll, 21 Ed. III. num. 15. accroaching the Royal Power (wherein every Excess was subject to a Construction of Treason) was Treason; for which divers having suffered, the Commons in Parliament finding how mischievous and destructive it was to the Subject, petitioned it might be bounded and declared. And this, not to give any liberty, but to give bounds to it; one while it being construed an Accroachment of Royal Power, as in the Case of the Earl of Lancaster, temp. Ed. II. for being over-popular with the People; and in the same King's Reign to Spencer, for being over-gracious with the King.

The Uncertainty of what was, or was not Treason, produced the Law of 25 Edw. III.

The Sense of these and other Mischiefs by the Uncertainty of Treason, brought on this Law of 25 Ed. III. And the Benefit it to the Subject, says Sir Ed. Coke in his Treatise of the Pleas of the Crown, begot that Parliament the Name of *Parliamentum Benedictum*; and that except *Magna Charta*, no other Act of Parliament had more Honour given it by the King, Lords, and Commons.

The Act of 25 Ed. III. the Rule in Parliament to judge Treasons by.

And this Law hath been in all times the Rules to judge Treasons by, even in Parliament; and therefore in the Parliament-Roll, 1 H. IV. Num. 144. the Trial and Judgment in Cases of Impeachment of Treason, is prayed by the Commons might be according to the antient Laws. And in the Parliament-Roll 5 H. IV.

Parliament-Roll 1 H. IV. num. 144. the Prayer of the Commons.

num. 12. in the Case of the then Earl of Northumberland, this Statute of 25 Ed. III. was the Guide and Rule by which the Lords judged, in a Case endeavoured to have been extended to be a Treason, the same to be no Treason.

And it is, as we conceive, very observable, That if at any time the Necessity or Excess of the Times produced any particular Laws in Parliament, for making of Treasons not contained in that Law of 25 Ed. III. yet they returned and fixed in that Law.

Witness the Statute of 1 H. IV. cap. 10. whereby all those Facts which were made Treasons in the divided Time of R. II. were reduced to those of Ed. III.

In the Time of H. VIII. wherein several Offences were enacted to be Treasons, not contained in the Statute of 25 Ed. III. the same were all swept away by the Statute of 1 Ed. VI. 12.

And again, where in the Time of Ed. VI. several Treasons were enacted, they were all repealed, and by an Act made 1 Marie none other Offence left to be Treason, than what was contained and declared by the Statute of 25 Ed. III.

And from 1 H. IV. to Queen Mary, and from thence downward, we find not any Judgment hath been given in Parliament, for any Treason not declared and contained in that Law, but by Bill.

Thus in Succession of all Times, this Statute of 25 Ed. III. in the Wisdom of former Parliaments, hath stood and been the constant fixed Rule for all Judgments in Cases of Treason.

We shall now observe, what Offences are in and by that Law declared to be Treasons; whereby your Lordships will examine, whether you find any of them in the Charge of these Articles: For which purpose we shall desire this, Statute of 25 Ed. III. be read.

The Treasons by that Act declared, are

1. Compassing and imagining the Death of the King, Queen, or Prince, and Declaring the same by some Overt-Act.
 2. Murdering the Chancellor, Treasurer, &c.
 3. Violating the Queen, the King's eldest Daughter, or the Prince's Wife.
 4. Levying War against the King.
 5. Or adhering to the King's Enemies, within the Realm or without, and declaring the same by some Overt-Act.
 6. Counterfeiting the Seals and Coin.
 7. Bringing in Counterfeit Coin.
- Next we shall lay for a ground, that this Act ought not be construed by Equity or Inference.
1. For that it is a declarative Law, and no Declaration ought to be upon a Declaration.

Parliament-Roll, 55 H. IV. num. 12. Case of E. of Northumberland.

Treason particularly enacted after 25 Ed. III. still reduced to that Law.

Treasons made in the divided time of R. II. reduced per Stat. 1 H. IV. c. 10.

Made in the Time of Hen. VIII. reduced 1 Ed. VI. c. 10.

Made in the Time of Ed. VI. reduced by the Act of 1 Marie, c. 10.

From 1 H. IV. to this Day, no Judgment in Parliament given of any Treason not contained in that Law.

This Law in all Times the Standard to judge Treasons by.

Treasons declared per Stat. 25 Ed. III. c. 2.

Stat. 25 Ed. III. may admit no Construction by Equity or Inference to make other Treason than thereby declared.

Reasens why not. ' 2. It was a Law provided to secure the Subject, for his Life, Liberty, and Estate; and to admit Constructions and Inferences upon it, were to destroy the Security provided for by it.

' It hath been the constant Opinion in all times, both in Parliament and upon Judicial Debates, that this Act must be literally construed, and not by Inference or Illation: nor would it be admitted in a Particular declared by this Law to be Treason; which a Man would have thought might have been consistent with it.

' Counterfeiting the Coin of the Kingdom, is by this Law declared Treason.

Instances where it would not. ' Washing, Filing, and Clipping the Coin, is an Abuse, an Abasing, and not making it current: yet in

Stat. 3 H. V. cap. 6. ' 3 H. V. when the Question was in Parliament, whether that Offence was Treason within the Statute of

' 25 Ed. III. it is declared by a special Act then made, 3 H. V. cap. 6. That forasmuch as before that time great Doubt and Ambiguity had been, whether those Offences ought to be adjudged Treason, or not, inasmuch as mention is not thereof made in the Declaration of the Articles of Treason by that Statute of 25 Ed. III. the same was by that particular Act made Treason, which before was none: and counterfeiting of foreign Coin made current here, an equal Mischief with counterfeiting of the Coin of this Realm; yet because the Words of the Statute are *his Money*, this not Treason until

1 M. cap. 6. Coke Collections of Pleas the Crown. ' the Act of 1 *Marie*, cap. 6. made it so. And Sir *Ed. Coke*, in his Book before-mentioned, saith, A compassing to levy War, is not a Treason within that Law, unless it pro-

' ceed into Act; but only to compass the Death of the King: Yet if a Constructive Treason should be admitted, it might happily, without any great straining, be inferred, That Compassing to levy War is in some sort a Compassing of the King's Death: and of this kind many more Instances may be given.

' So that the Result of all this is, That whatsoever is not declared to be a Treason within the Letter of this Law, may not be adjudged a Treason, by Inference, Construction or otherwise.

' Having done with this first, we now shall come to our second Question.

2 Question. ' Whether any the Matters in all, or any the Articles charged, contain any the Treasons declared by

' that Law, or enacted by any subsequent Law; wherein, altho' the Charges may appear to be great and enormous Crimes; yet we shall endeavour, and hope to satisfy your Lordships, the same, nor any of them, are Treasons by any established Law of the Kingdom. For clearing whereof, we shall pursue the Order first proposed.

' First, That an Endeavour to subvert Fundamental Laws, is not Treason by any Law in this Kingdom established: and particular Act to make it Treason there is none; so as we must then return to apply those former general Observations of that Act of 25 Ed. III. to this Particular; and shall add for Reasons,

' 1. That it is not comprized within any the

' Words of that Law, nor may by any Construction or Inference be brought within it, for the Reasons formerly alledged.

' 2. Because an Endeavour to subvert Laws, is of so great a Latitude and Uncertainty, that every Action not warranted by Law, may be thereby extended to be Treason.

' In the sixth *Report*, in *Mildmay's Case*, *Fol. 42.* where a Conveyance was made in Tail, with a Proviso, if he did go about or attempt to discontinue the Entail, the same should be void: It was resolved the Proviso was void; and the principal Reason was, That these Words, *attempt or go about*, are Words uncertain and void in Law. And the Words of the Book are very observable, *viz. God defend, that Inheritances and Estates of Men should depend upon such Incertainties; for that misera est Servitus, ubi Jus est vagum, & quod non definitur in Jure quid fit conatus; and therefore the Rule of the Law doth decide this Point.* Non efficit conatus nisi sequitur effectus; and the Law doth reject Conations and Goings about, as things uncertain, which cannot be put in issue. These are the Words of the Book: And if so considerable in Estates, your Lordships, we conceive, will hold it far more considerable in a Case of Life, which is of highest Consequence.

' And if it should be said this Law of 25 Ed. III. takes notice of Compassing and Imagining: We answer, it is in a Particular declared by that Law to be Treason, in compassing the Death of the King: But this of endeavouring to subvert Laws, not declared by that or any other Law to be a Treason.

' And if it should be granted, that this Law might in any Case admit any other Fact to be Treason by Inference or Construction, other than is therein particularly declared, which we conceive it cannot:

' Yet it is not imaginable, that a Law introduced purposely to limit and ascertain Crimes of so high Consequence, should by Construction or Inference be subject to a Construction of admitting so uncertain and indefinite a thing, as an Endeavour to subvert the Law is, it being not comprized within the Letter of that Law.

' 3. That the Subversion of the Law is an impossible thing; therefore an Endeavour to do an Act which cannot be effected, cannot be Treason.

' 4. That in all times the Endeavouring to subvert the Laws hath been conceived no determinate Crime, but rather an Aggravation only of a Crime than otherwise: And therefore hath been usually joined as an Aggravation or Result of Crimes below Treason.

' As appears in the Parliament-Roll, 28 H. VI. num. 28 to num. 47. in the Case of the Duke of *Suffolk*, where the Commons in Parliament having preferred Articles of Treason against him, did not make that any part of their Charge. Yet in the same Parliament, and within few Days after, the first being in *February*, the latter in *March*, exhibiting other Articles against him, they therein charged all the Misprisions, Offences, and Deeds, therein mentioned.

Mildmay's Case, 6 Report. Coke, Fol. 42.

Objection. Answer.

Parliament-Roll. 28 H. VI. n. 28, to 47. In the Case of the Duke of Suffolk.

tioned, to have been the Cause of the Subversion of Laws and Justice, and the Execution thereof; and nigh likely to tend to the Destruction of the Realm. So as it appears it was then conceived an Offence of another nature, and not a Treason.

Articles, Cardinal Woolsey in Parliament, 21 Hen. VIII. Indictment K Bench Ligham, 23 Hen. VIII.

And it appears as well by the Articles exhibited in Parliament, 21 H. VIII. against Cardinal Woolsey, as by Indictment in the King's Bench against Ligham 23 H. VIII. Rot. 25 That the Cardinal did endeavour to subvert *Antiquissimas Leges bujus Regni, Universumq; hoc Regnum Angliæ Legibus Imperialibus subjugare*: which altho' it be a Charge of subverting the ancient Laws of the Kingdom, and to introduce new and arbitrary Laws; yet neither upon the Articles or Indictment was the same imputed to be Treason; but ended in a Charge of a Premunire.

And if it shall be said, that Empson, 1 H. VIII. had Judgment, and died for it, upon an Indictment in London; we answer,

1. This was not the Substance of the Indictment, but only an Aggravation.

2. And if charged, it is with an actual subverting, not an with an Endeavour to subvert the Laws; and is joined with divers Offences.

3. Which is a full Answer, The Indictment upon which he was tried, was *Paschæ 2 H. VIII. at Northampton*, and was for levying War against the King, a Treason declared by the Law of 25 Ed. III. upon which he was convicted and suffered; and no Proceeding upon the other Indictment ever had.

Answer to the second General Charge of endeavouring to subvert Religion.

And as to the second general Charge of endeavouring to subvert Religion:

This no more than that former of subverting the Laws is any Treason, within any Law established in this Kingdom.

And herein as to the Charge of the Endeavour, we shall rely upon what hath been already said upon the former.

With this further:

That until that happy Reformation, begun in the Time of King Edward VI. there was another Frame of Religion established by Law; which was conceived until then to have been the True Religion; and any Endeavour to change or alter it, prosecuted with great Extremities. Yet was not any Attempt to alter it conceived to be Treason; but several special Acts of Parliament were made for Particular Punishments against Persons who should attempt the Alteration thereof;

Stat. 5 R. II. c. 5. 2 H. V. c. 7.

witness the Statute of 5 R. II. c. 5. and 2 H. V. c. 7.

In which latter, altho' mention is made of endeavouring to destroy and subvert the Christian Faith, yet was not the Offence made or declared to be Treason. And at this day Heresy, of what kind soever, is not punishable, but according to the old Course of the Law.

And we may add the Statute of 1 Ed. VI. cap. 12. that of 1 Mar. c. 12. which makes it but Felony to attempt an Alteration of Religion

by Force; The worst kind of Attempt certainly.

To the third and last general Charge, labouring to subvert the Rights of Parliaments. To the labouring to do it, we shall add nothing to what hath been said to the Charge of Endeavour in the two former; only thus much we shall observe:

That in the Parliament of 11 R. II. amongst the many Articles preferred against the Duke of Ireland, and others, the 14th Article contains a Charge much of this nature, viz. *That when the Lord and others in divers Parliaments, had moved to have a good Government in the Realm, they had so far incensed the King, that he caused divers to depart from his Parliament; so that they durst not, for fear of Death, advise for the Good of the Kingdom.* Yet when the Lords came to single out the Articles, what was, or what was not Treason, That, altho' a Charge transcending this, was none of the Articles by them declared to be Treason.

My Lords, having done with these Generals, it remains only that we apply ourselves to those others Articles, which we conceive were insisted upon as Instances conducing and applied to some of the Generals we have handled.

Wherein, if the Generals be not Treason, the particular Instances cannot be: And on the other side, if the Instances fall short of Treasons, the Application to those Generals cannot make them Treasons.

We shall only single out two Particulars, and in those be very brief, in that most which hath been said to the former Generals is applicable to them; inasmuch as none of them is declared to be a Treason by the Statute of 25 Ed. III. or by any other Law enacted.

1. The first of these in the 10th Original Article, viz. That he hath traitorously endeavoured to reconcile the Church of England with the Church of Rome. Which, if it be any Treason, must be a Treason within the Statute of 5 Jac. cap. 4. whereby is provided, That if any Man shall put in Practice to reconcile any of his Majesty's Subjects to the Pope or See of Rome, the same is enacted to be Treason; which we conceive clearly is none of this Charge.

(1.) First, for that here only is charged an Endeavour; there a putting in practice.

(2.) Here a Reconciling of the Church of England with the Church of Rome; there a Reconciling some of his Majesty's Subjects to the See of Rome. And a Reconciling with, may as well be a Reducing of that of Rome to England, as England to Rome.

The second, in the 7th Additional Article, for wittingly and willingly receiving and harbouring divers popish Priests and Jesuits, namely, *Sancta Clara* and Monsieur *St. Giles*.

Which Offence, as to the harbouring Priests and Jesuits, born within his Majesty's Dominions, by the Statute of 27 Eliz. cap. 2. is made Felony, not Treason; and extends only to Priests English

Answer to the third general Charge, labouring to subvert and incense the King against Parliaments.

Articles against the Duke of Ireland, and others, 11 R. II. 14 Article.

Answer to the particular Articles insisted upon principally in the Charge.

The first Particular.

Differences between the Matters charged, and the Fact made Treason by the Statute 3 Jac. c. 4.

The second Particular.

' *English* born, which these are not charged to be.

' My Lords, we have now gone thro those Articles wherein we conceive the Treasons charged were intended, and have endeavoured to make it appear, that none of the Matters in any of the Articles charged are Treason within the Letter of any Law.

' And if not so, then they cannot by Inference or Parity of Reason, be heighten'd to a Treason.

' It is true, the Crimes as they are laid in the Charge are great and many.

' Yet if the Laws of this Realm, which have distinguished Crimes, and accordingly given them several Names and inflicted Punishments, raise none of these to a Treason ;

' That we humbly conceive will be worthy of your Lordships Consideration in this Case ; and that their Number cannot make them exceed their Nature. And if they be but Crimes and Misdemeanours apart, below Treason or Felony, they cannot make a Treason by putting them together.

' Otherwise the Statute of 25 *Ed.* III. which we have so much insisted upon, had been fruitless and vain ; if after all that Exactness any Number of Misdemeanours (in themselves no Treason) should by Complication produce a Treason, and yet no mention made of it in that Law, much less any Determination thereby, that any Number, or what Number, and of what Nature of Crimes, below Treason, should make a Treason.

' It is true, my Lords, that by the Statute of 25 *Ed.* III. there is a Clause in these Words :

Power to declare Treasons, per Stat. 25 Ed. III. c. 2. Wherein we conceive there is no Power to declare an Offence below a Felony to be a Treason.

' *It is accorded, That if any other Case, supposed Treason, which is not therein specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, until the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or Felony.*

' And that hereby might seem to be inferred, That there should be some other Treasons than are mentioned in that Law, which may be declared in Parliament.

' But, my Lords, we shall observe, 1. If such Declaration look only forward, then the Law, making it Treason, precedes the Offence, and is no more than an enacting Law.

' If it look backward to the Offence past, then it appears by the very Clause itself, of 25 *Ed.* V. it should be at the least a Felony at the Common Law ; and that a Crime or Crimes below a Felony, were never intended to be by this Law to be declared, or to be heighten'd to a Treason. And we find not any Crime declared Treason with a Retrospect, unless it were a Felony before. And in the late Case of the Earl of *Strafford*, attainted by Bill, there is a Treason within

this Law charged, and declared by the Bill of his Attainder to have been proved.

' 2. Secondly, We are not now in Case of a Declaration of a Treason, but before your Lordships only upon an Impeachment ; and in such Case we humbly conceive the Law already established, as it hath been, so it will be the Rule *.

' Thus, my Lords, we have gone through that Part which belongs to us, directed us by your Lordships, *viz.*

' Whether in all or any the Articles exhibited before your Lordships, there is contained any Treason by any established Law of this Kingdom, without meddling at all with the Facts or Proof made of them ; which together with our weak Endeavours, we humbly submit to your Lordships great Judgment. And for any Authorities cited by us, are ready (if so commanded) to produce them.

Here this Day ended ; and I had a few Days rest. But on *Tuesday, October 22.* being a Day made solemn for Humiliation, my Chamber at the *Tower* was searched again for Letters and Papers ; but nothing found.

After this, there went up and down all about *London* and the Suburbs, a Petition for the bringing of Delinquents to Justice ; and some Preachers exhorted the People to be zealous in it, telling them it was for the Glory of God, and the Good of the Church. By this means they got many Hands of Men which little thought what they went about. In this Petition, none were named but myself and the Bishop of *Ely* ; so their Drift was known to none but their own Party ; and was undoubtedly set on foot to do me Mischief. Whose Design this was, God knows ; but I have cause to suspect Mr. *Prynn*'s Hand in it. This barbarous way of the People's clamouring upon great Courts of Justice, as if they knew not how to govern themselves and the Causes brought before them, is a most unchristian Course, and not to be endured in any well-govern'd State. This Petition, with a Multitude of Hands to it, was delivered to the House of Commons on *Monday, October 28.* Concerning which I shall observe this, That neither the Lord-Mayor nor the Sheriffs made any Stop to this illegal and blood-thirsty Course, tho' it were publicly known, and the People exhorted to set Hands to it in the Parish-Churches. What this, and such-like Courses as these, may bring upon this City, God alone knows, whom I humbly pray to shew it Mercy.

November 1. This Day, being *All-balan-day*, a Warrant came to the Lieutenant from the House of Commons to bring me to their Bar, to hear the Evidence formerly summed up, and given against me in the Lords House. I knew no Law nor Custom for this ; for tho' our Votes, by a late Act of Parliament, be taken away, yet our Baronies are not : And so long as we remain Barons, we belong to the Lords House, and not to the Commons. Yet how to help myself, I knew not : For when the Warrant came to me, the Lords House

* Whatsoever hath been hitherto placed in the Margin of this Argument, was transcribed from Mr. Herne's own Copy ; but this which followeth, I transcribed from a loose Note, wrote by an unknown Hand, and affixed to this Place. H. W.

Concerning the Proviso in 25 *Edw.* III. (last mentioned) it is observable, that Mr. Lane, in the Lord *Strafford*'s Trial, saith, That that Clause of Provision 25 *Edw.* III. is quite taken away by 6 *Hen.* VIII. cap. 4. & 20. So that no Treason is now to be reckoned, but what is literally contained in 25 *Ed.* III. See for this *Whitlock's Memoirs*, p. 43. See also *Burnet's Hist. Reform.* Part II. pag. 253. about the Repeal of Treasons.

House was risen, and I was commanded to the House of Commons the next Morning before the Lords came to sit; so I could not petition them for any Privilege. And had I done it, I doubt it, would have been interpreted for an Endeavour to make a Breach between the Houses: And should I have under any Pretence refused to go, Mr. Lieutenant would have carried me.

Therefore on *Saturday, November 2.* I went, according to the Warrant, to the House of Commons. So soon as ever I was come to the Bar, Mr. *Speaker* told me, There was an Ordinance drawn up to attain me of High-Treason; but that they would not pass it till they had heard a Summary of the Charge which was laid against me; and that I was sent for to hear it also. I humbly besought them that my Counsel and my Solicitor (who were always present with me in the Lords House) might stand now by me: But it would not be granted. Then Mr. *Browne*, by Order from the Speaker, delivered the Collection and Sum of the Charge against me; much at one with that which he formerly made in the Lords House. Now I took Notes of it as exactly as I could. He had no sooner done, but Mr. *Speaker* pressed me to make Answer presently. I humbly besought the House I might not be put to that, the Charge being long and various; but that I might have Time, and that my Counsel might be heard for Matter of Law. I was commanded to withdraw. And when I was called in again, I received an Order peremptory, to answer the *Monday* Seven-night after to such Things as the Reporter was mistaken in. But not a Word of hearing my Counsel. I returned to my Prison.

This *Wednesday, November 6.* I got my Prayer-Book, by the Help of Mr. *Hern* and Mr. *Browne*, out of Mr. *Prynne's* Hands, where it had been ever since the last of *May*, 1643.

Monday, November 11. I came to the House of Commons again; and, according to their peremptory Order, made my Answer to the Summary Charge which Mr. *Browne* made against me. But here I shall advertise the Reader, That, to avoid troublesome and tedious Repetition, I shall not set down my Answer at large, as there I spake it; because there is nothing in it but what is in my former Answers, the Beginning and the End only excepted. But it was necessary for me then to make a whole and an entire Answer, because the House of Commons had then heard no part of my Defence. But I presume the Charitable Reader will look upon my Answers in their proper Place, rather than be troubled a second Time with the same Thing. Yet because Mr. *Browne* went a different way in his Summary from the Charge lately given, I shall represent a Skeleton of my Answer, with all the Limbs of it intire, that it may be seen, as it were, together; tho' I report nothing which hath been already said. And thus I began:

My Defence in the House of Commons.

MR. *Speaker*, I was here *November 2.* It was the First time that ever I came within these Doors. And here then you gave me the most uncomfortable Breakfast that ever I came to; namely, that this Honourable House had drawn up an Ordinance against me of High-Treason: But that before they would proceed farther, I should hear the Sum of the Charge which was against me; which was the Cause I

was sent for then: And to give my Answer to that which was then said, or rather mistaken in saying and inferring, is the Cause of my coming now.

1. And, First, Mr. *Speaker*, I give Thanks to this Honourable House that they have given me leave to speak for myself. 2. Secondly, I do humbly desire if any Word or Thing should be mistaken or unadvisedly expressed by me, (which shall be fore against my Will) I may have Liberty to recal and expound myself. 3. Thirdly, That you will favourably consider into what Straits I am cast; that after a long and tedious Hearing, I must now come to answer to a Sum or an Epitome of the same Charge; which how dangerous it may be for me, all Men that know Epitomes cannot but understand.

Mr. *Speaker*, I am come hither to make a Brief of my Answer to a Sum of my Charge; wherein I may receive as much Detriment by my own Brief, for want of larger Expression, as by the other of my Charge by Omission or Mistake: Yet since your Command is upon me, I shall without farther Preface, (which I conceive would be as tedious to you, as to me troublesome) address myself, and with as much Brevity as the many Heads of the Charge will bear. And that my Answer may be the clearer both to this Honourable House and to the Gentleman who reported the Charge, I shall follow every Thing in the same Order he proceeded in: So far forth, at least, as an old slow Hand could take them, a heavy Heart observe them, and an old decayed Memory retain them.

This worthy Gentleman hath pressed all things as hardly against me, as the Cause can any way bear. That was his Duty to this Honourable House, and it troubles me not: But his Carriage and Expressions were civil towards me, in this my great Affliction; and for this I render him humble and hearty Thanks, having from other Hands pledged my Saviour in Gall and Vinegar, and drunk up the Cup of the Scorings of the People to the very Bottom.

This Gentleman began with four Generals, which he said I complained of, and I say I had cause so to do. 1. The first Complaint was, That I had lain three Years in Prison before I was heard. And this, he said, was my own Fault, because I delayed the putting in my full Answer when I was called. But herein he is quite mistaken: For I could not answer till I was called, and I was not called in three Years; nor then could I plead to more Articles than were put to me. [Nor did this delay three Months of the three Years: Yet this Gentleman in his Reply said still, it was my Fault because I did not petition to be brought to hearing. But this, under favour, is a weaker Reason than the former. For the Condition of the Times considered, neither my Counsel, nor my other Friends, nor myself, could think that a fit or a discreet way. Besides, it is well known that had I petitioned I could not have been heard, my Business being in a manner cast aside, till Mr. *Prynne's* Malice, actuated by a Search into my own Papers, undertook it.] 2. The Gentleman said, my second Complaint was, That my Papers were seized: But he said, that was done by Authority. And I never denied that: But that which he added is much mistaken; namely, That I ever seized any Man's Papers without Authority, or by my own

own Power; but what was done in that kind, was by the joint Authority of that Court in which I then sat. Nor was my Complaint general, that my Papers were seized; but that the Papers prepared for my Defence were taken from me, and not restored when I needed them, and petitioned for them. 3. He said, my third Complaint was, *That many of the Witnesses produced against me were Separatists*. I did indeed complain of this, and I had abundant Cause so to do: For there was scarce an active Separatist in England, but some way or other his Influence was into this Business against me. And whereas the Gentleman said, *The Witnesses were some Aldermen, and some Gentlemen, and Men of Quality*: That's nothing; for both Gentlemen, and Aldermen, and Men of all Conditions, (the more's the pity) as the Times now go, are Separatists from the Doctrine and Discipline of the Church of England established by Law. And I would to God some of my Judges were not. 4. My fourth Complaint, he said, was, *of the excessive Number of the Witnesses*. And he added, That if I would not have so many Witnesses, I should not have given Occasion for it, by committing so many Crimes. But, first, whether I have committed so many Crimes as are urged against me, is yet in question. And Secondly, 'tis one thing to give Cause, and another thing to give Occasion: For an Occasion may be taken when 'tis pretended as given. And so I hope it will be found in my Case. But the thing here mistaken is, That these are all said to be *legal Witnesses*; whereas almost all of them have at some time or other, been before me as their Judge, either at *Star Chamber*, or *Council-Table*, or *High-Commission*, or as Referee. And then I humbly desire it may be considered; First, how impossible it is for a Judge to please all Men. Secondly, How improbable it is, that Witnesses displeased should be indifferent in their Testimony. And, Thirdly, how hard is it to convince a Man by such interested Witnesses, now (upon the matter) becoming Judges of him that judged them. And (as *St. Augustine* speaks) *Quomodo potest, how is it possible for one that is contentious and evil to speak well of his Judge?*

Quomodo potest malus litigator laudare Judices?
Aug. Ep. 166.

From these Generals the Gentleman passed to the Particulars of the Charge; and he caused the 7, 8, 9, 10, 11th Original Articles, and the 7th Additional to be read. That done, he divided the Charge into two main Heads: The one, an Endeavour in me to subvert the Laws of the Kingdom; and the other, a like Endeavour to alter the true Protestant Religion into Popery. The Evidence given in the Lords House, began at the *Laws* and ended in *Religion*; but this Gentleman in his Sum, both there and here, began with *Religion*, and ended with the *Laws*.

I. The Charge concerning Religion, he said, would bear two Parts; the Ceremonial, and the Substantial Part of Religion.

(1.) And he professed he would begin at the Ceremonial, where having first charged in general, the Statute of the 3 and 4 of *Ed. VI. c. 10.* for the Destruction of Images he gave these particular Instances following, to shew my Intention to alter Religion.

1. The setting up of coloured Glafs with Pic-

tures in the Windows of my Chapel; the Communion-Table Altar-wise; Candlesticks thereon, with Reverence and Bowings.

2. A Bible in my Study with the five Wounds of Christ wrought upon the Cover in Needle-Work.

3. Three Pictures in my Gallery; the *Eccle Homo*; the four *Latin Fathers*, and the History of (*St. John 10.*) the true Shepherd entering in by the Door, and the Thief by the Window.

4. The Crucifix hung up in the Chappel at *White-Hall* on *Good-Friday*; and what happened there upon *Dr. Brown's* coming in and doing Reverence.

5. The Copes and Bowings used in Cathedral Churches since my Time.

The Ceremonies used at his Majesty's Coronation.

7. The Abuses in the Universities, especially *Oxford*.

1. The Titles given me from thence.

2. Divers Particulars in the new Statutes.

3. Images countenanced there, by me, in divers Chapels.

4. The Picture of the Virgin *Mary* at *St. Mary's Church Door*.

5. Nothing to be done without me in Congregations.

8. The Ceremonies in some Parish-Churches, and some punished for Neglect of them. Instances in some of *Beckington*, some of *Lewes*, and in *Mr. Chancy of Ware*.

9. That I preferred no Men, but such as were active for the Ceremonies.

10. Passages expunged out of Books, if contrary to these Courses; as that in *Dr. Fealy's* Sermons concerning Images.

11. Bibles with Pictures in them.

12. The severe Punishment of *Mr. Workman* of *Gloucester*, only for a Sermon against Images.

13. Words spoken to take *Bishop Jewell's* Works and the *Book of Martyrs*, out of some Parish-Churches.

14. The Consecration of *Cree-Church*, and *St. Giles in the Fields*. In all which, as I humbly conceive, here's nothing (especially my Answers being taken to them) that can co-operate to any Alteration of Religion. Nor is there any Treason, were all that is urged true.

(2.) From hence, *Mr. Speaker*, this worthy Gentleman passed over from the Ceremonies, to those things which, he said, concerned the Substance of Religion: In which the Particulars which he charged were these;

1. A Doubtfulness, if not a Denial of the Pope's being *Antichrist*.

2. Dislike of the Name, *the Idol of Rome*.

3. The Alteration of some Passages in the Publick Prayers appointed for *Novemb. 5.* and the *Coronation-Day*.

4. The *Antichristian Yoke* left out of the Brief for the *Palatinate*, with an Expression, as if we and those Reformed Churches were not of the same Religion.

5. That Men were punished for praying for the *Queen and Prince*.

6. That the Church of *Rome* is a true Church.

7. That the Communion-Table or Altar is the Chief Place; for there is *Hoc est Corpus meum*.

8. Restraint of all Books against Popery, Instances in a Book of *Bishop Carleton's*: One ten-

dred

‘dred by Sir *Edward Hungerford*. Dr. *Clark*’s Sermons. Dr. *Jones*. None called in but *Sales*. That I myself did expunge some Passages out of a Sermon of Dr. *Sibthorp*’s. Popish Books seized, re-delivered to the Owners. That for these I must answer for my Chaplains, since *John*, Archbishop of *York*, was fined for his Commissary’s Act against the Bishop of *Durham*; who having a Patent, could not so easily be put out of his Place, as I might change my Chaplains.

‘9. Three Ministers in my Diocese suspended for not Reading the *Book of Recreations* on the Lord’s Day.

‘10. The Feoffment for buying in of Improvements, overthrown, to the Hindrance of Preaching, and Scandal to Religion.

‘11. Incroachment upon the Lord Chamberlain for naming of Chaplains to the King; and upon the Master of the Wards for giving of Benefices.

‘12. Familiarity with Priests and Jesuits, *S. Clara* and Monsieur *S. Giles*.

‘13. The Testimonies of Mr. *Chaloner*, Sir *Henry Mildway*, and his Brother Mr. *Anthony*, what Opinion was held of me beyond the Seas, for my cunning introducing of Popery.

‘14. That an Offer was made unto me to be a Cardinal. And thus far this Gentleman proceeded in Points of Religion.

‘But because there hath passed divers things done at and by the *Council-Table*, the Courts of *Star-Chamber*, and *High-Commission*, and in *Convocation*; and because many more things so done, are to come in the next Head concerning the Law; I humbly crave leave, for avoiding tedious Repetition, to say it once for all, That no Act done by any of these, either by full Consent or major Part, which involves the rest, ought to be charged singly against me: And that for these Reasons following;

‘1. First, Because this is not *peccare cum multis*: For they meet not there in a Relation as *multi*, but as *unum Aggregatum*, as Bodies made one by Law. And therefore the Acts done by them, are Acts of those Bodies, not of any one Man sitting in them. And in this Sense a Parliament is one Body consisting of many; and the Acts done by it are Acts of Parliament. For which (should any of them prove amiss) no one Man is answerable, tho’ many times one Man brings in the Bill.

‘2. Secondly, Because I could sway no Man’s Vote in any of those Places (tho’ this hath been often urged against me, as an *over-potent Member*) for my Vote was either last, or last save one, in all these Places; so I could not lead. Nor is there any so much as shew of Proof offered, that I moved, or prepared any Man to a Sentence one way or other, in any one of these Courts or Places.

‘3. Thirdly, Because in those Court of Judicature, there was the Assistance of able Judges, Lawyers and Divines for Direction. And how can that be a Treason in me, which is not made so much as a Misdemeanour in any of the rest?

‘4. Fourthly, Because the Act of this present Parliament, which hath taken away the *Star-Chamber*, and the *High-Commission*, and bound the *Council-Table*, looks forward only, and punishes no Man for any Act past; much less doth it make any Man’s Actions done in them to be Treason: And I am no way excluded from the Benefit of that Act.

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‘5. Lastly, Because in all my Proceedings, both in the High-Commission and elsewhere, I kept strictly to the Doctrine and Discipline of the Church of *England* established by Law, against both Papists and other Sectaries. And under this Government, and Doctrine of this Church, it hath pleased God, now for above Fourscore Years together, to bless this Kingdom and People above other Nations. And I pray God, if we forsake the one, it prove not a Cause to deprive us of the other.

‘II. And now, Mr. *Speaker*, I shall follow this worthy Gentleman, as he went on to the second General Head, *the Subversion of the Laws*. And here, when he had caused the 1, 2, 3, 5, and 14th Original Articles to be read, as also the 2, 9, and 10th Additionals; he then said, That I had labour’d this Subversion by my Counsels, and by my Actions.

‘(1.) By my Counsels first; of which he gave three Instances.

‘1. The Vote of the *Council-Table* to assist the King in extraordinary Ways, if the Parliament should prove peevish and refuse: And this out of my Diary at *Decemb. 5, 1639*.

‘2. The Passage in the Epistle before my Speech in the *Star-Chamber*; *Not one way of Government, since the Humours of the People were in continual Change*.

‘3. A Speech at *Council-Table*, That now the King might use his own Power, &c. witnessed only by Sir *Henry Vane* the Elder.

‘(2.) From my Counsels, Proceed was made to my Actions; where the Particulars were;

‘1. That I attempted to set *Proclamations* above the Law.

‘2. That I was for all illegal Projects at the *Council-Table*; instanced in *Inclosures*, in *Ship-Money*, and Sir *John Corbet*’s Commitment.

‘3. The taking down of the Houses about St. *Paul*’s, with the large Commission for the Repair of the West-End.

‘4. The stopping of two Brewers in their Trade, being in *Westminster*, and pretended to annoy the Court.

‘5. Things done by me as *Referee*; instanced in a Case between *Rich* and *Pool*, and another of one *Symmes*.

‘6. Obstructing the Course of Law, by sending to Judges; instanced in the Parishioners of *Bee-kington*, in the Case of *Ferdinando Adams*; in Sir *Henry Martyn*’s Case about an Attorney at Law; Judge *Richardson*’s Words in *Huntley*’s Case, and Baron *Trevor*’s Words in *Grafton*’s Case.

‘7. The punishing Men that came in a legal Way; instanced in the Case of *Newcomin* and *Burrowes*; that I said in the High-Commission, I hoped to see the Clergy exempt again the next Hundred Years: The two Church-Wardens of *Chebbam*, with Words concerning Sir *Thomas Dacres*.

‘8. The Case of Prohibitions; and Mr. *Wheeler*’s Note out of a Sermon of mine concerning them.

‘9. That no Pope ever claimed so much Jurisdiction, not from the King.

‘10. The Canons; and I the main Man; the over-grown Member again.

‘11. The Statutes of *Oxford* enforced a second time; *Nevil*’s Case of *Merton-College* instanced in.

‘ 12. Books printed that are against the Law ;
 ‘ instanced in *Corwell’s* Interpreter, and Dr. *Man-*
 ‘ *waring’s* Sermons.

‘ 13. The Alteration of the *King’s Oath* at his
 ‘ Coronation.

‘ 14. My Enmity to Parliaments. To all which,
 ‘ as I then gave sufficient Answers, so I hope the
 ‘ courteous Reader hath found them at large in
 ‘ their several Places. And for this last concerning
 ‘ *Parliaments*, I humbly and heartily desire, that
 ‘ this may be taken notice of, and remembred,
 ‘ That there is not in any one of these Paper-
 ‘ Proofs produced against me, any one thing
 ‘ that offers to take away any Rights of *Parlia-*
 ‘ *ments*, rightly understood ; much less any that
 ‘ offers to take away *Parliaments* themselves ;
 ‘ which is a continued Mistake all along this par-
 ‘ ticular Charge. And if any rash or unweighed
 ‘ Words have fallen from me, yet these cannot
 ‘ be extended to the disannulling of *Parliaments*,
 ‘ or their Privileges in any kind, which I defended
 ‘ in Print long since, before I could foresee any
 ‘ of this Danger threatning me. It
 ‘ Cont. Fisher, ‘ is in my Book ^a against *Fisher* : It
 ‘ p. 211. ‘ was read in the Lords House, and
 ‘ I humbly desire I may read it here.

‘ And it was read.

‘ After this, it was inferred by this worthy
 ‘ Gentleman, *what a great Offender I was, and*
 ‘ *greater than Cardinal Wolsey.* Mr. Speaker, I
 ‘ have seen the Articles against the Cardinal, and
 ‘ sure somebody is mistaken ; for some of them
 ‘ are far greater than any thing that is proved
 ‘ against me. In which (I thank Christ for it)
 ‘ my Conscience is at peace ; whereas the Car-
 ‘ dinal confessed himself guilty of them all, and
 ‘ yet no thought of Treason committed ; and a
 ‘ *Premunire* was all that was laid upon him.

‘ Then he gave a touch, That
 ‘ Anno 45. ‘ in *Edward III’s* time, there was
 ‘ Ed. 3. ‘ a Complaint, that too much of the
 ‘ Civil Government was in the hands

‘ of the Bishops ; and that in the 45th Year of
 ‘ his Reign, they were put out, and Laymen put
 ‘ in. But, First, this concerns not me. Second-
 ‘ ly, The late Act of this Parliament hath taken
 ‘ sufficient Order with that Calling for meddling
 ‘ in Civil Affairs. Thirdly, The Time is memo-
 ‘ rable when this was done : it was in the Forty
 ‘ and Fifth Year of *Edward III.* that’s enough.

‘ Mr. Speaker, I shall draw towards an end. Yet
 ‘ not forgetting what Ordinance you told me was
 ‘ drawn up against me ; if that which I have now
 ‘ said may any way satisfy this Honourable House
 ‘ to make stay of it, or to mitigate it, I shall bless
 ‘ God and you for it. And I humbly desire you to
 ‘ take into consideration my Calling, my Age,
 ‘ my former Life, my Fall, my Imprisonment long
 ‘ and strict ; that these Considerations may move
 ‘ with you. In my Prosperity (I bless God for
 ‘ it) I was never puffed up into Vanity, whatever
 ‘ the World may think of me. And in these last

‘ full four Years durance, I thank
 ‘ Tacit. 1. 6. ‘ the same God, ^c *gravem Fortunam*
 ‘ Annal. ‘ *constanter tuli* ; I have with decent

‘ Constancy borne the weight of a
 ‘ pressing Fortune : And I hope God will strengthen
 ‘ me unto, and in the end of it.

‘ Mr. Speaker, I am very ^d aged,
 ‘ considering the Turmoils of my
 ‘ Life ; and I daily find in myself
 ‘ more Decays than I make shew of :

‘ and the Period of my Life, in the Course of Na-
 ‘ ture, cannot be far off. It cannot but be a great
 ‘ Grief unto me, to stand at these Years thus
 ‘ charged before ye : Yet give me leave to say
 ‘ thus much without offence, Whatsoever Errors
 ‘ or Faults I may have committed by the way, in
 ‘ any my Proceedings, thro’ human Infirmary ;
 ‘ as who is he that hath not offended, and broken
 ‘ some Statute-Laws too by Ignorance, or Misap-
 ‘ prehension, or Forgetfulness, at some sudden time
 ‘ of Action ? yet if God bless me with so much Me-
 ‘ mory, I will die with these Words in my Mouth ;
 ‘ *That I never intended, much less endeavoured, the*
 ‘ *Subversion of the Laws of the Kingdom, nor the*
 ‘ *bringing in of Popish Superstition upon the true Pro-*
 ‘ *testant Religion established by Law in this Kingdom.*

‘ And now, Mr. Speaker, having done with
 ‘ the Fact, I have but this one thing to put to the
 ‘ Consideration of this Honourable House. My
 ‘ Charge hath been repeated, I confess, by a very
 ‘ worthy, and a very able Gentleman : But *Ability*
 ‘ is not absolute in any. The Evidence given
 ‘ against me before the Lords, was (as by the
 ‘ Law it ought to be) given in upon Oath : But
 ‘ the Evidence now summed up, and presented
 ‘ to this Honourable House, is but upon the Col-
 ‘ lection and Judgment of one Man, how able
 ‘ or intire soever : and what he conceived is pro-
 ‘ ved against me, is but according to his Judg-
 ‘ ment and Memory ; which perhaps may differ
 ‘ much from the Opinion and Judgment of the
 ‘ Judges themselves, who heard the Evidence at
 ‘ large. Nor was this Gentleman himself present
 ‘ every Day of my Hearing ; and then for those
 ‘ Days in which he was absent, he can report no
 ‘ more here, than what others have reported to
 ‘ him. So for so much, his Repetition here is
 ‘ but a Report of a Report of Evidence given ;
 ‘ and at the best but a Report of Evidence, and
 ‘ not upon Oath. And, I suppose, never any
 ‘ Jurors, who are Triers of the Fact in any Case,
 ‘ Civil or Criminal, did ever ground their Ver-
 ‘ dict upon an Evidence only reported before
 ‘ them, and which themselves heard not.

‘ And if this manner of Proceeding shall be
 ‘ thought less considerable in my Person, yet I
 ‘ humbly desire it may be thoroughly weighed in
 ‘ the prudent Judgment of this Honourable House,
 ‘ the great Preserver of the Laws and Liberties of
 ‘ the Subject of *England*, how far it doth or may
 ‘ trench upon these in future Consequences, if
 ‘ these great Boundaries be laid loose and open.

‘ And because my Infirmities are many and
 ‘ great, which Age and Grief have added to
 ‘ those which are naturally in me, I most humbly
 ‘ desire again, That my Council may be heard for
 ‘ point of Law, according to the former Con-
 ‘ cession of this Honourable House : For I assure
 ‘ myself, upon that which hath been pleaded to
 ‘ the Lords, That no one, nor all of the things
 ‘ together which are charged against me, if
 ‘ proved, (which I conceive they are not) can
 ‘ make me guilty of High-Treason, by any
 ‘ known established Law of this Kingdom.

‘ The Sum of all is this : Upon an Impeach-
 ‘ ment arising from this House, I have pleaded
 ‘ *Not Guilty.* Thereupon Issue hath been joined
 ‘ and Evidence given in upon Oath. And now I
 ‘ must humbly leave it to you, your Wisdom and
 ‘ Justice, Whether it shall be thought fit, and just,
 ‘ and honourable, to judge me here, only upon a
 ‘ Report, or a Hearsay, and that not upon Oath.’

Here

Here ended the heavy Business of this Day. I was exceeding faint with speaking so long; and I had great Pain and Soreness in my Breast for almost a Fortnight after: then, I thank God, it wore away. I was commanded to withdraw, and to attend the House again on *Wednesday Nov. 13. 1644.* which I did. Then Mr. Browne made a Reply to my Answer: the Reply had some great Mistakes in it, but else was for the most part but a more earnest affirming of what he had delivered. And I conceived I was not to answer to his Reply, but that he was to have the last Speech: for so it was always carried, during my Hearing in the Lords House. Therefore being dismissed, I went away: And I was no sooner gone, but the House called for the Ordinance which was drawn up against me, and without hearing my Counsel, or any more ado, voted me guilty of High-Treason. And yet, when I came that Day to the House, all Men, and many of the House themselves, did much magnify my Answer before given: I will forbear to set down in what Language, because it was high; and as no time can be fit for Vanity, so least of all was this time for me. And vain I must needs be thought, should I here relate what was told me from many and good hands. But it seems the Clamour prevailed against me.

On *Saturday, Novemb. 16.* this Ordinance was passed the House of Commons suddenly, and with so great deliberation, as you have heard, was transmitted to the Lords, and by them the Debate concerning it put off to *Friday Novemb. 22.* Then the Earl of *Pembroke* began more fully to shew his canker'd Humour against me: how provoked, I protest, I know not, unless by my serving him far beyond his Desert. There, among other coarse Language, he bestowed (as I am informed) the *Rascal* and the *Villain* upon me: and told the Lords, they would put off giving their Consent to the Ordinance, till the Citizens would come down, and call for Justice, as they did in my Lord *Stratford's* Case. Was there not Justice and Wisdom in this Speech? Hereupon the Business was put off to *Saturday, Novemb. 23.* and then to *Friday, Novemb. 29.* But then upon *Thursday, Novemb. 28.* Mr. *Stowd* came up with a Message from the Commons, to quicken the Lords in this Business: And at the end of his Message, he let fall, That they should do well to agree to the Ordinance, or else the Multitude would come down and force them to it. At this, some Lords very honourably took exception; and Mr. *Stowd* durst not bide it, that this was any part of the Message delivered him by the House of Commons. But the matter was passed over, and Mr. *Stowd* not so much as checked. This, it may be, was thought seasonable by some, to hearten on the Violence of the Earl of *Pembroke*.

The Business not long heard on *Friday*, was put off again to *Monday Decemb. 2.* and the House of Lords put into a Committee, to examine Particulars by their Notes: the Earl of *Northumberland* on the Wool-Sack during the Debate, which continued, more or less, some Days. Where their own Notes failed, they called to Mr. *Browne*, Clerk of their House, for his. But at last, finding him very ready and quick for any thing that was charged against me, but loth to be known what Answer I gave to any Point, some Lords observed it. And it did after appear, that the Notes which he put to the Lords, were not the Notes which himself took, but that he had a Copy given him,

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(whether by Mr. *Prynn* or any other, I know not) and I was inform'd that the Earl of *Warwick* had another Copy of the very same. This is marvelous just and honourable in that Earl; and most Christian-like in Mr. *Browne*. It may be, he learned it out of the Notes which his Father-in-Law takes at Sermons.

Upon *Monday, December 16.* there was (the Times considered) a very full House of Lords; about twenty present, and my Business largely debated, and ready to come to the Question. I wish with all my heart it had, while the House was so full. But the Earl of *Pembroke* fell again into his wonted Violence, and asked the Lords what they stuck at? And added, *What, shall we think the House of Commons had no Conscience in passing this Ordinance? Yes, they knew well enough what they did.* One of the Wits hearing this excellent Passage of the Earl's, protested, if ever he lived to see a Parliament in *Bedlam*, this prudent Earl should be Speaker, if he were able to procure him the Place.

In the mean time this unhappy Clamour of his, put the Business off again to the next Day, being *Tuesday, Decemb. 17.* Then there were but fourteen Lords in the House. My Business was assumed, and proposed in three Questions, and I was voted guilty of the Fact in all three. Namely, Guilty of endeavouring to subvert the Laws; to overthrow the Protestant Religion; and that I was an Enemy to Parliaments. Then it being put to the Judges, whether this were Treason or no; the Judges unanimously declared, that nothing which was charged against me was Treason, by any known and established Law of the Land, with many things to and fro concerning this Business.

On *Tuesday, Dec. 24. Christmas-Eve*, the Lords had a Conference with the Commons about it. In which they declared, that they had diligently weighed all things that were charged against me, but could not by any one of them, or all, find me guilty of Treason. And therefore desired that the Argument made by my Counsel might be answered. And if it could be made appear unto them by any Law to be Treason, they would then proceed farther, as in Honour and Justice they should find it. Then came *Christmas-Day, Dec. 25.* the last *Wednesday* in the Month, and a most solemn Fast kept on it, with as solemn an Ordinance for the due Observance of this Fast, and against the manner of keeping of that Day in former Superstitious Times. A Fast never before heard of in *Christendom*.

After this Conference, Mr. Serjeant *Wilde* speaking freely to some Friends about this Business, told them, he wonder'd the Lords should so much distrust their Judgments, as to desire a Conference about it. To see how good Wits agree! Surely, I believe he was of the Earl of *Pembroke's* Counsel, or the Earl of his, they jump so together. It seems in these Mens Opinions, the House of Commons can neither err in Conscience nor Judgment. Howsoever, that House thought it fit the Lords should be satisfied, that I was by Law guilty of High-Treason: and to that end sent up a Committee, *Jan. 2, 1644.* to make proof of it to their Lordships. At this Meeting, two Judges were present, Justice *Reeves* and Judge *Bacon*. The Managers of the Business against me, were three Lawyers, Mr. *Browne*, Serjeant *Wilde*, and Mr. *Nicolas*. Neither myself nor any of my Counsel there. What this will effect upon the Lords, Time must discover, as it doth the Effects of other Eclipses.

6 E 2

And

And thus far I had proceeded in this sad History by Jan. 3, 1644. The rest shall follow, as it comes to my knowledge.

[H. W. Next Day, the Archbishop receiving the News that the Bill of Attainder had passed in the House of Lords, broke off his History, and prepared himself for Death.]

Rushworth's
Hist. Collect.
Vol. V. p. 780.

The Reasons of the Commons for the Attainder of the Archbishop, were at a Conference Jan. 2. by Sergeant Wilde, Mr. Browne, and Mr. Nicolas, communicated to the Lords; who thereupon, on the 4th of January, passed the Ordinance of Attainder: whereby it was ordained, that he should suffer Death, as in Cases of High-Treason. And on the 6th of January it was ordered by both Houses, that he should suffer accordingly on Friday the 10th. But on the 7th, the Lords at a Conference acquainted the Commons with a Letter and Petition from the Archbishop, and a Pardon to him from the King, dated the 12th of April, 19 Car. of which he desired the Benefit: but the same was over-ruled and rejected. His Petition was, that in case he must die, Dr. Stern, Dr. Heywood, and Dr. Martin, might be permitted to be with him before and at his death, to administer Comfort to his Soul; and that the Manner of his Execution might be altered to Beheading. To which the Lords agreed, but the Commons then refused both; only granted, that Dr. Stern, and Mr. Marshal, and Mr. Palmer, should go to him; and one or both of the later to be constantly present, whilst Dr. Stern was with him. But the next Day, upon another Petition of his, setting forth Reasons, from his being a Divine, a Bishop, one that had had the Honour to sit in the House of Peers, and of the King's most Honourable Privy-Council, &c. praying, in those regards, not to be exposed to such an ignominious Death; the Commons consented to remit the rest of the Sentence, and that he should suffer Death by being beheaded. Accordingly on the 10th of January he was conducted from the Tower to the Scaffold on Tower-Hill; where being arrived, holding a Paper in his Hand, he spake to the People as followeth.

Good People,

Rush. Vol. V.
p. 781.

THIS is an uncomfortable time to preach, yet I shall begin with a Text of Scripture, Heb. xii. 2. *Let us run with Patience the Race that is set before us, looking unto Jesus, the Author and Finisher of our Faith; who, for the Joy that was set before him, endured the Cross, despising the Shame, and is set down at the Right Hand of the Throne of God.*

I have been long in my Race, and how I have looked unto Jesus, the Author and Finisher of my Faith, he best knows: I am now come to the End of my Race, and here I find the Cross; a Death of Shame: but the Shame must be despis'd, or no coming to the Right Hand of God: Jesus despis'd the Shame for me, and God forbid but I should despise the Shame for him. I am going apace (as you see) towards the Red Sea, and my Feet are now upon the very Brink of it; an Argument, I hope, that God is bringing me into the Land of Promise, for that was the Way through which he led his People; but before they came to it, he instituted a Passover for them, a Lamb it was, but must be eaten with four Herbs. I shall

obey, and labour to digest the four Herbs as well as the Lamb; and I shall remember it is the Lord's Passover: I shall not think of the Herbs, nor be angry with the Hand that gathereth them, but look up only unto him who instituted that, and governs these. For Men can have no more Power over me than what is given from above. I am not in love with this Passage thro' the Red Sea, for I have the Weakness and Infirmary of Flesh and Blood plentifully in me, and I have pray'd with my Saviour, *ut transfret Calix iste*, that this Cup of red Wine might pass from me; but if not, *God's Will, not mine, be done*: And I shall most willingly drink of this Cup as deep as he pleases, and enter into this Sea, yea, and pass thro' it in the Way that he shall lead me; but I would have it remember'd, good People, that when God's Servants were in this boisterous Sea, and Aaron amongst them, the Egyptians who persecuted them, and did in a manner drive them into the Sea, were drown'd in the same Waters, while they were in pursuit of them.—And as for this People, they are at this Day miserably misled; God of his Mercy open their Eyes, that they may see the right Way; for at this Day the Blind lead the Blind, and if they go on, both will certainly fall into the Ditch. Tho' the Weight of my Sentence be heavy upon me, I am as quiet within as ever I was in my Life. And tho' I am not only the first Archbishop, but the first Man that ever died by an Ordinance in Parliament, yet some of my Predecessors have gone this Way, tho' not by this Means.—Here is a great Clamour that I would have brought in Popery: I shall answer that more fully by and by. In the mean time, you know what the Pharisees said against Christ himself, If we let him alone, all Men will believe in him, *Et venient Romani*, and the Romans will come and take away our Place and Nation. Here was a causeless Cry against Christ, that the Romans would come: And see how just the Judgment was; they crucify'd Christ for fear the Romans should come, and his Death was it that brought in the Romans upon them: God punishing them with that which they most feared. And I pray God this Clamour of *venient Romani*, for which I have given no Cause, help not to bring them in: For the Pope never had such an Harvest in England since the Reformation as he hath now upon the Sects and Divisions that are among us.—This I shall be bold to speak of the King, our gracious Sovereign: He hath been much traduced also for bringing in Popery, but in my Conscience (of which I shall give God a very present Account) I know him to be as free from the Charge as any Man living, and I hold him to be as sound a Protestant (according to the Religion by Law established) as any Man in this Kingdom, and that he will venture his Life as far, and as freely, for it. And I think I do, or should, know both his Affection to Religion, and his Grounds for it, as fully as any Man in England.—I have been accused as an Enemy to Parliaments. No! I understand them, and the Benefit that comes by them, too well to be so; but I did mislike the Misgovernments of some Parliaments many Ways, and I have good Reason for it, for *Corruptio optimi est pessima*. There is no Corruption in the World so bad as that which is of the best thing within itself; for the better the thing is in Nature, the worse it is corrupted. And that being the highest Court, over which no other hath Jurisdiction; when it is misinform'd, or misgovern'd,

govern'd, the Subject is left without all Remedy: But I have done. I forgive all the World, all and every of those bitter Enemies which have persecuted me, and humbly desire to be forgiven of God first, and then of every Man, whether I have offended him or not, if he do but conceive that I have: Lord do thou forgive me, and I beg Forgiveness of him; and so I heartily desire you to join in Prayers with me.

Having ended his Prayers, and finding the Scaffold crowded, he desir'd they would give him room to die, that he might have an end of the Miseries he had so long endur'd; and coming near the Block, he said, *God's Will be done.* I am willing to go out of the World, none can be more willing to send me; and perceiving some People under the Scaffold thro' the Boards, he desir'd the Chinks might be stop'd, or the People remov'd, for he did not desire his Blood should fall upon their Heads. Sir John Clotworthy demanded of him, what was the most comfortable Saying a dying Man could have in his Mouth: He answer'd, *Cu-*

pio dissolvi & esse cum Christo. Sir John still press'd him with several impertinent Questions, to which his Grace answer'd with abundance of Meekness; and turning to the Executioner, he gave him Money, and said, Here honest Friend, God forgive thee, and I do, and do thy Office upon me with Mercy. Having made another short Prayer, he laid his Head down upon the Block, and pray'd a little time to himself, after which he said aloud, *Lord receive my Soul;* and this being the Signal, the Executioner immediately sever'd his Head from his Body at one Blow. He was buried after the manner of the Church of England, in the Church of *Allballows, Barking;* the very Day the Liturgy was abolished by an Ordinance of Parliament, and the Directory set up in the room of it. A Brass Plate was nail'd on his Coffin with this Inscription: *In hac Cistula conduntur Exuvie Guilielmi Laud, Archiepiscopi Cantuariensis, qui securi percussus Immortalitatem adiit Die X. Januarii, Aetatis suae 73, Archiepiscopatus XII.*



XLII. *The Trial of CONNOR Lord MACGUIRE*, at the King's-Bench for High-Treason, in being concerned in the Irish Massacre. Feb. 10. 1644. Hil. 20. Car. I.*

Rush. Col.
Vol. 5.
p. 729.

ON Monday the 11th of November 1644. the Prisoner was brought to the Bar of the King's-Bench to be arraign'd: By the Indictment he was charged, That he, together with Sir Phil. O-Neale, Philip O'Relly, Roger Moore Esq; Roger Macguire Esq; Toole O-Coule Clerk, (being a Roman Priest) Hugh Macmahone, and divers other Persons, false Traitors, unknown, as a false Traitor against the King's Majesty, his supreme Liege Lord, not having the Fear of God in his Heart, nor considering his Duty or Allegiance, but being seduced by the Instigation of the Devil, intending altogether to withdraw, blot out, and extinguish the cordial Love and due Obedience which faithful Subjects owe to their Sovereign; did, on the 20th of October, 17 Car. at Dublin in Ireland, in the Parts beyond the Seas, and at divers other Times, both before and after, as well at Dublin, as elsewhere, falsely, maliciously, and traitorously conspire, imagine, and compass utterly to deprive and disinherit the King's Majesty of his Royal Estate and Kingdom of Ireland; to bring his Majesty's Person to Death and Destruction; to raise Sedition, and breed and cause miserable Slaughter and Destruction amongst the King's Subjects throughout all the whole Kingdom; to make an Insurrection and Rebellion

against the King his Sovereign; to levy publick, open, bloody, and fierce War against the King in that Kingdom; to change and alter, according to their own Wills, the Government of the Kingdom, and the Religion there established, and totally to subvert the well-ordered State of that Commonwealth; to procure and bring in divers Strangers and Foreigners (not being the King's Subjects) in a warlike manner to invade that Kingdom of Ireland, and to levy War there.

And in execution of these their wicked Treasons and traitorous Conspiracies, 20 Octob. 17 Car. the Defendant, Connor Macguire, at Dublin, and divers other Times and Places, by one Toole O-Coule, and divers other Messengers, by him sent to Owen O-Neale, being then in Flanders, did move and incite Phil. O-Neale to levy and raise an Army in Flanders, and thence to bring that Army over into Ireland in an hostile manner, to invade that Kingdom.

And further, to put in execution their traitorous Purposes, the Defendant, together with Hugh Macmahone, Phil. O-Neale, Phil. O'Relly, Roger Moore, Roger Macguire, and Toole O-Coule the Priest, 20 Oct. 17 Car. at Dublin, and divers other Times and Places in Ireland, before and after, did traitorously conspire to enter into, seize, get into their own Power, and surprize the King's Castle at Dublin,

* This Macguire was one principally design'd for the Surprizal of the Castle of Dublin, and the securing or murdering the Lords Justices and Council, for which Intent he came purposely to Dublin the Day before; but the Plot being detected that Night, he fled disguised from his usual Lodgings at one Nevil's, a Chirurgion in Castle-street, and secretly hid himself at one Ker's, a Taylor in Cook-street, where he was found in a Cock-loft by John Woodcock, one of the Sheriffs of Dublin, standing with his Cloak wrapt about him in an obscure Place, in which Posture he was apprehended and brought before the Lords Justices and Council, where he made some sort of a Confession, upon which he was committed Prisoner to the Castle the 23d of October 1641. from whence he was sent into England the 12th of June following, and continued Prisoner there till the 18th of August 1644: when he made his Escape; but was retaken the 20th of October following.

lin, and all other the King's Castles and Forts in that Kingdom, and the Magazine therein. And at the same time unlawfully and traitorously did endeavour and actually attempt to gain into their Possession and Power, and to surprize the said Castle of *Dublin*, and the Munition therein.

That the Defendant, with the other Persons named, *Philip O-Neale* and others, further to bring to pass their most horrid wicked Treasons and Conspiracies, on the 22d of *October*, 17 Car. at *Charlemont*, and other Places, before and after, being armed and arrayed with a great Multitude in a warlike manner, with Banners displayed, Drums, Swords, Staves, Guns, and other invasive and defensive Weapons, did falsly and traitorously prepare and levy open, fierce, and bloody War against the King's Majesty; and the same 22d of *October*, seized and surprized the King's Fort at *Charlemont*, and then and there maliciously and traitorously did kill and murder *Toby Lord Calfield*, *Francis Davies*, and others of the King's Subjects, that were Protestants.

That the Defendants, 4 *Junii*, 18 Car. at the Castles of *Keilagh* and *Cragan*, and other Times and Places, before and after, levied War, seized and surprized those Castles, and did kill and murder *Owen Powell* and *William Cofens*, and many other of the King's Protestant Subjects in that Kingdom.

Which several Offences are laid against his Duty and Allegiance against the Peace of the King's Crown and Dignity, in manifest Breach and Contempt of the Laws and Statutes of this Kingdom.

The Defendant pleaded Not Guilty. And being demanded how he would be tried;

The Copy of the Plea.

HE pleaded the Statute of *Magna Charta*, 10 Feb. 9. Hen. iii. That none should be condemned but by Trial of his Peers; and pleaded the Statute of 10 Hen. vii. That all the Statutes made in *England* should from thenceforth be in force in *Ireland*.

And pleaded, That before the Time of the several Treasons charged in the Indictment, *Bryan Macguire*, his Father, by Letters Patents was created Baron of *Enniskillen*, in *Ireland*, to him and the Heirs Males of his Body: By force whereof his Father was seized of the Barony in Fee-Tail, and 1 Feb. 12 Car. died so seized; after whose Death the Barony descended to the Defendant, by virtue whereof he was a Baron of *Ireland*. And that at a Parliament held at *Dublin*, 16 March, 16 Car. which was there continued till the 7th of *August* after, and then adjourned to the 9th of *November* following, and then prorogued to the 24th of Feb. thence next following, and from thence continued till the 24th of *June*, 18 Car.

That he was as one of the Noblemen and Peers of that Parliament; and that the 23d of *October*, 17 Car. he was arrested and imprisoned upon pretence of the several Treasons in the Indictment mentioned, and there continued till the 12th of *June*, 18 Car. when he was brought against his Will to *Westminster*, and thence committed to the *Tower of London* in strict Custody. And averred his Plea, and prayed that he might be tried and judged by his Peers in *Ireland*.

Whereunto the King's Counsel demurred in Law, and the Defendant's joined in the Demurrer.

Upon this Plea * of the Lord *Macguire*, the beginning of *Hilary* Term, Judge *Bacon* delivered his Judgment, That a Baron of *Ireland* was triable by a Jury in this Kingdom. After which, the House of Commons declared their Assent unto his Opinion in this following Vote.

Die Sabbati, 8 Feb. 1644.

RESolved upon the Question, That the House doth approve of the Judgment given by Master Justice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treason in the *King's-Bench*; and the Judge is hereby required to proceed speedily thereupon, according to Law and Justice. The Lords Concurrence to be desired herein; Master Recorder is appointed to carry it up.

Upon this Vote of the Honourable House of Commons, the House of Peers afterwards declared their Concurrence; and thereupon this ensuing Order was passed by both Houses of Parliament.

Die Lune, 10 Feb. 1644.

ORDered by the Lords and Commons in Parliament assembled, That the said Houses do approve of the Judgment given by Master Justice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treason in the *King's-Bench*; and the Judge is hereby required to proceed speedily thereupon, according to Law and Justice.

John Brown, Cler. Parl.

Hen. Elsing, Cler. Parl. D. C.

ON Monday Feb. 10. the Lord *Macguire* was brought from the *Tower of London*, by the Guard belonging thereunto, unto the *King's-Bench* Bar; where he was arraigned by the Name of *Connor Macguire*, alias *Cornelius Macguire* Esq; (for his Plea of Peerage was found invalid, and so declared by the Court; and that Opinion of the Judge was since assented unto, and confirmed by both Houses of Parliament.) At his coming to the Bar, the Prisoner spake as followeth.

Macguire. I do humbly move, that I may have time allowed me by this Court to send for my Witnesses.

* Judge. You have had a long time; you were indicted about the beginning of the last Term, you might have prepared Witnesses the last Term.

Mac. I did not expect a Trial.

Judge. You should expect it at your Peril.

Mac. I was told, when I came into the Kingdom, that I might have Witnesses.

Judge. The Proof lies upon the King's part.

Mac. Tho' the Proof be of the King's part, yet I must have time to clear myself.

Judge. But if every Man should ask so much time as you require, he should never come to his Trial.

Serj.

* See Mr. Prynne's long Argument of this Point, intituled, *The Case of the Lord Macguire, in State Trials, Vol. VIII. p. 335.* See also Hale's H. P. C. Vol. I. p. 155.

Serj. *Whitfield*. Mr. Justice *Bacon*, we know that my Lord *Macguire* was indicted here the last Term; he was arraigned at this Bar, he pleaded *Not Guilty*, he could not but expect that he should then have been tried, if it had not been for the Plea of Peerage which he then put in: upon which he knows there was a deliberate Dispute, and he could not tell but that there would be an end before this time; and if he had any Witnesses he might have sent for them the last Term. But it is a very unusual Course, especially in that he could not but expect that he should be tried before this time; but then the Court did conceive this was a legal Information. No Place is mentioned by the Prisoner where the Witnesses should be, nor are they named who they are, nor any particular thing that they should testify; but the Proof lies clear on our part: there's no Justification in Treason; if we prove that this Lord hath committed Treason, there's no Justification of that, by any Witnesses he can produce.

Judge. The Lord *Grey*, that was Lord-Deputy of *Ireland*, committed his Treasons in *Ireland*, for which he was brought over hither, and try'd here; yet the Court did not stay for his sending over into *Ireland* for Witnesses.

Mac. I desire Witnesses.

Judge. What can your Witnesses say for you? Can they say thus much, That you did not conspire, as this Indictment charges you? That there was no taking of these Castles? Can they swear in the Negative? The Proof lies in the Affirmative on the King's part.

Mac. They may be mis-informed.

Judge. Who may be mis-informed?

Mac. The Court. I have been kept close Prisoner a long time, and could not provide my Witnesses.

Serj. *Whitfield*. If we were not tied to that, to nothing but his own Confession, there's enough to condemn him: for that he says he was kept close Prisoner, he might have desired that the last Term.

Serj. *Roll*. If we go upon your own Examination, the Witnesses concurring with that, what can you have?

Judge. If you had Witnesses here, we would hear them; but to stay upon a mere verbal Supposal for those Witnesses in *Ireland*, they may be in that Rebellion too, and they will never come hither, and so the Matter must never come to a Trial.

Mac. I desire that it may be the next Term.

Judge. We cannot protract Time; they are the King's Witnesses, there are (I suppose) divers here, many Witnesses of the King's come out of *Ireland*; if you will ask them any Questions for your Defence, you shall. There are many Witnesses of the King's that know how Things were in *Ireland*, the Court shall put them to speak.

Mac. I humbly desire to have a formal Trial.

Judge. In what respect do you mean? I think it is so now. Now you are come to be arraigned, and the Evidence is to come in against you, I conceive it is a formal one.

Then the Prisoner was required to hold up his Hand at the Bar; and it was demanded, if he would challenge any of the Jury that were to pass upon him in the Matter of Life and Death.

Then the Jury being called, he looked upon them, and challenged those which did appear, being Twenty-three; there being only One absent. Being demanded whether his Challenge was pe-

remptory or no? he answered, It was for Causes best known to himself.

Jury challenged.

Sir William Browne	John Pawlet Gent.
Kt. and Baronet.	Thomas Pollock Gent.
Sir Henry Row,	Henry Smith Gent.
Sir Matthew Howland,	Francis Child Gent.
Thomas Marsh Esq;	Edward Wilford Gent.
Thomas Wilcox Esq;	William Vincent Gent.
William Lane Esq;	John Barnes,
Edward Rogers Esq;	John Arnold,
Edward Claxton Esq;	John Hucksley Esq;
Richard Zachary Esq;	Sir James Harrington Kt.
Humphrey Westwood Esq;	Thomas Moore Esq;
John Jackson Esq;	Henry Arundell Gent.

Serj. *Whitfield*. The Prisoner hath challenged all the Jury that does appear; Twenty-three appear, and he hath challenged them, and his Challenge is for Causes best known to himself, which is a peremptory Challenge. Truly, it is that which the Law doth allow, and we do not oppose it; but we do desire that we may have another Writ returnable To-morrow.

Judge. You must have a *Venire Facias*.

Serj. *Whitfield*. This Cause is a Cause of very great weight, there are many Witnesses that have long attended in Court, we are informed that some of them are gone away into *Ireland*; that there is the Sheriff of *Dublin*, and some others that are now present in Court, that cannot be here, if we should defer this Trial, as the Prisoner doth desire: and we do desire that it may be referred till To-morrow, we shall be ready to give in Evidence against him.

Judge. He hath spent three Days this Term already, this is the fourth: we would have proceeded now, but for his peremptory Challenge; but if we stay till To-morrow, he must be content to be try'd by a meaner Jury.

Mr. *Prynn*. This being a publick Case, we desire a speedy Progress in it: our Witnesses have been long detained here, and cannot attend till the next Term, some of them being to depart within two Days.

Judge. A publick Case must have publick Justice on both Sides: for your Witnesses, you shall stay your Witnesses here. We must do that which the Law doth allow.

Serj. *Whitfield*. The Law does allow of his peremptory Challenge; we desire to have a new Writ, and that it may be returnable To-morrow. For the doing of it, we shall leave it to those that are to prosecute it; and to the Sheriff. We see that this Cause cannot be try'd this Day, we desire we may have a speedy end of it; there have been many Days spent in it, and we that are of Counsel for the King do desire that we may confer together, departing the Court for some time; and when we have conferred together, we will return to the Court again, and then we will propound to you what Course we do desire for the speedy Trial of this Cause.

To this Motion the Judge assented, and Serjeant *Whitfield* and the rest of the Counsel went to consult together about it; and after a short stay, upon their return, Serj. *Whitfield* spake thus:

Serj. *Whitfield*. We that are Counsel for the King have consulted together with the Clerk of the Crown, and the Secretary; we have withdrawn ourselves, and perused several Precedents, and we do

do find by several Precedents, that whereas a peremptory Challenge shall be, it is in the Power of the Court to order the Course of Trial, and the Course is this: There goes a Writ to the Sheriff, that he shall distrain all them that make default, and that he shall amove those that are challenged by the Prisoner; and further, that he shall return so many more for the Trial. This we conceive to be the constant Course of this Court; and in this Case my Lord *Macguire* having challenged 23 of the 24, we are to distrain the other that made default, and to amove the 23 that he hath challenged of them, and have a *Tales* returnable To-morrow for a new Jury.

Serj. *Roll*. That was in *Standish's Case* and *Friar's Case*.

Judge. I know the Court may grant a *Tales*, but the Matter is, whether it can be done so soon as To-morrow or no, if the Sheriff can do it To-morrow.

Serj. *Whitfield*. We do find this in the Precedent of *Friar*, that in 3 *Hen. VII.* the Jury did appear on *Friday*, and all those that did appear were challenged, and there was a *Disfringas* returned the next Day, which was *Saturday*. It may be immediate.

Judge. Then make your *Disfringas* against To-morrow Morning, make out a *Quadrageinta Tales* against To-morrow.

Mac. I desire I may not be so severely dealt with.

Judge. It hath been so often-times, and the Court doth proceed in these Cases *de die in diem*, from Day to Day; and there is no Difficulty in the granting of it, but whether the Sheriff can return it so soon. If the King's Counsel will have it To-morrow, the other Business of the Court must be put off.

Hereupon the Prisoner was discharged, and a Rule granted to the Lieutenant of the *Tower*, to bring him again the next Day.

On *Tuesday, Feb. 11*, the Lord *Macguire* was again brought to the *King's-Bench Bar*, where he made a Motion that his Plea of *Peerage* might be referred to another Court. To which it was answered;

Serj. *Whitfield*. We know not for what end this Motion is, and we know this, that this is no time for my Lord to make this Request; for you know how far we have proceeded: He hath been arraigned, and indicted for High-Treason, and one Jury he challenged, the other is returned, so as now he is in the way of his Trial; we are now to proceed with such Evidence as we have, to prosecute instantly. We do not desire this to be produced again, and if it be, we know not how it could be material one way or other.

After this, the Lord *Macguire* further urged the Court to the former Purpose: to which it was answered, That he was then brought to his Trial as a Prisoner upon the Indictment, and that both the Lords and Commons had approved of the Opinion of the Court therein.

Mac. Please you, Sir, one Word more: I desire to appeal to the Lords.

Serj. *Whitfield*. When one is come here, to appeal to the Lords, that was never known: now you have put yourself upon the Country.

Mac. Under favour, I conceive I may, to an higher Court.

Judge. It cannot be granted, the Lords approved it: if you would have gone to an higher Court before, you might have taken your Course; now the Jury is returned, and you are appointed to be try'd here.

After this, the Lord *Macguire* desired further to appeal; to which the Answer was:

Serj. *Whitfield*. Here lies no such Appeal here: you are out of the Ecclesiastical Court, there is no such Plea here; you are now upon the Middle of your Trial, we desire you may go on, you have challenged 23 of the Jury already.

Judge. We have no such Course in the Common Law; if a Man will appeal from me, I cannot let him appeal to any Man.

Upon this, these of the Jury following were named, which he challenged; viz *George Hanger Esq;* Sir *Michael Wharton*, *James Hawley Esq;* *George Smith Esq;* *Edmund Besley Esq;* *William Ewerby Esq;* *Stephen Bourman Gent.* *George Weaver-Basset*, *J. Nicolls the Younger*, *Henry Walker Gent.* *Randolph Nicoll*, *Andrew Brent*. Upon his challenging of these, which being added to the rest, make 35 in all, the other Jury being about to be called, the Lord *Macguire* moved:

Mac. Under favour, I conceive, that my Lands being sequestred, those Men that have bought my Lands, should not pass upon my Trial; and therefore I desire they may make answer to it upon Oath, whether any of them have adventured or no.

Serj. *Whitfield*. To desire that a whole Jury may be demanded such a Question upon their Oath, is that that hath not been known. If my Lord *Macguire* have cause now against any, he hath run out the Liberty which the Law gave him, to challenge 35 peremptorily. Now if he should challenge any more, he must make a particular Challenge to every particular Man that comes to be sworn, and he must have such a Challenge notwithstanding as is warrantable by Law; but this general Challenge is not warrantable by Law, and if it were particular, it were not warrantable neither.

Serj. *Roll*. If you will challenge any more, the Law does not debar you to shew cause.

Mac. I conceive, that any that have given Money for *Ireland* for my Destruction, ought not to pass against me.

Serj. *Whitfield*. This is for the King, this is for no particular Person whatsoever.

Mac. I beseech you hear me in it.

Judge. You know this, that the King cannot grant it without the Consent of both Houses, and in this Case it may be put to the Jury to try upon their Oath. Thus far I shall agree, that if any of this Jury be to have any particular Benefit in *Ireland*, of Land or Goods by his Attainder, it is good; but if his Lands come to the King, and that the King is no way bound to give it any of them, it is no Challenge: look the Statute.

Mr. *Prynn*. Under favour, Mr. Justice *Bacon*, it doth not appear to the Court, that the Prisoner hath any Lands or Goods in *Ireland*; and therefore no such Question is to be demanded of the Jury.

Judge. You may make needless Disputes upon it.

Then the Jury being accordingly required to answer upon Oath, whether they had adventured, or had any Share in *Ireland* for the Rebels Land; *Macguire* desired the Question might be, Whether they themselves, their Children, or Brothers? But that would not be agreed unto, as being unreasonable.

Then

Then the Jury following was sworn: *I. Carpenter, John Cooper, A. Cordall, Rich. Atkinson, Josias Hendall, William Greenwood, William Barnes, Robert Stiles, George Norfolk, Edward Hudson, John Wait, Esab Risby.* The Oath which they took was this:

You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and Connor Macguire Esq, now Prisoner at the Bar, and a true Verdict give according to your Evidence.

The Jury being sworn, *Macguire* moved that he might have a Jury of 24; to which it was answered;

Judge. There have been 40 named.

Mac. Under favour, I conceive, I ought to be try'd by 24; there were so many returned at first.

Judge. They returned 24; that is, because if any of them did fail, and some may be challenged, then there might be twelve left.

Mac. Under favour, I conceive, there should be 24 now left for my Trial.

Judge. You are deceived in that. You challenged 23, and so there were 40 more added; now you have challenged 12 of this 40, and out of them their remains so many as will make up a Jury of 12.

Then the Court proceeded to his Trial, and the Indictment against him was read.

Clerk. Gentlemen of the Jury, Upon this Indictment he hath been arraigned, and to his Arraignment he hath pleaded *Not Guilty*, and thereupon put himself upon his Country; and your Charge is, to inquire whether he be guilty of the Indictments, or any of them: If you find him not guilty, you are to declare it; if guilty, then you are to give in your Verdict accordingly.

Then these Witnesses following were sworn to give in Evidence against the Prisoner: The Lord *Blaney*, Lady *Calfield*, Sir *Arthur Loftus*, Sir *John Temple*, Sir *William Stewart*, Sir *Francis Hamilton*, Sir *Edward Borlace*, Sir *William Cole*, Sir *Charles Coot*, Mrs. *Wordrofe*, *John Carmick*, *Walter Gubson*, *M. Bunbury*, Captain *Michael Balfoure*, Captain *Berisford*.

Sir William Cole's Testimony.

Serj. Whitfield. You know, Sir *William Cole*, a great many of their Names, which you have heard, that were Conspirators with this Lord; what Religion were they of?

Sir W. Cole. They were all Papists.

Serj. Whitfield. Who were they?

Sir W. Cole. The Lord *Macguire*, Sir *Phelim O-Neal*, *Roger Moore*, &c.

Serj. Whitfield. Sir *Francis Hamilton*, upon what occasion was it, that the Conspirators got an Order to view the Magazine?

Sir F. Hamilton. I was a Member of the House of Commons there, and I remember very well there came a Message from the House of Lords to the House of Commons, to let them know, that there was some Plot for the blowing up of the Parliament-House in *Ireland*; and they sent a Message, to desire that they might search under the Parliament-House: and there was a Search made, and (as I remember) the Lord *Macguire* was one of the Committee from the House of Lords made

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search there; but what they found, I do not know. Afterwards they desired that they might search the Castle of *Dublin*, and other Magazines.

Counsel. What was the Cause?

Sir F. Hamilton. There was a Coachman of my Lord of *Strafford's*, that had utter'd some big Words, (as was given out) That the Parliament-House should be blown up: but what was the Ground, I am persuaded in my Conscience, it was to know where the Store and Ammunition lay, that they might know where to surprize it.

Sir William Stewart's Testimony.

I was one of the Committee that was sent by the Parliament, and by Order from the House of Lords, to search the Parliament-House, and the Lord *Macguire* was one of the Lords: they made a very strict Search, and then they inquired for the King's Magazine, and I believe my Lord *Macguire* now here was one of the Committee that went to search for the House of Lords, and he did search very narrowly, and they were desirous to know where the Store was.

The Lord Blaney's Testimony.

Counsel. Whether this Search were moved by the Lord *Finghall*, and what was the End of it?

Ld. Blaney. So near as I can, I will give you the Business; it is so long ago. This I remember, that there was one of the Lords House, whether it were my Lord *Finghall* or my Lord *Macary*, moved it, I cannot certainly depose, but I am sure it was one of them. This Occasion was, one of the Earl of *Strafford's* Coachman said, he hoped to see some of the Lords blown up for it; it was about a Fortnight after the Earl of *Strafford* was beheaded here. Thereupon they got an Order for it, and so they went down, and they did not find the Powder, but they made as narrow a Search as ever any was. I asked what the Meaning was of this, for we had strange Censures of it ourselves. Says one of them, the Lord *Clamorris*, they are afraid of a Powder-Plot of the Protestants. I answered, that I had heard of a Powder-Plot of the Papists, but never of the Protestants in my Life. But if you ask the Reason of it, it was to assure themselves of their Strength, for we found by woful Experience afterwards it was their end. My Lord *Borlace* said, Let them not be afraid, for upon my Honour there is no Powder below. It's a great House, the House of Commons sit on one side, and the Lords on the other, and the Block-House in the Middle.

Counsel. What Religion is my Lord *Finghall* and my Lord *Clamorris* of?

Ld. Blaney. The Lord *Finghall* is a Papist, and *Clamorris* a pestiferous Papist.

Serj. Whitfield. All Papists. We shall now read the Examination of the Manner of his taking, and then his own Examination. The first we shall read, is this of Mr. *Woodcock*, that was Sheriff of *Dublin*; he was in Town, but he could not stay, but he was examined before this Court.

The Information of John Woodcock the 27th of October 1644. taken upon Oath before J. Bacon.

THE said Examinee depofeth and faith, That he being one of the Sheriffs of the faid City of *Dublin*, in the Year 1641, having Notice given him in the Night upon the 22d of *October* in the fame Year, of fome great Design intended, did by Virtue of his Office walk up and down the City that Night; and coming to the Houfe of one *Nevil*, a Chirurgeon in *Castle-street*, he underftood by the faid *Nevil*, that the Lord *Macguire* with fome ten or twelve others were there: this Examinee told him it was fit for his Guefts to be in bed at that time of Night; but the faid *Nevil* did bring this Examinee word, that the Lord *Macguire* and his Company were then going to Bed. The faid Examinee departed, fetting a Watch near his Houfe; by which Watch he was informed, that the faid Lord *Macguire* and the reft were gone from the Houfe, and were at the Houfe of one *Kerne* a Taylor: whereupon he fearched the faid Houfe, and there found fome Hatchets with the Helves newly cut off clofe to the Hatchets, five Petronels, five or fix Swords, three or four fmall Piftols, five or fix Skeines, with other Arms of the Lord *Macguire*'s in an Houfe of Office in the faid Houfe; in another Place divers Pole-Axes, and alfo behind a Hen-rooft fome great Weapons with fharpe Pikes of Iron in one end of them: the faid *Kerne* affirming, that he knew nothing of any of the Particulars before-mentioned, nor how they came in his Houfe. The faid Examinee fhewed all the faid Inftuments unto the faid Lords Juftices and Council of *Ireland*; and thereupon the faid Lords Juftices and Council commanded Search to be made for the faid Lord *Macguire*. Upon which, the faid Examinee fearching narrowly for him, at laft found him in a Cock-loft, with a Cloke wrapt about him, ftanding by a Bed, the Door lock'd upon him, there being no Key to be found; as alfo the Mafter of the Houfe flying away, and making an Efcape to the Enemy.

After this, the Lord *Macguire*'s own Examination was read, taken the 26th of *March* 1642, (for as Sir *John Temple* declared to the Court, the Lord *Macguire* was then brought to the Council-Board, and they could get nothing out of him) whereupon he was fent back to Prifon for that time.

The Examination of Connor Lord Macguire, Baron of Ennifkillen, taken before us, Charles Lord Lambert, and Sir Robert Meredith Kt. Chancellor of his Majefty's Court of Exchequer, the 26th Day of March, 1642, by Direktion of the Right Honourable the Lord Juftices and Council.

WHO being examined, faith, That about the time when Mr. *John Bellew* came out of *England* with the Commiffion for the Continuance of the prefent Parliament, *Roger Moor*, in the faid *Moor*'s Chamber, in the Houfe of one *Peter de Costres* of this City, acquainted him this Examinee, That if the *Irish* would rife, they might make their own Condition, for the regaining of their own Lands, and Freedom of their Religion. At which time the faid *Moor* alfo acquainted him this Examinee, That he had fpoken with fundry of *Leinfter*, who would be ready for that Purpofe: and withal told him this Examinee, That he was

affured a good Part of *Conaught* would do the like; and thereupon moved this Examinee to join likewise with them, with all he could make: unto which Motion, he this Examinee yielded. And the next Day following, there was a Meeting in his the faid *Moor*'s Chamber aforefaid, where were Col. *Mac-Bryan*, *Macmahone*, *Tirelagh O-Neal*, *Philip Mac-Hugh O-Rely*, this Examinee, and *Roger Moor*; where Difcourfe was had on that Bufinefs, yet nothing concluded on, fave that *Roger Moor* and the reft fhould go and prepare their Parties. And this Examinee further faith, That about *May* laft he this Examinee, *Roger Moor*, *Philip O-Rely*, and *Roger Macguire* this Examinee's Brother, difpatched a Prieft, one *Toole O-Cocle*, who lived in *Leinfter*, unto *Owen O-Neale* into *Flanders*, to acquaint him with the Bufinefs concerning the general Rebellion then in Preparation; which faid Prieft returned about a Month before the time appointed for Execution thereof. And the Answer which the faid Prieft brought from the faid *Owen O-Neale*, was, That he would (within fifteen Days after the People were up) be with them, with his beft Affiftance and Arms. And it being demanded why the faid *Owen* fhould bring Arms, confidering that the *Castle of Dublin* was to be taken, with the Arms therein; this Examinee answered, That they fo provided for Arms, that they might not want any, in cafe they could not take the faid *Castle*, whereof they doubted. And this Examinee acknowledgeth, That the *Castle of Dublin* was to have been furprized by himfelf, Capt. *Bryan O-Neale*, Capt. *Con O-Neale*, Capt. *Macmahone*, one *Owen O-Rely*, *Roger Moor*, *Hugh Macmahone*, Col. *Plantet*, and Capt. *Fox*; and likewise further acknowledgeth, That *Hugh Mac-Phelim*, Capt. *Con O-Neale*, and *Bryan O-Neale*, brought from *Owen O-Neale*, out of *Flanders*, the very fame Message which the faid Prieft brought. And this Examinee further faith, That he was told by *Roger Moor*, that a great Man was in the Plot, but he might not name him for the prefent. And at another time, and during the fitting of the Parliament the laft Summer, he this Examinee was informed by one *John Barnwell* a Francifcan Fryar, then refident in this City, That thofe of the Pale were alfo privy unto the Plot, (meaning the prefent Rebellion.) And laftly faith, That of thofe Perfons who came to attend him this Examinee for the Surprize of the faid *Castle of Dublin*, only *Cobonogh Macguire* was privy unto the Bufinefs in Hand; and that the laft Meeting (when the Day appointed for Execution thereof was refolved on) was at *Logh-Roffe*, where were prefent only *Ever Macmahone*, Vicar-General of the Diocefs of *Clogher*; *Thomas Mac-Kearnan*, a Fryar of *Dundalk*; Sir *Phelim O-Neale*, *Roger Moor*, and *Bryan O-Neale*.

Concordat cum Originali Ex. Charles Lambert, per Parl. Harris. Robert Meredith.

This being read, and opened unto the Jury, being the Lord *Macguire*'s free and voluntary Confeflion, which he afterwards acknowledged, fince his coming to the *Tower*, viz.

Memorandum, That this within written being fhewed and read unto the within-named Lord *Macguire*, and himfelf having perufed the fame, his Lordfhip did acknowledge the fame to be true in all things, faying that he doth not now acknowledge that *Barnard* told him, That thofe of the Pale were privy to the Plot; neither doth acknowledge,

ledge, that *Cobonagh Macguire* was privy to the Plot before his coming to *Dublin*.

This Examination and Acknowledgment was made and taken the 22d Day of June 1642. Anno Regni Caroli Regis decimo octavo, before us.

John Bramston, Thomas Mallet.

In the Presence of John Conyers, William Ayloffe, Nathaniel Finch.

June 24, 1642. The Examination of Connor Lord Macguire, Baron of Enniskillen, taken before Sir John Bramston, Knight, Lord Chief Justice of the King's-Bench.

WHO saith, that he is of the Age of Twenty-six Years and upwards, and that he was born in the County of *Fermanagh* in *Ireland*; and saith, That his Examination taken at *Dublin* the 26th Day of *March* 1642, before *Charles* Lord *Lambert*, and *Sir Robert Meredith*, with his Acknowledgment thereof the 2d of *June* before Judge *Bramston* and Justice *Mallet*, is true in such manner as in the said Examination and Acknowledgment is expressed.

Connor Macguire.

The Examination of Cornelius Macguire, Lord Baron of Enniskillen in Ireland, taken before Isaac Pennington Esquire, Lieutenant of the Tower of London, and Laurence Whitaker Esquire, two of his Majesty's Justices of the Peace for the County of Middlesex, the first Day of October 1644.

HE denieth the receiving of any Letters or Messages out of *England* before the Rebellion, nor did he ever hear of any. He saith, he was but a mean Instrument in the Design in *Ireland*; he confesseth he intended to seize upon the Castle of *Dublin*, and the Magazine there, and keep it till they had Redress of some Grievances, which they purposed to propound to the Parliament there; one whereof was, to have a Toleration of the *Roman Catholick* Religion. He confesseth, that he came accidentally to *Philip O'Rely's* House, as he came up to *Dublin*; and, as he remembereth, *Macmahone* was then there: and that his Intention of coming up to *Dublin*, was to put the aforesaid Design in execution, and that then and there they had Speech about that Design; but he remembereth not the Particulars: which Design was to be put in execution the 23d Day of *October* in that Year; and that he was taken there that very Day, being *Saturday*, upon Search made for him, carried before the Lords Justices, examined, committed, and sent over into *England*.

He saith further, That he made his Escape out of the *Tower of London* upon *Sunday* the 18th of *August* last about Four of the Clock in the Morning.

Laurence Whitaker, Isaac Pennington.

John Carmick's Testimony.

THAT upon the 21st of *October* 1641. *Fergus O-Howen*, one of the Followers of *Brian Macguire* Esquire, came to his Chamber in the Castle of *Enniskillen*; and after he endeavoured to bind him to keep secret a Matter of great Concernment, which *Fergus* said he had to disclose, and particularly to conceal it from *Sir William Cole*, and all other *Englishmen*; this Examine told him, He would be secret so far as it went with

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his Allegiance and Conscience. He discovered unto the said Examine, that the Lord *Macguire* and *Hugh Oge Macmahone*, accompanied with several *Irishmen* of the Counties of *Fermanagh* and *Monaghan*, did take their Journies out of the said Counties upon the 19th and 20th Days of *October* 1641, to the City of *Dublin*, with Resolution and Intent to murder and kill his Highness's Lord's Justices, and Council of the Kingdom of *Ireland*, and the rest of the Protestants there; and also to possess themselves of the City of *Dublin*, and to put all the Protestants there likewise to the Sword: and that to that effect there were other great Men, and others of the Papists of that Kingdom to repair unto, and meet them in *Dublin* on *Saturday*, the 23d of *October* 1641. or thereabouts. And that all the Castles, Forts, Sea-ports and Holds that were in the Possession of the Protestants in the several Counties and Provinces in the Kingdom of *Ireland*, were then also designed and resolved to be surprized and taken by the *Irish* Papists, and the Protestants in every of those Castles, Forts, Sea-Ports and Holds, to be then also put all to the Sword by the *Irish* Papists in *Ireland*, in their own several Parts and Limits, by Men thereunto chiefly and particularly appointed by the Contrivers thereof: and that especially the Town and Castle of *Enniskillen*, with the rest, would be taken, and all the Protestants in it put to the Sword; and therefore advised the Examine to get himself and Goods out of the Town: whereat the Examine smiling, *Fergus* bid him not to slight it, for he could assure those Things would come to pass in seven Days, or else he would be bound to lose his Head. Whereupon the said *Fergus O-Howen* departed, and the Examine acquainting *Sir William Cole* with it, there came one *Flartagh Mac-Hugh*, a Gentleman and Freeholder of that County, and affirms to the same effect to *Sir William Cole*, that the Plot for surprizing the City and Castle of *Dublin*, the Castle of *Enniskillen*, and all the Castles and Strengths in *Ireland*, was to be put in full execution by the Papist, *October* 22 and 23, 1641. throughout the said Kingdom; and that *Brian Mac-Conagh Macguire* Esq; did send him the said *Flartagh Mac-Hugh* to give notice and warning thereof to the said *Sir William Cole*, whom he earnestly desired to be upon his Guard upon *Friday* the 22d and *Saturday* the 23d of *October*; for the L. *Macguire* was gone with *Macmahone* and others, that Week, with purpose to possess themselves of the Castle and City of *Dublin*: And the L. *Macguire* had written his Letters to *Con O-Bourke*, *Owen O-Roreicke*, *Martagh Oge O-Fantagon*, and others, to go on with that Plot in those Parts; and had appointed his Brother *Rori Macguire* (in his absence) to command the *Irish* Papists of the County of *Fermanagh*, for the surprizing of the Castles and Houses of the Protestants. Of all which *Sir William* advertised the Lords Justices and Council of *Ireland* the same Day. And this Examine saith, that Captain *Mac-Hugh*, seven or eight Days before the Rebellion brake forth, declared, That the L. *Macguire* posted Letters, and rode up and down to divers Gentlemen and others of that County, to be very active in the Business: That it was averred upon the Oaths of *Flartagh Mac-Hugh*, *John Oge Mac-Hugh*, and *Terlagh Oge Mac-Hugh*, before the said *Sir William Cole*, that 150 Men were appointed to surprize the Castle of *Enniskillen*, under the Leading of *Don Macguire* and *Rori Macguire*, who were to murder the said *Sir William Cole*,

and his Wife, Children and Servants, and throw her over the Wall into the River, and then to do the like unto the Protestants in the Town and Corporation of *Enniskillen*: for which Service they were not only to have the Spoil and Riches of the said Castle and Town, but to have also the Barony of *Clanawley* granted and confirmed in Fee to them and their Heirs from the said Lord *Macguire* and his Heirs. The Examinee then also produced a Letter written in *Irish*, from the Lord *Macguire*, to his Cousin *Brian Macguire*, wherein taking notice that he was abundantly inclined to the *English*, which did very much trouble him; and therefore desired him to banish such Thoughts out of his Mind, and not to pursue those Resolutions which in the end might be his own Destruction, as he thought it would be to all those that did not appear.

Presently after, upon the 29th of *October*, one Captain *Rori-Macguire* took upon him the managing of all Business in his absence; he fortifies first the *Castle-Hafen*, the House wherein he dwelt himself, he took in the Castle of one *Edward Aldrich* Esq, he put out all the *English* there; he went to the Town, burnt that, but killed none of the Men; went thence to another Place, and hanged one *Eleazar M.* one that was Clerk of the Peace of the County; and from thence he went to *Newton*, four Miles off from it, took in the Town, strip'd and disarmed all the Protestants that were in the Church, the next Day after march'd away, and kill'd and destroy'd most of the *English* in those Parts; murder'd *Arthur Champion* Esq; and many more. Two and twenty Castles were seized upon, and the Church of *Monah*, with Eighteen Protestants burnt in it: Seven hundred ninety-four Protestants were destroyed in that County; and I did hear there was about One hundred and fifty-two-thousand, that they had destroyed in that Province of *Ulster*, in the first four Months of the Rebellion.

John Carmick.

Then Sir *William C.* (being present in Court) gave in his Evidence much to the same effect as in *Carmick's* Testimony.

Serj. *W.* We desire to shorten, we have a great many Witnesses; we shall go upon these Particulars: 1. Captain *O-Neale's* landing in *Ireland*, and what he brought with him. 2. *Guilo* and *Crocán*. Lastly, How long besieged, and how many murdered.

Then Sir *William Steward* gave in Testimony to this effect.

That *Con Owen O-Neale* landed in *July* the same Year the Rebellion began, brought many Commanders, much Arms and Ammunition; many of his Commanders, Nine of the chief of them, were taken Prisoners at one Battle.

Serj. *W.* It is his own Confession, that he sent a Priest over to fetch Arms to come into *Ireland*.

[Then the Lady *Calfield* was desired to declare her Knowledge concerning the taking of *Charlemont-Castle*.]

Lady *Calfield*. The 23d of *October* 1641. Sir *Pbelim O-Neale* and others came into the Castle, they seized upon all, murdered his Servants; and those that were alive, they bound them, and put them in Prison; and at that time Sir *Pbelim O-Neale* himself, and other of his Companions, told her, That *Dublin Castle and City, and most other Forts of Ireland* were surprized by their Confederates the *Papists*;

and that he was sorry for his Cousin the Lord *Macguire*, and that he was afraid he was taken.

Serj. *W.* What was done with my Lord *Calfield*?

Lady *Calfield*. He was murdered: he beg'd for his Life, and they durst not but do it.

Serj. *W.* When Sir *Pbelim O-Neale* had taken my Lord *Calfield*, then they got this Lady to write to the Lords Justices, that my Lord *Macguire* might be exchanged for her Son, but that would not be; and thereupon they murdered my Lord *Calfield*, *Francis Davis*, and others.

Mrs. Mary Wordrofe's Testimony.

That he came on *Friday* Night about 10 or 11 a-Clock to break into the Castle; I hearing the Noise, asked what was the matter? I went to call up some of our Gentlemen; when I came in again, they had taken some of our Gentlemen and bound them.

She also testified the murdering of the Lord *Calfield*, *Francis Davis*, and others; and the former Words concerning the Lord *Macguire*.

Serj. *W.* These two Witnesses prove that of *Charlemont*, how far the Rebels owned the Lord *Macguire*, as to endeavour his Exchange. We shall now come to the other Castles, how long they besieged them, and who was murdered.

Walter Gubson's Testimony.

They besieged it a Quarter of a Year before they took it; divers of the chief Conspirators, and *Powell* and *Cofens* took the Castle by force in an hostile manner.

Sir Francis Hamilton's Testimony.

Philip O-Relly came to the Castle, to *Guilo* and *Crocán* Castles, and they lay before it a Quarter of a Year with 2000 or 3000 Men, sometimes 1500, but never less.

Sir Charles Coote's Testimony concerning the Generality of the Rebellion.

Sir *Pbelim O-Neale* and *Roger Moore* were the Actors in the Massacres, and by publick Directions of some in place, and of the Titulary Bishops, for the sending of an exact Account of what Persons were murdered throughout all *Ulster*, a fourth Part of the Kingdom of *Ireland*, to the Parish-Priests in every Parish; and they sent in a particular Account of it; and the Account was an Hundred Four Thousand Seven Hundred in one Province, in the first three Months of the Rebellion.

Serj. *W.* What say you concerning the general Council and the Pope's Bull?

Sir *Charles Coote*. The Supreme Council, they took up a new Form of Government upon them of their own; and by this Authority it was granted to the Lady *Macguire*, that she should have the Rent of such Lands in Recompence of the Loss that he was at in their Causes. They have made several Judges of their own Courts: They print, they coin, they do all in their own Names.

The Copy of the Pope's Bull.

Ad futuram Rei Memoriam.

Urbanus Octavus, &c.

HAVING taken into our serious Consideration the great Zeal of the *Irish* towards the propagating of the Catholick Faith, and the Piety of the Catholick Warriors in the several Armies of that Kingdom (which was for that singular Ferocity in the true Worship of God, and notable Care

Care had formerly in the like Case, by the Inhabitants thereof, for the Maintenance and Preservation of the same Orthodox Faith, called of old, *The Land of Saints*; and having got certain Notice how, in Imitation of their godly and worthy Ancestors, they endeavour by force of Arms to deliver their thrall'd Nation from the Oppressions and grievous Injuries of the Hereticks, wherewith this long time it hath been afflicted, and heavily burdened, and gallantly do in them what lieth to extirpate, and totally root out those Workers of Iniquity, who in the Kingdom of *Ireland* had infected, and always striving to infect the Mass of Catholick Purity with the pestiferous Leven of their heretical Contagion: We therefore being willing to cherish them with the Gifts of those spiritual Graces, whereof by God we are ordained the only Disposers on Earth, by the Mercy of the same Almighty God, trusting in the Authority of the blessed Apostles *Peter* and *Paul*; and by virtue of that Power of binding and loosing of Souls, which God was pleased (without our deserving) to confer upon us; to all and every one of the faithful Christians in the foresaid Kingdom of *Ireland* now, and for the time militating against the Hereticks, and other Enemies of the Catholick Faith, they being truly and sincerely penitent, after Confession, and the spiritual refreshing of themselves with the sacred Communion of the Body and Blood of Christ, do grant a full and plenary Indulgence, and absolute Remission for all their Sins, and such as in the holy Time of Jubilee is usual to be granted to those that devoutly visit a certain Number of privileged Churches, within and without the Walls of our City of *Rome*: by the Tenor of which present Letters, for once only and no more, we freely bestow the Favour of this Absolution upon all and every one of them; and withal, desiring heartily all the Faithful in Christ, now in Arms as aforesaid, to be Partakers of this most precious Treasure.

To all and every one of these foresaid faithful Christians, we grant License, and give Power to chuse into themselves, for this effect, any fit Confessor, whether a Secular Priest, or a Regular of some Order; as likewise any other selected Person approved of by the Ordinary of the Place; who, after a diligent hearing of their Confessions, shall have Power to liberate and absolve them from Excommunication, Suspension, and all other Ecclesiastical Sentences and Censures by whomsoever, or for what Cause soever pronounced, or inflicted upon them; as also from all Sins, Trespases, Transgressions, Crimes and Delinquencies, how heinous and atrocious soever they be, not omitting those very Enormities in the most peculiar Cases, which by any whatsoever former Constitutions of ours, or of our predecessor Popes (than which we will have these to be no less valued in every Point) were designed to be reserved to the Ordinary, or to the Apostolick See: from all which the Confessor shall hereby have Power granted him to absolve the foresaid Catholicks at the Bar of Conscience, and in that Sense only. And furthermore, we give them power to exchange what Vow or Vows soever they were formerly strickt to (those of Religion and Chastity excepted) into any other pious and good Work or Works, imposed or to be imposed on them, and every one of them to perform in all the aforesaid Cases, by a wholesome Penance, according to the Mind and Will of the Confessor.

Therefore, by the Tenor of these present Letters, and by the Virtue of that holy strict Obedience, wherein all Christians are bound unto us, we charge and command all and every one of the Reverend Brethren, Archbishops, Bishops, and other Ecclesiastical Prelates, and whatsoever Ordinaries of Places now residing in *Ireland*, together with all Vicars, Substitutes and Officials under them; or these failing, we command all such to whom in those Places the Care of Souls is incumbent; that as soon as they shall have received the Copies of these our Letters, they shall forthwith, without any Stop or Delay, publish them, and cause them to be published throughout all their Churches, Diocesses, Provinces, Countries, Cities, Towns, Lands, Villages, and Places whatsoever.

Nevertheless we do not intend by these present Letters, where any publick or secret Irregularity is made known, or any Defection, Apostacy, Incapacity or Inability in any manner of way contracted, to dispense therewith, or grant to any other any Power or Faculty of Dispensation, Rehabilitation, or restoring the Delinquent to his former Condition, tho' but at the Bar of Conscience: Neither can nor should these our present Letters avail or be steadable to those, who by us and the Apostolick See, or by any Prelate or Ecclesiastick Judge, have been excommunicated, suspended, interdicted, or declared, and publicly denounced to have justly incurred the Sentences and Censures of the Church, till first they have satisfied and agreed with the Parties therein concerned, notwithstanding all other Constitutions and Apostolical Ordinations; whereby, nevertheless, the Faculty of Absolution in these, as well as other expressed Cases, is so reserved to his Holiness the Pope for the time being, that no kind of Jubilee, nor Power of granting such Indulgences can in any sort avail, unless express mention be made of the Fault or Faults in particular, and the whole Tenor of them fully deduced by an individual Relation from Word to Word, and not by general Clauses importing the same thing. This, or some other requisite Form of the like nature, being carefully observed, we in that case especially, expressly and namely, by the effect of these Presents, do totally abolish and remit them all and every one of them their Offences, notwithstanding any thing to the contrary.

Now that these principal Letters of ours, which cannot be conveniently brought to every Place, may the sooner come to the notice of all, our Will and Pleasure is, that any whatsoever Copies of Transcripts, whether written or printed, that are subscribed by the Hand of a Publick Notary, and which have the Seal of some eminent Person in Ecclesiastical Dignity affixed thereunto, be of the same Force, Power and Authority, and have the like Credit in every respect given unto them, as would be to these our principal Letters if they were shewn and exhibited.

Dated at *Rome* in the *Vatican*, or *St. Peter's* Palace, the 25th of *May* 1643. and in the Twentieth Year of our Pontificat.

M. A. Maraldus.

Serj. *Whitf.* We have troubled you with a long Relation of the Actions of the Confederates with the Lord *Macguire*, tho' not done in his own Person, and his own particular Act; but for this that was done by the Generality, I heard my Lord say

say at the Bar, What's that to me? Yes, my Lord, this is to you; you were one of the Conspirators in the first Plot, and you contrived the business. And that had been Treason alone, to send the Priest to fetch *Owen O-Neale* into *Ireland* with Arms and Soldiers: but you contrived this, and conspired it, and you are as guilty in Law, in all these cruel Murders and Burnings in every Place: For the Law of *England* is, in Treason you are all Principals and no Accessaries. Your Son was there, your Lady is rewarded; for the supreme Council they have taken care of you: Why! because you were one of the first Complotters of it; and this will light upon you, and fall very heavy. And for your Exchange, it was propounded for the Lord *Calfield*; but when they could not have that agreed upon, then what becomes of the poor Lord *Calfield*? murdered too! And you see what Incouragement you have from the Complotters, and from the Devil too; for they were both together in it. And now you have seen the Indictment fully made good.

Then the Lord *Macguire* proceeded to make his Defence, wherein he first of all denied his Examination, (altho' testified, as before, by so many credible Witnesses) and said, That he knew no such Examination.

That at the time of his Apprehension at *Dublin*, he came about his own particular Occasions, as his Estate was in Danger, if he did not follow it; That because he was found about the City, he was therefore apprehended; That his Lodging was not within the City, but he lodged without the City; That he did lodge at Mr. *Nevil's* House formerly, but not at this time; That for some of the Places mentioned, where he should be about the Conspiracy, he had not been there a Year before, he was certain of it. For the Number of Protestants that were mentioned to be slain, he said he did not think there were so many Protestants in the whole Kingdom; That he was continually either at his own House, or at *Dublin*, and knew nothing of the Plot, but by Hear-say.

Judge. You confess in your Examination, when the Day was for the Rising, that you were in the Conspiracy, and appointed for the taking of *Dublin-Castle*; and that you were taken when you came about it: also you rode about it, and provided Arms.

Mac. I was in the House in the Cock-loft where I was taken, I did not know where any Army was.

Serj. Whitfield. My Lord *Macguire* does forget himself, what he acknowledges under his own Hand.

Then the Examination being shewed him, he said, There's my Name, but not my Hand.

Judge. I am sorry to hear it: I did rather expect that you should have acknowledged it: Here are two able Witnesses that can testify it against you; your denying your own Hand, which is so manifestly proved, will be a great Discredit to what you say: You acknowledged it at two several Times.

Mac. What did I acknowledge?

Judge. You say that you came to *Dublin* to settle your Estate: By your own examination you acknowledged, That the Castle of *Dublin* was to be surprized by yourself. But it is now time we should draw to the Jury: You hear my Lord *Bramston* and my Brother *Finch* here justify it to you.

Then my L. *Macguire's* Examination was shewed to my L. *Blaney*, being present in Court, demanding whether he thought it to be *Macguire's* Hand, or no?

Lord *Blaney*. It is my Lord's own Hand, he hath written to me many Letters.

Mac. I don't think I have written many Letters to your Lordship.

Judge. Gentlemen of the Jury, you may go to the Business; if there were nothing that you see in this Case, but what is in the Examination, if you believe it to be his, his Confession does acknowledge it: You hear this by the Testimony of my Lord *Bramston* and my Brother *Finch* expressly, who were present when he did acknowledge it, and set his Hand to it; and yet you see, tho' it is here proved by my Lord *Blaney*, he denies it. If you find this to be true, here is Treason enough, and too much too; for he does here confess, That *Roger Moore* did acquaint him, That if the *Irish* did rise, they might make their own Conditions for regaining their Lands: And he acquainted him, that he had spoken with sundry in *Leinster*, that would be ready for that purpose; and that a great part of *Conaught* would do the like: and then moved him (this Lord) the Prisoner at the Bar, to join likewise with him, which he did; so then was the Plot. The next Day they met; he goes to *Moore's* Chamber-again, where Col. *Mac-Brian*, *Mac-Mabone* and others had Discourse again about it. Then he says, That they did send over to *Owen O-Neale*, to acquaint him concerning the general Rebellion in *Ireland*, then in preparation. He confesses expressly, That being demanded why the said *Owen* should bring over Arms, seeing the Castle of *Dublin* was to be surprized? he answered, That they so provided Arms, that they might not want any thing, if they should not take it, whereof they doubted. And then you have him acknowledging. That the Castle of *Dublin* was to be surprized by himself, and Captain *Brian O-Neale*, and others, These Words shew here expressly, That the Day whereon the Execution, was appointed, by the L. *Macguire's* own confession, he was come to *Dublin* for the Surprize of the Castle. So that it is apparent, that he was about this Plot expressly. If this be true, That you did conspire to make War or Rebellion within that Kingdom, tho' you were taken yourself before it was executed, yet it was your own Conspiracy: And besides, endeavouring after that to bring it to Perfection by sending over for Arms; all these do discover your own Intention to execute it.

Mac. I confess it not, I refer myself to the Jury.

Judge. Gentlemen, you are to know, That to conspire to raise a War, if any of that Conspiracy do act it, as you see here Sir *Phelim O-Neale* did, if you observe the Testimony of my Lady *Calfield*, he came and surprized the Castle of *Charlemont*, and then it was given out, That my Lord *Macguire* had taken *Dublin*; so that tho' it did not take effect, that which is done by any, is Testimony enough.

Go together and consider of it.

Upon this the Jury went together, and staying a short space, returned their Verdict, which was, That they found him guilty of all the Treasons according to the Indictment.

Clerk. Connor Macguire, alias *Cornelius Macguire*, thou hast been indicted for several High-Treasons, and thou hast been arraigned. Upon the Arraign-
ment

ment thou hast pleaded, Not Guilty; and for thy Trial hast put thyself upon the Country, which Country have found thee guilty, according to the Indictment: therefore prepare thyself to receive the Sentence.

Macg. I desire to know by what Law?

Judge. The Law is well enough known: That is a Treason within the Statute without doubt.

Macg. I was not tried by my Peers.

Judge. This is a general Exception, formerly annexed in your Plea: If you can shew some particular Cause also, you shall be heard.

Macg. I desire Counsel to advise me.

Judge. When you did put in a Plea therein, you had Counsel to advise you in your Plea, and to argue it: Now your Time is past for Counsel; you must have none assigned to pick Holes in the Indictment.

Macg. I desire the Court would consider of it before they proceed to Sentence.

Judge. You offer nothing to the Court that is of any difficulty: You had Counsel whether you should be tried by your Peers, or the Jury here; which Jury are to try any Man under a Nobleman in this Kingdom.

Macg. I desire to know under what Seal you thus proceed against me; for I think you sit here by the new Seal.

Judge. What Seal do you mean? I sit here by virtue of the old, by order of Parliament.

Macg. Under favour, I conceive that the Ordinance of Parliament for the new Seal, makes all done by the old Seal to be void.

Judge. Here is nothing done but by good Authority and the Parliament's Approbation.

Macg. I conceive the Ordinance for the new Seal cuts off all Proceedings of the old.

Judge. My Authority is not cut off: I was made by the old Seal before there was any new Seal, and so I am continued by the Parliament; and the Parliament did take notice that I have been allowed to sit. Besides this, there is nothing done in this Court by the new Seal: The Sheriffs are here by a Charter, and that comes in from Year to Year; and there is no Seal in order of Execution.

Judge. Well, if you have nothing to say for yourself, I am to pronounce Sentence, as I am a Minister of Justice. You have been indicted here for several Treasons contained in your Indictment, as was here of late read unto you; and you have had a fair Proceeding, and very deliberately: For your Indictment came in about *Alballowmas* last, three Weeks or a Month before the end of the last Term, three Weeks at least. You then made a Question, Whether you ought to be tried by your Peers in *Ireland*, or a Jury here? The Court did so far deliberate in it, as to allow you Counsel to plead with the best Advantage you could: And afterwards, this Term, there have been two Arguments at the Bar on each side, where hath been said as much for you as can be. The Court overruled that, and so you are tried by a Jury; and you had the Liberty to challenge them, and had all the Advantages that the Law will afford, and take all the Exceptions you could. Truly for my part, I see that there is not any one of them for me, to sway the Judgment: The Treason and the Offences that you are charged withal are very heinous, your Crimes very impious; great Destruction hath followed upon your Plot, which the Jury have found you guilty of. What a mighty cruel War

and great Devastation in that Kingdom? Most horrid to speak or rehearse! It is fitter for you now to bethink yourself what your Offences are, and prepare yourself for Death, rather than seek to mask or put colours upon those Things which are so manifestly proved to all the World. And now you are found guilty; and therefore there is no Contradiction or Gain-saying will avail you: You ought to repent, and pray to God to forgive that Offence whereof you are guilty. The Judgment that I am by the Law to pronounce against you, is this: *Connor Macguire* Esq; you being found guilty of the Treasons whereof you are indicted, your Judgment is, That you shall be carried from hence to the Place from whence you came, that is, the *Tower*, and from thence to *Jyburn*, the Place of Execution; and there you shall be hanged by the Neck; and cut down alive, your Bowels taken out, and burnt before your Face, your Head to be cut off, your Body to be divided into four Quarters, and the Head of your Body to be set up and disposed of as the State shall appoint. And the Lord have Mercy upon your Soul.

After Judgment pronounced, the King's Counsel demanded of him whether he would have any Ministers come to him, to prepare him for his end, and to advise him for the good of his Soul.

Macg. I desire none of them: But I desire I may be sent Prisoner to *Newgate*.

Counsel. His Reason is, Because there are some Popish Priests there.

Judge. That cannot be: Your Judgment is to return to the *Tower*; where you may have Ministers (if you please) to return to advise you for your Soul.

Macg. I desire that some Gentlemen of my own Religion may have Access to me, to confer with me; and some who are my Fellow-Prisoners in the *Tower*, to speak with me in my Keeper's Presence.

Judge. You must name somebody in particular.

Macg. I desire to confer with Mr. *Walter Mountague*. [*Belike he knew him to be a Popish Priest or Jesuit.*]

Judge. You must prepare yourself to die against *Saturday* next.

Macg. I desire a fortnight's Time to prepare myself.

Judge. That is too long a Space, and I cannot grant it; but you shall have convenient Time.

Macg. I desire you that I may have three Days notice at least to prepare myself.

Judge. You shall have three Days warning; but however delay no Time to prepare yourself.

Macg. I desire my Execution may be altered, and not according to the Judgment; and that I may not be hanged, and quartered.

Judge. This lies not in my Power to grant: But here are some Members of the House of Commons in Court, and you were best address yourself to them, that they may acquaint the House with your Desires.

Macg. I shall desire the Gentlemen of the House of Commons, so many as are here, to move the House in my behalf, that I may have a Fortnight's Time to prepare myself, and that the Manner of my Execution may be changed.

Sir John Clotworthy. My Lord, I have been your School-fellow heretofore, and I have found some Ingenuity in you; and I have seen some Letters of yours importing some Remorse of Conscience in you for this Fact; and I should be glad to discern the

the like Ingenuity in you still: And shall move the House that you may have some Ministers appointed to come to you; and likewise acquaint them with your other Desires.

Then the Prisoner departing from the Bar, Mr. *Prynn* advising him to confer with some godly Ministers for the Good and Comfort of his Soul; he answered, That he would have none at all, unless he might have some *Romish* Priests of his own Religion.

To which Mr. *Prynn* replied, my Lord, these *Romish* Priests are the chief Instruments who have advised you to plot and perpetrate those execrable Treasons, for which you are now condemned, and have brought upon you that shameful Judgment of a Traitor, the Execution whereof you even now so earnestly deprecated. Since then they have proved such evil destructive Counsellors to you in your Life, you have great Reason to disclaim them with their bloody Religion, and to seek out better Advisers for you at your Death, lest you eternally lose your Soul as well as your Life, for the Blood of those many thousand Innocents which have been shed by your Means. To which he, pausing a little, answered, That he was resolved in his Way. Whereupon another Lawyer said, My Lord, you were best to hear both Sides. To which he answered, in an obstinate Manner, I am settled on one Side already, and therefore I desire not to confer with any other. And so departed thro' the Hall towards the Tower, the People crouding and running about to behold his Person.

After the Sentence pronounced against the Lord *Macguire*, as before said, he petitioned the Parliament as followeth:

To the Right Honourable the Commons now assembled in Parliament, the humble Petition of the Lord Macguire;

Humbly sheweth,

THAT your Petitioner stands condemned for his Life, and adjudged to be drawn, hanged, and quartered: The Performance whereof (he humbly conceives) in some more favourable Manner, will be satisfactory to Justice. And forasmuch as your Petitioner hath hitherto enjoyed the Degree and Dignity of a Lord, which he humbly conceives your Honours are well acquainted with:

In tender Consideration whereof, he desireth that your Honour will graciously be pleased in Mercy to mitigate the Rigour of his Sentence, and turn it to that Degree which most befits the Denomination he hath: And as he hath been looked on by the Eye of Justice in his Condemnation, so in this Particular he may be pitied, and have Mercy.

And he shall ever pray, &c.

Cornelius Macguire.

But this Petition was rejected by the Parliament, and on Thursday, February the 20th he was drawn on a Sledge from the Tower thro' London, and so to Tyburn; where being removed into a Cart, he kneeled and prayed a-while: After which, Sheriff *Gibbs* spake to him, representing the Heinousness of his Crime, and the vast Numbers who had been murder'd by that Conspiracy, for which he was to suffer, and therefore exhorted

him to express his Sorrow for it; in answer to which he said, *I desire Almighty God to forgive me my Sins.*

Sheriff *Gibbs*. Do you believe you did well in those wicked Actions?

Macg. I have but a short time, do not trouble me.

Sher. Sir, it is but just I should trouble you, that you may not be troubled for ever.

Macg. I beseech you, Sir, trouble me not, I have but a little time to spend.

Sher. Sir, I shall give you as much time after as you shall spend to give Satisfaction to the People: I do require you, as an Instrument set in God's Stead here, to make an Acknowledgment to the People, whether you are sorry for what you have done or no, whether it be good or no.

Macg. I beseech you do not trouble me, I am not dispos'd to give you an Account. Pray give me leave to pray.

Dr. *Sibbald*. Give Glory to God, that your Soul may not be presented to God with the Blood of so many thousand People.

Sher. You are either to go to Heaven or Hell. If you make not an ingenuous Confession, your Case is desperate: Had you any Commission, or no?

Macg. I tell you that there was no Commission, that ever I saw.

Sher. Who were Actors or Plotters with you? or who gave you any Commission?

Macg. For God's Sake give me leave to depart in Peace.

Then they asked him, *If he had not some Pardon or Bull from the Pope for what he did?* To which he only answer'd, *I am not of the same Religion with you.* And being further urg'd about a Bull or Pardon, said, *I saw none of it; all that I knew, I deliver'd in my Examinations; all that I said in my Examinations are true; all that I said, is right. I beseech you let me depart in Peace.* And so not returning them any Answer to their Question, he continued mumbling over a Paper, which he had in his Hand, as he had done from his first coming. The Sheriffs commanded his Pockets to be search'd, whether he had no Bull or Pardon about him; but they found in his Pockets only some Beads and a Crucifix, which were taken from him. And then Dr. *Sibbald* said to him, Come, my Lord, leave these, and acknowledge your Offence to God and the World; one Drop of the Blood of Jesus Christ is able to purge away all the heavy Load of Blood that is upon you: It is not your *Ave Maria's*, nor these things, will do you any good; but it is *Agnus Dei qui tollit peccata Mundi*. The Lord *Macguire* seem'd not to regard his Discourse, but read out of his Paper to the People as followeth.

Since I am here to die, I desire to depart with a quiet Mind, and with the Marks of a good Christian; that is, asking Forgiveness first of God, and next of the World. And I do forgive (from the Bottom of my Heart) all my Enemies and Offenders, even those that have an Hand in my Death. I die a Roman Catholick, and altho' I have been a great Sinner, yet am I now by God's Grace heartily sorry for all my Sins; and I do most confidently trust to be saved (not by my own Works, but only) by the Passion, Merits and Mercy of my dear Saviour Jesus Christ, into whose Hand I commend my Soul. And then added, I beseech you

you Gentlemen, let me have a little time to say my Prayers.

Sher. Sir, If you answer ingenuously to these Questions we shall ask you, you shall have time afterwards: Whether do you account the Shedding of the Protestant Blood to be a Sin, or not; and whether do you desire Pardon of God for that Sin?

Macg. I do desire Pardon of God for all my Sins: I cannot resolve you in any thing for my Part.

Sher. You can tell what your Conscience dictates to you; do you think it was a Sin, or not?

Macg. For my Part I cannot determine it.

Sher. Then now it seems nothing to you to kill so many.

Macg. How do you mean killing of them? To tell you my Mind directly, for the killing I do not know that, but I think the *Irish* had a just Cause for their Wars.

Sher. Was there any Assault made upon you? Had you not enter'd into a Covenant? Had you not engag'd by Oath yourself to the King?

Macg. For Jesus Christ Sake, I beseech you to give me a little time to prepare myself.

Sher. Have Pity upon your own Soul.

Macg. For God's Sake have Pity upon me, and let me say my Prayers.

Sher. I say the like to you, in Relation to your own Soul; whether you think the Massacre of so many thousand Protestants was a good Act? For Jesus Christ's Sake, have Pity upon your own Soul.

Macg. Pray let me have a little time to say my Prayers. All this while his Eye was mostly upon his Papers, mumbling over something out of them to himself. Whereupon one of the Sheriffs demanded those Papers of him. He flung them down; they were taken up and given to the Sheriff. They ask'd him farther, whether they were not some Agreement with the Recufants here in *England*? Whereunto he answered, I take it upon my Death, I do not know that any Man knew of it; and after some other such-like Talk, the Sheriff bidding him prepare himself for Death, he said, I do beseech all the Catholicks that are here to pray for me. I beseech God to have Mercy upon my Soul. *And so was executed.*



XLIII. *The Trial of Sir ROBERT SPOTISWOOD, President of the College of Justice in Scotland, and Secretary there to King Charles I. for High-Treason, in the Parliament held at St. Andrews, November, December, and January, 21 Car. I. 1645.*

SIR Robert Spotiswood having been sent by the King into *Scotland* to negotiate Matters with the Marquiss of *Montrose*, and to carry him, among other things, a Commission to be Generalissimo of all his Forces there, took the Opportunity of the Army's marching Southward for his more safe Return to

his Master, to whom he was to give an Account of his Negotiation; but being unfortunately taken Prisoner at the Battle of *Philiphaugh*, where *Montrose's* Army was defeated by General *Leslie*, he was carry'd first to *Glasgow*, and afterwards to *St. Andrews*, where the following Procefs was prosecuted against him.

DITTA Y against Sir Robert Spotiswood.

SIR Robert Spotiswood, you are indicted and accused before the Committee of Estates of Parliament; that for suameikleas, by the common Law, Law of Nations, Laws and Acts of Parliament, and Practick of this Kingdom; and by all Justice, Reason, Equity, and Conscience, all that rise in Arms, and concur with the Adversaries of this Kingdom, for subduing of their native Country; all Invaders, Assaulters, or Subduers of this Kingdom, or any Part thereof, by Force of Arms; all who contribute their Help, Countenance, and Assistance, to the Adversaries, Assaulters, or Invaders thereof in an hostile Way: All who are either Authors, Abettors, Maintainers, Suppliers, or concur with the Adversaries of this Kingdom, in the assaulting, or subduing thereof, or any Part thereof: And all who are Art

and part of the saids Crimes, Misdeeds, and Malversations above specified, or any of them, incur the Pain of High-Treason against his Majesty, his Crown, and against the Estates of this Kingdom, and the Pain of Forfaulture of Life, Lands, Estate, and Goods to be execute against them, by the Estates of this Kingdom, and the Benefit thereof to be apply'd to the Use of the Publick for Relief of their Burdens: And the Committers of the saids Crimes above-specify'd, or any of them, are otherwise censurable and punishable in their Persons, Names, and Fame, and in their Lands, Goods, Means, and Estate, by Fining, Confining, or otherwise, as the Estates of this Kingdom shall think expedient. And albeit, That by the Acts of Parliament of this Kingdom, especially by the 130th Act of the 8th Parliament of King *James VI.*

in May 1584. It is statute and ordain'd, that none of the King's Liedges and Subjects presume, or take upon Hand, to impugn the Dignity and Authority of the Estates of Parliament, or to seek or procure the Innovation or Diminution of the Power and Authority of the Seamen, or of any of the Estates thereof in any time coming, under the Pain of Treason. Likeas, albeit by the fourth Act of the third Parliament of King *Charles*, dated 29th of June 1644, all takers up of Arms against the Kingdom and Estates of the Country, are guilty of Treason, and punishable by Forfeiture of Life, Lands, and Goods, or any other Censure the Parliament shall please to inflict. Yet nevertheless, the said Sir *Robert Spotiswood* having shaken off all Fear of God, and due Respect to the Laws of the Kingdom, and all Duty that as a Subject thereof you ought to have carry'd to the Kingdom, and to the Defence thereof, especially in these troublesome Times, when this Kingdom has been threaten'd to be ruin'd and destroy'd, with the hostile Invasion of some of her unnatural Brood, and some *Irish* Rebels, and forgetting and contemning that gracious Favour mentioned in the 33d Act of King *Charles's* second Parliament, of Date 16 of November 1641, whereby the Estates of Parliament therein conven'd did then declare, that for the good and grave Considerations mentioned, they would not proceed to a final Sentence against you, for such Crimes and Misdemeanors as at that time you were cited before them, and accused as guilty of, nor would insist upon the Punishment thereof. You have presum'd and taken upon Hand, to abuse the King's Majesty, in purchasing from his Majesty by your pretended Ways, the Office of Secretary to yourself, and have receiv'd the Signet thereof, which was formerly kept by the Earl of *Lanerk*, who was appointed by his Majesty and the Estates of Parliament in Anno 1641, to be Secretary to his Majesty for this Kingdom of *Scotland*, and that contrary to his Majesty's Declaration emitted by his Majesty in the said Parliament; whereby his Majesty did declare, that he would not employ you in any Office or Place of Court or State without Consent of Parliament, nor grant you Access to his Person, whereby you might interrupt or disturb the firm Peace was then so happily concluded. Likeas, since your purchasing of the said Office of Secretary, at least taking the Samen Office upon you, and of the keeping of the Signet thereof, you have docquetted with your Hand, signeted with the Signet of the said Office, several Commissions granted to *James Graham* sometime Earl of *Montrose*, a declared and forfeited Traitor, and an excommunicated Person: and especially, a Commission dated the 5th of June 1645, given by the King's Majesty to the said *James Graham*, making and constituting the said *James Graham* Lieutenant-Governor, and Captain-General of all Forces rais'd or to be rais'd within this Kingdom; and giving Power and Authority to the said *James Graham*, to raise and levy Forces within this Kingdom, and to lead and conduct them against the King's Majesty's good Subjects, and against the Forces rais'd and levy'd in Arms by Authority of the Estates of Parliament of this Kingdom, for the Maintainence, Defence, and Prosecution of the mutual League and Covenant. By which Commission so docquetted and signeted by you, as said is, the King's Majesty's good Subjects who have risen in Arms for the Defence of

the said League and Covenant, and whose rising in Arms is allow'd and authoriz'd by the Estates of Parliament of this Kingdom, are design'd as traitorous and seditious Persons. And als, you have docquetted and signed with your Hand, a Proclamation alledged emitted by the King's Majesty for holding of Parliaments within this Kingdom; which Proclamation is totally destructive of, and derogatory to the Dignity and Authority of the Estates of Parliament presently conven'd by vertue of the last Act of the last Parliament 1641, and which Proclamation annuls and condemns the Procedure thereof. And als, you have docquetted and sign'd with your Hand, a Commission granted by the King's Majesty to *James Graham* sometime Earl of *Montrose*, to be Commissioner for his Majesty for holding of the said pretended Parliament: in docqueting and signing of which Proclamation, Commissions and Warrants, you have abused the aforesaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity, and Authority of the Estates of Parliament of this Kingdom. Likeas, you not being contented with your abusing of his Majesty, in purchasing of the foresaid Office of Secretary from his Majesty, contrary to his Majesty's Declaration in Parliament, in manner and at the time as said is, at least with the taking the same upon you, and with the docqueting the foresaid Commissions to the said *James Graham*, and of the foresaid Proclamation for the Parliament; which is not only derogatory to the Dignity and Authority of the Estates of Parliament, but also destructive of the whole Power thereof, and which declares the Procedure of the Estates of Parliament to be Treason: You have actually and really joined yourself in an unnatural and traitorous way against this Kingdom, with the said *James Graham* and his rebellious Army, wherewith he infested and troubled the Peace of this Kingdom, and cruelly and unnaturally destroy'd and murder'd the King's Majesty's loyal Subjects; and have been with the said *James Graham* at all the Acts of Hostility committed by him and his rebellious Army within this Kingdom, within the Months of *August* and *September* last 1645, or one or other of them. And in special, you was with him and his rebellious Army after the Conflict at *Kilsyth*, which was upon the 15th of *August* last 1645, betwixt the Army and Forces of this Kingdom, and the said rebellious Army conducted by the said *James Graham*, where you did join yourself with the said *James Graham* and his rebellious Army, and was actually with him thereafter, in his Progress going thro' the Country in subduing the same, viz. From *Kilsyth* to *Bothwell*, and from *Bothwell* to *Calder*, and from thence to *Limphey*, and from thence to *Cramston-riddel*, and from thence to *Torwoodley*, and from thence to *Kelso*, and from thence to *Jedburgh*, and from thence to *Selkirk*, and to the Fields betwixt *Selkirk* and *Philiphaugh*, where the said *James Graham* and his rebellious Army, were upon the 13th of *September* last, by the Mercy of God upon his distressed People, and by the Strength of his Right-hand against his Enemies, defeat and confounded, and where you were actually with the said *James Graham* and his said rebellious Army; at least you the said Sir *Robert Spotiswood* did join with the said *James Graham* and his rebellious Army, at one or other of the saids Places particularly above-specified; and during your being with

with the saids *James Graham* and the saids Rebels the time foresaid, you did subscribe a Letter written by yourself to some Nobleman about the King's Person in *England*, of the Date, from about *Kells* to 10th of *September* last 1645, which was after the foresaid Conflict at *Kilsyth*; wherein you boast, that you had disperfed the King's Majesty's Enemies within this Kingdom, some of them to *Ireland*, and some to *Berwick*; whereby you do expostulate, that no Party was sent after Lieutenant-General *David Lesley*, who at that time came in with, and conducted Forces within this Kingdom for repressing and subduing that rebellious Army, wherein you were for the time: And in which Letter, you profess'd a Resolution to follow that rebellious War whereunto you had associate your self, and to clear the Kingdom of the Rebels that had fled to *Berwick*. By which Name of Rebels you did mean and exprefs his Majesty's best and most loyal Subjects, within this said Letter of yours, containing many Expressions of your joining the said *James Graham* and his rebellious Army, and of your unnatural and traitorous Resolution to assist the Prosecution of the ruin and destruction of this Kingdom as the said Letter bears. Which Crimes above-specify'd, or one or other of them, you cannot

deny; and therefore you as a Traitor to this Kingdom have incurr'd the pain of High-Treason, and the pain of Forefaulture of Life, Lands, Estate, and Goods to be execute against you by the Estates of this Kingdom, and the Benefit thereof to be apply'd to the use of the Publick, for the Relief of their Burdens, or otherwise, in the option of the saids Estates of this Kingdom, you are censurable and punishable in your Person, Name, and Fame, and in your Lands, Goods, Means and Estate, by fining, confining, or otherwise, as the saids Estates of this Kingdom shall think expedient.

Glasgow, 5th *November* 1645.

The Committee ordains the Dittay to be transmitted, sent and deliver'd to the above-written Sir *Robert Spotiswood*, where he is presently in the Castle of *Glasgow*; and ordains the said Sir *Robert* to be ready to answer to the said Dittay. At *St. Andrews*, upon the 13th of *November* Instant 1645.

Sic Subscribitur,

J. A. PRYMOSE.

ANSWERS to the Dittay given in against Sir Robert Spotiswood.

IN regard the Defences given in by *James Ogilvie*, against the Relevancy of his Dittay, will militate likewise in my behalf, I repeat the same for me *brevitatis causa*.

This of mine is founded upon two Acts of Parliament, the one in *May* 1584, and the other in *June* 1644. By the first, it is declared to be Treason, to impugn the Dignity and Authority of the Estates of Parliament, or to seek and procure the Innovation or Diminution of the Power and Authority of the sament, or any of the Estates thereof. It is subsumed, that I have forefaulted against this Act, in so far as I, forgetting and contemning the Favour granted to me in the last Parliament 1641. have abused his Majesty, in purchasing from him the Office of Secretary, contrary to the Declaration emitted by his Majesty in the said Parliament. Likeas, since the Purchasing thereof I have doctored and signeted with the Signet of the said Office, the two Commissions and Proclamation mentioned in the Dittay: In doing whereof I am alledged to have abused the foresaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity and Authority of the Estates of Parliament of this Kingdom.

First, To this Act of Parliament I answer; It cannot militate against me, in regard of the Scope and Intention thereof, which was only to restrain the Liberty which some in those Times took to themselves, to call in Question the Power that one of the three Estates then had to sit and vote in Parliament. Which is clear, both by the Preface of the said Act (*viz.* finding the Power, Dignity and Authority of the Court of Parliament of late Years called in some doubt; at least some curiously travelling to have introduced some Innovation thereanent) and by other Records of that time; especially a Declaration of the King's, yet extant in print, publish'd in *Anno* 1585. In which he who knew best what was meant thereby, declareth this to have been only the Parliament's In-

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tention in making of this Act. So that it cannot be extended to other Cases, namely this in hand.

Secundo, Giving, that this Act of Parliament could be extended beyond the true Intent and Meaning thereof; yet the particular Deeds libelled, whereby I am alledged to have transgressed the same, and consequently to be guilty of Treason, are not relevant to import so much. And first, whereas to aggravate the Matter, I am charged to have been unmindful and unthankful for the Favour I received at the last Parliament: Let me say this much without Offence, That as I esteem highly of their Favour, so I was not obnoxious to their Censure at that time: Whereanent I refer myself to that Process, wherein nothing was proven of all that was alledged against me.

As to the Purchasing of the Secretary's Office, what past about that, and how far I had Interest therein, I remit to the Declaration given in by me to the Committee at *Glasgow*, which I use as a part of my Defence against this Point. The Truth is, That the Lord Secretary being from Court at the time, and there being sundry Solicitors to his Majesty for Grants of divers Natures, having relation to this Kingdom, he was pleased (there being none then about him fit for the Employment) to intrust me with a signing and presenting of the same unto him, by sending me a Warrant under his Sacred Hand to that effect, and the Signet withal, to be kept by me during the absence of the Secretary, or while his Majesty should take further Order thereanent. In accepting whereof, I cannot imagine that I did commit any thing worthy of Blame; or that his Majesty did any thing contrary to the Declaration emitted by him in Parliament, he having conferred no ordinary Place or Office upon me, but only a temporary Employment *in casu necessitatis*, having none else for the time to lay it upon. Likeas I see not how I can be charged with Presumption (as the Dittay bears) in doing thereof; in respect that by natural

6 G 2

Allegiance

Allegiance (from which no Power under Heaven can loose me) I am bound to serve and obey his Majesty whensoever he calls upon me for that effect. And as to that part of his Majesty's Declaration, not to grant me access to his Person; it was never his Intention otherwise but in the Case annexed, *viz.* whereby I might interrupt or disturb the firm Peace then so happily concluded; which (I thank God) never so much as once enter'd into my Thought, as my own Conscience, and my Behaviour about his Majesty this while past doth bear me Witness. Besides his Majesty's Declaration, That he should not give any access to those therein mentioned, is not a penal Statute, or Act of the Estates, disabling or restraining them to repair to his Majesty, under any Pain or Certification in case they should contraveen, but only a Declaration emitted by his Majesty himself, that he would not admit them to the end expressed in the Act. And therefore the same is inept to be the Ground or Aggravation of a Criminal Dittay.

As for docqueting and signeting Commissions, and other Warrants presented by me, I hope in itself it is no Crime, altho' I was not actual Secretary, I having done it by his Majesty's special and expresse Command. For the three Particulars chopt at in the Dittay, I can answer: *First*, To the Commission of Lieutenantry docqueted by me, it is but a Double, as the Docquet, I believe, bears, the Principal having been sent long before by the *English* Secretary, who was the sole mover and procurer of it.

Next, To the Proclamation for holding a Parliament, it was drawn *in terminis* by his Majesty's special Direction, and docqueted by me, as it is, blank in Day and Place, and other Circumstances; his Majesty's Intention in it being only this, to have it come to his hand, to whom it was intrusted, who by special Order was to dispose of it, as should be found best for the Peace of the Kingdom, without Derogation to the standing Laws thereof: neither hath there any Use at all been made of it, he having indicted a Parliament before it came to his Hands, by virtue of a preceding Warrant. Wherein it may seem to annul and condemn the Procedure of the Estates of Parliament presently conven'd, or be otherwise destructive and derogatory to the Dignity and Authority thereof, it is not my part to meddle with, his Majesty being most concerned therein, whose Business it is, I having no further hand in it, but in so far as I was obedient to my Master's Directions; which by no Law nor Act of Parliament can bring me within the Compass of the least Censure, let be the Guilt of Treason. For I am not here (neither can be) called in Question for that

which usually the Ministers of Princes have been charged with (*viz.* giving of bad Counsel) but only for docqueting and signeting these three Warrants, which I could not in Duty refuse, being commanded by his Majesty to do the same.

To the third and last Commission I make the same Answer.

The second Act of Parliament, whereupon this Dittay is founded, is in *June* 1644, bearing, That they who take up Arms against the Kingdom and Estates of the Country, are guilty of Treason. For Answer to this part of the Dittay, I say, it is not relevantly subsumed, that I took up Arms against the Kingdom: Only it is alledged, that I was in Company with *James Graham* in his Progress thro' the Country, after the Conflict at *Kil-syth*, which by no Interpretation, can be thought to be a taking up of Arms against the Kingdom; especially since I was directed to him from his Majesty, and by that Occasion, and none other, was with him in Company.

Secundo, In the Act itself, it being propound in the Quere, Whether assisting, or taking Arms with those who have invaded the Country, shall be relevant to make up a Dittay against the Doers thereof, no Answer is given thereunto by the Parliament; which imports as much, that they thought it not reasonable to make the Assistants of such as are in Arms against the Kingdom and Estates, guilty of Treason: If not their Assistants, far less such as were only in Company with them occasionally, as I was.

As to the Letter written by me about *Kelfo*, whatever be in it, it cannot be charged upon me; because it went no further than Intention, I having upon better Thoughts called it back, in regard of some Expressions in it, which might seem injurious to those engaged on the other Side. For whatever I think of the Course, I thank God, I hate no Man's Person that is embarked therein, nor could wittingly irritate the meanest of them by any opprobrious Compellation. Always the most can be in it, is Inadvertancy.

To close all, in all this Dittay (laying aside the second Act, which I hope is sufficiently answered) I am not charg'd with any thing that is declared by any Law or Act of Parliament to be Treason, which by the 28 Act, 1641. is required, before any Person can be declared a Traitor.

These Answers for your Lordships Satisfaction, I have given in presently, under Protestation, That (in respect I have been straitned with Time, and could not gather my Thoughts so well as was requisite) I shall be heard to alledge what further I can bethink myself of, before the closing of the Process, either by Writ or Word, as your Lordships shall be pleased to allow.

REPLIES to *Sir Robert Spotiswood's Answers to his Dittay*, 12 December 1645.

WHERE the Defender repeats the Defences given in by *James Ogilvie*, against the Relevancy of his Dittay, alledged by the Defender to militate in his behalf. It is replied, That there are no Defences given in by *James Ogilvie*, but only the Defence of Quarters, which is answered in the Reply given in against the Defence of Quarters.

To the first Defence, bearing, That the Act of Parliament in *May* 1584, does not militate against the Defender, alledging that the Scope and Intention thereof, was only to restrain the Liberty of some who called in Question the Power of one of the three Estates. It is answered, The Defence ought to be repell'd, in respect of the dispositive Words of the said Act, militating against all those who

who should procure the Innovation or Diminution of the Power and Authority of the Estates of Parliament, or any of them; and the Parliament are the best Judges and Interpreters of the Acts of Parliament, and of the extent of the Sense and Meaning thereof.

Where the Defender in his second Defence seems to insinuate, that nothing was proven against him in his Process in *Anno* 1642, wherein he received the Parliament's Favour. It is answered, that the Time prescribed by the Parliament for the Trial of that whole Process being but two Months, the Committee for the Incendiaries could not proceed at that time to further Trial, and if they had had time, sufficient Probation would have been gotten in these Processes, for proving of all, or the most part of the Points contain'd therein.

Where in the said second Defence, the Defender affirms that he committed nothing worthy of Blame, and that he cannot be charg'd with Presumption, in taking upon him the Secretary's Office; because by his natural Allegiance, he was bound to obey the King's Majesty. It is replied, That seeing in the Parliament 1641, the Secretary's Office, and all the Officer's of Estate are to be provided and filled by Advice and Approbation of the Estates of Parliament, during their sitting, and of the Council, during the Interval betwixt the Parliaments: It was a high Presumption in the Defender, to accept of the said Office, without Advice and Approbation foresaid; and his accepting thereof is a presumptive Deed in prejudice of the Liberty of Parliament, by whose Advice he should have been chosen and provided to the said Office; his Presumption being the greater, by the embracing of the said Office, the same not being vacand, but was fill'd by Advice of Parliament: And therefore he ought modestly to have refused the said Office, which he did not, but embraced the samen, and used it in manner libelled in his Dittay, to the Dishonour of the Estates of Parliament of this Kingdom, by expeding and docqueting Commissions and Proclamations, declaring their Procedures to be seditious and treasonable, chiefly the said Commissions being in favour of *James Graham* a declared Traitor.

Where in the said second Defence, it is alledged, That his Majesty's Intention was never to grant the Defender Access to his Person, only in the Case annexed to his Majesty's Declaration in *Anno* 1641. *viz.* whereby the Defender might disturb the firm Peace then so happily concluded. It is replied, That these Words of the King's Majesty's Declaration, are not of the nature of a restricting Quality of the denied Access mentioned in the King's Declaration, as if Access to his Majesty's Person had been granted to the Defender, upon Condition that the Defender should not disturb the firm Peace: But the Words are declaratory, That in respect the Estates of the Kingdom had upon just Grounds conceived, that the Defender's Access to his Majesty's Person heretofore, had disturbed the Peace, and his Access to his Majesty's Person thereafter would disturb the Peace; therefore his Majesty was graciously pleased to make the foresaid Declaration, That he should not have Access to his Person, and so the Estates would be in Security, that he should not disturb the Peace by his Access. Likeas *de facto* the Defender's Actions, since his attending his Majesty's

Person, do testify, that he has had no small hand in disturbing the Peace, which are presently laid to his Charge in his Dittay.

Where in the said second Defence, it is alledged, That the King's Majesty's Declaration is no Penal Statute, restraining the Defender from having Access to his Majesty's Person, and therefore is ineptly libelled to be a Ground, or Aggravation of a criminal Dittay. It is replied, That albeit it were granted, That his Majesty's Declaration were no Penal Statute restraining the Defender; yet the same is pertinently libelled, to aggravate the Defender's Carriage against the Honourable Estates of Parliament, by his expeding under his Hand, as Secretary to his Majesty, the Commissions and Proclamations mentioned in his Dittay; which Office of Secretary he did accept, whilst he did accede to his Majesty's Person, contrary to his Majesty's Declaration made in Parliament.

Where the said second Defence bears, That the Defender cannot be quarrelled nor challenged for docqueting of the three particular Papers mentioned in his Dittay, he having done the same by his Majesty's special Command, and he not being quarrelled for giving Counsel to the samen. It is reply'd, That the Defender's docqueting thereof, not only clears his Accession to the evil Counsel, given to his Majesty for granting the said Commissions and Proclamations, but also is a part of the prosecuting of that evil Counsel, and of its desired Effect. And it was the Defender's Part, as the part of a true and loyal Subject to his Majesty, to have diverted his Majesty from giving Ear to such evil Counsels: But on the contrary, it is acknowledged by the Defender in his first Section of his third Defence, That he was sent by his Majesty to *James Graham*, whereby it is more than evident, that the Defender has had a great hand, not only in the framing or advising of the said Commissions and Proclamations, but also in the conveying of the samen to the said *James Graham*, he being a declared Traitor, and being in Arms against the Estates of this Kingdom both with Fire and Sword.

Lastly, the whole second Defence ought to be repell'd, in respect of the Dittay, bearing the Defender his acceding to his Majesty's Person contrary to his Majesty's Declaration in Parliament; his accepting of the said Office of being Secretary, contrary to the Act of Parliament, anent the providing of the Places of Officers of Estate; and his abusing of the same Office by docqueting and signeting Commissions and Proclamations, destructive of, and derogatory to the Dignity and Authority of the Parliament.

To the first Part of the third Defence, bearing that the Defenders being in Company with *James Graham* in his Progress thro' the Country after the Field at *Kilsyth*, cannot be interpreted the taking up of Arms against the Country, he being sent to *James Graham* by his Majesty. It is replied, that the Dittay is relevantly subsumed from the Act of Parliament, *viz.* That the Defender did join himself with *James Graham* and his rebellious Army, and was with him and his Army at the Places libelled in his Dittay, at least at one or other of them; which joining of the Defender with the Rebels, who were in Arms against the Country, is a taking up of Arms against the Country. Likeas, the Defender in his Defence founded upon

Quarters

Quarters, grants that he was taken Prisoner by an Officer of our Army, and so grants that he was in the Rebels Army against ours.

To that part of the third Defence, bearing that the Act of Parliament 1644, makes no Answer to that part of the Query therein mentioned, anent Assisters. It is replied, That the Dittay is founded upon the dispositive Words of the Act of Parliament against taking up of Arms, and not upon what the Act of Parliament has not answered. And where the Defender affirms, that he was only occasionally in Company with *James Graham*: It is replied, That it is contrary to the preceding Article of his third Defence, bearing that he was sent to *James Graham* by the King's Majesty, and so cannot alledge that he was there occasionally.

To that part of the said third Defence, bearing that the Letter mentioned in the Defender's Dittay, went no further than Intention, and was called back again. It is replied, That the Letter, albeit found upon the Defender himself, is a Declaration of the Defender's Resolutions therein, and is mentioned in his Dittay, as an aggravation of his Carriage, whereof if he had repented, he would surely have destroyed the Letter, and retired himself from the Rebels. And where the Defender affirms, that he is not charged with any thing that is declared to be Treason by any Law or Act of Parliament, except upon the Act of Parliament 1644. ought to be repell'd in respect of the Dittay, which is also founded upon the Act of Parliament 1584.

Item, To the first Part of the Eik anent the Defence of Quarters, the Procurators for the Estates refer the samen to the Commissioners for the Procefs.

To that part of the Eik given in by the Defender upon the 13th of *December* 1654. bearing, that the Proposition of his Dittay is not relevant, in so far as it is founded upon the Common Law, Equity, Reason and Conscience, because it is provided by diverse Acts of Parliament, That the King's Lieges should be governed by the King's

Laws, and the Laws of the Realm. It is replied, That the Proposition of the Dittay is relevant, as being founded upon the Common Law, Equity and Reason, because by the 69th Act of the 6th Parliament of King *James V.* it is found by the Estates of Parliament, That the King's Majesty has just Action to pursue all Summonds of Treason done and committed against his Person and Commonwealth, conform to the Common Law, good Equity and Reason, notwithstanding there is no special Law, Act nor Provision of the Realm made thereupon before, and the Defender's Dittay is a Dittay of Treason.

Item, To that Part of the Eik given in by the Defender upon the 15th of *December*, bearing that the Defender cannot be challenged upon the Act of Parliament 1644; because the samen was not made by the King's Majesty and Estates join'd together, making *communem reipub. sponsonem*, which is the ordinary Definition of Law. It is replied, That the Defence clears the Defender's Carriage, and all the Passages libelled in his Dittay, to have been clearly against the Estates of Parliament, he now averring, that it were heard to challenge him upon the Act of Parliament 1644, because the King's Majesty was not present thereat. The Defence itself insinuates tacitly, That this present Parliament is no Parliament: For if this be a Parliament, and was a Parliament in *Anno* 1644, then the Act is Obligatory, and does oblige all the Lieges, so that the Defence is rather a Declinator of the Honourable Estates of Parliament, than a Defence, and in effect merits no Answer, but Censure.

22d. *December*, 1645.

Produced by the Procurators of the Estates, and given up to Sir *Robert Spotiswood* this Day, with the Papers formerly given in by him, and orders him to give his Duply to this, against *Thursday* next at Ten a Clock in the Forenoon *peremptorie*.

DUPLIES given in by Sir Robert Spotiswood, to the Replies made by the Procurators of Estate against his Answers to his Dittay.

First, **W**Hereas it is Replied, That the dispositive Words of the Act of Parliament *May* 1584. militates against those who procure the Innovation or Diminution of the Estates of Parliament. It is Duplied, That neither the dispositive Words of the Act, nor the Reply militates against me; because neither is it, nor can be subsumed that I have impugned the Authority of the Estates of Parliament, or have procured the Diminution of their Power, by calling in doubt or in question, or denying their Power anent the providing the Secretary's Office, and all other Places of the State by their Advice, and by procuring the Power and Liberty granted unto them by the Act of Parliament 1641. to be retreated and innovated, and taken from them; which is the only Crime forbidden by the dispositive Words of that Act, as is clear by the samen, and by the Narrative of the said Act anent the Occasion of it, which declares the Dispositive. And albeit I had accepted the Office of Secretary without the Advice and Approbation foresaid, which is de-

nied, my accepting thereof could not import a Contravening of the said Act 1584, and a downright treasonable Impugning of the Authority of the Estates, because the contravening of an Act of Parliament, or the accepting of an Office not conform to an Act of Parliament, is not a direct Impugning of the Authority of the Estates of Parliament, but a null Act; *Et quod est nullum de jure, nullum sortitur effectum*: Otherwise if the consequential Impugning of the Authority of the Estates of Parliament by contravening of Acts of Parliament, should fall under the compass of the said Act 1584. Treason should be too frequent, in regard the Contraveners of any Act of Parliament does in consequence impugn the Authority of the Estates.

Secondly, Whereas it is Replied, That if there had been sufficiency of Time, there should have been sufficient Probation gotten against me in my former Procefs. It is answered, *De his que non sunt, Et non apparent, idem est judicium*; and notwithstanding the pretended shortness of time, there

there was Process gotten against others, but none against me.

Thirdly, Where it is further Reply'd, That it was a Presumption in me to accept the said Office, being already filled by the Advice of Parliament. It is answered, That all Presumption is not Treason, and the Act of Parliament anent the providing of these Places by Advice of the Estates, does not bear, that if they should be provided otherwise, the Accepters should be punished as Traitors.

2d, Repeats the Declaration given in by me and my Defence, and denys, that I imbraced or accepted the said Office; and the doing of Acts otherwise incumbent to the Secretary, cannot import the accepting of the Office, seeing it cannot be denied, but either the necessary absence of a Secretary, or in time of Sicknes, or in the Vacancy, before his Majesty could acquaint the Parliament or Council, or have the Advice and Approbation anent the filling these Places, his Majesty may command any of his Subjects to supply the Place, without any hazard of Treason.

Fourthly, Whereas to the Defence, bearing, That his Majesty's Declaration, that he should not grant me access to his Royal Person, whereby I might disturb the Peace, it is no penal Statute, and consequently it can be no Ground of a Dittay: It is Reply'd, That the Declaration is not of a restricting Quality; and that tho' his Majesty's Declaration be not a penal Statute, yet the samen may be enough to aggravate my Carriage. I Duply, That I repeat the Defence, and opposes the Declaration itself: And if the Declaration be not a penal Statute, as it is acknowledged, it cannot be libelled pertinently to be a relevant Ground of a Dittay, and consequently it cannot aggravate the Defender's Carriage; *Et quod non relevat, non aggravat.*

Fifthly, Whereas it is Reply'd, That my docquitting the Papers mentioned in the Dittay, clears, that I gave ill Counsel in granting the saids Commissions and Declarations, and is a part of the prosecuting of that Counsel, and that as a good Subject I should have diverted his Majesty. It is Duply'd, That all these who are employed to docquet or sign Papers, are not admitted to be of his Council, and cannot in good manners intrude themselves to divert his Majesty from his Resolutions, and refuse to sign or docquet such Papers as his Majesty is pleased to cause present to them, upon pretext, that they in their Judgment disprove them; and I repeat my Answer, whereunto no Reply is made, That what I did in these Particulars, was in obedience to his Majesty's express Commands, and in Law *qui iussu Judicis aliquid facit (multo magis of the Supreme Judge and Magistrate) non videtur dolo malo facere, qui parere necesse habet. ff. de Regul. Juris L. 167. § 1.*

Sixthly, Whereas it is Reply'd, That the Dittay is relevantly subsum'd; That I did join myself with *James Graham*, and was with him in his Army, and that in opposing my Defence for Quarters, grants that I was in the Rebels Army against our Army: The Defence is repeated, and that Subsumption is no wise relevant, because it is not conform to the Act of Parliament, that he took Arms: And an occasional being in an Army cannot import a joining with it, and taking of Arms. And altho' I have granted that I was

taken Prisoner, being occasionally in the Army, I have not granted that I was in the Army as an actual Taker of Arms against the Country.

Seventhly, And where the Reply bears, That I cannot alledge, that I was occasionally in the Army, because I have granted in my Defence, that I was sent by the King: It is answered, That in affirming that I was occasionally in Company with *James Graham*, I am not contrary to myself, and my Meaning being, that I was there being sent, but not there of purpose to join actually with him in taking of Arms.

Eighthly, Whereas it is further Reply'd, That my Letter, albeit found upon me, is a Declaration of my Resolution, and is mentioned as an Aggravation of my Dittay. The Defence is repeated, and the keeping and not sending of that Letter, argues my Resolution to the contrary.

Ninthly, Whereas to that Part of the Defence, bearing, That the Proposition of the Dittay is not relevant, in so far as it is founded upon the common Law, and other Grounds not authorized by Acts of Parliament: It is Reply'd, That by the 69 Act of the 6th Parliament of King *James Vth*, it is found, That the King's Majesty has just occasion to pursue all Summonds of Treason conform to the common Law, Equity and Reason, notwithstanding that there is no special Law nor Act of Parliament made thereupon. I Duply, That by the said Act of Parliament in *Anno 1540.* it is provided, That tho' there be not a special Law or Act of Parliament anent the raising of Summonds, and regulating of Processes against Parties accused of Treason, the samen may be done conform to the common Law, Equity and Reason: but it is not meant, that Dittays of Treason may subsist on these pretended Grounds, without an Act of Parliament prohibiting the Lieges, and putting them in *mala fide* anent the committing of unlawful Acts under the pain of Treason; which is clear from the Act itself, being made upon the occasion of raising of Summonds against the Heirs of umquhil *Robert Lesly*, and to see his Memory delete and extinct, for certain Points of Lese Majesty. The Question was then, and it was murmured, as the Act bears, not that he was accused of certain Points which were not Treason by any Act of Parliament or Law of the Country; but only that it was a Novelty to raise Summonds and move Action against a dead Person: And therefore the said Act being only ordinatory *quoad* the Regulation of Process, does not derogate from so many fundamental Laws, providing, that the King's Lieges should be governed by the Laws of this Kingdom, and of no other; especially seeing it is declared likewise by the 28 Act of his Majesty's 2d Parliament, That no Person can be declared Traitor but for contravening a Law or Act of Parliament made, under pain of Treason. And it were absurd, that the Subjects of this Kingdom, who cannot in reason be obliged to obey Laws, but *in quantum sunt notificatæ*, should be judged by Laws, which they neither know, nor can know.

Tenthly, Whereas the Replyer repeats as a Defence, that which is only humbly represented by me, and not proponed by way of Defence, in regretting how hard my Condition is to be judged, upon the late Act of Parliament made in the time of these unhappy Combuitions, and draws odious Consequences to irritate the Estates. I repeat my Paper,

Paper, and conceive, that without giving Occasion of such cruel Inferences, and without Offence, I might regrave my hard Fortune, having adhered to His Majesty *bona fide*, and following the Light of my Judgment, out of Confidence that I was not contravening any known Law. And now being brought to answer a Dittay founded upon a late Act of Parliament, made before the end of

these unhappy Distractions *re non integra*, when I was out of the Kingdom, I would have expected, That since these Revolutions have brought the Replyer and me to appear in other Stations than we have been in formerly, that he should have forbore to have used such Expressions, as in the end of his Reply he hath done.

ANSWERS for Sir Robert Spotiswood, founded upon Quarters.

ALTHO' the Answers to these things, where-with I am charg'd in my Dittay, be both easy and obvious; yet I do adhere mainly to that Defence, founded upon the Law of Nations and Humanity itself: That I cannot be put to my Answer, in regard when I was taken Prisoner, I had Quarters granted me by an honourable Person, an Officer of the Army, unto whose Promise and Word of Honour I do appeal. As to that which may be said for the Equity and Necessity of maintaining this universal Practice of Nations, because it is sufficiently touched in the Defences given in by some others at this time, to avoid unnecessary Repetition, I refer myself thereunto; whereunto I add this much only.

That hitherto, since the Beginning of this unhappy War, Quarters and Exchange of Prisoners too, have been allowed on both sides; which never having been discharged, to deny now to these are in your Power, after that by the Fortune of War you have got the Advantage in the Matter of Prisoners, I leave it to your Lordship's Consideration, if it be fair, and how it may be construed in the Opinion of the World. Besides, I hope

your Lordships will use your Prisoners no worse than your Friends and Associates in *England* (who are in Arms for the self-same Cause) are accustomed to do; between whom and the King's Party, there have always fair Quarters been granted. Which makes me wonder the more of the Report that is going, of some that come from thence, with Instructions to press the Execution of Justice upon the Prisoners. The which Advice, if it come from them, being so unsuitable to their own Practice, ought to be suspected, as tending to the Discredit and weakning of this Nation.

Now because upon the Decision of this Point dependeth much of the Welfare of this Kingdom, both Parties presently in Arms, being to take it for a Rule hereafter, in the Matter of Quarters; I hope your Lordships will amongst other Respects, have before your Eyes the Safety of many innocent Souls, who will be interested in the Result thereof; and will not listen to any Motions, which instead of curing the Sore, will inflame it, and be the ready Means to perpetuate our unnatural Divisions, and make them Irreconcilable.

Eiked Defences given in for Sir Robert Spotiswood.

THAT he adhereth to the Defence already given in by him, founded upon Quarters, and craveth that it may be first discust, being a peremptory Defence *impediens Processum*, and eliding both the Proposition and Conclusion, in so far as Capital Punishment and Forfaulture of Life is inferr'd against him. And as in a criminal Pursuit before the Justice, if a Defence were propon'd upon a Remission, remitting the Crime of Treason in so far as may infer Forfaulture of Life only, and not of Lands and Goods: The said Exception, albeit, partial, and not elusory of the whole Proposition and Conclusion, being propon'd *primo loco*, will be first discust. And therefore the Defender being in the same Case, and the Exception upon Quarters being in Effect equivalent to a Remission, so far as it secures his Life, and elides the Conclusion of Capital Punishment, he ought to have the like Benefit.

It is further answer'd for the Defender, that the Proposition of the Dittay is nowise relevant, in so far as it is founded upon the common Law of Nations, Equity, Reason, and Conscience; because the foresaid Grounds before they be determined and authorized by positive Laws and Statutes, are not relevant to be Grounds of criminal Dittays, whereupon capital or arbitrary Punishments are inferr'd, in regard it is a fundamental Law in all well-govern'd Kingdoms, *pœnam alicui non esse indicendam, nisi expresse jure cautum sit.* ff. de Verb. signif. l. 131. Likeas it is expressly provided by

diverse Acts of Parliament, that the King's Lieges should be govern'd by the King's Laws, and Laws of this Realm allenarly, namely, by an Act of the 5th Parliament of King James I. cap. 48. and another of the sixth Parliament, King James IV. cap. 79.

Whereas the Dittay is founded upon the 4th Act in June 1644. The Defender represents, that as he had no Hand in the Beginning, and hath never been a Fomenter since of this unhappy Combustion and Division between His Majesty and his People, so he will carefully avoid all ticklish Dispute anent these Questions between them. Nevertheless he is confident, that without Offence he may remonstrate how hard his Condition is, being put to answer a Dittay, having no other Warrant in Law but a late Act of Parliament, not made as all other former Acts and Laws, by his Majesty and the Estates joined together, and making *communem Reipublicæ sponsonem*; which is the ordinary Definition of Laws: but during, and in the time of an unhappy Division between his Majesty and his Subjects, being in Arms, as they both profess, for maintaining of their Rights and Privileges, without Intention to prejudice or diminish the known Right one of another. When such fatal Questions do fall out between such Parties, and when Necessity involves all Men to side with one of them, and Men are left to their own Judgments and the Light of their Consciences, without the clear Direction of positive Laws, determining expressly what the Carriage

Carriage of private Men and Subjects should be in so unhappy a Case: It hath ever been thought excusable, that they should follow the Light of their own Consciences and Judgment, albeit mistaken and erroneous; and therefore should enjoy the Benefit and Privileges of the Law of War and Nations, whereof one of the main and principal is, that they should not be judged by the Rules and Laws of these against whom they have sided; especially such as are made during the Dispute,

and while the War is not ended, but either by the preceding Laws made in time of Peace, or by such as are agreed upon by both Parties after a happy Pacification. The Reason of this Law and Practice of Nations is, because *in omnibus statibus controversiarum, fieri potest ut neutra litigantium pars sit improba: Et sicut ex probabili causa litigantes in disceptationibus fori, victi lite atque sententia non condemnantur calumnia, utrinque tamen juratur de calumnia; ita censetur in disceptatione Et lite armorum.*

REPLIES, to the Defences given in by Sir Robert Spotiswood, founded upon Quarters.

Whereas his Defence given in upon the 8th of December 1645, bears, that he cannot be put to answer his Dittay; in regard, when he was taken Prisoner, he had Quarters granted to him by an honourable Person, an Officer of the Army; and referring himself to the Defences given in by others, anent the Equity and Necessity of maintaining the universal Practice of Nations, anent Quarters.

It is reply'd, The Defence founded upon Quarters, alledged granted to him, is not relevant as it is set down; the Defence not condescending upon the Person Giver and Granter of the Quarters, and Time and Place, when and where. 2. Albeit it were condescended who gave him Quarters; yet the Defence bears not what the Granter of the Quarters promised to the Defender the time of the granting thereof: for at the taking of Captives, several Takers give several Promises to their Captives of several and distinct Natures. 3. The Defence founded upon Quarters, as being proponed to liberate the Defender from the Crimes libelled in his Dittay, and of the condign Punishment thereof, ought to be repell'd; because, whatsoever hath been heretofore, or is presently the Custom of other Nations in their Wars, when one Nation is in Arms against another, the Estates of Parliament of this Kingdom are not to take notice thereof, but *in casu de quo nunc agitur*, anent the bringing to due Trial and condign Punishment, these who have risen in Arms, and taken Arms against the Estates of this Kingdom. The Alledgance founded upon any Promise, Pardon, Impunity, or Quarters given by some particular Men, cannot free the Defender from just Trial, and condign Punishment, seeing the Question is not here of any Man taken *in bello*: But the Question is anent the punishing of these who have taken Arms in a treacherous and unnatural way against their own native Kingdom, and joined themselves with a declared Traitor, risen in Insurrection within the Kingdom; who not only has taken Arms against the Estates of this Kingdom, and the Liberties of the Nation, but also against the Religion presently professed within this Kingdom, and against the mutual League and Covenant establish'd by the Parliament and Assembly of this Kingdom: In Defence whereof, many Thousands of his Majesty's good Subjects within this Kingdom have been cruelly cut off by that declared Traitor *James Graham*, to whom the Defender did join himself at the times libelled in his Dittay. The Case being thus stated, that the Defender is challenged and accused for rising in Arms, and joining with *James Graham*, a declared Traitor and Enemy to this Kingdom, who had taken Arms against the Estates of the Kingdom, for opposing of the mutual League and Covenant: There is none who will think, that if any of his

Adherents, Counsellors, or those who are joined with him in Arms, being by the Lord's Mercy towards his distressed People in this Kingdom, deliver'd into the Hands of the Estates of this Kingdom, should alledge for their Defence and Impunity, upon this Ground, that when they were taken, their Takers promised to save their Lives, or their Fortunes: It cannot be thought that this should free the Delinquent, unless it be thought in the Power of any private Man in the Army whatsoever, in his private Way, to pardon the greatest Offenders against the Estates, and Opposers of our solemn League and Covenant; *quod est absurdum*. If this Evasion be sustain'd, then (without any great Hazard) there is a Door opened to all close Malignants (who in their cautelous Way, dare not appear what truly they are) to join in Arms with the publick Traitors, and to have some of their own Temper in our Army, ready to give them Quarters, when an adverse Wind blows. Likeas, if this Defence of Quarters be sustain'd, then the whole Nation, especially the Estates of Parliament, do violate the Oath of the Covenant, and the Oath of the Parliament, anent the prosecuting and censuring of Malignants, opposers of the Covenant. And therefore there cannot be any Impunity promised in the Fields to a Delinquent, by any private Man whatsoever, in Prejudice of the solemn League and Covenant, and Defence and Maintenance thereof: But these who have risen in Arms against the Estates of this Kingdom, as they are punishable by the Laws of the Kingdom, so these Laws cannot be evacuate, and made of no Effect by any Man's Protection or Promise.

Where in the Defence founded upon Quarters, an Example is cited of the Wars of *England*. It is answer'd, That the Estates of Parliament are not to be ruled by the Example of the Army of the Parliament of *England*, but are to proceed and to judge before God, that all Means may be essayed to divert his Wrath from this Nation; and are to proceed conform to the Laws of the Kingdom, in Prosecution of the solemn League and Covenant.

Where in the said Defence it is insinuate, that the Safety of many innocent Souls will be interested in the Result of the Question of Quarters. It is answer'd, that the samen needs no Answer in Law; but it may justly receive the Answer, That if Justice be done upon God's Enemies, the Lord will let us see Judgment upon the Enemies of this Kingdom, whose Terror is now casten up, and upbraided.

And where in the Defence upon Quarters, it is alledged, that Scripture confirms the Law and Practice thereof, the 22d Verse of the 6th Chapter of the 2d of the *Kings*, anent the Answer made by the Prophet *Elisha* to the King of *Israel's* Question, *If he should smite the Syrians whom the Pro-*

phet miraculously led blind into Samaria. It is answer'd, that that Passage of Scripture does not confirm the Law and Practice of Quarters, because the Prophet thereby does not confirm and allow the Law and Practice of Quarters, but cites a Custom of the Kings of *Israel*, which of itself is not allowable; being reprov'd by the Spirit of God, both in *Saul* for *Agag*, and in *Abab* for *Benbadad*, in the 15th of the 1st of *Samuel*, and in the 20th of the 1st of the *Kings*. And the Prophet *Elisba* was alledging the Kings of *Israel* their unlawful Customs, not to confirm the Custom, but to shew the Kings of *Israel* what Miracle the Prophet had wrought. And where it may be answer'd, That there was an express Command of the Lord for the not sparing of *Agag*; yet it is to be remember'd, that there is no such express Command for *Benbadad*. 2. The Tye of the Covenant is no small Tye, for punishing the Enemies of Religion, and these who have risen in Arms against the Estates of this Kingdom; and is a Bond tying the

Estates of Parliament to the Prosecution of Delinquents to their condign Punishment.

Item, Albeit Quarters were to be sustain'd within this Kingdom, (as they are not to be sustain'd as aforesaid) yet no Quarters could be granted to this Defender, he being by the Propositions of Peace ratified in both Parliaments of *Scotland* and *England*, put amongst the Number of these who should expect no Pardon. In Prejudice of which Declaration of the Estates of Parliament, none but the Estates of Parliament, or others having their Power, could promise Impunity.

22 December 1645.

Produced by the Procurators of the Estates, and given up to Sir Robert Spotiswood this Day, with the Papers formerly given in by him, and orders him to give in his Duply to this against *Thursday* next, at Ten a-Clock in the Forenoon, *peremptorie*.

DUPLIES by Sir Robert Spotiswood, to the Replies made against his Defences upon Quarters.

WHEREAS it is reply'd, that the Defence upon Quarters is not relevantly set down, because it is not condescended upon the Giver of Quarters, and the Time and Place. It is duply'd, that Time and Place, when and where I was taken, is so nottour, that there needs not any further condescending; it being known that I was taken in the Field about *Philiphaugh*, immediately after the Conflict there. And the said Defence is relevant, without condescending upon the Giver of Quarters, because by the Law of War and Nations, these who are taken in the Field, *eo ipso* that they are taken, by whomsoever, have the Right and Benefit of Quarters; neither are they obliged to take precise Notice of the Name and Quality of these who take them: Neither is it sometimes possible in these Occasions, when so many together are promiscuously in Action. And yet I condescend that it was my good Fortune to be taken by an Officer belonging to a Man of Honour and Eminence, both in the State and the Army, the Earl *Lancerk*, to whom I was brought immediately thereafter, and had from him that courteous and favourable Reception that could be expected from such a Man, in being secured from all Violence and Wrong. And as Honour and Nobility did weigh down in him these Prejudices, which he might have had, upon Misinformation, against me; so I am confident that the unquestionable Law of Arms will not be violated in me; who am Prisoner of such a Nobleman.

Where it is reply'd, that the Defence bears not what the Granter of Quarters promised to me in time of granting thereof, and that at the taking of Captives, several Takers make several Promises of distinct Natures. It is answer'd, that in these Occasions, when Men are so much taken up with Action, they have not Leisure, neither are they in use to stand upon Promises and Capitulations; and the granting of Quarters, without any other Expression or Condition, is as binding by the Law of Arms, and secureth as much the Receiver's Life, as if there were a formal Instrument upon it: *Qui enim hostem non interficit, sed capit, tribuit capto jus extorta pollicitatione*, tho' there were no other Expression. Yet to clear this part too, I refer my Quarters, and the manner thereof, to the Relation

of the said noble Earl, and of the Laird of *Silvertonkall*, one of his Captains, by whom I was first taken.

Where it is reply'd, that whatsoever hath been, or is the Custom of other Nations, when one Nation is in War against another; *in casu de quo nunc agitur*, Quarters cannot free me, because I was not taken *in bello*, but in a treacherous way against my Country, and have joined myself with a declared Traitor. It is duply'd, 1. Albeit the Reply bears, that the Estates of Parliament are not to take notice of the Law and Custom of Nations: Nevertheless, I (without prescribing or prejudicating what the Estates of Parliament will, or are to take notice of) do adhere to the common Law of Nations and War, which hath Force every where; *jus enim gentium omni humano generi commune est*. Neither is the said Law limited to the Case of a national and foreign War, when one Nation is in Arms with another; but hath place *in omni bello*, whether Foreign or Intestine, which falls under the Definition of War. For War is defined, *Publicorum armorum contentio*, upon some probable Grounds and Motives, which either Side conceive they have to be in Arms; which agreeth to Civil Wars as well as Foreign. And therefore the Necessity and favourable Laws of War have place in these Civil Wars and Distractions, and that with greater reason than in any other; because albeit they be called Wars, those who are engaged on either side, are not properly called *Hostes*, but *Adversarii*; for this reason, *quia in civilibus dissensionibus, quamvis sepe Respub. ledatur, non tamen in exitium Reipub. contenditur*, as the Law saith. So that the Benefit of Quarters cannot be deny'd in Civil Wars, no more than in Foreign. Likeas, it was acknowledged elsewhere by the Replier, that Parties taken *in procinctu* of this War, may challenge the Benefit of Quarters; as appears by the Replies and Triplies in *James Ogilvie's* former Process, which are in the Clerk's Hands, and are repeated by me, *brevitatis causa*.

2. Where the said Reply bears, that I was not taken *in bello*, but in an Insurrection, and as the Replier states the Question, it is affirmed, that none can think that the Defence upon Quarters should free me. I humbly crave, that what I am necessitate

necessitate to alledge for my just Defence be not mistaken, seeing I have no Intention to dispute so high a Question as the Lawfulness or Unlawfulness of the War; but only to vindicate myself, and make it appear that the Benefit of the Law of Nations ought not to be deny'd to me. Therefore I answer, that I cannot be judged by the Replyer's Thought and Assertion, either in stating the Question, or deciding it; and I cannot conceive, that I can be said to be taken in an Insurrection, and not *in bello*, seeing Insurrection in the Notion and Definition of Law is properly, when in time of a happy Peace and Harmony betwixt a Prince and the collective Body of his People, private and factious Men, for their own Ends and Designs, *Plebem contra Rempub. colligunt*; as *Sheba* the Son of *Bichri* did against *David*. But when there is a Division betwixt the Prince and his People, it cannot be said that he or his Adherents, who upon probable (tho' possibly erroneous) Grounds, follow their own Judgment, are in an Insurrection. And the Question being stated, as truly it is, when a Sovereign Prince is in Terms of Difference with his People, and both profess that they are for the same Ends, and that the Prince intends nothing but the Maintenance of his just Right, without Prejudice of Religion or Liberty of the Subject establish'd by the Laws; and on the other Part, these who are on the other Side profess, that they intend nothing but the Preservation of Religion, and their Liberty, without Diminution of the King's Greatness, Power and Sovereignty, established by so many Laws; and none being to interpose themselves to be Judges of so high Differences, both Sides conceive they are necessitated to take Arms for these Ends respective. If the Prince give Commission and Command to any of his Subjects who are of the same Opinion with himself, to make a Diversion; whether or not are these who are taken upon that Side, to be thought to be taken *in bello*, or in an Insurrection? The Question being so stated, it is evident upon the foresaid Grounds, and from the Story of all Times, and the Treatises of these who have written upon War, and the Laws thereof, that such a War by the Law and Practice of all Nations, admitteth and challengeth the Privileges & *Jura Belli*, whereof that of Quarters is a main one. Neither are the Persons or Conditions of these who are intrusted with the managing of the War to be consider'd, in prejudice of those who adhere to the Prince, and are with these whom he employeth, not out of any personal Respect to them, but as they represent the Prince by Commission. Neither can this War be thought to be of another Nature than that in *England*, where Quarters are neither deny'd nor violated. And what Moderation hath been used in the like civil Distractions in this Country, during that Contest and War betwixt the *Bruce* and the *Baliol*, and in the Times of King *James III.* and Queen *Mary*, and in the beginning of King *James VI.* his Reign, as also during the cruel Wars in *France*, or yet in those of the Low Countries, the Histories of those Times bear Record. It is reported, that King *Robert* the *Bruce* having taken many Prisoners, *dimisit omnes humaniter habitos*; which are *Buchanan's* own Words. These who sided with King *James III.* and were at the Field of *Stirling*, tho' not only the greatest part of the Nobility and Country were on the other Side, but also the Prince, were not e-

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steem'd or design'd Enemies to the Country, but are said to have been of another and of an ill Opinion, *Act. 3. & 5.* of the 1st Parliament of King *James IV.* and are said by *Buchanan* to have follow'd *diversam sectam*; and divers of the Nobility who had adhered to King *James III.* did vote in the next Parliament held by King *James IV.* as appears by the 8th Act of his first Parliament, of the Edition of *Likprivik*. And likewise these who adhered to the Queen Regent in the beginning of the Reformation, and thereafter in the Troubles of Queen *Mary*, divers of them being Noblemen of the highest Condition, as the Earls of *Argyle*, *Glencairn* and *Cassils*, the Lord *Home* and *Boyd*, &c. tho' they proceeded to the highest Acts of Opposition, and some of them were at the Battle of *Langside*, and indicted and held a Parliament at *Edinburgh*, the same Time that another was holden in the *Cannongate* in the King's Name, yet were so favourably construed, that *Archibald* Earl of *Argyle* was in the List to be Regent after the death of the Earl of *Lennox*. And what were the happy Effects of the Moderation used towards them, it appear'd by the happy and firm Peace that follow'd, and by the loyal Carriage both of them and their Posterity ever thereafter. And therefore, for these Reasons, and because Prisoners have been exchanged in this War, it cannot be deny'd, but the Laws and Benefit of Quarters being of the same nature, and founded upon the same Principles of Law and Nations, should be received and practised in this War.

Whereas the Inconvenient is represented and aggravated, if it should be in the Power of private Men to pardon the greatest Offenders, a Door should be opened to close Malignants to use the cautious way mentioned in the Reply, to join in Arms with the publick Traitors, upon hope that some of their own Temper on the other Side will be ready to give them Quarters when an adverse Wind blows. It is duplied, that the Question is not of granting an absolute Pardon, which is not craved by the Defence of Quarters, but a securing of the Life of these who are taken: And if the Defence of Quarters should not be sustained, the repelling of it will open a greater Door to all sort of Cruelty, and to far greater Inconvenience than that imaginary one in the Reply; seeing it cannot be thought that Men will engage and expose themselves to Hazard, upon Confidence that they might when they pleased have recourse to their close Friends for Quarters, considering the Difficulty to find them out in a Time of such Confusion.

Where it is further reply'd, That if Quarters be sustained, the whole Nation, and especially the Estates of Parliament, will violate the Oath of the Covenant, and that other of the Parliament anent the Prosecution of Malignants; and that there cannot be any Impunity granted to Delinquents by any private Man. It is duplied, that tho' the Oaths of Covenant and Parliament oblige the Takers of these Oaths to discover Malignants, that they may be brought to Trial, that they do not prejudice those who are called in question of their lawful Defences, competent to them by the Law of Nations, as that of Quarters; neither do they oblige the Judges to repel such Defences, seeing by the Covenant they are not obliged to proceed against those who are questioned as Malignants, notwithstanding of such Defences. 2. The Practice of

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the Estates in some particular Cases evinceth, that they do not think themselves so limited by the said Oaths, as the Replier would have, because they have before this condescended to the exchanging of divers Prisoners, and have dismissed divers others who were in the like Condition with me, being taken in the Field; and have not only spared some who were on the other side, but have employed them thereafter. And it were absurd and injurious to charge upon the Estates Perjury and Violation of their Oaths, because of these Practices, being founded upon the Law of Nations and good Considerations.

3. The Question is not of Impunity granted by any private Man in the Field, as the Reply bears, but of Quarters granted by the Laws of War and Nations, which is authorized and approved by the Lieutenant General and Commander in Chief the Day of the Conflict at *Philiphaugh*, in so far as he gave no Command discharging Quarters to be given in general, but only discharging any to be given to the *Irish*: Which Exception of the *Irish*, militates in Favour of all others not excepted, *quia exceptio firmat regulam in non exceptis*.

Whereas it is further replied, That the Estates of Parliament are not to be ruled by the Example of the Parliament of *England*, but to judge before God, and to divert his Wrath, by proceeding against Delinquents conform to the Laws of this Kingdom. It is answer'd, That the Practice of *England* is urged, not as a Rule to the Estates of this Kingdom to regulate their Procedure by, but as an Instance of the Practice of Nations, conform to the Law of Nations; which being receiv'd in *England* in this War, which is principally for obtaining the Reformation of Religion and settling the Liberties of that Country, ought with far greater Reason to be received by us who were involved in that War, out of our Desire to have these Ends establish'd there, after we had obtained the same our selves.

Neither can the Laws of this Kingdom, and the mutual League and Covenant be still obtruded for the repelling of the Defence of Quarters; because there is no Law of this Kingdom discharging Quarters to be granted or kept, neither any Clause of the mutual League and Covenant against the same; otherwise the whole Nation of *England* and the Estates there, should be involved in Perjury, seeing they joined with us in the mutual League and Covenant; and notwithstanding think not themselves obliged to refuse Quarters contrary to all Nations.

Where it is urged by the Replier, to make me odious, That the Terror of the Enemies of this Kingdom is casten up and upbraided, and therefore if Justice be done upon God's Enemies, the Lord will let us see Justice done upon the Enemies of this Kingdom. I am confident, that if my Defence and Expressions be considered, it will appear they cannot be wrested to import any upbraiding, or casting up of any Terror; and whatever odious Characters be put upon me, I cannot be thought to be an Enemy to God, except it were shown that I had intended something against the Honour of God, Purity of Religion, or the Liberty of my Country. For in Civil Combuitions, the naked difference of Opinion anent Civil Questions, and adhering of a Subject to his Prince, was never thought to be Enmity against God. This is evident from the 2 *Sam.* chap. ii. ver. 26, and 27. for

in that Civil War between *David* and the House of *Saul*, tho' *David* (God's Prophet, and Anointed to be King,) was on the one side with God's People, yet they who were upon the other side of *Ishbosheth* were not called Enemies to God, but their Brethren; and upon that respect *Joab* did not exhort them that were with him to pursue eagerly their Adversaries, as God's Enemies, but bid them return from following their Brethren. And in chap. iv. ver. 11. *David* calleth *Ishbosheth*, tho' the Head of that Faction against him, a righteous Person. Likewise, when it pleased God to work Deliverances for his People, it was not conceived that there was a necessity to divert God's Wrath, by proceeding in Rigour against those who had fallen in their Hands; but by the contrary, *David* after that great Victory against *Ab-salom*, being pressed to that purpose, answered, *Shall there any Man be put to Death in Israel?* 2 *Sam.* xix. 22. And *Saul* after his victory against the *Ammonites*, when the People urged that they should be put to Death who had been against *Saul*, and had said that he should not be King; he answered, *There shall not a Man be put to death this Day, for to Day the Lord hath wrought Salvation in Israel,* 1 *Sam.* xi. 13.

Where it is further reply'd, That the Passage of Scripture cited in the Defence, out of 2 *Kings* chap. vi. doth not confirm the Law and Practice of Quarters, but that the Prophet citeth a Custom of the Kings of *Israel*, which of itself is not allowable, being reproved by the Spirit of God, in the Case of *Agag* and *Benhadad*; and that that unlawful Custom is alledged not to confirm the same, but to shew what Miracle the Prophet had wrought. It is answered, That the Text itself is opposed, whence it is clear, that the Prophet useth an Argument *a majori*; *quasi dicat, ne eos quidem occideres, quos abduceres gladio tuo & arcu tuo; ergo multo minus alieno beneficio comparatos fas est occidere*. So it is understood by *Tremellius* commenting upon that Place, and *Diodati* in his Annotations upon the same. And therefore the Gloss of the Reply, bearing that nothing is meant by the Prophet but to shew what Miracle he hath wrought, is absurd, seeing there needed no Probation of that which was evident and undeniable; and is contrary to the express Words of the Text, which containeth a Question moved by the King of *Israel* unto *Elisba*, whether he should smite the *Syrians* or not; and a Negative Answer of the Prophet, that he should not, fortified with an Argument by way of Enthymeme: *Capti in bello non sunt occidendi; Ergo multo minus alieno beneficio & miraculo comparati*. Which should be an ill Argument, if the Antecedent were only founded upon an evil and reproved Custom: And the Prophet cannot be thought to use an ill Custom, to enforce a good Conclusion; it being as much against Rules, both of Goodness and good Reasoning, to use an Argument: from that which is Evil, to prove that which is Good, as to do Ill that Good may come of it. And that it was not only the Custom of the Kings of *Israel* to spare Captives, but an Universal and ancient Custom of Nations, it is evident, not only from innumerable Passages, as well of the Civil Law, as of History, but from the 14th of *Genesis*, where it is clear, that these who were taken by *Chedorlaomer*, were taken Captives and carried away with *Lot*.

Where

Where the Reply bears, That the said Custom is reprov'd in the Case of *Agag* and *Benbadad*. It is answered, That for the first, it is acknowledged by the Replier himself, that there was a great Disparity betwixt the Case of *Agag*, and of these who have gotten Quarters, because *Agag* was in that Condition, that he was incapable of Quarters, in regard God commanded *Saul* expressly to go and smite *Amelek*, and destroy all that they had, and spare neither Man, Woman, Infant, Ox, or Sheep; so that this was an extraordinary Case of a Person by God's Command devoted to Destruction, 1 *Kings* 15. As for the Case of *Benbadad*, it is clear from the Text, that he was appointed to Destruction by the Lord, for his Arrogancy and Blasphemy against God: And the Word in the 42 ver. chap. xx. of the 1st of *Kings*, used by the Prophet when he told *Ahab* that he had let go a Man whom God had appointed to utter Destruction, *Anathemati devotum*, as it is rendred by *Tremellius*, evinceth that there was an extraordinary Warrant for destroying of *Benbadad*; because that Word is only used in such cases, as when there was an extraordinary Command to destroy and devote *Jericho* and *Agag*; *nunc abi ut percutias Amalechum & Anathemati devoveas*: which is likewise more clear from the whole Context of 1 *Kings* chap. xx. for after *Benbadad* was foil'd the first time by *Ahab*, a Prophet came to the King of *Israel*, and told him that the King of *Syria* would come up against him at the return of the Year, and advised him to mark and see what he should do. And when the Prophet came thereafter to *Ahab*, after he had dismiss'd *Benbadad*, to convince him, did suppose the Case of a Man that had brought to him a Prisoner, and said keep this Man, and that upon Condition, if by any means he should be missing, his Life should be for his Life. In which Case there was an express Charge given to keep the Prisoner, and not to let him go: which must be understood likewise in the true Case of *Benbadad*, otherwise there should not be a Parity between the Cases; neither could *Ahab* have been convinced, but might have had an Evasion and Pretext, that he had not got the like Charge, and that God's Will concerning the Destruction of *Benbadad* had not been intimated to him.

I humbly represent how hard it is that such Arguments should be brought from extraordinary Cases of Blasphemous Pagans, devoted and anathematized by God, and enforced upon People at such times and places, where they whom it concerns cannot make Answer; whereas it may be evinced from diverse Places of Scripture, what

Moderation was used in Times of Civil Distraction, and that these who had been active, and leading on the other Side, were not only spared, but advanced: Witness the Civil War betwixt the *Israelites* and the *Benjamites*; in which, tho' the Cause was most unjust upon the *Benjamite's* part, and that they had provoked mightily the rest of the Tribes, by reason of two great Overthrows they had given them; yet after the *Israelites* had got the better of them, their Revenge went no further, than to kill such as they could overtake in the Battel: But as for them that escaped to the Rock *Rimmon*, they called peaceably to them, and notwithstanding of their Oath, provided Wives for them, and made up again the Breach of that Tribe. The fair Quarters *Abner* and his Men had from *Joab* (tho' in flying he had kill'd *Asabel*) is toucht before. Tho' *Adonijab* exalted himself against King *Solomon*, and usurped the Kingdom, yet upon his Submission he was spared and dismissed: so was cursed *Shimei*. *Amasa* Captain of *Abshalom's* Host, was received into Favour, and made Captain over *Judab*. These and many more Places clearly evince, that Scripture is on our Side, and that not one Passage thereof can be wrested against us.

Whereas it is reply'd, That Quarters could not be granted to me, because I am excepted in the Propositions of Peace, and declared to be such a Person as could expect no Pardon. It is answered, first, The Question is not of Pardon, which is not craved, but of Quarters already granted for securing my Life: And the said Propositions of Peace, are not a positive Declarator of my Incapacity and Exception in case of a happy Peace, but only contains the Desires and Propositions of the Estates to be made to his Majesty, which may be altered upon a mutual condescending betwixt his Majesty and them, before they be settled by an Act of Pacification; and the said Exception is only to take effect against such as should be Processed and Condemned, and therefore is to be understood without prejudice of their lawful Defences, and namely that of Quarters; seeing by no Act of Parliament, nor by the foresaid Propositions, it is declared, that these who are excepted should be incapable of Quarters, and of the Benefit of the Law of Nations. And that this was not the Intention of the Estates of either Kingdom, is clear by their Practice; for notwithstanding of the said Propositions contained in the said Exception, some of these who are excepted, have been exchanged, as the Laird of *Drum Younger* with us, and Col. *Goreing* and others in *England*.

DEFENCES for my Lord Ogilvie, 10 February, 1645.

MY LORDS,

I Conceive that my Answer to the Dittay may be very short, and that I need not enter in a subtle Dispute of Law against it; the Subject is so tender and ticklish, that I shall be loth to be put to the Question, unless I be necessitate.

My Answer then at this time is, that I conceive, that by the Law of Nations and War, I cannot be brought to answer a Dittay of Treason upon hazard of my Life and Estate, as long as I am in this Condition; because I am a Prisoner of

War, and was taken by the *Lancashire* Forces, with my Sword in my Hand, and upon Quarters and Assurance that my Life, and such Stuff and other Things as I had about me, should be safe and unquestioned. War, albeit with its Noise it seem to cry down all other Laws, wants not its own necessary and inviolable Laws, without which it should be rather a bloody and brutish Butchery, than a lawful War, which God himself is pleased to own, entitling himself the God of Hosts and Battels.

Battels. That the Law of Quarters, amongst all other *Jura Belli*, is the most necessary and equitable, it cannot be called in question: the Issues of Life and of Death are in God's Hands, who is pleased to dispense with that which is called the Fortune of War in so variable a way, that it may be justly said, *Inter utrumque volat dubiis victoria pennis*; to the end, that neither Side should refuse to the other that Humanity and Favour which they may have occasion possibly the next Day to desire themselves. And it is not to be conceived that Quarters consist in the Favour only and Grant of the Giver, but as founded rather upon the Equity and Obligation of a mutual Pactiō, whereby the Receivers of Quarters redeem their own Safety, with the Safety of moe who would be in hazard upon the other Side; it being always to be presumed, that Men being prodigal of themselves, and despairing of their Life and Quarters, tho' in the end they may be overcome by Multitudes, will sell their Lives at a dearer Rate, than those who would live to enjoy the Victory would be content to have it. This Law, as in all other Wars, so more especially is to be kept in Civil Diffensions, in regard the Ties and Interests both Parties have in others, plead both for excusing those who are taken, by reason of Interest they conceive they had to adhere to the Side which they followed, and likewise for Favour of those who have taken their Friends, in respect of the Interest they have in their Prisoners. I may instance many Practicks in these late Troubles in *England*,

but shall only remember one, because it is famous and nottous. One Captain *Lilburn* was taken by some of his Majesty's Forces; the Gentleman being both a Parliament-Man and a Commander, had been so active in both ways, that he wanted not powerful Enemies, who upon probable Grounds and Motives, moved his Majesty to put him to a Trial for divers high Points of Treason. The Gentleman alledged the inviolable Privilege of a Prisoner of War, and the Law of Nations, and that he could not be put to answer any Charge, tho' never so just, until he were dismissed. General *Rutbven*, and all other Soldiers of Fortune did interpose themselves, and sollicit that the Law of War should not be violated. In end, Justice did prevail with his Majesty's all other Respects, and the Gentleman was upon the said Ground acquit. Upon these Grounds I conclude, that I am in the like Case, and cannot be holden to answer to this Dittay: And yet, lest I should seem to shadow myself only under the said Privilege and Defence, and that my Actions may not appear still to your Lordships so ugly and horrid as they look in my Dittay, being represented naked, and without the Vesture of the favourable Circumstances, and probable Grounds and Motives, and the Sincerity of my Intentions, whereupon they proceeded, without any thought of Treason or Hostility: I have joined with this Defence, a short and true Relation of my Carriage in these late Troubles, for Information to your Lordships.

The Relation of James Lord Ogilvie his Carriage in these late Troubles.

Whatever the World may conceive of me and my Carriage in the first and late Troubles, my Conscience bears me witness, and I may appeal to the knowledge of all those who have had the Occasion to know me inwardly, how free I have ever been of Dissimulation either to the Purity of Religion establish'd here, or to my Native Country; and that I never countenanced nor complied with any thing which was conceived to be a Corruption nither in Church or State, but was one of the first who petitioned for Redress of the same during the first Troubles, tho' some of our Houses suffered the Extremity of War and Hostility: It cannot be instructed, that I appeared in any hostile way, or did any Act against my Country. After the Pacification of these Troubles, the Rebellion of *Ireland* having fallen out, I resolved to take hold of that Occasion, to express to the World my constant Zeal for Religion and my Country. And to that purpose there having past some Discourse betwixt General *Lesley* and me, concerning the Expedition for *Ireland*, which I conceived to imply an Invitation to engage in that Service; I sent therefore a Gentleman of my own Name, to show him, that I should be content to serve in that War, upon such Terms as others of my Quality were to have. But having found, that the General had not absolute Power to dispose of Places, and to prefer Officers; and not presuming to have the like way and favour with others who had a Vote in the disposing of them, I retired and lived quietly at home, without any meddling, until the Com-bustions in *England* broke out, and came to such height, that they were like to involve this Kingdom, and to occasion a Rupture betwixt his Ma-

jefty and us. Then I began to bethink myself what my Carriage should be: And in end I thought it best to keep myself free, and to convoy myself out of his Majesty's Dominions, until it should please God to put an end to these unhappy Differences. Upon this Resolution I went to *England*, intending thence to go to *France*; but having gone to take leave of his Majesty, I was commanded to stay and wait upon him. Being his Majesty's Subject, and commanded to wait upon his Royal Person, at such a time, when he was in distress and hazard, I neither did, nor can conceive how I could disobey, without rubbing upon myself the Imputation both of Disloyalty and Baseness. This Country at that Time had not entred in Covenant with the Parliament of *England*: I know not any Law obliging *Scots-Men* his Majesty's Native Subjects, trusted by his Majesty in Places of Respect and Eminence about his Person, wherein they may be useful to their Country, to desert his Majesty's Person and their Places, upon any occasion of Rupture betwixt his Majesty and his Subjects of *England*. I conceived then, that his Majesty's Command did oblige me as well as others to wait upon his Person. The Article of the Treaty, which I am charg'd to have contraven'd (tho' I profess I was altogether ignorant of it, holding it no shame for one of my way to be unacquainted with some particular Laws) appears to me, having looked upon it upon this occasion, not to mean or include the Case of personal Attendance, and Service of private Subjects, who in a private and personal way, adhere to his Majesty in the Time of Troubles and Question with his People of *England*, as I did: For I went to *Eng-land*

land without Forces, yea without my ordinary Train, and accompanied only with one Servant. During my being in the South, I had no Charge but to wait upon his Majesty; I neither commanded Forces, nor was inroll'd in any Regiment, or under the Command of any.

This was my Carriage in the South, until my Master commanded me with *Montrose* and all our Countrymen who were about him, to go homeward. The Marquis of *Newcastle* being then in the Fields with an Army for his Majesty, I could not have passed without seeing of him; my stay with him was so short, that I neither had, nor could have had any Charge or Employment under him. I do not deny but I came to this Country, but I profess it was by his Majesty's express Warrant and Command, and without any sinister Intention against my Country and Countrymen. I came to *Dumfries* without any purpose of Hostility, but only to accommodate myself: and I believe none can complain of any Injury done at that time by me. Finding that the Country was displeased, I returned immediately, without doing harm to any. After my return I was accessory to neither of these Exploits libelled in the Dittay, of taking of *Morpeth* and the *Sheills*; neither was I present at either of these Places when they were taken; but I am able to make good, that I was at *Newcastle* at Six or Seven a-Clock at Night, that Day the Castle of *Morpeth* was taken, it being taken at One or Two o-Clock in the Afternoon: And having heard at *Newcastle* that it was taken, and being solicitous for my Countrymen, that they should not have been well treated by the *English*, who had been irritate by them, in regard they had lost some Men of Quality at the Place, I went of purpose at Seven a-Clock at Night from *Newcastle*, to procure favour to them; and I am confident, that these whom I found there will not deny, that they received such Tokens of my Favour as they stood in need of, and as I at that time was able to give. I neither had, nor could have had any Employment under Colonel *Slaverney*, being a Gentleman beneath my own Quality.

When it was my Fortune to be taken, it was not in any Service or hostile Intention, but being upon my way to his Majesty, with such a small number of People, as appeared afterwards not to be sufficient for a Convoy, I was surprized and forced to bestir myself for my just Defence, and safety of my Life, wherein it pleased God so to assist me, that these who were at the taking of me,

were content to offer and give me Quarters; whereupon I suffered myself to be taken, and doubt not but that I may expect, that the Law of Nations and War, which is observed as sacred and inviolable, when all other Laws are silent *inter arma*, shall not be broken in my behalf.

This is the true Relation of my Carriage in these troublesome Times; for my Carriage before I should be sparing to speak of it myself, if my after Actions were not painted with so foul and ugly Colours. To my knowledge, before these Times, it cannot be condescended that I have offended any by any scandalous or injurious Act. And I am confident, that with God's Assistance I might have regulate so the whole Course of my Life to the end, that I should not have seemed to have fail'd to any, much less in my Duty either to my Prince or Country, if the Times had not fallen out so irregular, that I could not witness my respect to either, without seeming to fail to the other. It being then my Misfortune to have fallen in such hard Times, having so much Interest on both Sides, I have not been suffered to have been an idle Spectator; I followed the Light of my Conscience, which bindeth even when it is mistaken, as Divines hold. I believe none will suspect me to have been a Contriver, Plotter or Fomentor of this unnatural War, and am assured, that if from this Relation it may appear, that I have been in any wise an Actor, there was never one more harmless. None of my Countrymen may charge me with any Act of Insolency, Wrong or Prejudice to them; and I doubt not but some will bear me witness, that I have shown them favour. Tho' I conceived, that my adhering to my Prince in his distress by his special Command, was incumbent to me by my Oath of Allegiance, and in Duty, Conscience and Honour; yet if any thing may be thought to have escaped me, being a young Man, and not acquainted with Subtilties and Laws, in a Business of so tender a Nature, which hath both in the Dispute of the Question in the general, and in this particular Case, divided so many Lawyers, Statesmen, Divines, and others, in their Opinions, and hath set a-work their Tongues, Pens and Swords, to maintain the same, I may say with far better reason than an old Statesman and Lawyer did in the like Case of Civil Dissensions; *Erat obscuritas, erat certamen inter clarissimos duces: multi dubitabant quod optimum esset, & si aliquâ culpâ tenemur erroris humani a scelere certe liberi sumus.*

DEFENCES for Ogilvie.

IT is answered, That he cannot be called in question of Life and Fortune, and forced to answer at this time to this Dittay; because he is Prisoner of War taken upon Quarters, and express Capitulation with his Takers for his Safety; and by the Law and received Customs of all Nations, where War is not turned in a downright Butchery, there be *jura Belli* held sacred and inviolable: Whereof a main one is *captiveis parcendum*, & *sicut resistenti violentia redditur, ita captivo misericordia debetur*, which are *Augustin's* Words repeated in C. 3. 23, 4, 1. *Danda enim est ad minimum vita his qui vitam hostibus & capientibus reliquerunt.* This was the Law of *Lycurgus*, of the *Romans*, and other Warlike Nations, as is clear

from History and Writers *de jure Belli*. It is founded not only upon common Equity, but upon the special Equity of an express Paction, where any Capitulation is made; and where there is no express Capitulation, it is founded upon a tacite and presumed Paction, *nam qui hostem non interficit, sed capit, videtur velle eum vivum habere: & capto est jus ex tacita pollicitatione ne possit postea interfici, & qui se dedit cum hoste pacisci de vita videtur: especially where Captives have rendred themselves in Arms, qui pugnando potuerunt non capi, aut non sine sanguine.*

Scripture itself confirmeth this Law and Practice: For the *Syrians* being stricken blind, and brought Captives by *Elisha*, to the King of *Israel*

at *Samaria*, he enquires at *Elisba*, whether he should smite them or not? He answers *negative*, saying, *Would thou smite those whom thou hast taken with thy Sword and Bow?*

This Law thus confirmed, is most observable in a Civil War betwixt a Prince professing nothing but the Maintenance of his just Power, without prejudice of Religion, and his People's Liberties, to whom adheres a Part of his Subjects: and his People on the other side professing Loyalty to his Majesty, Maintenance and Reformation of Religion, betwixt whom there is a Concurrence of so many Relations and Interests publick and private, as not only Quarters, but Exchange of Prisoners, both flowing from one Fountain, should necessarily be observed. This is the Case of our unnatural War: Prisoners have been exchanged: And it

should be a Stain to the Kirk and Kingdom, if Quarters should not be inviolably kept. The Consequence also may prove dangerous, the Fortune of War being ambulatory; what is now the Defender's Case, may possibly be the Condition of others who appear secure for the present.

The History of Wars betwixt the *Swedes* and *Russians* sheweth, That these Nations who at first have been so full of Animosity as to refuse Quarters, finding in the Progress so great Inconveniences to follow, have been forced to acknowledge the Necessity.

And therefore the Defender upon Quarters, having rendered himself, cannot now be processed upon Life and Fortune; but before any Procedure whatsoever, he ought to be dismissed and conveyed to a Place of Safety.

ANSWERS to the Lord *Ogilvie* his Defences.

THE first Defence founded upon the Course of Martial Law, in giving Quarters and Conditions to Parties taken, and keeping of the famen, can have no Place for freeing of my Lord *Ogilvie* from answering to the Crimes contained in his Dittay. 1. Because the Crimes whereupon he is challenged are these which were not only committed by him before his Apprehending, but also for which he was cited to compare before the Parliament, long before his Apprehending, and from Trial whereof he did withdraw himself by flying to *England*; wherein no Accident occurring to him occasioned by his own Misdemeanour can furnish to him any Shadow of Excuse. 2. The Benefit of Quarters founded upon Martial Law, is only considerable, when the famen are granted in *ipso pro-cinctu*, and by those having Power, neither of which my Lord has, nor can alledge; but by the contrary in his Defences, he grants that he was not in any Service, but upon his way to his Majesty. Likeas, they who took him, found about him certain Instructions from the Earl of *Montrose* to his Majesty, whereof the Copies were sent to the Committee of Estates. 3. By the Martial Law, the Quarters alledged given, cannot be further extended, than to the Freedom from all Chal-

lenges within that Kingdom, within which the Quarters were granted: And my Lord being taken in *England*, might have had some colour (having cleared and verified the Quarters made to him) to have craved the Benefit of the Martial Law, which either he has not craved, or if crav'd, has been judged to be unjust; because the Estates of the Kingdom where he was taken, have transmitted him to the Estates of this Kingdom whereof he is a Subject.

Item. As to the second Part of my Lord's Defence, which is anent his Carriage, opposes the Dittay and Probation thereof.

19 February 1645.

This Day about half Hour to Ten in the Forenoon, their Replies given in by the Procurators of Estates for eliding of the Defences given in by the late Lord *Ogilvie*, are delivered to him about Ten of the Clock before Noon, and ordains him to give in his Duplies, together with all other Defences he has, either in the principal Cause, or against the Probation, against Friday at two a Clock in the Afternoon.

REASONS why the Defenders cannot be urged to give in any other Defences, till that of Quarters be Discussed.

FIRST, the Defence proponed is Inconsistent with other Defences, because the Defence is, that the Defender is not obliged to answer at all to a Dittay, so long as he is in this Condition, for the Reasons adduced in the Defence; and therefore he cannot be urged to give in other Defences. For albeit Defences *in causa* may be proponed together, yet a Defence of this Nature, which is not an Exception *in meritis cause*, but is exclusive of Process, & *que impedit litis ingressum*, cannot consist with other Defences *in causa*, because the proponing of other Defences would be a tacite passing from the same; and the Defender is in the like Case, as if being pursued before the Justice, he would alledge to a Remission; in which Case,

he could not be urged in Justice or Form of Process, to give in other Defences before the said Defences were discussed.

2. This Defence is so material, that if it be found relevant, as it ought to be, the Defender will possibly use no other Defences at all; and he is so confident of the Relevancy of it, that he has not thought upon, nor desired his Advocates to think upon his other Defences *in Causa*.

3. It is not usual before any Judicatory to cause the Defender give in all his Defences at first, especially where a material Defence elusory of the Instance is proponed, which before giving in of any other Defences should be answered and discussed.

ANSWERS to the Reasons given in by James Ogilvie, William Murray, Sir Robert Spotiswood, and Nathaniel Gordon, why they cannot be urged to give in any other Defences, till that Defence anent Quarters be discussed.

TO the first Reason, where it bears, that the Defence of Quarters is exclusive of Process, & impedit *litis ingressum*. It is answered, That the Defence of Quarters is not exclusive of Process, *nec impedit litis ingressum*, because albeit it were sustained to the Defenders, that these who are taken in War, and get the Benefit of Quarters, cannot be killed or slain; yet they who are taken *in bello* (albeit Quarters were granted to be lawful, which is denied *in nostro casu*) are still *Captivi*; and being Captives, the Procurators of the Estates, in Name of the Publick, may crave Process against the Captives, *ut Juxta procedat ad sententiam*, that it may be clear to the World that the Captives are guilty of such and such Crimes; which Guilt is neither pardoned, nor taken away by the giving of Quarters (albeit it were granted that Quarters were lawful *in hoc casu*, as it is not, as shall be cleared in the discussing of the Defence founded upon Quarters) but the giving of Quarters *impedit tantummodo Executionem sententie, eamque partialem duntaxat, quatenus ea est extendenda ad vitam*; but impedes not the Criminal Pursuit itself, whereby it is craved to be found that the Delinquents have committed such and such Crimes.

And where the foresaid first Reasons bears, That the Defence of Quarters cannot consist with the other Defences *in Causa*, because the proposing of other Defences should be a tacit passing from the same. It is answered, the Reason of the foresaid Inconsistency is not relevant; for albeit the proposing of other Defences before the Defence founded upon Quarters might seem to the Defenders to prejudge the Defence of Quarters, as they conceive the Defence of Quarters to be *contra litis ingressum* (which it is not for the Answer above-written) yet proposing of the rest of the peremptory Defences *simul & semel* with the Defence of Quarters, the Defence of Quarters preceding cannot be a passing from that Defence which is proposed *primo loco & per expressum*; but to eschew Cavillation, the Defenders Procurators know very well, that they may propound the rest of the Peremptors with this Caution (adhering to the Defence of Quarters, and may protest that the proposing of the rest shall not prejudge them of the Defence of Quarters) like as the Procurators of Estates declare, that the proposing of the rest of the Defences, shall not prejudge their Defence of Quarters, but the same shall receive its own Answer with the rest.

To the last Part of the first Reason founded upon the *simile* of a Remission. It is answered, That the same cannot be respected, 1. Because an Alledgeance upon a Remission was never alledged,

but where it was instantly verified by Production of the Remission. 2. A Remission *perimit totam instantiam*, for it frees the Defender from all Sentence, or Execution, of the Crime laid to his Charge: And it is truly *contra litis ingressum*, because it discharges the Judge to proceed. But the Defence of Quarters, is as above-written, *nullum processum partem impedit*, but is only effective, when the Sentence of the Process is to be put to Execution.

To the second Reason, bearing, That if the Defence of Quarters be sustain'd to the Defenders as relevant, whereof they are confident, that possibly they will use no other Defences at all. It is answered, The Procurators of Estates are not to make answer to any thing that the Defenders mind possibly to do; but this answer they make, That this same may be alledged in all other peremptory Defences: For if any peremptory Defence be sustained relevant and proven, the Defender needs propound no other Defences; which is absurd, unless they will omit the proposing of them upon their own Peril, seeing it has ever been the Custom of all Commissions from the Parliament, that all the Defences are proposed together, as has been in use to be proposed before the Justice.

To the third and last Reason, opposes the Custom of the Justice Court, and of all preceding Commissions flowing from the Parliament for trying of Delinquents. For before the Justice Court, the Justice usually urges the Pannal's Procurators to propound all the Defences, unless sometimes the King's Advocat, for his own behoof, and in favours of the Pursuer, will make a Reply to a Peremptor, before he hear the rest proposed: and before the Commissions of Parliament for trying of Delinquents, it has been always the Custom to propound all the Defences together. And where the said third Reason bears, that a material Defence elusory of the Instance, ought to be discussed before the Defenders be urged to propound any further Defences. It is answered, 1. That the Defence of Quarters is not elusory of the Process or any Part thereof. 2. All total Exceptions are elusory of the Instance. And therefore, in no Case in the Defenders Judgment, can the Defenders be urged to propound their peremptory Defences *simul & semel: quod est absurdum*.

9th December, 1645.

Sent at half One of the Clock.

• **DUPLIES** for Ogilvie, William Murray, *Sir Robert Spotiswood, and Nathaniel Gordon.*

TO the Answer to the first Alledgeance, it is duplyed; That the Defence founded upon Quarters, not only impedes the Execution of the Sentence, but elides the very Proposition of the Libel, and impedes the Sentence itself, at the least in so far as the Proposition of the Libel carries, that whosoever are Art and Part of the Crimes libelled, incur the pain of Treason, and Fore-faulture of Life: Which is expressly libelled in the Proposition of their Libel. And the Life being the greatest of all Pains, a Defence alledged for Safety thereof, and elusory of that part of the Proposition and Conclusion foresaid against the samen, should first, and *per se* be discussed: Especially in regard that the Defenders are very loth to entangle themselves in a Dispute with the Estates concerning the Relevancy of the Libel, wherein many tender Points may occur to be agitate, and it should tend to an unnecessary protracting of them, if the Defenders should be forced to give in all their Defences, which the Defenders Procurators have not as yet thought on, being confident that the Defence upon Quarters will be found relevant, and carry that whereof the Defenders should be most careful, *viz.* Safety of their Life. And it is known, that before the Justice, and other inferior Judicatories, Defences are most frequently pro-

poned and discussed in the same order. And it is time, after this material Defence shall be discussed, then to urge the Defenders to give in all their Defences. Likeas, in the former Process pursued against *Ogilvie*, there being one of the same nature given in by him; there past in that Process, Replies, Duplies, Triplies, and Quadruples, before he was urged to give in any further Defences.

Secundo, Whereas it is alledged, That in all Commissions from the Parliament, it has been the Custom to propone all Defences together, just as before the Justice General. The Defender denies any such Custom; but by the contrary Defences have severally, and without Cumulation, been proponed and discussed, as in *Ochiltry's* Process, *Toschock's*, *Meldrum's*, and many others.

The same Duply the Defenders repeat against the remanent Members of the Reply: And humbly represents to the Honourable Lords of the Committee the Expediency of discussing of this Defence *primo loco*, seeing the discussing thereof in their favours (which they expect) will shorten the Process, and make them ready to give all possible Content to the Estates, and no wise to vex them with many more Defences, or tedious Dispute.

The Report from the Commissioners for the Process to the Parliament against Sir Robert Spotiswood.

AT *Sanct-Andrews* the eight Day of January One thousand six hundredth and fourty six Years, the Lords and others Commissioners under-written, appointed by the Estates of Parliament for the Process, they are to say, *William Earl Marishal, William Earl of Glencairn, John Earl of Castles, John Earl of Weymes, Robert Lord Burghly, James Lord Coupar, Sir Archibald Johnston of Warriston*, one of the Lords of Sessions, *Sir William Cochran of Collduon, Mr. George Dundas of Maner, Sir Thomas Rutbven of Frieland, Sir John Weyms of Bogie, James Mackdougall of Gartland, John Kennedy Burges of Air, George Gairden Burges of Bruntisland, Mr. Robert Cunningham Burges of Kingborne, Mr. Robert Barclay Burges of Irwing, William Glendinnin Burges of Kirkudbright, Mr. James Campbell Burges of Dumbarton, and Mr. Alexander Colvil of Blair*, one of his Majesty's Justice Deputes, not as Ordinary Judge in the Office of Justiciary, but as one of the Commissioners delegate by the saids Estates of Parliament with the remanent Commissioners foresaid, *Anent* the Dittay given in by *Mr. Roger Mowat, Mr. James Baird, and Thomas Nicolson* Procurators for the Estates of this Kingdom to *Sir Robert Spotiswood, Makand Mentoun, &c.* as in the Dittay it self is more fully contain'd. The said *Mr. Roger Mowat, Mr. James Baird, and Mr. Thomas Nicolson* Procurators for the saids Estates, *Compearand* personally, who for instructing of the Points of the said Dittay produced the foresaid Commission granted by the King's Majesty to the said *James Graham*, making

and constituting him Lieutenant Governour and Captain General of all the Forces raised or to be raised within this Kingdom; and giving him Power and Authority to raise and levy Forces within this Kingdom, and to lead and conduct them against the Forces raised and levied by Authority of the Estates of Parliament of this Kingdom, as the samen of the Date, Tenor and Contents foresaid, signeted, docqueted and subscribed by the said *Sir Robert*, at more length bears. And likewise produced the foresaid Proclamation for holding of Parliaments within this Kingdom, together with the foresaid Commission granted by his Majesty to the said *James Graham* to be Commissioner for his Majesty for holding of the said Parliament, as the samen of the Tenor and Contents foresaid, docqueted and subscribed by the said *Sir Robert*, also at more length bears. And in like manner likewise produced the foresaid misfivive Letter written by the said *Sir Robert Spotiswood* during his being with the said *James Graham*, to some of the Noblemen about the King's Person in *England*, as the samen of the Date, Tenor and Contents foresaid, subscribed by the said *Sir Robert*, likewise at more length bears. And the said *Sir Robert Spotiswood* Defender *Compearand* Personally, who acknowledged Judicially the Signeting of the foresaid first Commission, and the Docqueting and Subscription thereof; the Docqueting and Subscribing of the foresaid Proclamation, and second Commission to the said *James Graham* for holding of the Parliament; and

and the foresaid missive Letter and Subscription thereof, to be all the said Sir Robert's own proper Hand-write; whereupon the saids Procurators of Estates asked Instruments. *Thereafter* the Rights, Reasons and Allegations, together with the Alledgeances, Replies and Duplies given in by the said Parties *hinc inde*, with the hail Writs foresaid, and other Probation deduced by the saids Procurators of Estates, being at length heard, seen and consider'd by the saids Commissioners, and they being therewith ripely advised, the saids Commissioners according to the Power and Authority given to them by the saids Estates of Parliament, makes their Report as follows, *viz.* They find the said Dittay founded upon the foresaid Act of Parliament made in *May 1584*. anent the impugning the Dignity and Authority of the Estates of Parliament, seeking or procuring the Innovation or Diminution of the Power of the samen, being subsum'd upon, and qualified in manner contain'd in the said Dittay, relevant to infer against the said Defender any arbitrary Censure or Punishment the saids Estates of Parliament shall think expedient. And in the like manner find the said Dittay founded upon the Act of Parliament above-written made in *June 1644*. anent the taking up of Arms against the Kingdom and Estates of the Country, relevant to infer the Conclusion contain'd in the said Act, notwithstanding of the hail Defences and Duplies proponed for the part of the said Sir Robert in the contrary. And repels the Defence founded upon Quarters proponed by the said Sir Robert, as the samen is proponed by him against the said Dittay, to stay and impede the foresaid Commissioners to proceed to discuss the Relevancy and Probation of the said Dittay. But the saids Commissioners remits and refers the saids Defences given in by the said Sir Robert or James Ogilvie, to which the said Sir Robert adheres, and which he repeats founded upon Quarters, to be discussed and decided by the honourable Estates of Parliament before the pronouncing of any Sentence of Condemnation to follow hereupon. And finds that Member of the Assumption of the said Dittay, bearing Sir Robert has docketed and subscribed with his Hand, signeted with the Signet of the Office of Secretary, the foresaid Commission granted to the said James Graham upon the first of *June 1645*, for raising and levying of Forces within this Kingdom, leading and commanding them against the Forces raised and levied by Authority of the Estates of Parliament, and siklike, bearing that the said Sir Robert Spotiswood has docketed and subscribed with his Hand the foresaid Commission granted by his Majesty to James Graham, to be Commissioner for his Majesty for holding the said pretended Parliament, sufficiently proven against the said Sir Robert, to infer any arbitrary Censure or Punishment the foresaid Estates of Parliament shall think fit. And in like manner find that Member of the said Assumption of the foresaid Dittay, bearing that the said Sir Robert has joined himself with the said James Graham and his rebellious Army, and his being with him at Acts of Hostility committed by him in the Month of *September* last, at the Battel of *Philiphaugh*, being taken in the Battel, and his Sword drawn in his Hand; and so having taken up Arms against the King-

dom and Estates of the Country, sufficiently proven against the said Sir Robert, to infer the Pain and Punishment of Treason, and that therethorow he is punishable by Forefaulture of Life, Lands and Goods, or any other Censure the Parliament shall please to inflict, the Defence of Quarters being first discuss'd as aforesaid. *Sic subscribitur.*

Cassilis I. P. D. Com.

13th January, 1646.

Read in Audience of the Parliament, and remitted to the several Bodies.

THE Estates of Parliament having heard the whole Dispute contain'd in the Alledgeance, Reply and Duply, above and a back written, founded upon the Exception of Quarters, proponed for Sir Robert Spotiswood, Nathaniel Gordon, William Murray, and Mr. Andrew Guthrie, and after full reading of the samen hail Dispute in plain Parliament, and after full Debate there, the saids Estates repel the Alledgeance and Duply contained in this Paper, and in the other Papers produced, in respect of the Reply propon'd for eliding of the Alledgeance; whereupon Mr. Thomas Nicolson, one of the Procurators for the Estates, asked Instruments. *Sic subscribitur.*

Crawfurd Lindsay, I. P. D. Parl.

16 January, 1646.

THE Report above written produced from the Commission for the Process, against Sir Robert Spotiswood, together with the Interlocutor of Parliament given this Day, repelling the Defence and Duply propon'd by him, founded upon Quarters, in respect of the Reply proponed for eliding of the same Defence, being read, heard, considered and advised by the Estates of Parliament; they approve the same Report and Interlocutor of Parliament foresaid, and find and declare that the said Sir Robert Spotiswood has incurr'd the Capital Punishment of Death, in respect the Dittay founded upon the Act of Parliament in *May 1584*, is found relevant and proven against him by the foresaid Report. And als find and declare, That the said Sir Robert Spotiswood has incurred the Pain and Punishment of Treason, and Forefaulture of his Life, Lands and Goods, in respect the Dittay founded upon the Act of Parliament made in *June 1644*, anent the taking up of Arms against the Kingdom and Estates of this Country, is also found relevant and proven against him by the Report above specified. And therefore the Estates declare him a Traitor to this Kingdom and Estates thereof, and forefault him in Life, Lands and Goods, to be applyed to the use of the Publick; and ordain his Arms, to be riven, and delete out of the Book of Arms, and himself to be execute to the Death by striking of his Head from his Shoulders at the Mercat Cross of St. Andrews, upon *Tuesday* next the twentieth Day of *January* instant, at twelve a Clock that Day, and ordain the Magistrats of St. Andrews to see the same done, *Sic Subscribitur.*

Crawfurd Lindsay, I. P. D. Par.

The Procurators of the States presented to the Commissioners the Form and Directory for proving Sir Robert Spotiswood's Dittay.

St. Andrews, 27 December 1645, The Subsumption of Sir Robert Spotiswood's Dittay, in the several Members and Aggravations thereof libelled, is proven as after follows.

THE Gracious Favour mentioned in his Dittay granted by the Estates of Parliament in Anno 1641, is contained in the 33 Act of King Charles his second Parliament dated the 16 of November 1641.

The Nomination of the Earl of Lanerk to be Secretary by the King's Majesty and Parliament is proven by the Act of King Charles his second Parliament in Anno 1642.

The King's Majesty's Declaration anent the Defender is in the Act of King Charles his Parliament in Anno 1641.

The Defender his Docqueting and Signeting of the two Commissions, and of the Proclamation mentioned in the Defender his Dittay, are proven by the saids two Commissions and Proclamation produced.

The Defender his Joining with James Graham and his Army is proven by his own Declaration of the second of January 1646.

The Writing of the Letter by the Defender of the date the tenth of September 1645, is proven by the Production of the Letter.

DOUBLE of the King's Majesty his Commission to the Marquiss of Montrose, to be Lieutenant-Governour, and General of all his Majesty's Forces in Scotland.

CHARLES R.

CHARLES by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. To our Right Trusty and Right entirely beloved Cousin James Marquis of Montrose, greeting. Whereas divers traitorous and seditious Persons of our Kingdom of Scotland, have levied War against us, and to the manifest Forefaulture of their Allegiance, and the Breach of the Act of Pacification, lately made between the two Kingdoms, have invaded our Kingdom of England, and possess'd themselves in divers places therein, to the great Disturbance of our Peace, and the Destruction and Spoil of our People: And yet further, if no course be taken by us to prevent that, intend to make a new Invasion upon this our Kingdom, and bring in Forces for the Assistance of the Rebels here. Know ye therefore, that we reposing especial Trust and Confidence in your approved Wisdom, Courage, Fidelity and great Ability, whereof you have given hitherto most extraordinary and undeniable Proof, do by these Presents name, constitute, ordain and authorize you the said James Marquis of Montrose to be our Lieutenant Governor, and Captain General of all our Forces raised, or to be raised in our Kingdom of Scotland, and of, and over all others brought, or to be brought thither out of our Kingdom of England and Ireland, or from any part whatsoever. And we hereby give you Power and Authority to raise and levy Forces meet and apt for the Wars within all the Parts of our said Kingdom of Scotland, and to command and enjoin the Sheriff Lieutenants, Magistrats of Cities and Towns, and all others having Power and Authority under us, within every several County of our said Kingdom, to send, or cause to be sent unto you such Number of our said Subjects apt and meet for the War, to such Place, or Places, and at such time as you shall think expedient. And we do further by

these Presents, give you full Power and Authority to put in readines the Persons so by you raised, or to be raised, levied, or assembled, sent, conducted, or brought unto you and them, from time to time, to arm, lead and conduct against all and singular Enemies, Rebels and Traitors, and every of their Adherents attempting any thing against us, our Crown and Dignity, within any part of the said Kingdom, and the saids Enemies, Rebels and Traitors, to invade, pursue, repulse, and in case of Opposition or Resistance, to slay, kill, and put to Execution of Death, by all ways and means, according to your good Discretion: And to do, fulfil and execute all and singular other Things, which shall be requisite for the Levying, Conducting and Government of the said Forces, particularly to make, constitute and ordain Laws, Ordinances and Proclamations from time to time, as the Case shall require, for the good Government and Order of all the Forces that are, or shall be under your Command; and the same also, and every one of them to cause to be duly proclaimed, performed and executed. And likewise to punish all Mutinies, Tumults, Rapines, Murders, and all other Crimes and Misdemeanours of any Person under your Command in your Army, according to the Course and Custom of the Wars and the Laws of the Land. As also for us, and in our Name, as you in your Discretion shall think fit, to save such as you please of these Traitors, Rebels, and Offenders as shall be apprehended or brought into Prison, and make tender of our Royal Grace and Pardon to such of them as shall submit to us, and desire to receive our Mercy. And further, we do give unto you full Power and Authority, for the better Execution of this our Commission, to appoint and assign all Commanders and Officers necessary and requisite for the Government and Command of our saids Forces, and

and to command all Cities, Towns, Castles and Forts within our said Kingdom of *Scotland* to place Governors and Commanders within the same, and to remove, displace or continue such as are in any of them already, according as you shall think meet for the Good of our Service, and Safety of that our Kingdom. And our further Will and Pleasure is, and we do by these Presents give unto you full Power and Authority, not only to repress and subdue such as are in Arms against us within our said Kingdom of *Scotland*, but also to advance your Forces into such parts of our Kingdom of *England*, or any other of our Dominions as are infested and oppressed by any of our *Scotish* Subjects already brought, or hereafter to be brought in for assisting the Rebels of this Kingdom, and there to pursue and beat out of such Towns, Castles and Forts, as they have got Possession of, without any part of our said Kingdom of *England*, or other our Dominions, to recover the same for our use, and to relieve and free our *English* Subjects, and others, from the heavy Yoke that by that means lieth upon them. And because of the ample Testimony you have given us of your singular Wisdom and Fidelity in the ordering and disposing of our great and weighty Affairs hitherto, to the end you may reward and encourage such as have given, or shall give Assistance unto you towards the Advancement of our Service; We do hereby give unto you full Power and Authority from time to time to confer the Title, Degree and Honour of Knighthood upon such Persons, either Natives or others employed under your Charge and Command, whom you in your Discretion shall conceive fit to receive the same; and whatsoever you shall do herein, according to the

true Intent and Meaning of these Presents, we do for us, our Heirs and Successors, ratify and confirm upon the great Trust and Confidence which we repose in you, that ye will make such use of this Power given to you as may best conduce to the Advancement of our Service and Honour. Wherefore we will and command you our said Lieutenant-Governor, with all Diligence duly to execute the Premises with effect. And whatsoever you shall do by virtue of this our Commission, and according to the Tenor and Effect of the same, touching the Execution of the Premises, or any part thereof, you shall be for the same discharged, by these Presents in that behalf against us, our Heirs and Successors. And therefore we will and command all and singular our Subjects within our said Kingdom of *Scotland*, of whatsoever Degree and Quality, whether Noblemen, Gentlemen, Burgeesses, Magistrates in the Country or Towns, Privy-Counsellors, Officers of State Militant, Commanders and Soldiers, to whom it shall appertain, that they and every of them shall be from time to time attendant, aiding, assisting and helping to you, and at the Commandment of you as aforesaid in the due Execution hereof, and that they diligently and faithfully perform and execute such Commands as you shall from time to time give them for our Service, as they and every of them tender our Displeasure, and will answer the contrary at their utmost Perils. And these Presents shall have Continuance during our Pleasure, and ever while they be expressly revoked by us. Given under our Sign Manual, and Privy Signit; At our Court at *Hereford* the Twenty-fifth of *June* 1645, and of our Reign the One and twentieth.

May it please your Majesty,

THIS is a Double of the former Commission granted by your Majesty to the Marquiss of

Montrose, to be Lieutenant-Governor, and General of all your Majesty's Forces in *Scotland*.

Robert Spotiswood.

Follows the King's Majesty his Proclamation for calling a Parliament.

CHARLES R.

CHARLES by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To our Lovits, Lyon King of Arms, Heralds, Pursuivants, Messengers and Officers at Arms, our Sheriffs in that part, conjunctly and severally greeting. Whereas by the seventh Act in the first Session of our late Parliament in that our Kingdom, we with Advice of our Estates there, did statute and ordain, that in every three Years, once at least, a Parliament should be kept within that our Kingdom, in such a convenient Place and Time as we with Advice aforesaid should at the close of every Parliament determine and appoint; likeas by the last Act of our said late Parliament, it was appointed, that the next Triennial Parliament should meet and convene at *Edinburgh* upon the first *Tuesday* of *June* last 1644. Which Date, in regard of the great Distempers both of this and that Kingdom, we could not keep at that time, neither in our own Person nor by our Commissioner. But now amidst the many and weighty Affairs we have in hand, not laying aside the Care of that our antient and native Kingdom, we have thought good not to frustrate any longer the Expectation and Desires that our good Subjects there

may have of such a Parliament; and that the rather, lest any of them should be abused in thinking, that we do or ever intend to acknowledge for lawful the Meeting begun at *Edinburgh* the first *Tuesday* of *June* last, and continued since under the Name of a Parliament; which howsoever the appointing of it to convene by us at that Day and Place, might have been a sufficient Warrant to them for their first Meeting, yet to continue the same in absence of us, or some one at least to represent our Royal Person amongst them, and by themselves, without our concurring Authority, to make pretended Laws and Ordinances, is such a Presumption as we are resolved never to endure. For these therefore and other Causes us moving, but chiefly out of the tender Affection we carry to that our native Kingdom, the present distracted Estate whereof we much pity, and think it cannot better be remedied than by the Wisdom and Authority of a lawful and free Parliament, by whose Counsel and Advice we will be govern'd in what may conduce to the perfect settling of Peace and Tranquillity there. We will and require you and every one of you conjunctly and severally to pass to the Mercat-Cross of our Town of

and

and there by open Reading of this our Proclamation, summond and warn all and sundry Dukes, Marquises, Earls, Viscounts and Lords within that our Kingdom, to give their personal Appearance within the

of our said Town of the Day of next, where and when we intend to hold our High-Court of Parliament by ourself or our Commissioner to be appointed by us for that effect; as also that ye make Intimation of and Warning to the Sheriffs and Freeholders of every Shire within that our Kingdom, and to the Magistrates of all our Burroughs Royal within the same, having Place and Voice in Parliaments to elect and choise Commissioners to be sent from their severall Shires and Burroughs respective, that may give their Opinion and Counsel in such Things as shall be proposed in the said Parliament, and concur with our Nobility aforesaid, to make such Acts and Statutes as may conduce most to the Peace and Welfare of that Kingdom, and shall be approv'd and ratify'd by us or our Commissioner aforesaid in our Name: Likeas we will and command you to intimate publickly to all our Lieges of whatsoever Quality and Condition, that may have any Suits, Complaints or Grievances to be represented to us in Parliament, that they resort for that effect to our said Town of at the Day aforesaid, and have their Recourse no where else within that our Kingdom (especially to the pretended Parliament kept by the Rebels there at *Edinburgh*) as they would not have us to esteem of them as Persons

disaffected to our Royal Person and Government. Furthermore, it is our Pleasure, That this being done, you pass immediately to the Mercat-Crosses of all the Head-boroughs within every severall Shire of that our Kingdom; (or at least to so many of them as are presently under our Obedience) and publish this our Proclamation; provided always, that the Publication thereof at the Mercat-Cross of our said Town of allenarly shall be a sufficient Intimation to all our Lieges to repair thither; and that such of our Nobility and Commissioners of Shires and Burroughs as shall compare and attend upon us or our Commissioner at the Day and Place appointed hereby, shall have Power with the Consent and Approbation of us or our Commissioner foresaid, to make Laws and Acts of Parliament that shall bind all our Subjects of that Kingdom in the same manner that any preceding Acts of Parliament, either in our Time or our Predecessors, have done: And that you report this duly execute and indorsed Day and Place above written, as you and every one of you will Answer upon your Perils; whereanent these Presents shall be a sufficient Warrant. Given under our Royal Hand and Signet at

May it please your Majesty,

This is a Proclamation for calling of a Parliament to meet in the Town of upon the Day of next.

Robert Spotiswood.

Follows the King's Majesty his Commission to James Marquiss of Montrose to be Commissioner to the foresaid Parliament.

CHARLES R.

CHARLES by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. To our right trusty and right entirely beloved Cousin, James Marquiss of Montrose, Lieutenant Governor of our Kingdom of Scotland, greeting. Whereas for the settling of the present Distractions within that our Kingdom, we have thought fit to call a Parliament, which is to meet and begin the Day of next within our Town of And in regard of the great and weighty Affairs we are taken up with here at this time, we not being able to be present in our own Person at that Meeting; therefore we reposing a special Trust and Confidence in your approved Wisdom and Fidelity, do by these Presents, Name, Constitute and Ordain you our Commissioner at the said Parliament, authorizing you at the Day and Place above-mentioned for us and in our Name to meet and convene with such of our Nobility and Commissioners of Shires and Burroughs, as shall give their Appearance for holding of our High Court of Parliament in our said Town of There to advise and consult with our said Nobility and others, of all such things as may tend to the Peace and Welfare of that our Kingdom; and in our Name to propound unto them such things as you shall think expedient to be enacted in our said Parliament, which may conduce to the Good of our Service and happy State of our said Kingdom: Giving you hereby full Power

and Authority for us and in our Name, to approve and ratify all such Acts and Statutes as shall be agreed upon by you and them, and to give them the Strength of Laws to bind and oblige all and whatsoever our Subjects of that Kingdom; with Power also to you to adjourn and continue the said Parliament from time to time, or to dissolve the same as you shall find it meet and expedient; and generally to do all and every thing that any Commissioner from us heretofore hath had Power and Authority to do. Likeas also we give you full Power and Authority in absence of our Chancellor, to appoint a Vice-Chancellor to supply his Place, and to do and perform such things as any Chancellor heretofore in preceding Parliaments have been in use of: As also in absence of the Clerk Register and other necessary Members of Parliament, to appoint such as you shall think fit to fill their Places and exercise their Charges during the Sitting of the said Parliament. And furthermore, we Will and Ordain you to make publick Intimation to all our Lieges within that our Kingdom of all such Acts, Statutes and Ordinances as shall be enacted and concluded in the said Parliament; and generally to use all Solemnities requisite for giving of them the Strength and Power of Laws, which may bind all our Subjects of that Kingdom, in the same manner that any preceding Act of Parliament in our time or any of our Predecessors

decessors have done. Given under our Royal Hand and Signet.

May it please your Majesty,
This is a Warrant for the Marquis of Montrose to be your Majesty's Commissioner in this next Parliament, giving him Power

to appoint a Vice-Chancellor in case of the Chancellor's Absence, and other Officers during the Sitting of the said Parliament, in case they that are now in place do absent themselves.

Robert Spotiswood.

Sir Robert Spotiswood's Declaration from St. Andrews, 2d January 1646.

In Presence of the Laird of Bogie and Mr. Robert Barclay, two of the Commissioners for the Process.

in his Hand. *Robert Spotiswood, Ja. Weems of Bogie, Robert Barclay.*

SIR Robert Spotiswood being examined and interrogative when he went into James Graham's Army, declares he went in to him at Bothwell upon the first Day of September last bypast, and went along with the said James Graham and his Army all the way, till he came to Philiphaugh, and being in Selkirk the time of the Allarm, he followed down to the Haugh after James Graham had drawn down all his Men to the Haugh; and when the Deponer was come down, he found the Armies ready to join, and before he could come thro' the Haugh to the other side where the Baggage stood, James Graham's Army was put to flight, and the Deponer seeing them flee, resolved to flee also, and was thereafter taken by the Laird of Silvertonhill, and some of his Accomplices, holding his Sword

For clearing the Generality of that part of my Deposition, bearing that I was taken with my Sword in my hand, the Manner of it was this. By the time that I came from the Town of Selkirk down the Philiphaugh, the Fight was begun (wherein I was never engaged) and the Flight taken, in the which I was carry'd along with the Throng, having nothing but a Cane in my Hand. But being upon a borrowed Nag, that was not able to take me off, and being pursued close by some Troopers with their drawn Swords, seeing no means to get free of them, I then drew my Sword to keep them off, if possible I might, until I had obtained Quarters of them; which I did, and in that Posture was taken.

Robert Spotiswood.

Sir Robert Spotiswood's Letter to the Laird of Bogie and Mr. Robert Barclay, from St. Andrew's Castle, 4 January 1646.

Right Worshipful,

HAVING bethought myself of my Deposition last Day before you, lest I might be prejudged by the Generality thereof, in regard of my Answer made to your Question, That I was taken with my Sword in my Hand; I humbly desire that this Specification of my said Deposition may be admitted at the time of the advising thereof, to wit, That as I have deponed already I was not engaged in the Fight, neither ever drew Sword till after the Flight begun; in the which I being carry'd away with the rest, and my Nag not being able to take me off, when I saw sundry Troopers coming upon me with their drawn

Swords, then I drew mine, to keep them off, if I could, until I had obtained Quarters, in which Posture I was taken. This being the Truth, I hope to clear my Carriage in that Place the better, your Worships will allow me the Favour to let me eik this to my former Deposition, *re ad-huc integra*, before the concluding of my Process. In Expectation whereof I rest your Worships very humble Servant,

Robert Spotiswood.

Directed thus: For the Right Worshipful the Laird of Bogie and Mr. Robert Barclay.

Sir Robert Spotiswood's Letter to the Lord Digby.

MY LORD,

WE are now arrived *ad columnas Herculis*, to Tweed-side, dispersed all the King's Enemies within this Kingdom to several Places, some to Ireland, most of them to Berwick, and had no open Enemy more to deal with, if you had kept David Lesly there, and not suffered him to come in here, to make head against us of new. It is thought strange here, that at least you have sent no Party after him, which we expected: altho' he should not come at all. You little imagine the Difficulties my Lord Marquis hath here to wrestle with; the overcoming of the Enemy is the least of them, he hath more to do with his own seeming Friends: Since I came to him (which was but within these ten Days, after much Toil and Hazard)

I have seen much of it. He was forced to dismiss his *Highlanders* for a Season, who would needs return home to look to their own Affairs. When they were gone, Abcyn took a Caprice, and had away with him the greatest strength he had of Horse: Notwithstanding whereof he resolved to follow his work, and clear this part of the Kingdom (that was only resting) of the Rebels that had fled to Berwick, and kept a bustling here. Besides he was invited hereunto by the Earls of Roxburgh and Home, who when he was within a dozen Miles of them, have rendred their Houses and themselves to David Lesly, and are carried in as Prisoners to Berwick. Traquair hath been with him, and promised more nor he hath yet performed

formed. All these were great Disheartnings to any other but to him, whom nothing of this kind can amate. With the small Forces he has presently with him he is resolved to pursue *David Lesly*, and not suffer him to grow stronger. If you would perform that which you lately promised, both this Kingdom and the North of *England* might be soon reduced, and considerable Assistance sent from hence to his Majesty; however nothing will be wanting on our parts here: these that are together are both Loyal and Resolute, only a little Encouragement from you (as much to let it be seen that they are not neglected, as for any thing else) would crown the Work speedily. This is all I have for the present, but that I am your Lordship's most Faithful Servant,

Robert Spotiswood.

Dated, Near to Kelfo, September 10. 1645.

THESE are the Evidences whereupon the Sentence condemnator is founded, in pronouncing of which there was much Division in the Court; and tho' many liked not Sir *Robert's* Party, yet they lov'd his Person, which made him many Friends, even among the Covenanters, in so much, that after the Sentence was read, some of the Nobility spoke in his behalf, and intreated the House to consider the Quality and Parts of that excellent Gentleman, and most just Judge, whom they had condemned, and begged earnestly his Life might be spar'd: but an eminent Knowledge and Esteem, which in other Cases might be a Motive to save a Criminal, was one Cause of taking away his Life. For these Gentlemen who spoke were told, That the Authority of the then established Government was not secure, while Sir *Robert Spotiswood* was spared. Whereupon these Noblemen who presided in the Meeting of the Estates at *Glasgow*, and in the Parliament at *St. Andrews*, when they sign'd the respective Sentences, openly declared to the rest of the Members, That they did sign as Prefes, and in Obedience to the Command of the Estates, but not as their particular Judgment.

The Day before his Death, he wrote a Letter to the Marquis of *Montrose*, telling, ' That he ' was condemn'd to die for being faithful to the ' King, and because he had shown an inviolable ' Respect to his Lordship's Pardon. That what- ' ever the Estates might pretend, he believed his ' taking part with his Lordship, was the only Mo- ' tive which made them determine his Destruction, ' and he hop'd by his Death he would contribute ' more to his Majesty's Service, than he could ' have done, had it pleas'd the Sovereign Provi- ' dence to have prolong'd his Life. He intreated ' his Lordship to notice one thing he found neces- ' sary for the King's Service, which was, to con- ' tinue his Gentleness and Moderation of Conduct, ' and not to imitate the barbarous Inhumanity of ' their Enemies, who gave his Lordship but too ' great Cause to follow their Example. And as a ' mark that his Services were not disagreeable to ' his Lordship, he conjur'd him to take under his ' Protection his poor Orphans, and the afflicted ' Family of his Brother Sir *John Spotiswood* of ' *Dairsy*.'

The Day of Sir *Robert Spotiswood's* Execution being come, the People were surprized with A-

stonishment, when they see appear upon the Scaffold, a Person whom in former Time they had with Love and Admiration seen preside in the Supreme Judicature of the Nation, with great Sufficiency, and much Honour. He appeared with the same Gravity and Majesty which did ever shine in his Countenance; and as he was about to speak to the People, a Minister of the Place, knowing that the last Words of this great Man would make Impression on the Minds of all the Spectators, caused the Provost of the Town impose on him silence. But Sir *Robert* foreseeing this Treatment, had put in Writing what he had purposed to speak to the People; so that finding himself interrupted, he threw among the Multitude the following Paper.

YE will expect something from me of the Cause for which I am brought hither at this time to suffer in this kind; which I am bound to do for clearing the Integrity of my own Proceedings, vindicating his Majesty's just and pious Intentions, and withal to vindicate you that are misled in Ignorance, and made to believe that you are tied in Conscience to set forward this unnatural Rebellion, masked under the Covert and Pretext of propagating Religion, and maintaining of the Publick Liberties. You have perceived by the Fact that is gone before, viz. carrying Arms, &c. that I stand here adjudged to die by this pretended Parliament, as a Traitor to the Estates, and an Enemy to my Native Country. This is a Treason unheard of before in this Kingdom, against the Estates, a thing of a late Creation, which I believe there be some would have erected in Opposition to the just and lawful Authority of the King, under which we and our Predecessors have been so many hundreds of Years governed. To come to my treasonable Demeanour (as they esteem it) the main one is, That I did docquet and bring down a Commission of Lieutenantry from his Majesty, to the Lord Marquis of *Montrose*, with a Proclamation for indicting a Parliament by the King's Authority, wherein the said Lord Marquis was to be Commissioner. Not to excuse myself upon the Necessity laid upon me to obey his Majesty's Command in a business of that Nature, in regard of the Charge I had about him, I cannot so far betray my own Conscience, as to keep up from you my Judgment of the thing itself, seeing it may tend to the justifying of the King's part, and your better Information; for lack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful Providence hath brought us hither, to be Instruments of freeing you from the manifold Delusions that are made use of to ensnare you. I say then, it was just and necessary to his Majesty to grant such Commissions, and by Consequence an Act of Duty in me, to perform what he was pleased to Command me. It is known well enough what Contentment his Majesty gave to this Kingdom at his last being here, both in the Affairs of Church and Policy; notwithstanding whereof the World seeth what meeting he hath gotten from us. When the Rebellion burst forth in *England*, all that he desired of us, was only to stand neutral, and not to meddle between him and his Subjects there: Of which moderate desire of his little reckoning was made; but on the contrary, at the request of these Rebels, by the Power of their Faction amongst us, an Army was raised and sent to *England*, to assist them against our own native King. His Ma-
jesty

jeſty being reduced to this Extremity, what expedient could he find ſo fair and eaſy, as to make uſe of the Help of ſuch of his Loyal Subjects here, as he knew had ſuch an unparallel'd Diſloyalty in Horror and Detestation? Amongſt whom that matchleſs Mirror of all true Worth and Nobility, the Lord Marquiſs of *Montroſe* having offered himſelf, it pleaſed his Maſteſty to give him a ſubaltern Commiſſion at firſt; which he having execute with ſuch unheard of Succeſs, that his Memory ſhall be had in Honour for it in all Ages: his Maſteſty for the better furthering of his own Service, and to countenance and encourage him the more in it, gave him an abſolute and independent one thereafter, which is that I deliver'd into his Hands by his Maſteſty's Command. Herewithal his Maſteſty pitying the Miſery of this poor Kingdom, occaſioned by the rebellious Stubbornneſs of a few factious Spirits, thought fit to give Power to the ſaid Lord Marquiſs to call a Parliament in his Maſteſty's Name, to try if by that Means, a Remedy might be found againſt the preſent Evils, and to have all his Subjects of this Kingdom reduced by one Means or other under his Obedience. In all this I ſee not what can be juſtly charged upon his Maſteſty, or upon me as his Servant, who have done nothing againſt any authorized Law of the Kingdom, but have ſerved him faithfully, unto whom by Truſt and natural Allegiance I am ſo much bound.

Whereas I am declared an Enemy to my native Country, God be ſo propitious to me, as my Thoughts towards it have been always publick, and tending to the Good and Honour thereof. I do profeſs, ſince the firſt time I had the Honour of that Noble Marquiſs his Acquaintance, I have been a Favourer of his Deſigns, knowing them to be both loyal and honourable: Beſide that I knew his Affection towards his Country to be eminent in this eſpecially, that he did ever ſhow himſelf paſſionate to vindicate the Honour of this Kingdom, which ſuffereth every where, by this ſtrange Combination of theirs with the Rebels of another Kingdom againſt their own Prince; wherein I concurred in Judgment with him, and thought there was no other way to do it, but by ſetting up a Party of true and loyal hearted *Scots-Men* for his Maſteſty, whereby it might be ſeen that it is not a national Deſection, but only ſtirred up by a Faction therein, who for their own Ends have diſhonoured their native Kingdom, and diſturbed the Peace thereof. In enterprizing and proſecuting of which heroical Deſign, God hath ſo favoured that Noble Lord, that he hath righted our Country in the Opinion of all the World, and diſcovered where the Rottenneſs lieth.

Thus far I am content to be accounted a Traitor, in their Opinion that have condemned me, being fully aſſured that God the righteous Judge of all, who knoweth the Uprightneſs and Integrity of my Intentions, will impute no fault to me in this kind; ſince to my Knowledge I have carried myſelf according to the Direction of his Word, and the

Practice of all good Chriſtians before theſe miſerable Times we are fallen into. My Exhortation therefore (which coming from one at the Point I am at, will, I hope, have ſome weight) ſhall be this unto you; That you will break off your Sins by Repentance, and above all, free yourſelf of this Maſter Sin of Rebellion that reigneth in this Land: whereunto moſt part are either forced, or drawn unawares, chiefly at the Inſtigation of thoſe who ſhould direct you in the way of Truth. It cannot be but a great Judgment upon a Land, when God's ſingular Mercies towards it are ſo little valued. He hath not given us a King in his Wrath, but one for Piety, Bounty, and all Virtues both Chriſtian and Moral, may be a Pattern to all Princes beſides. How thankful we are to God for ſo great a Bleſſing, our Reſpect towards him manifeſteth. Yet I fear there is a greater Judgment than this upon it, which occaſioneth all the Miſchiefs that afflict this poor Land, ſuch as was ſent upon *Ahab*: God hath put a lying Spirit in the Mouths of the moſt part of your Prophets, who inſtead of the Doctrine of Salvation, labour to draw your Hearts unto the Condemnation of *Core*. God Almighty look upon this poor miſerable Church and Kingdom, and relieve you out of the intolerable Servitude you lie under, which I do heartily wiſh for in your Behalf. So let me have the Aſſiſtance of your Prayers, that God would be pleaſed to pardon all my Sins in Jeſus Chriſt, and gather my Soul with the Saints and Martyrs that are gone to their Reſt before. So I bid the World and you farewel.

Sir Robert was not diſturbed at the unmanly Interruption he met with, when he was about to addreſs himſelf to the People; ſo that turning from them, he wholly beſtowed himſelf in Devotions and Prayers to Almighty God. The ſame Miniſter having aſked, if he would have him and the People to pray for the Salvation of his Soul, he made answer, That he deſired the Prayers of the People; but was not ſollicitous for his Prayers, which he believed were abominable unto God: for (added he) of all the Plagues with which the offended Maſteſty of God had ſcourged this Nation, this was much the greateſt (greater than the Sword, Fire or Peſtilence) that for the Sins of the People God had ſent a lying Spirit into the Mouth of the Prophets. With which ſaying this Preacher finding himſelf touched, grew ſo extremely in Paſſion, that he could not forbear ſcandalous and contumelious Language againſt *Sir Robert's* Father, who had been long dead, and againſt himſelf who was now a dying: Which this mild Gentleman took no notice of, having his Mind fixed upon higher Matters. At laſt with an undaunted Air he advances towards the Inſtrument of his Execution, and ſhewing no Alteration either in Voice or Countenance, he laid down his Neck to the fatal Stroak, and uttered theſe his laſt Words; *Merciful Jeſu, gather my Soul unto thy Saints and Martyrs, who have run before me in this Race.*



XLIV. *The Trial of CHARLES STUART* * *King of England, before the High-Court of Justice, for High-Treason, January 20---27, 1648. 24 Car. I. Licensed by Gilbert Mabbot.*

ON *Saturday*, being the 20th Day of *January*, 1648. the Lord President of the High Court of Justice, with near fourscore of the Members of the said Court, having sixteen Gentlemen with Partizans, and a Sword, and a Mace, with their and other Officers of the said Court, marching before them, came to the Place ordered to be prepared for their sitting at the West-end of the great Hall at *Westminster*; where the Lord President in a Crimson-Velvet Chair, fixed in the midst of the Court, placed himself, having a Desk with a Crimson-Velvet Cushion before him; the rest of the Members placing themselves on each side of him upon several Seats, or Benches, prepared and hung with Scarlet for that Purpose; and the Partizans dividing themselves on each side of the Court before them.

The Court being thus sat, and Silence made, the Great Gate of the said Hall was set open, to the end that all Persons, without Exception, desirous to see or hear, might come into it. Upon which the Hall was presently filled, and Silence again ordered.

This done, Colonel *Thomlinson*, who had the Charge of the Prisoner, was commanded to bring him to the Court; who within a Quarter of an Hour's Space brought him, attended with about twenty Officers with Partizans, marching before him, there being other Gentlemen, to whose Care and Custody he was likewise committed, marching in his Rear.

Being thus brought up within the Face of the Court, the Serjeant at Arms, with his Mace, receives and conducts him strait to the Bar, having a Crimson-Velvet Chair set before him. After a stern looking upon the Court, and the People in the Galleries on each side of him, he places himself, not at all moving his Hat, or otherwise shewing the least Respect to the Court; but presently rises up again, and turns about, looking downwards upon the Guards placed on the left side, and on the Multitude of Spectators on the right side of the said great Hall. After Silence made among the People, the Act of Parliament for the trying of *Charles Stuart*, King of *England*, was read over by the Clerk of the Court, who sat on one side of a Table covered with a rich *Turkey-Carpet*, and placed at the Feet of the said Lord-President; upon which Table was also laid the Sword and Mace.

After reading the said Act, the several Names of the Commissioners were called over, every one who was present, being eighty, as aforesaid, rising up, and answering to his Call.

Having again placed himself in his Chair, with his Face towards the Court, Silence being again ordered, the Lord President stood up, and said:

Ld. President. Charles Stuart, King of *England*, the Commons of *England* assembled in Parliament being deeply sensible of the Calamities that have been brought upon this Nation, (which is fixed upon you as the principal Author of it) have resolved to make Inquisition for Blood; and according to that Debt and Duty they owe to Justice, to God, the Kingdom, and themselves, and according to the Fundamental Power that rests in themselves, they have resolved to bring you to Trial and Judgment; and for that purpose have constituted this High Court of Justice, before which you are brought.

This said, Mr. *Cook*, Solicitor for the Commonwealth (standing within a Bar on the Right Hand of the Prisoner) offered to speak: but the King having a Staff in his Hand, held it up, and laid it upon the said Mr. *Cook's* Shoulder two or three times, bidding him hold. Nevertheless, the Lord President ordering him to go on, he said:

Mr. *Cook*. My Lord, I am commanded to charge *Charles Stuart*, King of *England*, in the Name of the Commons of *England*, with Treason and High Misdemeanours; I desire the said Charge may be read.

The said Charge being delivered to the Clerk of the Court, the Lord President ordered it should be read; but the King bid him hold. Nevertheless, being commanded by the Lord President to read it, the Clerk begun, and the Prisoner sat down again in his Chair, looking sometimes on the High Court, sometimes up to the Galleries; and having risen again, and turned about to behold the Guards and Spectators, sat down, looking very sternly, and with a Countenance not at all moved, till these Words, *viz. Charles Stuart to be a Tyrant and Traitor, &c.* were read; at which he laughed, as he sat, in the Face of the Court.

The Charge being read, the Lord President replied:

Ld. President. Sir, You have now heard your Charge, containing such Matter as appears in it; you find, that in the Close of it, it is prayed to the

the Court, in the behalf of the Commons of *England*, that you answer to your Charge. The Court expects your Answer.

King. I would know by what Power I am called hither; I was not long ago in the *Isle of Wight*, how I came there, is a longer Story than I think it fit at this time for me to speak of; but there I enter'd into a Treaty with both Houses of Parliament, with as much publick Faith as it's possible to be had of any People in the World. I treated there with a number of honourable Lords and Gentlemen, and treated honestly and uprightly; I cannot say but they did very nobly with me, we were upon the conclusion of the Treaty. Now I would know by what Authority, I mean lawful; there are many unlawful Authorities in the World, Thieves and Robbers by the Highways; but I would know by what Authority I was brought from thence, and carried from place to place, and I know not what: and when I know what lawful Authority, I shall answer. Remember I am your King, your lawful King, and what Sins you bring upon your Heads, and the Judgment of God upon this Land; think well upon it, I say, think well upon it, before you go further from one Sin to a greater: therefore let me know by what lawful Authority I am seated here, and I shall not be unwilling to answer. In the mean time, I shall not betray my Trust; I have a Trust committed to me by God, by old and lawful Descent, I will not betray it, to answer to a new unlawful Authority: therefore resolve me that, and you shall hear more of me.

Ld. President. If you had been pleased to have observed what was hinted to you by the Court, at your first coming hither, you would have known by what Authority; which Authority requires you, in the Name of the People of *England*, of which you are elected King, to answer them.

King. No, Sir, I deny that.

Ld. President. If you acknowledge not the Authority of the Court, they must proceed.

King. I do tell them so, *England* was never an Elective Kingdom, but an Hereditary Kingdom for near these Thousand Years; therefore let me know by what Authority I am called hither: I do stand more for the Liberty of my People, than any here that come to be my pretended Judges; and therefore let me know by what lawful Authority I am seated here, and I will answer it; otherwise I will not answer it.

Ld. President. Sir, how really you have managed your Trust, is known: your way of Answer is to interrogate the Court, which befits not you in this Condition. You have been told of it twice or thrice.

King. Here is a Gentleman, Lieutenant-Colonel *Cobbet*; ask him, if he did not bring me from the *Isle of Wight* by force. I do not come here as submitting to the Court: I will stand as much for the Privilege of the House of Commons, rightly understood, as any Man here whatsoever. I see no House of Lords here, that may constitute a Parliament; and the King too should have been. Is this the bringing of the King to his Parliament? Is this the bringing an end to the Treaty in the publick Faith of the World? Let me see a legal Authority warranted by the Word of God the Scriptures, or warranted by the Constitutions of the Kingdom, and I will answer.

Ld. President. Sir, You have propounded a Question, and have been answered. Seeing you will not answer, the Court will consider how to proceed: in the mean time, those that brought you hither, are to take charge of you back again. The Court desires to know, whether this be all the Answer you will give, or no.

King. Sir, I desire that you would give me, and all the World, Satisfaction in this: let me tell you, it is not a slight thing you are about. I am sworn to keep the Peace, by that Duty I owe to God and my Country, and I will do it to the last Breath of my Body; and therefore ye shall do well to satisfy first God, and then the Country, by what Authority you do it: if you do it by an usurped Authority, you cannot answer. There is a God in Heaven, that will call you, and all that give you Power, to account. Satisfy me in that, and I will answer; otherwise I betray my Trust, and the Liberties of the People: and therefore think of that, and then I shall be willing. For I do avow, that it is as great a Sin to withstand lawful Authority, as it is to submit to a tyrannical, or any other ways unlawful Authority; and therefore satisfy me that, and you shall receive my Answer.

Ld. President. The Court expects you should give them a final Answer, their Purpose is to adjourn to *Monday* next, if you do not satisfy yourself, tho' we do tell you our Authority; we are satisfied with our Authority, and it is upon God's Authority and the Kingdom's, and that Peace you speak of will be kept in the doing of Justice, and that's our present Work.

King. For answer, let me tell you, you have shewn no lawful Authority to satisfy any reasonable Man.

Ld. President. That is, in your Apprehension; we are satisfied that are your Judges.

King. 'Tis not my Apprehension, nor yours neither, that ought to decide it.

Ld. President. The Court hath heard you, and you are to be disposed of as they have commanded.

The Court adjourns to the Painted-Chamber, on *Monday* at Ten of the Clock in the Forenoon, and thence hither.

It is to be observed, that as the Charge was reading against the King, the Head of his Staff fell off, which he wonder'd at; and seeing none to take it up, he stoops for it himself.

As the King went away, facing the Court, he said, I do not fear that, (meaning the Sword.) The People in the Hall, as he went down the Stairs, cry'd out, some, *God save the King*, and most for *Justice*.

At the High Court of Justice sitting in Westminster-Hall, Monday, Jan. 22, 1648.

O Yes made; Silence commanded; the Court call'd, and answer'd to their Names.

Silence commanded upon pain of Imprisonment, and the Captain of the Guard to apprehend all such as make Disturbance.

Upon the King's coming in, a Shout was made.

Command given by the Court to the Captain of the Guard, to fetch and take into his Custody those who make any Disturbance.

Mr. Solicitor. May it please your Lordship, my Lord President; I did at the last Court, in the Behalf of the Commons of *England*, exhibit and give into this Court a Charge of High-Treason, and other high Crimes against the Prisoner at the Bar; whereof I do accuse him in the Name of the People of *England*: and the Charge was read unto him, and his Answer required. My Lord, He was not then pleased to give an Answer, but instead of answering, did there dispute the Authority of this high Court. My humble Motion to this high Court in behalf of the Kingdom of *England*, is, That the Prisoner may be directed to make a positive Answer, either by way of Confession, or Negation; which if he shall refuse to do, that the Matter of the Charge may be taken *pro confesso*, and the Court may proceed according to Justice.

Ld. President. Sir, You may remember at the last Court you were told the Occasion of your being brought hither, and you heard a Charge read against you, containing a Charge of High-Treason and other high Crimes against this Realm of *England*: you heard likewise, that it was prayed in the Behalf of the People, that you should give an Answer to that Charge, that thereupon such Proceedings might be had, as should be agreeable to Justice. You were then pleased to make some Scruples concerning the Authority of this Court, and knew not by what Authority you were brought hither; you did divers times propound your Questions, and were as often answer'd, That it was by Authority of the Commons of *England* assembled in Parliament, that did think fit to call you to account for those high and capital Misdemeanours where-with you were then charged. Since that the Court hath taken into Consideration what you then said, they are fully satisfied with their own Authority, and they hold it fit you should stand satisfied with it too; and they do require it, that you do give a positive and particular Answer to this Charge that is exhibited against you: they do expect you should either confess or deny it; if you deny, it is offer'd in the Behalf of the Kingdom to be made good against you: their Authority they do avow to the whole World, that the whole Kingdom are to rest satisfied in, and you are to rest satisfied with it. And therefore you are to lose no more Time, but to give a positive Answer thereunto.

King. When I was here last, 'tis very true, I made that Question; and truly if it were only my own particular Case, I would have satisfied myself with the Protestation I made the last time I was here against the Legality of this Court, and that a King cannot be try'd by any superiour Jurisdiction on Earth: but it is not my Case alone, it is the Freedom and the Liberty of the People of *England*; and do you pretend what you will, I stand more for their Liberties. For if Power without Law may make Laws, may alter the fundamental Laws of the Kingdom, I do not know what Subject he is in *England*, that can be sure of his Life, or any thing that he calls his own: therefore when that I came here, I did expect particular Reasons to know by what Law, what Authority you did proceed against me here. And therefore I am a little to seek what to say to you in this particular, because the Affirmative is to be proved, the Negative often is very hard to do: but since I cannot persuade you to do it, I shall tell you my Reasons as short as I can.

My Reasons why in Conscience and the Duty I owe to God first, and my People next, for the Preservation of their Lives, Liberties, and Estates, I conceive I cannot answer this, till I be satisfied of the Legality of it.

All Proceedings against any Man whatsoever—

Ld. President. Sir, I must interrupt you, which I would not do, but that what you do is not agreeable to the Proceedings of any Court of Justice; You are about to enter into Argument, and dispute concerning the Authority of this Court, before whom you appear as a Prisoner, and are charged as an high Delinquent; if you take upon you to dispute the Authority of the Court, we may not do it, nor will any Court give way unto it: you are to submit unto it, you are to give a punctual and direct Answer, whether you will answer your Charge or no, and what your Answer is.

King. Sir, By your favour, I do not know the Forms of Law; I do know Law and Reason, tho' I am no Lawyer profess'd, but I know as much Law as any Gentleman in *England*; and therefore (under favour) I do plead for the Liberties of the People of *England* more than you do: And therefore if I should impose a Belief upon any Man, without Reasons given for it, it were unreasonable; but I must tell you, that that Reason that I have, as thus informed, I cannot yield unto it.

Ld. President. Sir, I must interrupt you, you may not be permitted: you speak of Law and Reason, it is fit there should be Law and Reason, and there is both against you. Sir, the Vote of the Commons of *England* assembled in Parliament, it is the Reason of the Kingdom, and they are these that have given to that Law, according to which you should have ruled and reigned. Sir, you are not to dispute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the Court, and your Contempt will be recorded accordingly.

King. I do not know how a King can be a Delinquent; but by any Law that ever I heard of, all Men (Delinquents, or what you will) let me tell you they may put in Demurrers against any Proceeding as legal: and I do demand that, and demand to be heard with my Reasons; if you deny that, you deny Reason.

Ld. President. Sir, you have offer'd something to the Court; I shall speak something unto you, the Sense of the Court. Sir, neither you nor any Man are permitted to dispute that Point; you are concluded, you may not demur to the Jurisdiction of the Court: if you do, I must let you know, that they over-rule your Demurrer; they sit here by the Authority of the Commons of *England*, and all your Predecessors and you are responsible to them.

King. I deny that, shew me one Precedent.

Ld. President. Sir, you ought not to interrupt while the Court is speaking to you. This Point is not to be debated by you, neither will the Court permit you to do it; if you offer it by way of Demurrer to the Jurisdiction of the Court, they have consider'd of their Jurisdiction, they do affirm their own Jurisdiction.

King. I say Sir, by your favour, that the Commons of *England* was never a Court of Judicature; I would know how they came to be so.

Ld. President. Sir, you are not to be permitted to go on in that Speech and these Discourses.

Then

Then the Clerk of the Court read as followeth:

Charles Stuart, *King of England*, You have been accused on the behalf of the People of England of High Treason, and other high Crimes; the Court have determined that you ought to answer the same.

King. I will answer the same so soon as I know, by what Authority you do this.

Ld. President. If this be all that you will say, then, Gentlemen, you that brought the Prisoner hither, take charge of him back again.

King. I do require that I may give in my Reasons why I do not answer, and give me time for that.

Ld. President. Sir, 'tis not for Prisoners to require.

King. Prisoners! Sir, I am not an ordinary Prisoner.

Ld. President. The Court hath consider'd of their Jurisdiction, and they have already affirmed their Jurisdiction; if you will not answer, we shall give order to record your Default.

King. You never heard my Reasons yet.

Ld. President. Sir, your Reasons are not to be heard against the highest Jurisdiction.

King. Shew me that Jurisdiction where Reason is not to be heard.

Ld. President. Sir, we shew it you here, the Commons of *England*; and the next time you are brought, you will know more of the Pleasure of the Court; and, it may be, their final Determination.

King. Shew me where ever the House of Commons was a Court of Judicature of that kind.

Ld. President. Serjeant, take away the Prisoner.

King. Well, Sir, remember that the King is not suffer'd to give in his Reasons for the Liberty and Freedom of all his Subjects.

Ld. President. Sir, you are not to have liberty to use this Language: How great a Friend you have been to the Laws and Liberties of the People, let all *England* and the World judge.

King. Sir, under favour it was the Liberty, Freedom, and Laws of the Subject, that ever I took—defended myself with Arms; I never took up Arms against the People, but for the Laws.

Ld. President. The Command of the Court must be obey'd; no Answer will be given to the Charge.

King. Well, Sir!

And so he was guarded forth to Sir Robert Cotton's House.

Then the Court adjourned to the Painted Chamber on *Tuesday* at Twelve a-clock, and from thence they intend to adjourn to *Westminster-Hall*; at which time all Persons concerned are to give their Attendance.

At the High Court of Justice sitting in Westminster-Hall, Tuesday Jan. 23. 1648.

O Yes made, Silence commanded, the Court called, seventy three Persons present.

The King comes in with his Guard, looks with an austere Countenance upon the Court, and sits down.

The second O Yes made, and Silence commanded.

Mr. Cook, Solicitor-General. May it please your Lordship, my Lord President; This is now the third time, that by the great Grace and Favour of this High Court the Prisoner hath been brought to the Bar before any Issue joined in the Cause. My Lord, I did at the first Court exhibit a Charge against him, containing the highest Treason that ever was wrought upon the Theatre of *England*; That a King of *England*, trusted to keep the Law, that had taken an Oath so to do, that had Tribute paid him for that end, should be guilty of a wicked Design to subvert and destroy our Laws; and introduce an Arbitrary and Tyrannical Government, in defiance of the Parliament and their Authority, set up his Standard for War against his Parliament and People: and I did humbly pray, in the behalf of the People of *England*, that he might speedily be required to make an Answer to the Charge.

But, my Lord, instead of making any Answer, he did then dispute the Authority of this High Court. Your Lordship was pleased to give him a further Day, to consider, and to put in his Answer; which Day being yesterday, I did humbly move, that he might be required to give a direct and positive Answer, either by denying or confession of it: but, my Lord, he was then pleased for to demur to the Jurisdiction of the Court; which the Court did then over-rule, and command him to give a direct and positive Answer. My Lord, Besides this great Delay of Justice, I shall now humbly move your Lordship for speedy Judgment against him. My Lord, I might press your Lordship upon the whole, that according to the known Rules of the Law of the Land, That if a Prisoner shall stand as contumacious in contempt, and shall not put in an issuable Plea, Guilty or Not Guilty of the Charge given against him, whereby he may come to a fair Trial; That, as by an implicit Confession, it may be taken *pro confesso*, as it hath been done to those who have deserved more Favour than the Prisoner at the Bar has done. But besides, my Lord, I shall humbly press your Lordship upon the whole Fact. The House of Commons, the Supreme Authority and Jurisdiction of the Kingdom, they have declared, That it is notorious, that the Matter of the Charge is true, as it is in truth, my Lord, as clear as Chrystal, and as the Sun that shines at Noon-day: which if your Lordship and the Court be not satisfied in, I have notwithstanding, on the People of *England's* behalf, several Witnesses to produce. And therefore I do humbly pray, and yet I must confess it is not so much I, as the innocent Blood that hath been shed, the Cry whereof is very great for Justice and Judgment; and therefore I do humbly pray, that speedy Judgment be pronounced against the Prisoner at the Bar.

Ld. President. Sir, you have heard what is moved by the Counsel on the behalf of the Kingdom against you. Sir, you may well remember, and if you do not, the Court cannot forget what dilatory Dealings the Court hath found at your hands. You were pleased to propound some Questions, you have had our Resolution upon them. You were told over and over again, That the Court did affirm their own Jurisdiction; that it was not for you, nor any other Man, to dispute the Jurisdiction of the supreme and highest Authority of *England*, from which there is no Appeal, and touching which there must be no Dispute: yet you did persist in such Carriage, as you gave no manner of

of Obedience, nor did you acknowledge any Authority in them, nor the High Court that constituted this Court of Justice.

Sir, I must let you know from the Court, that they are very sensible of these Delays of yours, and that they ought not, being thus authorized by the supreme Court of *England*, to be thus trifled withal; and that they might in Justice, if they pleased, and according to the Rules of Justice, take advantage of these Delays, and proceed to pronounce Judgment against you: yet nevertheless they are pleased to give direction, and on their behalfs I do require you, that you make a positive Answer unto this Charge that is against you, Sir, in plain terms, for Justice knows no respect of Persons; you are to give your positive and final Answer in plain *English*, whether you be guilty or not guilty of these Treasons laid to your Charge.

The King, after a little Pause, said,

King. When I was here yesterday, I did desire to speak for the Liberties of the People of *England*; I was interrupted: I desire to know yet whether I may speak freely or not.

Ld. President. Sir, You have had the Resolution of the Court upon the like Question the last Day, and you were told, that having such a Charge of so high a nature against you, and your Work was, that you ought to acknowledge the Jurisdiction of the Court, and to answer to your Charge. Sir, If you answer to your Charge, which the Court gives you leave now to do, tho' they might have taken the advantage of your Contempt; yet if you be able to answer to your Charge, when you have once answered, you shall be heard at large, make the best Defence you can. But, Sir, I must let you know from the Court, as their Commands, that you are not to be permitted to issue out into any other Discourses, till such time as you have given a positive Answer concerning the matter that is charged upon you.

King. For the Charge, I value it not a Rush, it is the Liberty of the People of *England* that I stand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that should be an Example to all the People of *England* for to uphold Justice, to maintain the old Laws; indeed I do not know how to do it. You spoke very well the first Day that I came here, (on *Saturday*) of the Obligations that I had laid upon me by God, to the maintenance of the Liberties of my People; the same Obligation you spake of, I do acknowledge to God that I owe to him, and to my People, to defend as much as in me lies the antient Laws of the Kingdom: therefore until that I may know that this is not against the fundamental Laws of the Kingdom, by your favour I can put in no particular * Charge. If you will give me time, I will shew you my Reasons why I cannot do it, and this —

* This is as the King expressed it, but I suppose he meant Answer.

Here being interrupted, he said,

By your favour, you ought not to interrupt me: how I came here I know not, there's no Law for it to make your King your Prisoner. I was in a Treaty upon the publick Faith of the Kingdom, that was the known — two Houses of Parliament that was the Representative of the Kingdom; and when that I had almost made an end of the Treaty, then I was hurried away, and brought hither: and therefore —

Here the Lord President said, Sir, you must know the Pleasure of the Court.

King. By your favour, Sir.

Ld. President. Nay, Sir, by your favour, you may not be permitted to fall into those Discourses; you appear as a Delinquent, you have not acknowledged the Authority of the Court, the Court craves it not of you: but once more they command you to give your positive Answer — Clerk, Do your Duty.

King. Duty, Sir!

The Clerk reads.

Charles Stuart, *King of England*, you are accused in the behalf of the Commons of *England* of divers high Crimes and Treasons, which Charge hath been read unto you; the Court now requires you to give your positive and final Answer, by way of Confession or Denial of the Charge.

King. Sir, I say again to you, so that I might give Satisfaction to the People of *England* of the Clearness of my Proceeding, not by way of Answer, not in this way, but to satisfy them that I have done nothing against that Trust that hath been committed to me, I would do it: but to acknowledge a new Court, against their Privileges, to alter the fundamental Laws of the Kingdom, Sir you must excuse me.

Ld. President. Sir, this is the third time that you have publicly disown'd this Court, and put an Affront upon it: How far you have preserv'd the Privileges of the People, your Actions have spoke it; but truly, Sir, Mens Intentions ought to be known by their Actions, you have written your Meaning in bloody Characters throughout the whole Kingdom. But, Sir, you understand the Pleasure of the Court. — Clerk, Record the Default. — And, Gentlemen, you that took charge of the Prisoner, take him back again.

King. I will only say this one Word more to you: If it were only my own Particular, I would not say any more, nor interrupt you.

Ld. President. Sir, you have heard the Pleasure of the Court, and you are (notwithstanding you will not understand it) to find that you are before a Court of Justice.

Then the King went forth with his Guard, and Proclamation was made, That all Persons which had then appeared, and had further to do at the Court, might depart into the Painted Chamber; to which Place the Court did forthwith adjourn, and intended to meet in *Westminster-Hall* by Ten of the Clock next Morning.

Cryer. God blefs the Kingdom of *England*.

Wednesday, January 24th 1648.

THIS Day it was expected the High Court of Justice would have met in *Westminster-Hall*, about Ten of the Clock; but at the Time appointed one of the Ushers, by Direction of the Court (then sitting in the Painted-Chamber) gave Notice to the People there assembled, That in regard the Court was then upon the Examination of Witneses, in relation to present Affairs, in the Painted-Chamber, they could not sit there; but all Persons appointed to be there, were to appear upon further Summons.

The Proceedings of the High Court of Justice sitting in Westminster-Hall, on Saturday the 27th of January 1648.

O Yes made; Silence commanded; the Court called: Serjeant *Bradshaw* Lord President (in a Scarlet Robe) with Sixty-eight other Members of the Court.

As the King comes in, a Cry made in the Hall for Execution, Justice, Execution.

King. I shall desire a Word to be heard a little, and I hope I shall give no Occasion of Interruption.

Ld. President. You may answer in your time, hear the Court first.

King. If it please you, Sir, I desire to be heard, and I shall not give any Occasion of Interruption, and it is only in a Word: a sudden Judgment—

Ld. President. Sir, you shall be heard in due time, but you are to hear the Court first.

King. Sir, I desire, it will be in order to what I believe the Court will say; and therefore, Sir, an hasty Judgment is not so soon recalled.

Ld. President. Sir, you shall be heard before the Judgment be given, and in the mean time you may forbear.

King. Well, Sir, shall I be heard before the Judgment be given?

Ld. President. Gentlemen, it is well known to all, or most of you here present, that the Prisoner at the Bar hath been several times convened and brought before the Court to make answer to a Charge of Treason, and other high Crimes exhibited against him in the Name of the People of * *England*; to which Charge being required to answer, he hath been so far from obeying the Commands of the Court by submitting to their Justice, as he began to take upon him to offer Reasoning and Debate unto the Authority of the Court, and of the highest Court

* Here a malignant Lady (*Lady Fairfax*) interrupted the Court, saying, Not half the People; but she was soon silenced.

that constituted them to try and judge him: but being over-ruled in that, and required to make his Answer, he was still pleased to continue contumacious, and to refuse to submit or answer. Hereupon the Court, that they may not be wanting to themselves, to the Trust reposed in them, nor that any Man's Wilfulness pervert Justice, they have thought fit to take the Matter into their Consideration; they have considered of the Charge, they have considered of the Contumacy, and of that Confession, which in Law doth arise upon that Contumacy: They have likewise considered of the Notoriety of the Fact charg'd upon this Prisoner, and upon the whole Matter they are resolved, and have agreed upon a Sentence to be now pronounc'd against this Prisoner: But in respect he doth desire to be heard, before the Sentence be read and pronounc'd, the Court hath resolved that they will hear him. Yet, Sir, thus much I must tell you before-hand, which you have been minded of at other Courts, that if that you have to say, be to offer any Debate concerning Jurisdiction, you are not to be heard in it; you have offered it formerly, and you have indeed struck at the Root, that is, the Power and Supreme Authority of the Commons of *England*, which this Court will not admit a Debate of; and which indeed is an irrational Thing in them to do, being a Court that acts

upon Authority derived from them, that they should presume to judge upon their Superior, from whom there is no Appeal. But, Sir, if you have any thing to say in defence of yourself concerning the Matter charged, the Court hath given me in command to let you know they will hear you.

King. Since that I see that you will not hear any thing of Debate concerning that which I confess I thought most material for the Peace of the Kingdom, and for the Liberty of the Subject, I shall wave it; I shall speak nothing to it, but only I must tell you, that this many a-day all things have been taken away from me, but that that I call more dear to me than my Life, which is my Conscience and my Honour: And if I had respect to my Life more than the Peace of the Kingdom, the Liberty of the Subject, certainly I should have made a particular Defence for myself; for by that at leastwise I might have delayed an ugly Sentence, which I believe will pass upon me. Therefore certainly, Sir, as a Man, that hath some Understanding, some Knowledge of the World, if that my true Zeal to my Country had not over-borne the Care that I have of my own Preservation, I should have gone another way to work than that I have done. Now, Sir, I conceive, that an hasty Sentence once pass'd, may sooner be repented than recalled; and truly, the self-same Desire that I have for the Peace of the Kingdom, and the Liberty of the Subject, more than my own Particular, does make me now at last desire, that having something for to say that concerns both, I desire before Sentence be given, that I may be heard in the Painted-Chamber before the Lords and Commons. This Delay cannot be prejudicial to you, whatsoever I say; if that I say no Reason, those that hear me must be Judges; I cannot be Judge of that, which I have: if it be Reason, and really for the Welfare of the Kingdom, and the Liberty of the Subject, I am sure on't, very well 'tis worth the hearing; therefore I do conjure you, as you love that which you pretend, I hope it's real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me the hearing, before any Sentence be past. I only desire this, that you will take this into your Consideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this Liberty, I do here protest, that so fair Shews of Liberty and Peace, are pure Shews, and not otherwise, since you will not hear your King.

Ld. President. Sir, you have now spoken.

King. Yes, Sir.

Ld. President. And this that you have said is a further declining of the Jurisdiction of this Court, which was the thing wherein you were limited before.

King. Pray excuse me, Sir, for my Interruption, because you mistake me; it is not a declining of it, you do judge me before you hear me speak: I say it will not, I do not decline it, tho' I cannot acknowledge the Jurisdiction of the Court; yet, Sir, in this give me leave to say, I would do it, tho' I do not by this acknowledge it, I do protest it is not the declining of it, since I say, if that I do say any thing, but that which is for the Peace of the Kingdom, and the Liberty of the Subject, then the Shame is mine. Now I desire that you will take this into your Consideration; if you will, I'll withdraw.

Ld.

Ld. President. Sir, this is not altogether new that you have moved unto us, not altogether new to us, tho' it is the first time in Person you have offered it to the Court. Sir, you say you do not decline the Jurisdiction of the Court.

King. Not in this that I have said.

Ld. President. I understand you well, Sir, but nevertheless that, which you have offered, seems to be contrary to that Saying of yours; for the Court are ready to give a Sentence: It is not as you say, That they will not hear your King; for they have been ready to hear you, they have patiently waited your Pleasure for three Courts together, to hear what you would say to the People's Charge against you, to which you have not vouchsafed to give any Answer at all. Sir, this tends to a further Delay; truly, Sir, such Delays as these, neither may the Kingdom, nor Justice well bear; you have had three several Days to have offered in this kind what you would have pleased. This Court is founded upon that Authority of the Commons of *England*, in whom rests the supreme Jurisdiction; that which you now tender, is to have another Jurisdiction, and a co-ordinate Jurisdiction. I know very well you express yourself, Sir, that notwithstanding that you would offer to the Lords and Commons in the Painted-Chamber, yet nevertheless you would proceed on here, I did hear you say so. But, Sir, that you would offer there, whatever it is, it must needs be in delay of the Justice here; so as if this Court be resolved, and prepared for the Sentence, this that you offer they are not bound in justice to grant: But, Sir, according to what you seem to desire, and because you shall know the further Pleasure of the Court upon that which you have moved, the Court will withdraw for a time.

King. Shall I withdraw?

Ld. President. Sir, you shall know the Pleasure of the Court presently. The Court withdraws for half an Hour into the Court of Wards.

Serjeant at Arms. The Court gives Command, that the Prisoner be withdrawn; and they give Order for his Return again.

The Court withdraws for half an Hour, and returns.

Ld. President. Serjeant at Arms, send for your Prisoner.

Sir, you were pleased to make a Motion here to the Court to offer a Desire of yours, touching the propounding of somewhat to the Lords in the Painted-Chamber, for the Peace of the Kingdom: Sir, you did, in effect, receive an Answer before the Court adjourned; truly, Sir, their Withdrawing and Adjournment was *pro formâ tantum*; for it did not seem to them that there was any Difficulty in the thing: they have considered of what you have moved, and have considered of their own Authority, which is founded, as hath been often said, upon the supreme Authority of the Commons of *England* assembled in Parliament: The Court acts according to their Commission. Sir, the Return I have to you from the Court, is this: That they have been too much delayed by you already, and this that you now offer, hath occasioned some little further Delay; and they are Judges appointed by the highest Judges; and Judges are no more to delay, than they are to deny Justice: they are good Words in the great old Charter of *England*; *Nulli negabimus, nulli vendemus, nulli differemus Justitiam*. There must be no Delay; but the truth is, Sir, and to every Man here observes

it, that you have much delayed them in your Contempt and Default, for which they might long since have proceeded to Judgment against you; and notwithstanding what you have offered, they are resolved to proceed to Punishment, and to Judgment, and that is their unanimous Resolution.

King. Sir, I know it is in vain for me to dispute, I am no Sceptick for to deny the Power that you have; I know that you have Power enough: Sir, I confess, I think it would have been for the Kingdom's Peace, if you would have taken the pains for to have shewn the Lawfulness of your Power; for this Delay that I have desired, I confess it is a Delay, but it is a Delay very important for the Peace of the Kingdom; for it is not my Person that I look on alone, it is the Kingdom's Welfare, and the Kingdom's Peace; it is an old Sentence, That we should think long, before we resolve of great Matters. Therefore, Sir, I do say again, that I do put at your doors all the Inconveniency of an hasty Sentence. I confess I have been here now, I think, this Week; this Day eight days was the Day I came here first, but a little Delay of a Day or two further may give Peace; whereas an hasty Judgment may bring on that Tronble and perpetual Inconveniency to the Kingdom, that the Child that is unborn may repent it: and therefore again, out of the Duty I owe to God, and to my Country, I do desire that I may be heard by the Lords and Commons in the Painted-Chamber, or any other Chamber that you will appoint me.

Ld. President. Sir, you have been already answered to what you even now moved, being the same you moved before, since the Resolution and the Judgment of the Court in it: and the Court now requires to know whether you have any more to say for yourself, than you have said, before they proceed to Sentence?

King. I say this, Sir, That if you will hear me, if you will give but this Delay, I doubt not but I shall give some Satisfaction to you all here, and to my People after that; and therefore I do require you, as you will answer it at the dreadful Day of Judgment, that you will consider it once again.

Ld. President. Sir, I have received Direction from the Court.

King. Well, Sir.

Ld. President. If this must be re-enforced, or any thing of this nature, your Answer must be the same; and they will proceed to Sentence, if you have nothing more to say.

King. Sir, I have nothing more to say, but I shall desire, that this may be entred what I have said.

Ld. President. The Court then, Sir, hath something else to say to you; which, altho' I know it will be very unacceptable, yet notwithstanding they are willing, and are resolved to discharge their Duty.

Sir, You speak very well of a precious Thing, which you call Peace: And it had been much to be wished that God had put it into your Heart, that you had as effectually and really endeavoured and studied the Peace of the Kingdom, as now in Words you seem to pretend: But, as you were told the other Day, Actions must expound Intentions; yet Actions have been clean contrary. And truly, Sir, it doth appear plainly enough to them, that you have gone upon very erroneous Principles: The Kingdom hath felt it to their Smart; and

and it will be no Ease to you to think of it: For Sir, you have held yourself, and let fall such Language, as if you had been no ways subject to the Law, or that the Law had not been your Superior. Sir, the Court is very sensible of it, and I hope so are all the understanding People of *England*, that the Law is your Superior; that you ought to have ruled according to the Law; you ought to have done so. Sir, I know very well your pretence hath been that you have done so; but, Sir, the Difference hath been who shall be the Expositors of this Law: Sir, whether you and your Party, out of Courts of Justice, shall take upon them to expound Law, or the Courts of Justice, who are the Expounders? nay, the Sovereign and the High Court of Justice, the Parliament of *England*, that are not only the highest Expounders, but the sole Makers of the Law? Sir, for you to set yourself with your single Judgment, and those that adhere unto you, to let yourself against the highest Court of Justice, that is not Law. Sir, as the Law is your Superior, so truly, Sir, there is something that is superior to the Law, and that is indeed the Parent or Author of the Law, and that is the People of *England*: For, Sir, as they are those that at the first (as other Countries have done) did chuse to themselves this Form of Government even for Justice Sake, that Justice might be administered, that Peace might be preserved; so, Sir, they gave Laws to their Governors, according to which they should govern: and if those Laws should have proved inconvenient or prejudicial to the Publick, they had a Power in them, and reserved to themselves, to alter as they shall see Cause. Sir, it is very true what some of your side have said, *Rex non habet parem in regno*, so they: This Court will say the same, while King, that you have not your Peer in some Sense, for you

Bract. de leg.
lib. 1. c. 8.

are *major singulis*; but they will aver again that you are *minor universis*. And the same Author tells you, that *non debet esse major eo in regno suo in exhibitione juris, minimus autem esse debet in judicio suscipiendo*.

This we know to be Law, *Rex habet superiorem, Deum & Legem, etiam & Curiam*; so says the same Author. And truly, Sir, he makes bold to go a little further, *Debent ei ponere frænum*: They ought to bridle him. And, Sir, we know very well the Stories of old: Those Wars that were called the Barons War, when the Nobility of the Land did stand out for the Liberty and Property of the Subject, and would not suffer the Kings, that did invade, to play the Tyrants freer, but called them to account for it; we know that Truth, that they did *frænum ponere*. But, Sir, if they do forbear to do their Duty now, and are not so mindful of their own Honour, and the Kingdom's Good as the Barons of *England* of old were, certainly the Commons of *England* will not be unmindful of what is for their Preservation, and for their Safety; *Iustitiæ fruendi causa Reges constituti sunt*. This we learn; The End of having Kings, or any other Governors, it's for the enjoying of Justice; that's the End. Now, Sir, if so be the King will go contrary to that End, or any other Governor will go contrary to the End of his Government; Sir, he must understand that he is but an Officer in Trust, and he ought to discharge that Trust; and they are to take Order for the Animadversion and Punishment of such an offending Governor.

VOL. I.

This is not Law of Yesterday, Sir, (since the Time of the Division betwixt you and your People) but it is Law of old. And we know very well the Authors and the Authorities that do tell us what the Law was in that Point upon the Election of Kings, upon the Oath that they took unto their People: And if they did not observe it, there were those Things called Parliaments; the Parliaments were they that were to adjudge (the very Words of the Author) the Plaints and Wrongs done of the King and the Queen, or their Children; such Wrongs especially, when the People could have no where else any Remedy. Sir, that hath been the People of *England's* Case: They could not have their Remedy elsewhere but in Parliament.

Sir, Parliaments were ordained for that Purpose, to redress the Grievances of the People; that was their main End. And truly, Sir, if so be that the Kings of *England* had been rightly mindful of themselves, they were never more in Majesty and State than in the Parliament: But how forgetful some have been, Stories have told us: We have a miserable, a lamentable, a sad Experience of it. Sir, by the old Laws of *England*, I speak these Things the rather to you because you were pleased to let fall the other Day, You thought you had as much Knowledge in the Law as most Gentlemen in *England*: It is very well, Sir. And truly, Sir, it is very fit for the Gentlemen of *England* to understand that Law under which they must live, and by which they must be governed. And then, Sir, the Scripture says, *They that know their Master's Will and do it not*: What follows? The Law is your Master, the Acts of Parliament.

The Parliaments were to be kept antiently, we find in our old Author, twice in the Year, that the Subject upon any Occasion might have a ready Remedy and Redress for his Grievance. Afterwards, by several Acts of Parliament in the Days of your Predecessor *Edward* the Third, they should have been once a Year. Sir, what the Intermision of Parliaments hath been in your Time, it is very well known and the sad Consequences of it; and what in the Interim instead of these Parliaments hath been by you by an high and arbitrary Hand introduced upon the People, that likewise hath been too well known and felt. But when God by his Providence had so far brought it about, that you could no longer decline the calling of a Parliament, Sir, yet it will appear what your Ends were against the antient and your native Kingdom of *Scotland*: The Parliament of *England* not serving your Ends against them, you were pleased to dissolve it. Another great Necessity occasioned the calling of this Parliament; and what your Designs, and Plots, and Endeavours all along have been, for the crushing and confounding of this Parliament, hath been very notorious to the whole Kingdom. And truly, Sir, in that you did strike at all; that had been a sure way to have brought about that that this Charge lays upon you, your Intention to subvert the Fundamental Laws of the Land: For the great Bulwark of the Liberties of the People is the Parliament of *England*; and to subvert and root up that, which your Aim hath been to do, certainly at one Blow you had confounded the Liberties and the Property of *England*.

Truly, Sir, it makes me call to mind; I cannot forbear to express it; for, Sir, we must deal plainly with you, according to the Merits of your Cause,

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so is our Commission: It makes me call to mind, (these Proceedings of yours) that that we read of a great *Roman* Emperor, by the way let us call him a great *Roman* Tyrant, *Caligula*, that wished that the People of *Rome* had had but one Neck, that at one blow he might cut it off. And your Proceedings have been somewhat like to this: For the Body of the People of *England* hath been (and where else) represented but in the Parliament; and could you have but confounded that, you had at one Blow cut off the Neck of *England*. But God hath reserved better Things for us, and hath pleased for to confound your Designs, and to break your Forces, and to bring your Person into Custody, that you might be responsible to Justice.

Sir, we know very well that it is a Question much on your side press'd, By what Precedent we shall proceed? Truly, Sir, for Precedents, I shall not upon these occasions institute any long Discourse; but it is no new Thing to cite Precedents almost of all Nations, where the People (when Power hath been in their hands) have made bold to call their Kings to account; and where the Change of Government hath been upon occasion of the Tyranny and Misgovernment of those that have been placed over them. I will not spend Time to mention either *France*, or *Spain*, or the Empire, or other Countries; Volumes may be written of it. But truly, Sir, that of the Kingdom of *Arragon*, I shall think some of us have thought upon it, where they have the Justice of *Arragon*, that is, a Man, *tanquam in medio positus*, betwixt the King of *Spain* and the People of the Country; that if Wrong be done by the King, he that is the King of *Arragon*, the Justice, hath Power to reform the Wrong; and he is acknowledged to be the King's Superior, and is the grand Preserver of their Privileges, and hath prosecuted Kings upon their Miscarriages.

Sir, what the Tribunes of *Rome* were heretofore, and what the *Ephori* were to the *Lacedemonian* State, we know that is the Parliament of *England* to the *English* State: And tho' *Rome* seemed to lose its Liberty when once the Emperors were; yet you shall find some Famous Acts of Justice even done by the Senate of *Rome*; that great Tyrant of his Time, *Nero*, condemned and judged by the Senate. But truly, Sir, to you I should not need to mention these foreign Examples and Stories: If you look but over *Tweed*, we find enough in your native Kingdom of *Scotland*: If we look to your first King *Fergus*, that your Stories make mention of, he was an elective King: He died, and left two Sons, both in their Minority; the Kingdom made choice of their Uncle, his Brother, to govern in the Minority. Afterwards, the elder Brother giving small Hopes to the People that he would rule or govern well, seeking to supplant that good Uncle of his that governed then justly, they set the elder aside and took to the younger. Sir, if I should come to what your Stories make mention of; you know very well you are the Hundred and ninth King of *Scotland*: For not to mention so many Kings as that Kingdom, according to their Power and Privilege, have made bold to deal withal, some to banish, and some to imprison, and some to put to death, it would be too long; and as one of your own Authors says, it would be too long to recite the manifold Examples that your own Stories make mention of. *Reges, &c.* (say they) we do create; we created Kings at first: *Leges, &c.*

we imposed Laws upon them. And as they are chosen by the Suffrages of the People at the first; so upon just occasion, by the same Suffrages they may be taken down again. And we will be bold to say, that no Kingdom hath yielded more plentiful Experience than that your native Kingdom of *Scotland* hath done, concerning the Deposition and the Punishment of their offending and transgressing Kings, &c.

It is not far to go for an Example near you: Your Grandmother set aside, and your Father, an Infant, crowned. And the State did it here in *England*: Here hath not been a want of some Examples. They have made bold (the Parliament and the People of *England*) to call their Kings to account: there are frequent Examples of it in the *Saxons* Time, the Time before the Conquest. Since the Conquest there want not some Precedents neither; King *Edward* the Second, King *Richard* the Second, were dealt with so by the Parliament, as they were deposed and deprived. And truly, Sir, whoever shall look into their Stories, they shall not find the Articles that are charged upon them, to come near to that Height and Capitalness of Crimes that are laid to your Charge; nothing near.

Sir, you were pleased to say the other Day wherein they dissent; and I did not contradict it. But take all together, Sir; If you were as the Charge speaks, and no otherwise, admitted King of *England*: but for that you were pleased then to alledge, how that almost for a Thousand Years these Things have been, Stories will tell you, if you go no higher than the time of the Conquest; if you do come down since the Conquest, you are the Twenty-fourth King from *William* called the Conqueror, you shall find one half of them to come merely from the State and not merely upon the Point of Descent. It were easy to be instanced to you; but Time must not be lost that way. And truly, Sir, what a grave and learned Judge said in his Time, and well known to you, and is since printed for Posterity, That altho' there was such a Thing as a Descent many times, yet the Kings of *England* ever held the greatest Assurance of their Titles, when it was declared by Parliament. And, Sir, your Oath, the Manner of your Coronation, doth shew plainly, that the Kings of *England*, altho' it's true, by the Law the next Person in Blood is designed, yet if there were just Cause to refuse him, the People of *England* might do it. For there is a Contract and a Bargain made between the King and his People, and your Oath is taken: And certainly, Sir, the Bond is reciprocal; for as you are the Liege Lord, so they Liege Subjects. And we know very well that hath been so much spoken of, *Ligeantia est duplex*. This we know now, the one Tie, the one Bond, is the Bond of Protection that is due from the Sovereign; the other is the Bond of Subjection that is due from the Subject. Sir, if this Bond be once broken, farewell Sovereignty; *Subjectio trahit, &c.*

These Things may not be denied, Sir: I speak it rather, and I pray God it may work upon your Heart that you may be sensible of your Miscarriages. For whether you have been, as by your Office you ought to be, a Protector of *England*, or the Destroyer of *England*, let all *England* judge, or all the World, that hath look'd upon it. Sir, tho' you have it by Inheritance in the way that is spoken of, yet it must not be denied that your Office was an Office of Trust, and indeed an Office

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fice of the highest Trust, lodged in any single Person: For as you were the Grand Administrator of Justice, and others were, as your Delegates, to see it done throughout your Realms; if your greatest Office were to do Justice, and preserve your People from Wrong and instead of doing that, you will be the great Wrong-doer yourself; if instead of being a Conservator of the Peace, you will be the grand Disturber of the Peace, surely this is contrary to your Office, contrary to your Trust. Now, Sir, if it be an Office of Inheritance, as you speak of, your Title by Descent, let all Men know that great Offices are seizable and forfeitable, as if you had it but for a Year, and for your Life. Therefore, Sir, it will concern you to take into your serious Consideration your great Miscarriages in this kind.

Truly, Sir, I shall not particularize the many Miscarriages of your Reign whatsoever, they are famously known: It had been happy for the Kingdom, and happy for you too, if it had not been so much known, and so much felt, as the Story of your Miscarriages must needs be, and hath been already.

Sir, That which we are now upon, by the Command of the highest Court, hath been and is to try and judge you for these great Offences of yours. Sir, the Charge hath called you *Tyrant*, a *Traitor*, a *Murderer*, and a *publick Enemy* to the Commonwealth of *England*. Sir, it had been well if that any of all these Terms might rightly and justly have been spared, if any one of them at all.

King. Ha!

Ld. President. Truly, Sir, We have been told, *Rex est dum bene regit, Tyrannus qui Populum opprimat*: And if so be that be the Definition of a *Tyrant*, then see how you come short of it in your Actions, whether the highest *Tyrant*, by that way of arbitrary Government, and that you have sought for to introduce, and that you have sought to put, you were putting upon the People? Whether that was not as high an Act of *Tyranny* as any of your Predecessors were guilty of, nay, many Degrees beyond it?

Sir, the Term *Traitor* cannot be spared. We shall easily agree it must denote and suppose a Breach of Trust; and it must suppose it to be done to a Superior. And therefore, Sir, as the People of *England* might have incurred that respecting you, if they had been truly guilty of it, as to the Definition of Law; so on the other Side, when you did break your Trust to the Kingdom, you did break your Trust to your Superior: For the Kingdom is that for which you were trusted. And therefore, Sir, for this Breach of Trust, when you are called to account, you are called to account by your Superiors. *Minimus ad majorem in judicium vocat.* And, Sir, the People of *England* cannot be so far wanting to themselves, God having dealt so miraculously and gloriously for them; but that having Power in their Hands, and their great Enemy, they must proceed to do Justice to themselves and to you: For, Sir, the Court could heartily desire, that you would lay your Hand upon your Heart, and consider what you have done amiss, that you would endeavour to make your Peace with God. Truly, Sir, these are your *High Crimes*, *Tyranny* and *Treason*.

There is a third Thing too, if those had not been, and that is *Murder*, which is laid to your Charge. All the *bloody Murders*, which have been

committed since this Time that the Division was betwixt you and your People, must be laid to your Charge, which have been acted or committed in these late Wars. Sir, it is an heinous and crying Sin: And truly, Sir, if any Man will ask us what Punishment is due to a *Murderer*, let God's Law, let Man's Law speak. Sir, I will presume that you are so well read in Scripture, as to know what God himself hath said concerning the shedding of Man's Blood: *Gen. ix. Numb. xxxv.* will tell you what the Punishment is: And which this Court, in behalf of the whole Kingdom, are sensible of, of that innocent Blood that has been shed, whereby indeed the Land stands still defiled with that Blood; and, as the Text hath it, it can no way be cleansed but with the shedding of the Blood of him that shed this Blood. Sir, we know no Dispensation from this Blood in that Commandment, *Thou shalt do no Murder*: We do not know but that it extends to Kings as well as to the meanest Peasants, the meanest of the People; the Command is universal. Sir, God's Law forbids it; Man's Law forbids it: Nor do we know that there is any manner of Exception, not even in Man's Laws, for the Punishment of Murder in you. 'Tis true, that in the Case of Kings every private Hand was not to put forth itself to this Work, for their Reformation and Punishment: But, Sir, the People represented having Power in their Hands, had there been but one wilful Act of Murder by you committed, had Power to have convened you, and to have punished you for it.

But then, Sir, the Weight that lies upon you in all those respects that have been spoken, by reason of your *Tyranny*, *Treason*, *Breach of Trust*, and the *Murders* that have been committed; surely, Sir, it must drive you into a sad Consideration concerning your eternal Condition. As I said at first, I know it cannot be pleasing to you to hear any such Things as these are mentioned unto you from this Court, for so we do call ourselves, and justify ourselves to be a Court, and a high Court of Justice, authorized by the highest and solemnest Court of the Kingdom, as we have often said: And altho' you do yet endeavour what you may to discount us, yet we do take Knowledge of ourselves to be such a Court as can administer Justice to you; and we are bound, Sir, in Duty to do it. Sir, all I shall say before the reading of your Sentence, it is but this; The Court does heartily desire that you will seriously think of those Evils that you stand guilty of. Sir, you said well to us the other Day you wished us to have God before our Eyes. Truly, Sir, I hope all of us have so: That God, who we know is a King of Kings, and Lord of Lords; that God with whom there is no respect of Persons; that God, who is the Avenger of innocent Blood: We have that God before us; that God, who does bestow a Curse upon them that withhold their Hands from shedding of Blood, which is in the case of guilty Malefactors, and that do deserve Death: That God we have before our Eyes. And were it not that the Conscience of our Duty hath called us unto this Place, and this Employment, Sir, you should have had no Appearance of a Court here. But, Sir, we must prefer the Discharge of our Duty unto God, and unto the Kingdom before any other Respect whatsoever. And altho' at this Time many of us, if not all of us, are severely threaten'd by some of your Party, what they intend to do,

Sir, we do here declare, That we shall not decline or forbear the doing of our Duty in the Administration of Justice, even to you, according to the Merit of your Offence, altho' God should permit those Men to effect all that bloody Design in had against us. Sir, we will say, and we will declare it, as those Children in the fiery Furnace, that would not worship the golden Image that *Nebuchadnezzar* had set up, *That their God was able to deliver them from that Danger that they were near unto*: But yet if he would not do it, yet notwithstanding that they would not fall down and worship the Image. We shall thus apply it: That tho' we should not be delivered from those bloody Hands and Hearts that conspire the Overthrow of the Kingdom in general, of us in particular, for acting in this great Work of Justice, tho' we should perish in the Work, yet by God's Grace, and by God's Strength, we will go on with it. And this is all our Resolutions. Sir, I say for yourself, we do heartily wish and desire that God would be pleased to give you a Sense of your Sins, that you would see wherein you have done amiss, that you may cry unto him, that God would deliver you from Blood-guiltiness. A good King was once guilty of that particular Thing, and was clear otherwise, saving in the matter of *Uriah*. Truly, Sir, the Story tells us that he was a repentant King; and it signifies enough, that he had died for it, but that God was pleased to accept of him, and to give him his Pardon, *Thou shalt not die, but the Child shall die: Thou hast given Cause to the Enemies of God to blaspheme*.

King. I would desire only one Word before you give Sentence; and that is, That you would hear me concerning those great Imputations, that you have laid to my Charge.

Ld. President. Sir, You must give me now leave to go on; for I am not far from your Sentence, and your Time is now past.

King. But I shall assure you will hear me a few Words to you: For truly, whatever Sentence you will put upon me in respect of those heavy Imputations, that I see by your Speech you have put upon me; Sir, It is very true, that—

Ld. President. Sir, I must put you in mind: Truly, Sir, I would not willingly, at this time especially, interrupt you in any thing you have to say, that is proper for us to admit of; but, Sir, you have not owned us as a Court, and you look upon us as a sort of People met together; and we know what Language we receive from your Party.

King. I know nothing of that.

Ld. President. You disavow us as a Court; and therefore for you to address yourself to us, not acknowledging us as a Court to judge of what you say, it is not to be permitted. And the truth is, all along, from the first time you were pleased to disavow and disown us, the Court needed not to have heard you one Word: For unless they be acknowledged a Court, and engaged, it is not proper for you to speak. Sir, we have given you too much Liberty already and admitted of too much Delay, and we may not admit of any farther. Were it proper for us to do it, we should hear you freely, and we should not have declined to hear you at large, what you could have said or proved on your behalf, whether for totally excusing, or for in part excusing those great and heinous Charges, that in whole or in part are laid upon you. But, Sir, I shall trouble you no longer, your Sins are of so large a Dimen-

sion, that if you do but seriously think of them, they will drive you to a sad Consideration of it, and they may improve in you a sad and serious Repentance: And that the Court doth heartily wish that you may be so penitent for what you have done amiss, that God may have Mercy, at leastwise, upon your better Part: Truly, Sir, for the other, it is our Parts and Duties to do that, which the Law prescribes. We are not here *jus dare*, but *jus dicere*. We cannot be unmindful of what the Scripture tells us. *For to acquit the Guilty is of equal Abomination, as to condemn the Innocent*: We may not acquit the Guilty. What Sentence the Law affirms to a *Traitor*, *Tyrant*, a *Murderer*, and a *publick Enemy* to the Country, that Sentence you are now to hear read unto you; and that is the Sentence of the Court.

The Lord President commands the Sentence to be read; make an *O yes*, and command Silence while the Sentence is read.

O yes made: Silence commanded.

The Clerk read the Sentence, which was drawn up in Parchment:

Whereas the Commons of England in Parliament had appointed them an High Court of Justice, for the Trying of Charles Stuart, King of England, before whom he had been three times convened; and at the first time a Charge of High-Treason, and other Crimes and Misdemeanours, was read in the behalf of the Kingdom of England, &c.

Here the Clerk read the Charge.

Which Charge being read unto him, as aforesaid, he the said Charles Stuart was required to give his Answer: But he refused so to do; and so express'd the several Passages at his Trial in refusing to answer.

For all which Treasons and Crimes this Court doth adjudge, That the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a publick Enemy, shall be put to Death, by the severing his Head from his Body.

After the Sentence read, the Lord President said, This Sentence now read and published, is the Act, Sentence, Judgment, and Resolution of the whole Court.

Here the Court stood up, as assenting to what the President said.

King. Will you hear me a Word, Sir?

Ld. President. Sir, you are not to be heard after the Sentence.

King. No, Sir?

Ld. President. No, Sir; by your favour, Sir, Guard, withdraw your Prisoner.

King. I may speak after the Sentence—

By your Favour, Sir, I may speak after the Sentence ever.

By your Favour, (Hold!) the Sentence, Sir—I say, Sir, I do—

I am not suffered for to speak: Expect what Justice other People will have.

O Yes: All manner of Persons that have any thing else to do, are to depart at this time, and to give their Attendance in the *Painted-Chamber*; to which Place this Court doth forthwith adjourn itself.

Then the Court rose, and the King went with his Guard to Sir *Robert Cotton's*, and from thence to *Whitehall*.

The Speech Cook design'd to have delivered, if the King had pleaded.

May it please your Lordship,

MY Lord President, and this High Court, erected for the most Comprehensive, Impartial, and Glorious Piece of Justice, that ever was acted and executed upon the Theatre of *England*, for the trying and judging of *Charles Stuart*, whom God in his Wrath gave to be a King to this Nation, and will, I trust, in great Love, for his notorious Prevarications and Blood-guiltiness, take him away from us: He that hath been the Original of all Injustice, and the principal Author of more Mischiefs to the Free-born People of this Nation, than the best Arithmetician can well enumerate, stands now to give an account of his Stewardship, and to receive the Good of Justice, for all the Evil of his Injustice and Cruelty. Had he ten thousand Lives, they could not all satisfy for the numerous, horrid, and barbarous Massacres of Myriads, and Legions of innocent Persons, which by his Commands, Commissions, and Procurements, (or at least all the World must needs say, which he might have prevented; and he that suffers any Man to be kill'd, when he may save his Life without danger of his own, is a Murderer) have been cruelly slain, and inhumanly murdered, in this renowned *Albion*: *Anglia* hath been made an *Akeldama*, and her younger Sister *Ireland* a Land of Ire and Misery. And yet this hard-hearted Man, as he went out of the Court down the Stairs, *Jan. 22.* said (as some of his Guard told me and others) That he was not troubled for any of the Blood that hath been shed, but for the Blood of one Man, (peradventure he meant *Strafford*.) He was no more affected with a List that was brought into *Oxford* of five or six thousand slain ad *Edgehill*, than to read one of *Ben. Johnson's* Tragedies. You Gentlemen Royalists that fought for him, if ye had lost your Lives for his sake, you see he would have no more pitied you by his own Confession, than you do a poor Worm: and yet what Heart but would cleave, if it were a Rock; melt, if it were Ice; break, if it were a Flint; or dissolve, if it were a Diamond, to consider that so much precious Protestant Blood should be shed in these three Kingdoms, so many gallant valiant Men of all Sorts and Conditions to be sacrificed and lose their Lives, and many of them to die so desperately in regard of their eternal Conditions; and all this merely and only for the satisfying and fulfilling of one Man's sinful Lust and wicked Will? A good Shepherd is he that lays down his Life, or ventures it to save the Sheep; but for one to be so proudly wedded to his own Conceits, as so maliciously to oppose his private Opinion against the publick Judgment and Reason of State, and to make head against the Parliament, who acknowledged him to be Head thereof, so far as to give him the Honour of the Royal Assent, in settling the Militia and Safety of the People: I say, for a Protestant Prince, so beloved at home, and feared abroad, that in love and by gentle Means might have had any Thing from the Parliament, for him to occasion the shedding of so much Blood for a pretended Prerogative, as hereafter will appear, nothing in effect but to fix and perpetuate an absolute Tyranny; I can say no less,

But, O Lucifer, from whence art thou fallen? and what Hereticks are they in Politicks, that would have had such a Man to live? Much more, that think his Actions to have merited Love and Praise from Heaven and Earth. But now to dissect the Charge.

I. That the Kings of *England* are trusted with a limited Power to govern by Law, the whole Stream and Current of legal Authorities run so limpid and clear, that I should but weary those that know it already, and trouble those that need not know the particular Cases; for it is one of the Fundamentals of Law, That the King is not above the Law, but the Law above the King. I could easily deraign it from *1 Edw. III.* to the Jurisdiction of Courts, That the King has no more Power or Authority, than what by Law is credited and committed to him: but the most famous Authority is *Fortescue*, Chancellor to *Henry VI.* (and therefore undoubtedly would not clip his Master's Prerogative) who most judiciously takes a Difference between a Government wholly Regal and Seignoral, as in *Turkey, Russia, France, Spain, &c.* and a Government Politick and Mix'd, where the Law keeps the Beam even between Sovereignty and Subjection, as in *England, Denmark, Sweden, and Poland.* The first, where the Edict of a Prince makes the Law resembles an impetuous Inundation of the Waters, whereby the Corn and Hay, and other Fruits of the Earth are spoiled, as when it is Midwinter at Midsummer; the latter is like a sweet smooth Stream, running by the pleasant Fields and Meadows. That by the Law of *England* the King ought not to impose any Thing upon the People, or take any Thing away from them to the value of a Farthing, but by common Consent in Parliaments or National Meetings; and that the People of common Right, and by several Statutes, ought to have Parliaments yearly, or oftner if need be, for the redress of publick Grievances, and for the enacting of good and wholesome Laws, and repealing of old Statutes of *Omeri* which are prejudicial to the Nation: And that the King hath not by Law so much Power as a Justice of Peace, to commit any Man to Prison for any Offence whatsoever, because all such Matters were committed to proper Courts and Officers of Justice: And if the King by his verbal Command send for any Person to come before him, if the Party refused to attend, and the Messenger endeavouring to force him, they fell to blows; if the Messenger killed the Party sent for, this by the Law is Murder in him, but if he killed the Messenger, this was justifiable in him, being in his own Defence, so as to sue forth a Pardon of course: These, and many other Cases of like nature, are so clear and well known, that I will not presume to multiply Particulars.

That the King took an Oath at his Coronation to preserve the Peace of the Nation, to do Justice to all, and to keep and observe the Laws which the People have, himself confesses: And it was charged upon the late Archbishop, that he emasculated the Oath, and left out very material Words; *Which* 1st Book of Ord. fol. *the People shall chuse*: which certainly he durst not have done, without the King's special Command. And it seems to me no light Presumption, that from that very Day he had a Design

to alter and subvert the fundamental Laws, and to introduce an Arbitrary and Tyrannical Government. But tho' there had been no Oath, yet by special Office and Duty of his Place every King of *England* is obliged to act for the People's Good: for all Power, as it is originally in the People (he must needs be extreme ignorant, malicious, or a Self-destroyer, that shall deny it) so it is given forth for their Preservation, nothing for their Destruction. For a King to rule by Lust, and not by Law, is a Creature that was never of Gods making, not of God's Approbation, but his Permission: and tho' such Men are said to be Gods on Earth, 'tis in no other Sense than the Devil is called the God of this World. It seems that one Passage which the King would have offered to the Court, (which was not permitted him to dispute the Supreme Authority in the Nation; and standing mute, the Charge being for High-Treason, it is a Conviction in Law) was, That 1 *Sam. viii.* is a Copy of the King's Commission, by virtue whereof, he as King might rule and govern as he list; that he might take the People's Sons, and appoint them for himself, for his Chariots, and to be his Horsemen, and take their Daughters to be his Confectionaries, and take their Fields, and Vine-yards, and Olive-yards, even the best of them, and their goodliest Young-men, and their Asses, and give them to his Officers, and to his Servants; which indeed is a Copy and Pattern of an absolute Tyrant and absolute Slaves, where the People have no more than the Tyrant will afford them. The Holy Spirit in that Chapter does not insinuate what a good King ought to do, but what a wicked King would presume to do. Besides, *Saul* and *David* had extraordinary Calling, but all just Power is now derived from and conferred by the People: yet in the Case of *Saul* it is observable, That the People, out of pride to be like other Nations, desired a King, and such a King as the Heathens had, which were all Tyrants: for they that know any thing in History, know that the first four Monarchs were all Tyrants at first, till they gained the Peoples Consent. *Nimrod* the great Hunter was *Ninus* that built *Nineveh*, the first Tyrant and Conqueror that had no Title; and so were all Kingdoms, which are not Elective, till the Peoples subsequent Consent; and tho' it be by Descent, yet 'tis a Continuation of a Conquest; till the People consent and voluntarily submit to a Government, they are but Slaves, and in reason they may free themselves if they can. In *France* the King begins his Reign from the Day of his Coronation: The Archbishop asks the People, if he shall be King; the twelve Peers, or some that personate them, say, Yes: They girt the Sword about him, then he swears to defend the Laws. And is any thing more natural than to keep an Oath? And tho' virtuous Kings have prevailed with the People to make their Crowns Hereditary, yet the Coronation shews the Shell that the Kernel hath been in. *Samuel* was a good Judge, and there was nothing could be objected against him, therefore God was displeased at their inordinate Desire of a King; and it seems to me, that the Lord declares his dislike of all such Kings as the Heathens were, that is, Kings with an unlimited Power, that are not tied to Laws; for he gave them a King in his Wrath, therein dealing with them as the wise Physician with the distempered and impatient Patient, who desiring to drink Wine, tells

him the Danger of Inflammation; yet Wine he will have, and the Physician considering a little Wine will do but little hurt, rather than his Patient by fretting should take greater hurt, prescribes a little White-wine: wherein the Physician doth not approve his drinking of Wine, but of two Evils chuseth the least. The Jews would have a King for Majesty and Splendor, like the Heathens; God permits this, he approves it not: it seems to me, that the Lord renounces the very Genus of such Kings as are there mentioned, and the old word *Conning* (by contraction King) does not signify Power or Force to do what he will, but a knowing, wise, discreet Man, that opens the Peoples Eyes, and does not lead them by the Noses, but governs them with Wisdom and Discretion for their own Good. Therefore, Gentlemen-Royalists, be not so mad as to misconstrue either the Oaths of Allegiance or Supremacy, or any League or Covenant, that any Man should swear to give any one leave to cut his Throat; the true meaning is, that the King of *England* was Supreme in this Land, in opposition to the Pope, or any other Prince or Potentate, as the Words of the Oath do import, *That no foreign State, Prince, or Potentate, &c.* In case of any foreign Invasion, the King was by Law to be Generalissimo, to command the People for their own Safety; and so it was expounded by the Parliament in 13 *Eliz.* which for some Reason of State was not permitted to be printed with the Statutes. Besides, God told those Kings whom he had formerly anointed, what their Duty was; not to exalt themselves overmuch above their Brethren, to delight themselves in the Law of God: Out of which I infer, that the *Turks, Tartars, Muscovites, French, Spaniards*, and all People that live at the beck and nod of Tyrannical Men, may and ought to free themselves from that Tyranny, if, and when, they can; for such Tyrants that so domineer with a Rod of Iron, do not govern by God's permissive Hand of Approbation or Benediction, but by the permissive Hand of his Providence, suffering them to scourge the People, for Ends best known to himself, until he open a way for the People to work out their own Enfranchisements.

But before I speak of the War, it will be necessary for the Satisfaction of rational Men, to open and prove the King's wicked Design, where-with he stands charged. Now that he had from the beginning of his Reign such a Design and Endeavour so to tear up the Foundations of Government, that Law should be no Protection to any Man's Person or Estate, will clearly appear by what follows.

1. By his not taking the Oath so fully as his Predecessors did, that so when the Parliament should tender good Laws to him for the Royal Assent, he might readily answer that he was not by Oath obliged to confirm or corroborate the same.

2. By his dishonourable and perfidious Dealing with the People at his Coronation, when he set forth a Proclamation, That in regard of the Infection then spread thro' the Kingdom, he promised to dispense with those Knights, that by an old Statute were to attend at the Coronation, who were thereby required not to attend; but did notwithstanding within a few Months after take advantage of their absence, and raised a vast Sum of Money out of their Estates at the Council-Table: where

where they pleading the said Proclamation for their Justification, they were answered that the Law of the Land was above any Proclamation; like that Tyrant, that when he could not by Law execute a Virgin, commanded her to be deflowred, and then put to death.

3. By his altering the Patents and Commissions to the Judges, which having heretofore had their Places granted to them so long as they should behave themselves well therein, he made them but during Pleasure; that if so the Judges should not declare the Law to be as he would have it, he might with a wet Finger remove them, and put in such as should not only say, but swear, if need were, That the Law was as the King would have it. For when a Man shall give five or ten thousand Pounds for a Judge's Place, during the King's Pleasure, and he shall the next Day send to him to know his Opinion of a Difference in Law between the King and Subject; and it shall be intimated unto him, That if he do not deliver his Opinion for the King, he is likely to be removed out of his Place the next Day: which, if so, he knows not how to live, but must rot in a Prison for the Money which he borrowed to buy his Place; as was well known to be some of their Cases, who under-hand and closely bought great Places, to elude the Danger of the Statute; whether this was not too heavy a Temptation for the Shoulders of most Men to bear, is no hard matter to determine. So as upon the matter, that very Act of his made the King at the least a potential Tyrant; for when that shall be Law which a King shall declare himself, or which shall be declared by those whom he chuses, this brings the People to the very next Step to Slavery.

But that which doth irrefragably prove the Design, was his restless Desire to destroy Parliaments, or to make them useless: And for that, who knows not but that there were three or four National Meetings in Parliament in the first four Years of his Reign, which were called for Supply, to bring Money into his Coffers, in Point of Subsidies, rather than for any Benefit to the People, as may appear by the few good Laws that were then made? But that which is most memorable, is the untimely dissolving of the Parliament in 4 Car. when Sir John Elliot and others (who managed a Conference with the House of Peers concerning the Duke of Buckingham, who, amongst other things, was charged concerning the Death of King James) were committed close Prisoners to the Tower, where he lost his Life by cruel Indurance; which I may not pass over without a special Animadversion: For sure there is no Turk or Heathen but will say, that if he were any way guilty of his Father's Death, let him die for it.

I would not willingly be so injurious to the honest Reader, as to make him buy that again which he hath formerly met with in the Parliament's Declaration or elsewhere; in such a Case a marginal Reference may be sufficient. Nor would I herein be so presumptuous as to prevent any thing that happily may be intended in any Declaration for more general Satisfaction; but humbly to offer a Student's Mite, which satisfies myself, with Submission to better Judgments.

How the King came to the Crown, God and his own Conscience best knew. It was well known and observed at Court, that a little before he was a professed Enemy to the Duke of Buckingham; but instantly upon the Death of King James,

took him into such special Protection, Grace and Favour, that upon the Matter he divided the Kingdom with him. And when the Earl of Bristol had exhibited a Charge against the said Duke, the 13th Article whereof concerned the Death of King James, he instantly dissolved that Parliament, that so he might protect the Duke from the Justice thereof, and would never suffer any legal Enquiry to be made for his Father's Death. The Rabbins observe, that that which stuck most with Abraham about God's Command to sacrifice Isaac, was this; *Can I not be obedient, unless I be unnatural? What will the Heathen say, when they hear I have killed my only Son?* What will an Indian say to this Case? A King hath all Power in his Hand to do Justice: There is one accused upon strong Presumptions, at the least, for poisoning that King's Father; the King protects him from Justice: whether do you believe that himself had any Hand in his Father's Death? Had the Duke been accused for the Death of a Beggar, he ought not to have protected him from a judicial Trial. We know that by Law 'tis no less than Misprision of Treason to conceal a Treason; and to conceal a Murder, strongly implies a Guilt thereof, and makes him a kind of Accessary to the Fact. He that hath no Nature to do Justice to his own Father, could it ever be expected that he should do Justice to others? Was he fit to continue a Father to the People, who was without natural Affection to his own Father? Will he love a Kingdom, that shewed no Love to himself, unless it was, that he durst not suffer Inquisition to be made for it? But I leave it as a Riddle, which at the Day of Judgment will be expounded and unriddled; for some Sins will not be made manifest till that Day, with this only, That had he made the Law of God his Delight, and studied therein Night and Day, as God commanded his Kings to do; or had he but studied Scripture half so much as Ben. Johnson or Shakespear, he might have learnt, That when Amaziah was settled in the Kingdom, he suddenly did Justice upon those Servants which had killed his Father Joash: he did not by any pretended Prerogative, excuse or protect them, but delivered them up into the Hands of that Justice which the Horridness of the Fact did undoubtedly demerit.

That Parliament (4 Car.) proving so abortive, the King sets forth a Proclamation, That none should presume to move him to call Parliaments, for he knew how to raise Monies enough without the Help of Parliaments; therefore in twelve Years refuseth to call any. In which Interval and Intermission, how he had oppressed the People by Incroachments and Usurpations upon their Liberties and Properties; and what vast Sums of Money he had forcibly exacted and exhausted by illegal Patents and Monopolies of all Sorts, I refer the Reader to that most judicious and full Declaration of the State of the Kingdom, published in the Beginning of this Parliament. That Judgment of Ship-Money did, upon the Matter, formalize the People absolute Slaves, and him an absolute Tyrant: For if the King may take from the People, in Case of Necessity, and himself shall be Judge of that Necessity, then cannot any Man say that he is worth 6d. for if the King say that he hath need of that 6d. then by Law he must have it. I mean that great Nimrod, that would have made all Eng-

land

2 Kings xii.
20. and xiv.
1, 5.

27 Mar.
5 Car.

land, a Forest; and the People, which the Bishop calls his Sheep, to be his Venison to be hunted at his Pleasure.

Nor does the common Objection, *That the Judges and evil Counsellors, and not the King, ought to be responsible for such Male-Administrations, Injustice and Oppression*, bear the Weight of a Feather in the Balance of right Reason. For, 1st, Who made such wicked and corrupt Judges? Were they not his own Creatures? And ought not every Man to be accountable for the Works of his own Hands? He that does not hinder the doing of Evil, if it lies in his Power to prevent it, is guilty of it as a Commander thereof. He that suffered those black Stars to inflict such barbarous Cruelties, and unheard-of Punishments, as Brandings, flitting of Noses, &c. upon honest Men, to the Dishonour of the Protestant Religion, and Disgrace of the Image of God shining in the Face of Man, he well deserved to have been so served. But, 2dly, he had the Benefit of those illegal Fines and Judgments. I agree, that if a Judge shall oppress *I. S.* for the Benefit of *I. D.* the King ought not to answer for this, but the Judge, unless he protect the Judge against the Complaint of *I. S.* and in that Case he makes himself guilty of it. But when an unjust Judgment is given against *I. S.* for the King's Benefit, and the Fine to come immediately into his Coffers; he that receives the Money, must needs be presumed to consent to the Judgment. But, 3dly, mark a *Machiavel-Policy*; *Call no Parliaments to question the Injustice and Corruption of Judges for the People's Relief; and make your own Judges, and let that be the Law that they declare; whether it be reasonable or unreasonable, it is no matter.*

But then how came it to pass that we had any more Parliaments? Had we not a gracious King to call a Parliament when there was so much need of it, and to pass so many gracious Acts to put down the *Star-Chamber*, &c.? Nothing less; it was not any voluntary free Act of Grace, nor the least Ingredient or Tincture of Love or good Affection to the People, that called the short Parliament in 40, but to serve his own Turn against the *Scots*, whom he then had designed to enslave; and those seven Acts of Grace which the King pass'd, were no more than his Duty to do, nor half so much, but giving the People a Taste of their own Griets; and he dissents with them about the Militia, which commanded all the rest: he never intended thereby any more Good and Security to the People, than he that stealing the Goose, leaves the Feathers behind him. But to answer the Question, thus it was:

The King being wholly given up to be led by the Counsels of a Jesuited Party, who endeavoured to throw a Bone of Dissention among us, that they might cast in their Net into our troubled Waters, and catch more Fish: For *St. Peter's* See persuaded the King to set up a new Form of Prayer in *Scotland*, and laid the Bait so cunningly, that whether they saw it or not, they were undone: If they saw the Mystery of Iniquity couched in it, they would resist, and so merit Punishment for rebelling; if they swallowed it, it would make way for worse. Well, they saw the Poison, and refused to taste it. The King makes War, and many that loved Honour and Wealth more than God, assisted him; down he went with an Army, but his Treasure wasted in a short time: fight they would not, for fear of an

After-reckoning. Some Commanders propound, that they should make their Demands, and the King grants all, comes back to *London*, and burns the Pacification, saying, it was counterfeit: They re-assume their Forces, he raises a second War against them, and was necessitated to call a Parliament, offering to lay down Ship-Money for twelve Subsidies. They refuse; the King in high Displeasure breaks off the Parliament, and in a Declaration commands them not to think of any more Parliaments, for he would never call another.

There was a King of *Egypt* that cruelly oppress'd the People; they poor Slaves complaining to one another, he feared a Rising, and commanded that none should complain upon Pain of cruel Death. Spies being abroad, they often met, but durst not speak, but parted with Tears in their Eyes; which declared that they had more to utter, but durst not: This struck him to greater Fears, he commanded that none should look upon one another's Eyes at parting; therefore their Griets being too great to be smothered, they fetch'd a deep Sigh when they parted, which moved them so much to compassionate one another's Wrongs, that they ran in and killed the Tyrant. The long hatching *Irish* Treason was now ripe, and therefore it was necessary that *England* and *Scotland* should be in Combustion, lest we might help the *Irish* Protestants. Well, the *Scots* get *Newcastle*, he knew they would trust him no more, he had so often broke with them, therefore no Hopes to get them out by a Treaty. Many Lords and the City petition for a Parliament; the King was at such a Necessity, that yield he must to that which he most abhorred, God had brought him to such a Strait, he that a few Months before assumed the Power of God, commanding Men not to think of Parliaments, to restrain the free Thoughts of the Heart of Man, was constrained to call one, which they knew he would break off when the *Scots* were sent home; therefore got a Confirmation of it, that he should not dissolve it without the Consent of both Houses, of which he had no Hopes, or by Force, which he suddenly attempted; and the *English* Army in the North, was to have come up to confound the Parliament and this rebellious and disloyal City, as the King called it; and for their Pains was promised thirty thousand Pounds and the Plunder, as by the Examinations of Colonel *Goring*, *Legg*, &c. doth most fully appear.

And here by the way, I cannot but commend the City-Malignants; he calls them Rebels, they call him a gracious King: He, by his Proclamation at *Oxford*, prohibits all Commerce and Intercourse of Trade between this populous City (the Life and Interest whereof consists in Trade, without which many Thousands cannot subsist) and other Parts of the Kingdom: still they do Good against Evil, and petitioning him so often to cut their Throats, are troubled at nothing so much as that they are not reduced to that former and a worse Bondage than when there was a Lord Warden made in the City, and the *Darlingrubb*. King sent for as much of their Estates as he pleased. But surely the *Oxfordshire* Men are more to be commended; for when the King had commanded by his Proclamation, that what Corn, Hay, and other Provision in the County of *Oxford*, could not be fetch'd into the said City for his Garrison, should be consumed and destroy'd by Fire, for fear

15 April,
20 Car.

it

it should fall into the hands of the Parliament's Friends; (a Cruelty not to be parallel'd by any Infidel, Heathen, or Pagan King; nor to be preceded amongst the most avowed and professed Enemies, much less from a King to his Subjects) they resolved never to trust him any more.

But the great Question will be, What hath been the true ground and Occasion of the War? Which unless I clear, and put it out of question, as the Charge imports, I shall fall short of what I chiefly aim at, viz. *That the King set up his Standard of War, for the Advancement and Upholding of his personal Interest, Power, and pretended Prerogative, against the publick Interest of Common Right, Peace and Safety:* and thus I prove it.

1. He fought for the *Militia* by Sea and Land, to have it at his absolute Dispose, and to justify and maintain his illegal Commissions of Array; and this he pretended was his Birthright by the Law of *England*: which if it were so, then might he by the same Reason command all the Money in the Kingdom; for he that carries the Sword, will command the Purse.

2. The next thing that he pretended to fight for, was his Power to call Parliaments when he pleased, and dissolve them when he list; if they will serve his turn, then they may sit by a Law to enslave the People; so that the People had better chuse all the Courtiers and King's Favourites at first, than to trouble themselves with ludicrous Elections, to assemble the Freeholders together, to their great Labour and Expence both of Time and Coin; and those which are chosen Knights and Burgeesses, to make great Preparations, to take long Journies to *London* themselves and their Attendants, to see the Kings and Lords in their Parliament-Robes ride in State to the House, and with *Domitian*, to catch Flies. And no sooner shall there be any Breathings, or a Spirit of Justice stirring and discover'd in the House of Commons, but the King sends the Black-Rod, and dissolves the Parliament, and sends them back again as wise as they were before, but not with so much Money in their Purses, to tell Stories to the Freeholders of the Bravery of the King and Lords.

3. Well, but if this be too gross, and that the People begin to murmur and clamour for another Parliament, then there goes out another Summons, and they meet, and sit for some time, but to as much purpose as before; for when the Commons have presented any Bill for Redress of a publick Grievance, then the King hath several Games to play to make all fruitless: As, first, his own negative Voice, that if Lords and Commons are both agreed, than he will advise; which (I know not by what strange Doctrine) hath been of late construed to be a plain Denial: tho' under favour, at the first it was no more but to allow him two or three Days time to consider of the Equity of the Law; in which time if he could not convince them of the Injustice of it, then ought he by his Oath and by Law to consent to it.

4. But if by this means the King had contracted hard Thoughts from the People, and that not only the Commons, but many of the Lords, that have the same noble Blood running in their Veins, as those *English* Barons, whose Swords were the chief Instruments that purchased *Magna Charta*; then, that the King might be sure to put some others between him and the People's Hatred, the next Prerogative that he pretended to have, was to be the sole Judge of Chivalry, to have the sole Power

of conferring Honours, to make as many Lords as he pleased, that so he might be sure to have two against one, if the House of Commons (by reason of the Multitude of Burgeesses, which he likewise pretended a Power to make as many Borough-Towns and Corporations as he pleased) were not pack'd also. And this is that glorious Privilege of the *English* Parliaments, so much admired for just nothing: For if this pretended Prerogative might stand for Law, as was challenged by his Adherents, never was there a purer Cheat put upon any People, nor a more ready way to enslave them, than by Privilege of Parliament; being just such a Mockery of the People, as that Mock-Parliament at *Oxford* was, where the King's Consent must be the Figure, and the Representative stand for a Cypher.

5. But then out of Parliament the People are made to believe, that the King hath committed all Justice to the Judges, and distributed the Execution thereof into several Courts; and that the King cannot so much as imprison a Man, or impose any thing upon, nor take any thing away from the People, as by Law he ought not to do: But now see what Prerogative he challenges.

1. If the King have a mind to have any publick-spirited Man removed out of the way, this Man is killed, the Murderer known, a Letter comes to the Judge, and it may be, it shall be found but Manslaughter; if it be found Murder, the Man is condemned, but the King grants him a Pardon, which the Judges will allow, if the Word *Murder* be in it: But because it is too gross to pardon Murder, therefore the King shall grant him a Lease of his Life for seven Years, and then renew it (like a Bishop's Lease) as he did to Major *Prichard*, who was lately justified; who being a Servant to the Earl of *Lindsey*, murder'd a Gentleman in *Lincolnshire*, and was condemned, and had a Lease of his Life from the King, as his own Friends have credibly told me.

2. For matter of Liberty: The King or any Courtier sends a Man to Prison; if the Judge set him at liberty, then put him out of his place; a Temptation too heavy for those that love Money and Honour more than God, to bear: therefore any Judgment that is given between the King and a Subject, 'tis not worth a Rush; for what will not Money do?

Next, he challenges a Prerogative to enhance and debase Monies, which by Law was allowed him, so far as to balance Trade, and no further; that if Gold went high beyond Sea, it might not be cheap here, to have it all brought up and transported: but under colour of that, he challenges a Prerogative, That the King may by Proclamation make Leather current, or make a Sixpence go for Twenty Shillings, or Twenty Shillings for a Sixpence. Which not to mention any thing of the Project of Farthings or Brass Money, he that challenges such a Prerogative, is a potential Tyrant: For if he may make my Twelve-pence in my Pocket worth but Two-pence, what Property hath any Man in any thing that he enjoys?

Another Prerogative pretended was, That the King may avoid any Grant; and so may cozen and cheat any Man by a Law. The Ground whereof is, That the King's Grants shall be taken according to his Intention; which, in a sober Sense, I wish that all Men's Grants might be so construed according to their Intentions, express'd by Word or Writing: But by this means, it being hard to

know what the King intended, his Grants have been like the Devil's Oracles, taken in any contrary Sense for his own Advantage.

1 *Rep.* In the famous Case of *Altonwood* there is vouched the Lord *Lovel's* Case: That the King granted Lands to the Lord *Lovel*, and his Heirs Males, not for Service done, but for a valuable Consideration of Money paid. The Patentee well hoped to have enjoyed the Land not only during his Life, but that his Heirs Males, at least of his Body, should have likewise enjoyed it: But the Judges finding, it seems, that the King was willing to keep the Money, and have his Land again, (for what other Reason, no mortal Man can fathom) resolved that it was a void Grant, and that nothing passed to the Patentee. I might instance in many Cases of like nature, throughout all the Reports. As one once made his boast, That he never made or past any Patent or Charter from the Crown, but he reserved one starting Hole or other, and knew how to avoid it; and so merely to cozen and defraud the poor Patentee. So that now put all these Prerogatives together, 1. The Militia by Sea and Land: 2. A Liberty to call Parliaments when he pleased; and to adjourn, prorogue, or dissolve them at pleasure: 3. A negative Voice, that the People cannot save themselves without him, and must cut their own Throats, if commanded so to do: 4. The Nomination and making of all the Judges, that upon peril of the Loss of their Places, must declare the Law to be as he pleases: 5. A Power to confer Honours upon whom, and how he pleases; a covetous base Wretch for five or ten thousand Pounds to be courted, who deserves to be carted: 6. To pardon Murderers, whom the Lord says shall not be pardoned: 7. To set a Value and Price of Monies as he pleases; that if he be to pay ten thousand Pounds, he may make Leather by his Proclamation to be current that day, or five Shillings to pass for twenty Shillings; and if to receive so much, twenty Shillings to pass for five Shillings: And lastly, a legal Theft to avoid his own Grants: I may boldly throw the Gantlet, and challenge all the *Machiavels* in the World to invent such an exquisite Platform of Tyrannical Domination, and such a perfect Tyranny, without Maim or Blemish, as this is, and that by a Law, which is worst of all. But the truth is, these are no legal Prerogatives, but Usurpations, Incroachments, and Invasions upon the People's Rights and Liberties: And this easily effected, without any great Depth of Policy; for 'tis but being sure to call no Parliaments, or make them useless, and make the Judges Places profitable, and place Avarice upon the Bench, and no doubt but the Law shall found as the King would have it. But let me thus far satisfy the ingenuous Reader, That all the Judges in *England* cannot make one Case to be Law that is not Reason, no more than they can prove a Hair to be white that is black; which if they should so declare or adjudge, it is a mere Nullity: For Law must be Reason adjudged, where Reason is the *Genus*; and the Judgment in some Court makes the *Differentie*. And I never found that the fair Hand of the Common Law of *England* ever reached out any Prerogative to the King above the meanest Man, but in three Cases; 1. In Matters of Honour and Pre-eminence to his Person; and in Matters of Interest: That he should have Mines Royal of Gold and Silver, in whose Land soever they were discover'd; and Fishes Royal, as Sturgeons and Whales, in whose Streams or Water so-

ever they were taken, which very rarely happen'd: or to have Tythes out of a Parish that no body else could challenge: For says the Law, *The most noble Persons are to have the most noble Things*. 2. To have his Patents freed from Deceit, that he be not overreached or cozened in his Contracts, being employed about the great and arduous Affairs of the Kingdom. 3. His Rights to be freed from Incurion of Time, not to be bound up by any Statute of Non-claim: For indeed Possession is a vain Plea, when the Matter of Right is in question; for Right can never die: And some such honourable Privileges of mending his Plea, or suing in what Court he will; and some such Prerogatives, of a middle indifferent Nature, that could not be prejudicial to the People. But that the Law of *England* should give the King any such vast, immense, precipitating Power, or any such God-like State, That he ought not to be accountable for wicked Actions, or Male-Administrations and Misgovernment, as he hath challenged and averred in his Answer to the Petition of Right, or any such Principles of Tyranny; which are as inconsistent with the People's Liberties and Safety as the Ark and *Dagon*, Light and Darkness, in an extensive degree; is a most vain and irrational Thing to imagine. And yet that was the Ground of the War, as himself often declared; and that would not have half contented him, if he had come in by the Sword. But some rational Men object, How can it be Murder, say they, for the King to raise Forces against the Parliament, since there is no other way of determining Differences between the King and his Subjects, but by the Sword? For the Law is no competent Judge between two supreme Powers; and then if it be only a contending for each other's Right, where is the Malice that makes the killing of a Man Murder? Take the Answer thus: First, How is it possible to imagine two supreme Powers in one Nation, no more than two Suns in one Firmament? If the King be supreme, the Parliament must be subordinate: If they supreme, then he subordinate. But then it is alledged, That the King challenged a Power only co-ordinate, that the Parliament could do nothing without him, nor he without them. Under favour, two Powers co-ordinate is as absurd as the other: For tho' in quiet Times the Commons have waited upon the King, and allowed him a negative Voice in Matters of less Concernment, where Delay could not prove dangerous to the People; yet when the Commons shall vote that the Kingdom is in danger, unless the Militia be so and so settled, now if he will not agree to it, they are bound in Duty to do it themselves. And 'tis impossible to imagine that ever any Man should have the Consent of the People to be their King upon other Conditions, (without which no Man ever had Right to wear the Diadem:) For Conquest makes a Title amongst Wolves and Bears, but not amongst Men.

When the first Agreement was concerning the Power of Parliaments, if the King should have said, Gentlemen, are you content to allow me any negative Voice, that if you vote the Kingdom to be in danger, unless such an Act pass, if I refuse to assent, shall nothing be done in that Case? Surely no rational Man but would have answered, May it please your Majesty, we shall use all dutiful Means to procure your Royal Assent: But if you still refuse, we must not sit still, and see ourselves ruin'd: we must and will save ourselves, whether you will or no. And will any Man say that the King's Power

Power is diminished, because he cannot hurt the People? Or that a Man is less in Health that hath many Physicians to attend him? God is omnipotent, that cannot sin; and all Power is for the People's Good: But a Prince may not say that is for the People's Good, which they see and feel to be for their Hurt. And as for the Malice, the Law implies that; as when a Thief sets upon a Man to rob him, he hath no spite to the Man, but Love to the Money: But it is an implied Malice, that he will kill the People unless they will be Slaves.

Q. But by what Law is the King condemned?

Resp. By the Fundamental Law of this Kingdom, by the general Law of all Nations, and the unanimous Consent of all rational Men in the World, written in every Man's Heart with the Pen of a Diamond in Capital Letters, and a Character so legible, that he that runs may read, *viz.* That when any Man is intrusted with the Sword for the Protection and Preservation of the People, if this Man shall employ it to their Destruction, which was put into his Hand for their Safety, by the Law of that Land he becomes an Enemy to that People, and deserves the most exemplary and severe Punishment that can be invented. And this is the first necessary Fundamental Law of every Kingdom, which by intrinsecal Rules of Government must preserve itself. And this Law needed not be express'd, That if a King become a Tyrant, he shall die for it; 'tis so naturally implied. We do not use to make Laws which are for the Preservation of Nature; that a Man should eat and drink, and buy himself Clothes, and enjoy other natural Comforts: No Kingdom ever made any Laws for it. And as we are to defend ourselves naturally, without any written Law, from Hunger and Cold, so from outward Violence. Therefore, if a King would destroy a People, 'tis absurd and ridiculous to ask by what Law he is to die. And this Law of Nature is the Law of God, written in the fleshy Tables of Mens Hearts; that, like the elder Sister, hath a prerogative Right of Power before any positive Law whatsoever: And this Law of Nature is an undubitable Legislative Authority of itself, that hath a suspensive Power over all human Laws. If any Man shall by express Covenant, under Hand and Seal, give Power to another Man to kill him, this is a void Contract, being destructive to Humanity. And by the Law of *England* any Act or Agreement against the Laws of God or

Com. E. Leicester's Case.

Nature is a mere Nullity: For as Man hath no hand in the making of the Laws of God or Nature, no more hath he power to mar or alter them. If the Pilot of a Ship be drunk, and running upon a Rock; if the Passengers cannot otherwise prevent it, they may throw him into the Sea to cool him. And this Question hath received Resolution this Parliament. When the Militia of an Army is committed to a General, 'tis not with any express Condition that he shall not turn the Mouths of his Cannons against his own Soldiers; for that is so naturally and necessarily implied, that it's needless to be express'd: Infomuch, as if he did attempt or command such a Thing against the Nature of his Trust and Place, it did *ipso facto* estate the Army in a Right of Disobedience; unless any Man be so grossly ignorant, to think that Obedience binds Men to cut their own Throats, or their Companions. Nor is this any Secret of the Law which hath lain hid from the beginning, and now brought out to bring him to Justice; but that

which is connatural with every Man, and innate in his Judgment and Reason, and is as antient as the first King, and an epidemical binding Law in all Nations in the World: For when many Families agree, for the Preservation of Human Society, to invest any King or Governor with Power and Authority; upon the acceptance thereof, there is a mutual Trust and Confidence between them, that the King shall improve his Power for their Good, and make it his Work to procure their Safeties, and they to provide for his Honour; which is done to the Commonwealth in him, as the Sword and Ensigns of Honour, carry'd before the Lord Mayor, are for the Honour of the City. Now, as when any one of this People shall compass the Death of the Governor, ruling well, this is a Treason punishable with Death, for the Wrong done to the Community, and *Anathema* be to such a Man; so when he or they that are trusted to fight the People's Battles, and to procure their Welfare, shall prevaricate, and act to the enslaving or destroying of the People, who are his Liege Lords, and all Governors are but the People's Creatures, and the Work of their Hands, to be accountable as their Stewards, (and is it not senseless for the Vessel to ask the Potter by what Law he calls it to account?) this is High-Treason with a Witnests, and far more transcendent than in the former Case; because the King was paid for his Service, and the Dignity of the Person does increase the Offence. For a great Man of noble Education and Knowledge to betray so great a Trust, and abuse so much Love as the Parliament shewed to the King, by petitioning him as good Subjects, praying him as good Christians, advising him as good Counsellors, and treating with him as the great Council of the Kingdom, with such infinite Care and Tendernefs of his Honour, (a Course which God's People did not take with *Rehoboam*; they never petitioned him, but advised him; he refused their Counsel, and hearkened to young Counsellors, and they cry, *To thy Tents, O Israel*: and make quick and short Work of it; after all this, and much more Longanimity and Patience (which God exercises towards Man to bring him to Repentance) from the Lord to the Servant, for him not only to set up a Standard of War, in defiance of his dread Sovereign the People, (for so they truly were in Nature, tho' Names have befooled us) but to persist so many Years in such cruel Persecutions; who with a Word of his Mouth might have made a Peace: If ever there were so superlative a Treason, let the *Indians* judge. And whosoever shall break and violate such a Trust and Confidence, *Anathema Maranatha* be unto them.

Q. But why was there not a written Law to make it Treason for the King to destroy the People, as well as for a Man to compass the King's Death?

Resp. Because our Ancestors did never imagine, that any King of *England* would have been so desperately mad, as to levy a War against the Parliament and People; as in the common Instance of Parricide, the *Romans* made no Law against him that should kill his Father, thinking no Child would be so unnatural to be the Death of him who was the Author of his Life: But when a Child came to be accused for Murder, there was a more cruel Punishment inflicted, than for other Homicides; for he was thrown into the Sea in a great Leather Barrel, with a Dog, a Jackanapes, a Cock, and a Viper, significant Companions for him, to be deprived of all the Elements, as in my *Poor Man's Case*, fol. 10. Nor was there any Law made a-

gainst Parents, who should kill their Children; yet if any Man was so unnatural, he had an exemplary Punishment.

Obj. *But is it not a Maxim in Law, That the King can do no Wrong?*

Resp. For any Man to say so, is Blasphemy against the great God of Truth and Love: For only God cannot err; because what he wills is right, because he wills it. And 'tis a sad thing to consider how learned Men, for unworthy Ends, should use such Art to subdue the People, by Transportation of their Senses, as to make them believe that the Law is, That the King can do no Wrong.

First, for Law; I do aver it with Confidence, but in all Humility, that there is no such Case to be found in Law, That if the King rob, or murder, or commit such horrid Extravagancies, that it is no Wrong. Indeed the Case is put in *Hen. VII.* by a Chief Judge, That if the King kill a Man, 'tis no Felony, to make him suffer Death; that is, to be meant in ordinary Courts of Justice. But there is no doubt but the Parliament might try the King, or appoint others to judge him for it. We find Cases in Law, that the King hath been sued even in Civil Actions.

In 43 *Edw. III.* 22. it is resolved, That all manner of Actions did lie against the King, as against any Lord; and 24 *Edw. III.* 23. *Wilby* a learned Judge said, That there was a Writ *Præcipe Henrico Regi Angliæ.*

Indeed *Ed. I.* did make an Act of State, That Men should sue to him by Petition; but this was not agreed unto in Parliament: *Thelwal. tit. Roje. Digest of Writs*, 71. But after, when Judges Places grew great, the Judges and Bitesheeps began to sing Lullaby, and speak *Placentia* to the King, that *my Lord the King is an Angel of Light*: now Angels are not responsible to Men, but God, therefore not Kings. And the Judges, they begin to make the King a God, and say, That by Law his Stile is *Sacred Majesty*, tho' he swears every hour; and *Gracious Majesty*, tho' gracious Men be the chief Objects of his Hatred; and that the King hath an Omnipotency and Omnipresence.

But I am sure there is no Case in Law, That if the King levy a War against the Parliament and People, that it is not Treason. Possibly that Case in *Hen. VII.* may prove, That if the King should in his passion kill a Man, this shall not be Felony to take away the King's Life; for the Inconveniency may be greater to the People, by putting a King to death for one Offence and Miscarriage, than the Execution of Justice upon him can advantage them. But what's this to a levying of War against a Parliament? Never any Judge was so devoid of Understanding, that he denied that to be Treason. But suppose a Judge that held his Place at the King's pleasure did so, I am sure never any Parliament said so. But what if there had in dark Times of Popery been an Act made, That the King might murder, ravish, burn and perpetrate all Mischief, and play Reaks with impunity; will any Man that hath but Wit enough to measure an Ell of Cloth, or to tell Twenty, say, That this is an Obligation for Men to stand still, and suffer a Monster to cut their Throats, and grant Commission to rob at *Shuters-Hill*; as such and no better are all legal Thefts and Oppressions. The Doctor says, That a Statute against giving an Alms to a poor Man is void: He is no Student, I mean, was never bound Prentice to Reason, that says, A King cannot commit Treason against the People.

Obj. *But are there not Negative Words in the Statute of 25 Edw. III. That nothing else shall be construed to be Treason, but what is there express'd?*

Resp. That Statute was intended for the People's Safety, that the King's Judges should not make Traytors by the dozens, to gratify the King or Courtiers; but it was never meant, to give liberty to the King to destroy the People: and tho' it be said, That the King and Parliament only may declare Treason, yet no doubt if the King will neglect his Duty, it may be so declared without him; for when many are obliged to do any Service, if some of them fail, the rest must do it.

Obj. *But is there any Precedent, that ever any Man was put to death that did not offend against some written Law? For where there is no Law, there is no Transgression.*

Ref. 'Tis very true, where there is neither Law of God, nor Nature, nor positive Law, there can be no Transgression; and therefore that Scripture is much abused, to apply it only to Laws positive. For,

1. *Ad ea quæ frequentius, &c.* 'Tis out of the Sphere of all earthly Law-givers to comprehend and express all particular Cases that may possibly happen, but such as are of most frequent concurrence; Particulars being different, like the several Faces of Men different from one another, else Laws would be too tedious: and as Particulars occur, rational Men will reduce them to general Reasons of State, so as every thing may be adjudged for the Good of the Community.

2. The Law of England is *Lex non scripta*, and we have a Direction in the Epistle to the 3 *Rep.* That when our Law-Books are silent, we must repair to the Law of Nature and Reason. *Hollingshed*, and other Historians tell us, That in 20 *H. VIII.* the Lord *Hungerford* was executed for Buggery, for which there was then no positive Law to make it Felony: and before any Statute against Witchcraft, many Witches have been hanged in England, because it is Death by God's Law. If any Italian Mountebank should come over hither, and give any Man Poison that should lie in his Body above a Year and a Day, and then kill him, as it is reported they can give a Man Poison that shall consume the Body in three Years; will any make scruple or question to hang up such a Rascal? At *Naples*, the great Treasurer of Corn being intrusted with many thousand Quarters at three Shillings the Bushel, for the common Good, finding an opportunity to sell it for five Shillings the Bushel to foreign Merchants, enriched himself exceedingly thereby; and Corn growing suddenly dear, the Council call'd him to account for it, who proffer'd to allow three Shillings for it, as it was deliver'd into his custody, and hoped thereby to escape: but for so great a Breach of Trust, nothing would content the People but to have him hang'd; and tho' there was no positive Law for it, to make it Treason, yet it was resolved by the best Politicians, that it was Treason to break so great a Trust, by the Fundamental Constitution of the Kingdom, and that for so great an Offence he ought to die, that durst presume to enrich himself by that which might endanger the Lives of so many Citizens; for as Society is so natural, so Governors must of necessity, and in all reason provide for the Preservation and Sustainance of the meanest Member, he that is but as the little Toe of the Body Politick.

But concerning *Ireland*, where there were no less than 15000 Men, Women, and Children, most

most barbarously and satanically murdered in the first four Months of the Rebellion, as appeared by substantial Proofs, at the *King's-Bench*, at the Trial of *Macguire*; if the King had a Hand or but a Little-Finger in that Massacre, every Man will say, Let him die the death: but how shall we be assured of that? How can we know the Tree better than by its Fruits? For my own particular, I have spent many serious Thoughts about it, and I desire in doubtful Cases to give Charity the upper hand; but I cannot in my Conscience acquit him of it. Many strong Presumptions, and several Oaths of honest Men, that have seen the King's Commission for it, cannot but amount to a clear Proof. If I meet a Man running down stairs with a bloody Sword in his hand, and find a Man stabbed in the Chamber, tho' I did not see this Man run into the Body by that Man which I met, yet if I were of the Jury, I durst not but find him guilty of the Murder; and I cannot but admire that any Man should deny that for him, which he durst never deny for himself. How often was that monstrous Rebellion laid in his Dish? and yet he durst never absolutely deny it. Never was Bear so unwillingly brought to the stake, as he was to declare against the Rebels; and when he did once call them Rebels, he would suffer but forty Copies to be printed, and those to be sent to him seal'd: and he hath since above forty times called them his Subjects, and his good Subjects; and sent to *Ormond* to give special Thanks to some of these Rebels, as *Muskerri* and *Plunket*: (which I am confident, by what I see of his Height of Spirit and undaunted Resolution at his Trial and since, acting the last part answerable to the former part of his Life; he would rather have lost his Life, than to have sent Thanks to two such incarnate Devils, if he had not been as guilty as themselves.) Questionless if the King had not been guilty of that Blood, he would have made a thousand Declarations against these Blood-hounds and Hell-hounds, that are not to be named but with Fire and Brimstone, and have sent to all Princes in the World for Assistance against such accursed Devils in the shape of Men: but he durst not offend those Fiends and Firebrands; for if he had, I verily believe they would soon have produced his Commission under his Hand and Seal of *Scotland* at *Edinburgh*, 1641, a Copy whereof is in the Parliament's Hands, attested by Oath, dispersed by Copies in *Ireland*, which caused the general Rebellion.

Obj. He did not give Commission to kill the English but to take their Forts, Castles, Towns, and Arms, and come over and help him.

Resp. And is it like all this could be effected without the Slaughter of the poor English? Did the King ever call them Rebels, but in forty Proclamations wrung out of him by force, by the Parliament's Importunity? murdering the Protestants was so acceptable to him! And with this Limitation, That none should be published without his further Directions, as appears under *Nicols's* Hand, now in the Parliament's custody. But the Scots were proclaimed Rebels before they had killed a Man, or had an Army, and a Prayer against them, enjoined in all Churches; but no such matter against the *Irish*.

Well when the Rebels were worsted in *Ireland*, the King makes War here to protect them, which but for his fair Words had been prevented; often calling God to witness, he would as soon raise War on his own Children: and Men from Popish

Principles assist him. Well! we fought in jest, and were kept between winning and losing: The King must not be too strong, lest he revenge himself; nor the Parliament too strong, for the Commons would rule all; till *Naseby* Fight that then the King could keep no more Days of Thanksgiving so well as we, Then he makes a Cessation in *Ireland*, and many *Irish* came over to help him: *English* came over with Papists, who had scarce wiped their Swords since they had killed their Wives and Children, and had their Estates.

But thus I argue; The Rebels knew that the King had proclaimed them Traitors, and forty Copies were printed; and the first Clause of an Oath enjoined by the General Council of Rebels, was, *To bear true Faith and Allegiance to King Charles, and by all means to maintain his Royal Prerogative, against the Puritans in the Parliament of England.* Now is any Man so weak in his Intellectuals, as to imagine, That if the Rebels had without the King's Command or Consent murdered so many Protestants, and he thereupon had really proclaimed them Rebels, that they would after this have taken a new Oath to have maintained his Prerogative? No, those bloody Devils had more Wit than to fight in jest. If the King had once in good earnest proclaimed them Rebels, they would have burnt their Scabbards, and would not have stiled themselves the King's and Queen's Army, as they did. And truly, that which the King said for himself, That he would have adventured himself, to have gone in person into *Ireland* to suppress that Rebellion, is but a poor Argument to enforce any Man's Belief, that he was not guilty of the Massacre: for it makes me rather think, that he had some hopes to have returned at the head of 20 or 30000 Rebels, to have destroy'd this Nation. For when the Earl of *Leicester* was sent by the Parliament to subdue the Rebels did not the King hinder him from going? And were not the Clothes and Provisions which were sent by the Parliament for the Relief of the poor Protestants there, seiz'd upon by his Command, and his Men of War; and sold or exchanged for Arms and Ammunition to destroy this Parliament? And does not every Man know, That the Rebels in *Ireland* gave Letters of Mart for taking the Parliament's Ships, but freed the King's as their very good Friends? And I have often heard it credibly reported, that the King should say, That nothing more troubled him, but that there was not as much Protestant Blood running in *England* and *Scotland*, as in *Ireland*. And when that horrid Rebellion begun to break forth, how did the Papists here triumph and boast, that they hoped ere long to see *London* Streets run down in Blood? And yet I do not think, that the King was a Papist, or that he designed to introduce the Pope's Supremacy in Spiritual Things into this Kingdom: but thus it was; A Jesuitical Party at Court was too prevalent in his Counsels, and some mungrel Protestants, that less hated the Papists than the Puritans, by the Queen's Mediation joined all together to destroy the Puritans; hoping that the Papists and the *Laodicean* Protestants would agree well enough together. And lastly, if it be said, that if the King and the Rebels were never fallen out, what need had *Ormond* to make a Pacification or Peace with them by the King's Commission under the Great Seal of *Ireland*? Truly there hath been so much Daubing, and so little Plain-dealing, that I wonder how there comes to be so many Beggars.

Concerning

Concerning the betraying of *Rochel*, to the enslaving of the Protestant Party in *France*, I confess, I heard so much of it, and was so shamefully reproached for it in *Geneva*, and by the Protestant Ministers in *France*, that I could believe no less than that the King was guilty of it. I have heard fearful Exclamations from the *French* Protestants against the King and the late Duke of *Buckingham*, for the betraying of *Rochel*. And some of the Ministers told me ten Years since, That God would be revenged of the wicked King of *England*, for betraying *Rochel*. And I have often heard *Deodati* say, concerning *Henry IV.* of *France*, That the Papists had his Body, but the Protestants had his Heart and Soul; but for the King of *England*, the Protestants had his Body, but the Papists had his Heart: Not that I think he did believe Transubstantiation, but I verily believe, that he loved a Papist better than a Puritan.

The Duke of *Roan*, who was an honest gallant Man, and the King's Godfather, would often say, That all the Blood which was shed in *Dauphine*, would be cast upon the King of *England's* Score. For thus it was: The King sent a Letter to the *Rochellers* by Sir *William Beecher*, to assure them, That he would assist them to the uttermost against the *French* King, for the Liberty of their Religion; conditionally, That they would not make any Peace without him: and *Montague* was sent into *Savoy* and to the Duke of *Roan* to assure them from the King, That 30000 Men should be sent out of *England*, to assist them against the *French* King, in three Fleets; one to land in the Isle of *Rhee*, a second in the River of *Bordeaux*, and a third in *Normandy*. Whereupon the Duke of *Roan* being General for the Protestants, not suspecting that the *French* durst assault him in *Dauphine*, (because the King of *England* was ready to invade him as he had promised) drew out his Army upon disadvantage: whereupon the *French* King employed all his Army into *Dauphine* against the Protestants, who were forced to retreat, and the Duke of *Roan* to fly to *Genoa*, and the Protestants to accept of Peace upon very hard Conditions, to stand barely at the King's devotion for their Liberties, without any cautionary Towns of Assurance, as formerly they had; being such a Peace, as the Sheep make with the Wolves, when the Dogs are dismiss'd. And the Protestants have ever since cry'd out to this very Day, It is not the *French* King that did us wrong, for then we could have borne it; but it was the King of *England*, a profess'd Protestant, that betray'd us. And when I have many times intreated *Deodati* and others, to have a good opinion of the King, he would answer me, That we are commanded to forgive our Enemies, but not to forgive our Friends.

There is a *French* Book printed about two Years since called *Memoires du Monsieur de Roan*, where the King's horrid Perfidiousness, and deep Diffimulation, is very clearly unfolded and discovered. To instance but in some Particulars: The King having solemnly engaged to the *Rochellers*, that he would hazard all the Forces he had in his three Kingdoms, rather than they should perish; did in order theunto, to gain Credulity with them, send out eight Ships to Sea, commanded by Sir *John Pennington*, to assist the *Rochellers* as was pretended, but nothing less intended; for *Pennington* assisted the *French* King against the *Rochellers*, which made Sir *Ferdinando Gorge* to go away with the *Great Neptune*, in detestation of so damnable a Plot: and

the *English* Masters and Owners of Ships refusing to lend their Ships to destroy the *Rochellers*, whom with their Souls they desired to relieve, *Pennington* in a mad spite shot at them.

Soubise being Agent here in *England* for the *French* Protestants, acquainted the King how basely *Pennington* had dealt, and that the *English* Ships had mowed down the *Rochel* Ships like Grass, not only to the great Danger and Loss of the *Rochellers*, but to the eternal dishonour of this Nation, scandal of our Religion, and disadvantage of the general Affairs of all the Protestants in *Christendom*. The King seems to be displeased, and says, What a Knave is this *Pennington*! but whether it was not feigned, let all the World judge. But the thing being so plain, said *Soubise* to the King, Sir, why did the *English* Ships assist the *French* King, and those that would not, were shot at by your Admiral? The *French* Protestants are no Fools; how can I make them believe that you intend their Welfare? The King was much put to it for a ready Answer, but at last thus it was patch'd up; That the *French* King had a Design to be revenged of *Genoa* for some former Affront, and that the King lent him eight *English* Ships to be employed for *Genoa*; and that sailing towards *Genoa*, they met with some of the *Rochellers* accidentally, and that the *English* did but look on, and could not help it, not having any Commission to fight at that present: wherein the *Rochellers* might and would have declined a Sea-fight if they had not expected our assistance. But still the poor Protestants were willing rather to blame *Pennington* than the King; who in great seeming Zeal being Surety for the last Peace between the *French* King and his Protestant Subjects, sends *Devick* to the Duke of *Roan*, to assure him, That if *Rochel* were not speedily set at Liberty, (which the *French* King had besieged, contrary to his Agreement) he would employ his whole strength, and in his own Person see it perform'd. Which being not done, then the King sends the Duke of *Buckingham* to the Isle of *Rhee*, and gives new hopes of better Success to *Soubise*; commanding the Admiral and Officers in the Fleet, in *Soubise's* hearing, to do nothing without his Advice. But when the Duke came to land at the Isle of *Rhee*, many gallant *Englishmen* lost their Lives, and the Duke brought back 300 Tuns of Corn from the *Rochellers*, which he had borrowed of them, pretending a Necessity for the *Englishmen*, which was but feigned, knowing it was a City impregnable, so long as they had Provision within. I confess the *Rochellers* were not wise, to lend the Duke their Corn, considering how they had been dealt with. But what a base thing was it so to betray them, and to swear unto them, That they should have Corn enough sent from *England*, before they wanted it! And for a long time, God did miraculously send them in a new kind of Fish, which they never had before. But when the Duke came to Court, he made the honest *English* believe, that *Rochel* would suddenly be relieved, and that there was not the least danger, of the loss of it: but Secretary *Cook*, an honest understanding Gentleman, and the only Friend at Court to the *Rochellers* labouring to improve his Power to send some Succour to *Rochel*, was suddenly sent away from Court upon some sleeveless Errand, or as some say to *Portsmouth*, under colour of providing Corn for *Rochel*, but the Duke soon after went thither, and said, His Life upon it, *Rochel* is safe enough. And the next day, *Soubise* being at *Portsmouth*,

mouth, he press'd the Duke of *Buckingham* most importunately to send Relief to *Rochel* then or never. The Duke told him, that he had just then heard good News of the victualling of *Rochel*, which he was going to tell the King: which *Soubise* making doubt of, the Duke affirm'd it by an Oath; and having the Words in his Mouth, he was stabb'd by *Felton*, and instantly died. The poor *Rochellers* seeing themselves so betray'd, exclaimed of the *English* and were constrained thro' Famine to surrender the City; yet new assurances came from the King to the Duke of *Roan*, that he should never be abandoned, and that he should not be dismay'd nor astonish'd for the Loss of *Rochel*.

But *Soubise* spoke his mind freely at Court, that the *English* had betray'd *Rochel*, and that the Loss of that City was the apparent Perdition and Loss of thirty two Places of Strength from the *French* Protestants in *Languedoc*, *Piedmont*, and *Dauphine*: therefore it was thought fit that he should have a Fig given him to stop his Mouth. Well, not long after, two Capuchins were sent into *England* to kill honest *Soubise*, and the one of them discovered the other. *Soubise* rewarded the Discoverer, and demanded Justice here against the other, who was a Prisoner; but by what means you may easily imagine, that assassinate Rascal, instead of being whipt, or receiving some more severe Punishment, was released, and sent back into *France* with Money in his Purse: and one of the Messengers that was sent from *Rochel* to complain of those abominable Treacheries, was taken here; and, as the Duke of *Roan* writes, was hanged for some pretended Felony or Treason: And much more to this purpose may be found in the Duke of *Roan*'s Memorials. But yet I know many wise, sober Men do acquit the King from the Guilt of the Loss of *Rochel*, and lay it upon the Duke, as if it were but a Loss of his Reputation. They say that the Duke of *Buckingham* agitated his Affairs neither for Religion, nor the Honour of his Master; but only to satisfy his Passion in certain foolish Vows which he made in *France*, enter'd upon a War: and that the Business miscarried thro' Ignorance, and for want of Understanding to manage so difficult a Negotiation, he being unfit to be an Admiral or a General.

I confess that for many Years I was of that Opinion, and thought that the King was seduced by evil Counsel; and some thought that *Buckingham* and others ruled him as a Child, and durst do what they list: But certainly he was too politick and subtle a Man to be swayed by any thing but his own Judgment. Since *Naseby* Letters, I ever thought him Principal in all Transactions of State, and the wisest about him but Accessaries: He never acted by any implicit Faith in State-matters: the proudest of them all durst never cross him in any Design, when he had once resolved upon it. Is any Man so soft-brained to think that the Duke of *Pennington* durst betray *Rochel* without his Command? Would not he have hanged them up at their Return, if they had wilfully transgressed his Commands? A thousand such Excuses made for him, are but like *Irish* Quagmires that have no solid Ground or Foundation in Reason: He was well known to be a great Student in his younger Days, that his Father would say, He must make him a Bishop. He had more Learning and Dexterity in State-Affairs undoubtedly, than all the Kings in Christendom: If he had had Grace answerable to his strong Parts, he had been another *Solomon*:

but his Wit and knowledge proved like a Sword in a Mad-man's Hand; he was a Stranger to the Work of Grace and the Spirit of God: And all those *Meanders* in State, his serpentine Turnings and Windings, have but brought him to Shame and Confusion. But I am fully satisfied none of his Counsel durst ever advise him to any thing, but what they knew before he resolved to have done; and that they durst as well take a Bear by the Tooth, as do, or consent to the doing of any thing, but what they knew would please him; they did but hew and square the Timber, he was the Master-builder that gave the Form to every Artifice: and being so able and judicious to discern of every Man's Merits, never think that the Duke of *Pennington*, or any Judge or Officer, did ever any thing for his Advantage without his Command, against Law or Honour.

Upon all which Premises, may it please your Lordship, I do humbly demand and pray the Justices of this High Court; and yet not I, but the innocent Blood that hath been shed in these three Kingdoms, demands Justice against him: This Blood is vocal, and cries aloud, and yet speaks no better but much louder than the Blood of *Abel*; for what Proportion hath the Blood of that righteous Man, to the Blood of so many Thousand? If King *Abah* and Queen *Jezabel*, for the Blood of one righteous *Naboth*, (who would not sell his Inheritance for the full Value) were justly put to death; what Punishment doth he deserve, that is guilty of the Blood of thousands, and fought for a pretended Prerogative, that he might have any Man's Estate that he liked, without paying for it? This Blood hath long cried, How long Parliament, how long Army, will ye forbear to avenge our Blood? Will ye not do Justice upon the capital Author of all Injustice? When will ye take the proud Lion by the Beard, that defies you with imperious Exultations? What's the House of Commons? What's the Army? As *Pharaoh* said, *Who is the Lord? And who is Moses?* I am not accountable to any Power on Earth; those that were murdered at *Brentford*, knock'd on the Head in the Water, and those honest Souls that were kill'd in cold Blood at *Bolton* and *Liverpool* in *Lancashire*, at *Barton* in *Cheshire* and many other Places, their Blood cries night and day for Justice against him; their Wives and their Children cry, Justice upon the Murderer, or else give us our Fathers and Husbands again: Nay, should the People be silent, the very Stones and Timber of the Houses would cry for Justice against him. But, my Lord, before I pray Judgment, I humbly crave leave to speak to two Particulars. 1. Concerning the Prisoner. When I consider what he was, and how many Prayers have been made for him, tho' I know that all the World cannot restore him nor save his Life, because God will not forgive his temporal Punishment; yet if God in him will be pleased to add one Example more to the Church of his unchangeable Love to his Elect in Christ, not knowing but that he may belong to the Election of Grace; I am troubled in my Spirit, in regard of his eternal Condition, for fear that he should depart this Life without Love and Reconciliation to all those Saints whom he hath scorned under the notion of Presbyterians, Anabaptists, Independents and Sectaries. It cannot be denied, but that he hath spent all his Days in unmeasurable Pride; that during his whole Reign he hath deported himself as a God, been depended upon, and ador'd as God; that hath challenged

challenged and assumed an Omnipotent Power, an earthly Omnipotence, that with the Breath of his Mouth hath dissolved Parliaments; his *Non placet* hath made all the Counsels of that Supreme Court to become Abortives. *Non curo* hath been his Motto, who instead of being honoured as good Kings ought to be, and no more, hath been idolized and adored, as our good God only ought to be. A Man that hath shot all his Arrows against the Upright in the Land, hated Christ in his Members, swallowed down Unrighteousness, as the Ox drinks Water; esteemed the Needy as his Footstool, crush'd honest Publick-spirited Men, and grieved when he could not afflict the Honest more than he did; counted it the best Art and Policy to suppress the Righteous, and to give way to his Courtiers so to gripe, grind, oppress and over-reach the free People of the Land, that he might do what he list (the Remembrance whereof would pierce his Soul, if he knew the Preciousness of it) but all Sins to an infinite Mercy, are equally pardonable: therefore my Prayer for this poor Wretch shall be, That God would so give him Repentance to Life, that he may believe in that Christ, whom he hath imprisoned, persecuted, and murdered in the Saints; That he which hath lived a Tyrant, and hated nothing so much as Holiness, may die a Convert, and in Love to the Saints in *England*; that so the Tears of the Oppressed and the Afflicted, may not be as so many fiery stinging Serpents, causing an eternal Despairing, continual Horror to this miserable Man, when all Tyrants shall be astonish'd, and innocent Blood will affright more than twelve Legions of Devils. All the Hurt that I wish to him, is, That he may look the Saints in the face with Comfort; for the Saints must judge the World: And however it may be, he or his Adherents may think it a brave *Roman* Spirit, not to repent of any thing, nor express any Sorrow for any Sin, tho' never so horrid, taking more care and fear not to change their Countenance upon the Scaffold, than what shall become of them after Death; yet I beseech your Lordship, that I may tell him and all the Malignants now living, but this; *Charles Stuart*, unless you depart this Life in Love and Reconciliation to all those Saints and godly Men, whom you have either ignorantly or maliciously oppos'd, mock'd, and persecuted, and still scorn and jeer at, as Hereticks and Sectaries, there is no more Hopes for you ever to see God in Comfort, than for me to touch the Heavens with my Finger, or with a Word to annihilate this great Building, or for the Devil to be saved; which he might be, if he could love a Saint as such. No, Sir, it will be too late for you to say to those Saints, whom you have defied, Give me some of your Holiness, that I may behold God's angry Countenance: You can expect no Answer, but, Go buy, Sir, of those Soul-hucksters, your Bishops, which fed you with Chaff and Poison; and now you must feed upon Fire and Brimstone to all Eternity.

2. Concerning myself, I bear no more Malice to the Man's Person, than I do to my dear Father; but I hate that cursed Principle of Tyranny, that has so long lodged and harboured within him, which has turned our Waters of Law into Blood. And therefore, upon that malignant Principle, I hope this High-Court (which is an Habitation of Justice, and a Royal Palace of Principles of Freedom) will do speedy Justice; That this Lion which has devoured so many Sheep, may not only be re-

moved out of the way, but that this Iron Scepter, which has been lifted up to break this poor Nation in pieces like a Potter's Vessel, may be wrested out of the Hands of Tyrants: That my honourable Clients (for whom I am an unworthy Advocate) the People of *England*, may not only taste, but drink abundantly of those sweet Waters of that Well of Liberty, which this renowned Army hath digg'd with their Swords, which was stop'd by the *Philistines*, the fierce *Jew*, and uncircumcised *Canaanite*; the Hopes whereof made me readily hearken to the Call to this Service, as if it had been immediately from Heaven, being fully satisfied, that the Prisoner was long since condemned to die by God's Law, (which being more noble and antient than any Law of Man, if there had been a Statute that he should not die, yet he ought to be put to death notwithstanding;) and that this High Court was but to pronounce the Sentence and Judgment written against him. And tho' I might have been sufficiently discouraged, in respect that my Reason is far less than others of my Profession; yet considering that there are but two things desirable, to make a dumb Man eloquent, namely, a good Cause, and good Judges; the first whereof procures the Justice of Heaven, and the second, Justice upon Earth: and thinking that happily God might make use of one mean Man at the Bar, amongst other Learned Counsel, that more of his mind might appear in it, (for many times the less there is of Man, the more God's Glory does appear; and hitherto very much of the Mind of God hath appeared in this Action) I went as cheerfully about it, as to a Wedding. And that the Glory of this Administration may be wholly given to God, I desire to observe, to the Praise of his great Name, the Work of God upon my own Spirit, in his gracious Assistance and Presence with me, as a Return of Prayer, and Fruit of Faith; believing that God never calls to the acting of any thing so pleasing to him, as this most excellent Court of Justice is, but he is present with the Honourable Judges, and those that wait upon them. I have been sometimes of Counsel against Felons and Prisoners, but I never moved the Court to proceed to Judgment against any Felon, or to keep any Man in Prison, but I trembled at it in my Thoughts, as thinking it would be easier to give an Account of Mercy and Indulgence, than of any thing that might look like Rigour: but now my Spirits are quite of another temper, and I hope it is Meat and Drink to good Men, to have Justice done; and Recreation to think what Benefit this Nation will receive by it.

And now, my Lord, I must, as the truth is, conclude him guilty of more transcendent Treasons, and enormous Crimes, than all the Kings in this part of the World have ever been. And as he that would picture *Venus*, must take the Eyes of one, the Cheeks of another beautiful Woman, and so other Parts, to make a complete Beauty; so to delineate an absolute Tyrant, the Cruelty of *Richard the Third*, and all the Subtlety, Treachery, deep Dissimulation, abominable Projects, and dishonourable Shifts that ever were separately in any, that sway'd the *English* Scepter, conspired together to make their Habitation in this whited Wall. Therefore I humbly pray, That as he has made himself a Precedent in committing such horrid Acts, which former Kings and Ages knew not, and have been afraid to think of, That your Lordship

ship and this High-Court, out of your sublime Wifdoms, and for Justice-Sake, would make him an Example for other Kingdoms for the time to come, that the Kings of the Earth may hear and

fear, and do no more so wickedly; that he, which would not be a Pattern of Virtue, and Example of Justice in his Life, may be a Precedent of Justice to others by his Death.



The Journal of the High-Court of Justice, for the Trial of King CHARLES I. as it was read in the House of Commons, and attested under the Hand of Phelps, Clerk to that Court; with Additions by J. Nalson, LL. D.

An Act of the Commons of England, assembled in Parliament, for erecting of a High Court of Justice, for the Trying and Judging of Charles Stuart King of England.

Whereas it is notorious, That Charles Stuart, the now King of England, not content with those many Encroachments which his Predecessors had made upon the People in their Rights and Freedoms, hath had a wicked Design totally to subvert the Antient and Fundamental Laws and Liberties of this Nation, and in their Place to introduce an Arbitrary and Tyrannical Government; and that besides all other evil Ways and Means to bring this Design to pass, he hath prosecuted it with Fire and Sword, levied and maintained a cruel War in the Land, against the Parliament and Kingdom, whereby the Country hath been miserably wasted, the publick Treasure exhausted, Trade decayed, thousands of People murdered, and infinite other Mischiefs committed: For all which high and treasonable Offences, the said Charles Stuart might long since justly have been brought to exemplary and condign Punishment. Whereas also, the Parliament well hoping that the Restraint and Imprisonment of his Person, after it had pleased God to deliver him into their Hands, would have quieted the Distempers of the Kingdom, did forbear to proceed judicially against him; but found by sad Experience, that such their Remissness served only to encourage him and his Complices in the Continuance of their evil Practices, and in raising of new Commotions, Rebellions and Invasions: for Prevention therefore of the like or greater Inconveniences, and to the end no Chief Officer or Magistrate whatsoever may hereafter presume traitorously and maliciously to imagine or contrive the Enslaving or Destroying of the English Nation, and to expect Impunity for so doing: Be it ordained, and enacted by the Commons in Parliament, and it is hereby ordained and enacted by Authority thereof, That Thomas Lord Fairfax; Oliver Cromwell, Henry Ireton, Esquires; Sir Hardress Waller, Knight; Philip Skippon, Valentine Wauton, Thomas Harrison, Edward Whaley, Thomas Pride, Isaac Ewer, Richard Ingoldby, Henry Mildmay, Esquires; Sir Thomas Honeywood, Thomas Lord Grey of Grooby, Philip Lord Little, William Lord Mounson; Sir John Danvers, Sir Thomas Maleverer, Baronet; Sir John Bouchier; Sir James Harrington, Sir William Allanton, Sir Henry Mildmay, Sir Thomas Wroth, Knights; Sir William Massiam,

Sir John Barrington, Sir William Brereton, Baronets; Robert Wallop, William Heveningham, Esquires; Isaac Pennington, Thomas Atkins, Rowland Wilton, Alderman of the City of London; Sir Peter Wentworth, Knight of the Bath; Henry Martin, William Purefoy, Godfrey Bosvile, John Trenchard, Herbert Morley, John Berkstead, Matthew Thomlinson, John Blackstone, Gilbert Millington, Esquires; Sir William Constable, Baronet; Edmund Ludlow, John Lambert, John Hutchinson, Esquires; Sir Authur Hazlerig, Sir Michael Livesey, Baronets; Richard Salwey, Humphry Salwey, Robert Tichbourn, Owen Roe, Robert Manwaring, Robert Lilbourn, Adrian Scroop, Richard Dean, John Okey, Robert Overton, John Hufon, John Desborough, William Goff, Robert Duckenfield, Cornelius Holland, John Carey Esquires; Sir William Armyn Baronet; John Jones Esq; Miles Corbet, Francis Allen, Thomas Lister, Benjamin Weston, Peregrine Pelham, John Gourdon Esquires; Francis Thorp, Serjeant at Law; John Nutt, Thomas Challoner, Algernon Sidney, John Anlaby, John Moore, Richard Darley, William Say, John Alured, John Fagg, James Nelthrop, Esquires; Sir William Roberts, Knight; Francis Laffels, Alexander Rigby, Henry Smith, Edmond Wild, James Challoner, Josias Berners, Dennis Bond, Humphry Edwards, Gregory Clement, John Fry, Thomas Wogan, Esquires; Sir Gregory Norton Baronet; John Bradshaw Serjeant at Law; Edmond Harvey, John Dove, John Ven Esquires; John Fowks Alderman of the City of London; Thomas Scot Esq; Thomas Andrews Alderman of the City of London; William Cawley, Abraham Burrell, Anthony Stapeley, Roger Gratwick, John Downs, Thomas Horton, Thomas Hammond, George Fenwick, Esquires; Robert Nicholas Serjeant at Law; Robert Reynolds, John Lisle, Nicholas Love, Vincent Potter, Esquires; Sir Gilbert Pickering Bart. John Weaver, Roger Hill, John Lenthal Esquires; Sir Edward Bainton; John Corbet, Thomas Blunt, Thomas Boon, Augustine Garland, Augustine Skinner, John Dixwell, George Fleetwood, Simon Meyne, James Temple, Peter Temple, Daniel Blagrove Esquires; Sir Peter Temple, Knt. and Bart. Thomas Wayte, John Brown, John Lowry, Esquires; shall be, and are hereby appointed and required to be Commissioners and Judges for the Hearing, Trying and Adjudging of the said

Charles Stuart. And the said Commissioners, or any twenty, or more of them, shall be and are hereby authorized and constituted an High Court of Justice, to meet and sit at such convenient Time and Place as by the said Commissioners, or the major Part of twenty, or more of them, under their Hands and Seals, shall be appointed and notified by publick Proclamation at the Great-Hall or Palace-Yard at Westminster; and to adjourn from time to time, and from place to place, as the said High Court, or major Part thereof meeting shall hold fit; and to take Order for the charging of him the said Charles Stuart with the Crimes and Treasons above-mentioned, and for the receiving of his personal Answer thereunto; and for the Examination of Witnesses upon Oath, which the Court hath hereby Authority to administer, or otherwise, and taking any other Evidence concerning the same, and thereupon: or in default of such Answer, to proceed to final Sentence, according to Justice and the Merit of the Cause; and such final Sentence to execute, or cause to be executed, speedily and impartially. And the said Court is hereby authorized and required to appoint and direct all such Officers, Attendants, and other Circumstances, as they, or the major Part of them, shall in any sort judge necessary or useful for the orderly and good managing of the Premises. And Thomas Lord Fairfax, the General, and all Officers and Soldiers under his Command, and all Officers of Justice, and other well-affected Persons, are hereby authorized and required to be aiding and assisting unto the said Court in the due Execution of the Trust hereby committed. Provided, That this Act, and the Authority hereby granted, do continue in force for the Space of one Month, from the making hereof, and no longer.

Hen. Scobell, Cler. Parl. Dom. Com.

In pursuance of which said Act, the House of Commons ordered as followeth, viz.

Die Sabbati, 6 Jan. 1648.

Ordered by the Commons assembled in Parliament, That the Commissioners nominated in the Act, for erecting of an High Court of Justice for the trying and judging of Charles Stuart, King of England, do meet on Monday next, at Two of the Clock in the Afternoon, in the Painted Chamber.

By Virtue of which said recited Act, and of the said Order grounded thereupon, the Commissioners whose Names are here under-written, met on Monday the said 8th Day of January, 1648, in the said Painted Chamber, at Westminster; where the said Act was openly read, and the Court called.

Commissioners present.

Thomas Lord Fairfax.	Richard Deane Esq;
Oliver Cromwell Esq;	Cornelius Holland Esq;
Henry Ireton Esq;	John Jones Esq;
Sir Hardress Waller.	John Alured Esq;
Valentine Wauton.	Henry Smith Esq;
Edward Whaley.	John Lisle Esq;
Thomas Pride.	James Temple Esq;
Isaac Ewers.	Adrian Scroope Esq;
Sir Gregory Norton Bar.	Edmund Ludlow Esq;
Peter Temple Esq;	John Huson Esq;
John Ven Esq;	Thomas Harrison Esq;
Thomas Challoner Esq;	Nicholas Love Esq;
Henry Marten Esq;	Tho. Ld Grey of Grooby.
John Berkstead Esq;	Sir John Danvers.
Gilbert Millington Esq;	Sir Tho. Maleverer Bar.

Sir John Bourchier.
Sir Henry Mildmay.
James Challoner Esq;
Gregory Clement Esq;
John Fry Esq;
Augustine Garland Esq;
Daniel Blagrove Esq;
Robert Tichbourne Esq;
Will. Heveningham Esq;
William Purefoy Esq;
John Blackstone Esq;
William Lord Mounson.

John Okey Esq;
John Carew Esq;
Peregrine Pelham Esq;
Francis Lassells Esq;
John Downes Esq;
John Brown Esq;
John Hutchinson Esq;
Miles Corbet Esq;
Humphrey Edwards Esq;
Edmond Harvey Esq;
William Goff Esq;

The Commissioners of the Court being, as afore-said, met, and informing themselves of the Tenor of their Commission, they accordingly appoint the said Court to be holden in the same Place on Wednesday the 10th of the said Month of January; and ordered Proclamation thereof to be made in the great Hall at Westminster by Edward Dendy, Serjeant at Arms; authorizing him thereunto by Precept, under their Hands and Seals, in these Words following, viz.

BY Virtue of an Act of the Commons of England, assembled in Parliament, for erecting of an High Court of Justice for the trying and judging of Charles Stuart, King of England, we, whose Names are hereunder written, (being Commissioners, amongst others nominated in the said Act) do hereby appoint, That the High Court of Justice, mentioned in the said Act, shall be holden in the Painted Chamber, in the Palace of Westminster, on Wednesday the 10th Day of this Instant January, by One of the Clock in the Afternoon. And this we do appoint to be notified by publick Proclaiming hereof in the great Hall at Westminster To-morrow, being the 9th Day of this Instant January, betwixt the Hours of Nine and Eleven in the Forenoon. In Testimony whereof, we have hereunto set our Hands and Seals this 8th Day of January, Anno Domini 1648.

We the Commissioners, whose Names are hereunto subscribed, do hereby authorize and appoint Edward Dendy, Serjeant at Arms, to cause this to be proclaimed, according to the Tenor thereof, and to make due Return of the same, with this Precept, to the said Court, at the Time and Place above-mentioned.

Sealed and subscribed by

William Monson.	John Huson.
Tho. Grey.	Peregr. Pelham.
Oliver Cromwell.	Edmond Ludlow.
Gregory Norton.	John Berkstead.
Henry Ireton.	Peter Temple.
H. Edwards.	Edw. Whaley.
John Hutchinson.	John Okey.
Har. Waller.	Rob. Tichbourn.
William Constable.	Thomas Pride.
John Lisle.	Henry Smith.
Henry Martin.	Thomas Maleverer.
Valentine Wauton.	Thomas Challoner.
John Blackstone.	John Fry.
Gilbert Millington.	John Bourchier.
Adrian Scroope.	John Carew.
James Temple.	Aug. Garland.
James Challoner.	Richard Deane.
Thomas Harrison.	Daniel Blagrove.
John Jones.	

Which

Which said Precept is thus returned on the Backside, *viz.* I have caused due Proclamation to be made hereof, according to the Tenor of the Precept within written.

E. Dendy, Serjeant at Arms.

And in order to the more regular and due Proceedings of the said Court, they nominate Officers; and accordingly chose Mr. *Aske*, Dr. *Dorilaus**, Mr. *Steel*, and Mr. *Cook*, Counsel, to attend the said Court; Mr. *Greaves* and Mr. *John Phelps* Clerks; to whom Notice thereof was ordered to be given.

Mr. *Edward Walford*, Mr. *John Powell*, Mr. *John King*, Mr. *Phineas Payne*, and Mr. *Hull*, are chosen Messengers to attend this Court.

January 9. 1648. according to the Precept of the 8th Instant, Serjeant *Dendy* made Proclamation for the Sitting of the said Court in the Manner following, *viz.*

About Ten of the Clock of the same Day the said Serjeant, being attended with six Trumpets, and a Guard of two Troops of Horse, himself with them on Horseback, bearing his Mace, rideth into the Middle of *Westminster-Hall*, (the Court of *Chancery* then sitting at a general Seal) where, after the said Trumpet sounding, (the Drums then likewise beating in the *Palace-Yard*) he caused the said Precept to be openly read: which being done, the House of Commons, at the same time sitting, order as followeth;

Die Martis, 9 Jan. 1648.

Ordered by the Commons assembled in Parliament, That the same Proclamation that was made this Morning in *Westminster-Hall*, touching the Trial of the King, be made at the *Old Exchange* and at *Cheapside* forthwith, and in the same manner; and that Serjeant *Dendy*, the Serjeant at Arms, do proclaim the same accordingly; and that the Guard that lieth in *Paul's* do see the same done.

In pursuance whereof, Serjeant *Dendy*, about Twelve of the Clock of the same Day, accompanied with ten Trumpets, and two Troops of Horse, drawn out for that purpose in *Paul's Church-yard*, himself mounted, bearing his Mace, march'd from thence unto the *Old Exchange London*; where, after the Trumpets had sounded, he made Proclamation as he had done before in *Westminster-Hall*: and from thence immediately march'd to *Cheapside*, making the like Proclamation there also in manner as aforesaid. During all which time all the Streets were throng'd with Spectators, without the least Violence, Injury, or Affront, publickly done or offered.

Mercurii, 10 Jan. 1648. Painted Chamber.

Commissioners present.

<i>Oliver Cromwell Esq;</i>	<i>Sir John Danvers.</i>
<i>Henry Ireton Esq;</i>	<i>John Fry.</i>
<i>Sir Hardress Waller Knt.</i>	<i>Sir Gregory Norton.</i>
<i>Valentine Wauton Esq;</i>	<i>Augustine Garland.</i>
<i>Edward Whaley Esq;</i>	<i>Peter Temple.</i>
<i>Thomas Harrison Esq;</i>	<i>Daniel Blagrove.</i>
<i>Thomas Pride Esq;</i>	<i>John Ven.</i>
<i>Sir Tho. Maleverer Bar.</i>	<i>Henry Marten.</i>
<i>James Challoner.</i>	<i>William Purefoy.</i>

John Blackstone.
Gilbert Millington.
Edmond Ludlow.
John Hutchinson.
John Corbet.
Robert Tichbourne Esq;
Owen Roe Esq;
John Deane Esq;
John Huson Esq;
Cornelius Holland Esq;
John Carew Esq;
Thomas Lister Esq;
Sir Henry Mildmay Knt.
Thomas Challoner Esq;

Peregrine Pelbam Esq;
John Moor Esq;
William Say Esq;
Francis Lassels Esq;
Henry Smith Esq;
Thomas Scot Esq;
Nicholas Love Esq;
Vincent Potter Esq;
Adrian Scroope Esq;
John Dixwell Esq;
John Lisle Esq;
John Okey Esq;
John Berkstead Esq;

The Court being sat in the Place aforesaid, began to take into Consideration the Manner and Order that they intended to observe at the King's Trial, and appointed two Ushers of the Court, *viz.* Mr. *Edward Walford* and Mr. *Vowel*; and Mr. *Litchman* was chosen a Messenger to the Court.

John Bradshaw, Serjeant at Law, a Commissioner of this Court, was then chosen President of the said Court; who being absent, Mr. *Say*, one of the Commissioners then present, was appointed President *pro tempore*, and until the said Serjeant *Bradshaw* should attend the said Service. The said Mr. *Say* accordingly took his Place, and gave the Thanks of this Court to Mr. *Garland*, one of the Commissioners of this Court, for his great Pains by him formerly taken about the Business of this Court.

The Court were informed of the great and important Imployment that at present lay upon Mr. *Greaves*, in the behalf of the Commonwealth, from which he cannot be spared, without Prejudice to the Publick; and it was therefore moved in his behalf, that he might be excused from attending the Service of one of the Clerks of the said Court; which the Court admitted as a sufficient Excuse: And thereupon Mr. *Andrew Broughton* was named and appointed one of the Clerks of this Court, with *John Phelps*. The said *John Phelps* being then sent for by a Messenger of the Court, and accordingly making his Appearance, was commanded to attend the said Service; who attended the same accordingly. And a Messenger of the Court was sent to summon the said Mr. *Broughton*.

Mr. *Aske*, Mr. *Steel*, Dr. *Dorilaus*, and Mr. *Cook*, are appointed Counsel in the behalf of the Commonwealth, to prepare and prosecute the Charge against the King, according to the Act of the Commons assembled in Parliament in that behalf; and, in particular, the Court did appoint Mr. *Steel* Attorney, and Mr. *Cook* Solicitor, to take care thereof. And the Act for constituting the said Court was ordered to be transcribed, and delivered to the said Counsel; which was done accordingly.

Mr. *Love*, Mr. *Lisle*, Mr. *Millington*, Mr. *Garland*, Mr. *Marten*, Mr. *Tho. Challoner*, Sir *John Danvers*, and Sir *Henry Mildmay*, or any Two of them, are appointed a Committee, to consider of all Circumstances in matter of Order or Method for the carrying on and managing the King's Trial; and for that purpose to advise with the Counsel assigned to prove the Charge against the King, and to make Report therein the next Sitting: And the Care of the Business is particularly recommended to Mr. *Love*.

* He was afterwards sent by the new Commonwealth as their Agent to the States of Holland, but the same Night that he arrived at the Hague, was barbarously assassinated, as he was at Supper, by six Scotchmen in the Train of the Marquis of Montrose.

Edward Dendy, Serjeant at Arms, made return of the Precept of the 8th Instant, for proclaiming the Sitting of the Court; which was received: The said Serjeant *Dendy* having proclaimed the same by the sound of Trumpet in *Westminster-Hall*, as also at the *Old Exchange*, and in *Cheapside*.

Edward Dendy, Serjeant at Arms, is appointed Serjeant at Arms to attend the said Court: Mr. *John King* is appointed Cryer of the said Court.

The Court having thus made Preparations for the said Trial, (during all which Time they sat private) the Doors are now opened for all Parties, that had any thing to do there, to give their Attendance.

Three Proclamations being made by the Cryer, the Act for constituting the said Court was openly read, and the Court called: The Commissioners present were as before named.

The Commissioners that were absent were ordered to be summoned to attend the said Service; and Summons were issued forth accordingly.

The Court adjourned itself till *Friday, Jan. 12.* at Two of the Clock in the Afternoon, to the same Place.

Jan. 12. 1648.

AT which Time the Commissioners present were as after named.

Die Veneris, 12 Jan. 1648. Painted-Chamber.

Commissioners present.

<i>Oliver Cromwell</i> Esq;	<i>Thomas Pride</i> Esq;
<i>Sir John Danvers.</i>	<i>John Lisle</i> Esq;
<i>Thomas Hammond</i> Esq;	<i>Owen Roe</i> Esq;
<i>Peregrine Pelham</i> Esq;	<i>Thomas Scot</i> Esq;
<i>Herbert Morley</i> Esq;	<i>John Jones</i> Esq;
<i>James Temple</i> Esq;	<i>John Carew</i> Esq;
<i>William Say</i> Esq;	<i>John Fagg</i> Esq;
<i>John Huson</i> Esq;	<i>Henry Marten</i> Esq;
<i>Sir John Bouchier</i> Kt.	<i>John Blackstone</i> Esq;
<i>John Bradshaw</i> Serj. at Law.	<i>John Dove</i> Esq;
<i>Gilbert Millington</i> Esq;	<i>Henry Smith</i> Esq;
<i>John Moor</i> Esq;	<i>John Ven</i> Esq;
<i>John Brown</i> Esq;	<i>John Downs</i> Esq;
<i>John Fry</i> Esq;	<i>Nicholas Love</i> Esq;
<i>Sir Hardress Waller</i> Kt.	<i>Thomas Harrison</i> Esq;
<i>Adrian Scrope</i> Esq;	<i>John Berkstead</i> Esq;
<i>Thomas Challoner</i> Esq;	With divers more.

Serjeant *Bradshaw*, upon special Summons attended this Court, being one of the Commissioners thereof. And being, according to former Order, called to take his Place of President of the said Court, made an earnest Apology for himself to be excused; but therein not prevailing, in obedience to the Commands and Desires of this Court, he submitted to their Order, and took place accordingly. And thereupon the said Court ordered concerning him as followeth, viz. *That John Bradshaw, Serjeant at Law, who is appointed President of this Court, should be called by the Name, and have the Title of Lord President, and that as well without as within the said Court, during the Commission and Sitting of the said Court.* Against which Title, he pressed much to be heard to offer his Exceptions; but was therein over-ruled by the Court.

Mr. *Andrew Broughton* attended according to former Order: And it was thereupon again ordered, That *Andrew Broughton* and *John Phelps*, Gent.

be, and they are hereby constituted Clerks of the said Court, and enjoined to give their Attendance from time to time accordingly.

Ordered, That the Counsel assigned, or such as they or any of them shall appoint, shall have Power to search for all Records and Writings concerning the King's Trial, and to take into their Custody, or order the producing of all such Records and Papers, or Copies thereof, by any Clerk, or other Person whatsoever, at or before the said Trial, as they shall judge requisite; the said Counsel giving a Note under their Hands of their Receipt of all such Original Books and Papers, which they shall so take into their Custody. And that the said Counsel shall have Power to send for such Person or Persons at or before the said Trial, and to appoint, by Writing under their Hands, their Attendance for the Service of the State in this Business, as they shall think requisite, requiring all Persons concerned to yield Obedience thereunto at their Perils.

Sir Hardress Waller Knight, and *Col. Harrison*, are ordered to desire the Lord General from time to time to appoint sufficient Guards, to attend and guard the said Court during their Sitting.

Ordered, That *Col. Tichbourne*, *Col. Roe*, *Mr. Blackstone*, and *Mr. Fry*, Members of this Court, shall and do make Preparations for the Trial of the King, *That it may be performed in a Solemn Manner*: And that they take care for other necessary Provisions and Accommodations in and about that Trial; and are to appoint and command such Workmen in and to their Assistance, as they shall think fit.

Mr. Love reporteth from the Committee appointed, *Jan. 10.* instant, to consider of the Circumstances in Matters of Order for Trial of the King: And it is thereupon ordered, That in managing the Proceedings in open Court, at the Time of the King's Trial, none of the Court do speak but the President and Counsel: and in case of any Difficulty arising to any one, that he speak not to the Matter openly, but desire the President that the Court may please to advise. By which Order it is not intended that any of the Commissioners be debarred, at the Examination of any Witness, to move the Lord President to propound such Question to the Witness, as shall be thought meet for the better disquisition and finding out of the Truth.

Ordered, That there shall be a Marshal to attend this Court, if there be Cause.

Ordered, That the Lord President and Counsel do manage the Trial against the King, according to Instructions to be given them by the Court; and that the Committee for considering of all Circumstances for the managing of the King's Trial, do consider of Rules and Instructions in that behalf; and are to consult with the Counsel, and address themselves to the Lord President for Advice in the Premises.

Ordered, That the Counsel do bring in the Charge against the King on *Monday* next.

The Committee for considering of the Circumstances of Order for the King's Trial, together with *Sir Hardress Waller*, *Col. Whaley*, *Mr. Scot*, *Col. Tichbourne*, *Col. Harrison*, *Lieut. Gen. Cromwell*, and

and Col. *Deane*, are appointed to consider of the Place for trying the King, and make Report to-morrow in the Afternoon; and are to meet to-morrow Morning in the Inner-Court of Wards, at Nine of the clock: And who else of the Court please may be there.

The Court adjourned itself till the Morrow in the Afternoon, at Two of the Clock.

Sabbati, 13 Jan. 1648.

Proclamation being made, and all Parties concerned required to give Attendance, the Court is called openly.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Oliver Cromwell</i> Esq;	<i>John Fagg</i> Esq;
<i>Henry Ireton</i> Esq;	<i>Francis Laffels</i> Esq;
Sir <i>Hardress Waller</i> Knt.	<i>Valentine Wauton</i> Esq;
<i>Edward Whalley</i> Esq;	<i>Henry Smith</i> Esq;
<i>Thomas Pride</i> Esq;	<i>Humphrey Edwards</i> Esq;
<i>Isaac Ewer</i> Esq;	<i>John Fry</i> Esq;
Sir <i>John Danvers</i> .	Sir <i>Tho. Maleverer</i> Bar.
Sir <i>Gregory Norton</i> .	<i>Will. Heveningham</i> Esq;
<i>William Purefoy</i> Esq;	<i>John Dove</i> Esq;
<i>John Blackstone</i> Esq;	<i>John Venn</i> Esq;
<i>Gilbert Millington</i> Esq;	<i>Thomas Scot</i> Esq;
Sir <i>William Constable</i> Bar.	<i>John Downes</i> Esq;
<i>John Hutchinson</i> Esq;	<i>Adrian Scroope</i> Esq;
<i>William Goffe</i> Esq;	<i>John Lisle</i> Esq;
<i>Cornelius Holland</i> Esq;	<i>Augustine Garland</i> Esq;
<i>John Carew</i> Esq;	<i>John Dixwell</i> Esq;
<i>Thomas Challoner</i> Esq;	<i>Daniel Blagrove</i> Esq;
<i>Algernon Sidney</i> Esq;	<i>John Brown</i> Esq;
<i>William Say</i> Esq;	

The Court being to make further Preparations for the King's Trial, sit private. The Serjeant at Arms is authorized to employ such other Messengers as shall be needful for the Service of the Court, giving in their Names to the Clerks of this Court.

Ordered, That the Serjeant at Arms do search and secure the Vaults under the *Painted Chamber*, taking such Assistance therein from the Soldiery as shall be needful.

Mr. *Garland* reporteth from the Committee for considering of the Place for the King's Trial: And the Court thereupon ordered, That the said Trial of the King shall be in *Westminster-Hall*; That the Place for the King's Trial shall be where the Courts of *King's-Bench* and *Chancery* sit in *Westminster-Hall*; and that the Partitions between the said Two Courts be therefore taken down; and that the Committee for making Preparations for the King's Trial are to take care thereof accordingly.

The Court adjourned itself till Monday at Two of the Clock in the Afternoon to this Place.

Lunæ, 15 Jan. 1648.

THREE Proclamations are made, and all Parties concerned are required to give Attendance.

The Court is called openly.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>John Deane</i> Esq;	<i>Vincent Potter</i> Esq;
<i>John Berkstead</i> Esq;	<i>Augustine Garland</i> Esq;
<i>Isaac Ewer</i> Esq;	<i>James Temple</i> Esq;
<i>Robert Lilbourn</i> Esq;	<i>Daniel Blagrove</i> Esq;
<i>Thomas Hammond</i> Esq;	<i>John Blackstone</i> Esq;
<i>Edward Whalley</i> Esq;	<i>Oliver Cromwell</i> Esq;
<i>Thomas Pride</i> Esq;	<i>Robert Tichbourne</i> Esq;
<i>Thomas Lord Grey</i> of	<i>John Jones</i> Esq;
<i>Grooby</i> .	<i>John Downes</i> Esq;
<i>William Ld. Mounson</i> .	Sir <i>Hardress Waller</i> .
Sir <i>John Danvers</i> .	<i>Thomas Horton</i> Esq;
Sir <i>John Maleverer</i> Bar.	<i>Henry Ireton</i> Esq;
Sir <i>Thomas Wroth</i> .	<i>Algernon Sidney</i> Esq;
<i>Robert Wallop</i> Esq;	<i>Peter Temple</i> Esq;
<i>Henry Marten</i> Esq;	<i>Nicholas Love</i> Esq;
<i>William Purefoy</i> Esq;	<i>Valentine Wauton</i> Esq;
<i>Gilbert Millington</i> Esq;	<i>John Lisle</i> Esq;
<i>Edmond Ludlow</i> Esq;	<i>John Venn</i> Esq;
<i>John Hutchinson</i> Esq;	<i>Cornelius Holland</i> Esq;
<i>Adrian Scroope</i> Esq;	<i>Thomas Scot</i> Esq;
<i>John Okey</i> Esq;	Sir <i>William Constable</i> Bar.
<i>John Hufon</i> Esq;	<i>Herbert Morley</i> Esq;
<i>Peregrine Pelham</i> Esq;	<i>Miles Corbet</i> Esq;
<i>Thomas Challoner</i> Esq;	<i>John Fry</i> Esq;
<i>John Moor</i> Esq;	<i>William Goffe</i> Esq;
<i>John Alured</i> Esq;	<i>John Fagg</i> Esq;
<i>Henry Smith</i> Esq;	<i>John Carew</i> Esq;
<i>James Challoner</i> Esq;	Sir <i>Henry Mildmay</i> .
<i>Humphrey Edwards</i> Esq;	Sir <i>Gregory Norton</i> Bar.

Fifty-eight Commissioners present.

Here the Court sit private.

The Counsel attended, and presented to the Court the Draught of a Charge against the King. Which being read, the Court appointed Commisary-General *Ireton*, Mr. *Millington*, Mr. *Marten*, Col. *Harvey*, Mr. *Challoner*, Col. *Harrison*, Mr. *Miles Corbet*, Mr. *Scot*, Mr. *Love*, Mr. *Lisle*, Mr. *Say*, or any Three of them, to be a Committee; to whom the Counsel might resort, for their further Advice concerning any thing of Difficulty in relation to the Charge against the King: Who were likewise with the Counsel to compare the Charge against him with the Evidence, and to take care for the preparing and fitting the Charge for the Court's more clear Proceedings in the Businesses; as likewise to advise of such general Rules as are fit for the expediting the Business of the said Court, and to meet the Morrow-morning at Eight of the Clock in the *Queen's Court*.

Col. *Ludlow*, Col. *Purefoy*, Col. *Hutchinson*, Col. *Scroope*, Col. *Deane*, Col. *Whalley*, Col. *Hufon*, Col. *Pride*, Sir *Hardress Waller*, Sir *William Constable*, together with the Committee for making Preparations for the King's Trial, or any Three of them, are appointed a Committee to consider of the Manner of bringing the King to the Court at his Trial, and of the Place where he shall be kept, and lodge at, during his said Trial; and to take Consideration of the secure sitting of the said Court, and placing the Guards that shall attend it, and are to meet To-morrow Morning, at Eight of the Clock, in the *Inner Star-Chamber*.

The Court taking notice of the Nearness of *Hilary Term*, and Necessity they apprehended of adjourning it in regard of the King's Trial, thereupon

upon were of Opinion, That it is fit that a Fort-night of the said Term be adjourned: And Mr. *Lisle* is desired to move the House therein.

Three Proclamations.

The Court adjourned itself till *Wednesday* next, at Eight in the Morning.

Mercurii, 17 Jan. 1648.

THREE Proclamations are made, and all Parties concerned are required to give Attendance.

The Court is called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Oliver Cromwell</i> Esq;	<i>William Goff.</i>
<i>Edward Whalley</i> Esq;	<i>John Carew.</i>
<i>Tho. Ld. Grey of Grooby.</i>	<i>Thomas Pride.</i>
<i>Sir John Danvers.</i>	<i>Francis Allen.</i>
<i>Sir John Maleverer</i> Bar.	<i>Peregrine Pelham.</i>
<i>Sir Hardress Waller.</i>	<i>John Moor.</i>
<i>John Blackstone</i> Esq;	<i>Francis Lassels.</i>
<i>John Berkstead</i> Esq;	<i>Henry Smith.</i>
<i>Sir William Constable</i>	<i>James Challoner.</i>
<i>John Hutchinson.</i>	<i>Humphrey Edwards.</i>
<i>Robert Tichbourne.</i>	<i>John Fry.</i>
<i>Owen Roe.</i>	<i>Sir Gregory Norton.</i>
<i>Adrian Scroope.</i>	<i>John Venn.</i>
<i>Richard Deane.</i>	<i>William Caveley.</i>
<i>John Okey.</i>	<i>Thomas Horton.</i>
<i>John Hufon.</i>	<i>Thomas Hammond.</i>
<i>Augustine Garland.</i>	<i>Isaac Ewers.</i>
<i>Simon Meyne.</i>	<i>Cornelius Holland.</i>
<i>Peter Temple.</i>	<i>Sir John Bourchier.</i>
<i>John Brown.</i>	<i>Edmond Ludlow.</i>
<i>Thomas Scot.</i>	<i>Edmond Harvey.</i>
<i>Thomas Lister.</i>	<i>Edmond Wild.</i>
<i>John Jones.</i>	<i>Thomas Heath.</i>
<i>Vincent Potter.</i>	<i>William Heveningham.</i>
<i>Daniel Blagrove.</i>	<i>Henry Marten.</i>
<i>William Say.</i>	<i>William Purefoy.</i>
<i>Nicholas Love.</i>	<i>John Lisle.</i>
<i>Robert Lilbourn.</i>	

Fifty six Commissioners present.

Ordered, That the Commissioners of this Court, who have not hitherto appeared, be summoned by Warrants under the Hands of the Clerks of this Court, to give their personal Attendance at this Court, to perform the Service to which they are, by Act of the Commons of *England* assembled in Parliament, appointed and required.

Ordered, That the Serjeant at Arms attending this Court, or his Deputy, do forthwith summon all the aforesaid Commissioners making default, who reside or dwell within twenty Miles of *London*.

Particular Warrants to every one of them were accordingly issued forth for their Attendance.

Upon Report made by *Col. Hutchinson*, from the Committee to consider of the Manner of bringing the King to Trial, &c. the Court order as followeth, viz.

Ordered, That *Sir Robert Cotton's* House be the Place where the King shall lodge during his Trial.

That the Chamber in *Sir Robert Cotton's* House, next the Study there, shall be the King's Bed-Chamber.

That the great Chamber, before the said Lodging-Chamber, be for the King's Dining-Room; and that a Guard, consisting of thirty Officers, and other choice Men do always attend the King, who are to attend him at his Lodging above Stairs; and that two of the said Thirty do always attend in his Bed-Chamber.

That a Place for a Court of Guard, for 200 Foot-Soldiers, be built in *Sir Robert Cotton's* Garden, near the Water-side.

That ten Companies of Foot be constantly upon the Guards, for securing *Sir Robert Cotton's* House; and those Companies to be quartered in the Court of Requests, the Painted Chamber, and other necessary Places thereabouts.

That the Passage that cometh out of the Old Palace into *Westminster-Hall* be made up at the Entrance of the said Passage, next the said Guard.

That the top of the Stairs at the Court of Wards Door have a Cross-Bar made to it.

That the King be brought out of *Sir Robert Cotton's* House to his Trial the lower way into *Westminster-Hall*, and so brought to the Bar in the Face of the Court, attended by the abovesaid Guard above Stairs.

That two Rails, of above forty Foot distance from the Place where this Court shall sit in *Westminster-Hall*, be made cross the said Hall: For the effectual and substantial doing whereof, this Court do refer it to the Care of the Committee appointed to consider of the Manner of bringing the King to Trial; who are likewise to take care for raising the Floor in such part of the Hall as they shall think fit, for placing of the Guards. And that a Rail, or Rails, from the Court down to the Hall-Gate, be made, in such manner as they shall think fit, on the *Common-Pleas* side, to keep the People from the Soldiers.

That there be Guards set upon the Leads, and other Places that have Windows to look into the Hall.

That the General be desired from time to time to send and appoint convenient Guards of Horse, for the convenient Sitting of the Court.

That twenty Officers, or other Gentlemen, do attend upon the Lord President from time to time, to and from this Court, thro' *Westminster-Hall*.

That the Officers of the Ordnance do send unto this Court two hundred Halberts, or Partizans, lying within the Tower of *London*, for the arming of the Guards that are to attend this Court.

That at the time of the Trial of the King, the Commissioners do, before their Sitting in the Court, meet in the *Exchequer-Chamber*, and do from thence come up to the Hall into the Court.

That all Back-doors from the House called *Hell* be stopp'd up during the King's Trial.

That Lodgings be prepar'd for the Lord President at *Sir Abraham Williams's* House, in the New Palace-Yard, during the Sitting of this Court; and that all Provisions and Necessaries be provided for his Lordship.

That *Sir Henry Mildmay*, Mr. *Holland*, and Mr. *Edwards*, do take care for providing all Provisions and Necessaries for the King, during his Trial.

That *Sir Henry Mildmay*, Mr. *Holland*, and Mr. *Edwards*, do likewise take care for all Necessaries for the Lord President.

Ordered,

Ordered, That the Committee for considering of the Manner of bringing the King to Trial, do consider what Habits the Officers of this Court shall have; who are to advise with some Heralds at Arms therein, and concerning the ordering of the said Officers.

That a Sword be carried before the Lord President at the Trial of the King.

That *John Humphreys* Esq; do bear the Sword before the Lord President,

That a Mace, or Maces, together with a Sword, be likewise carry'd before the Lord President.

This Court doth adjourn itself to Three of the Clock in the Afternoon.

Jan. 17. 1648. *Post Meridiem.*

Three Proclamations. The Court is cleared of Strangers; and they sit private.

The Charge against the King is presented by the Counsel, and ordered to be recommitted to the Committee appointed for Advice with the Counsel concerning the Charge against the King, who are to contract the same, and fit it for the Court's proceeding thereupon, according to the Act of Parliament in that behalf. And the same Committee are likewise to take care for the King's coming to *Westminster* to Trial, at such Time as to them shall seem meet; and Lieutenant-General *Cromwell* is added to the said Committee. And the Counsel are to attend this Court with the said Charge to-morrow at Two of the Clock in the Afternoon. And thereupon

Ordered, That the Committee for considering of the Manner of bringing the King to Trial do meet to-morrow Morning, at Eight of the Clock, in the *Exchequer-Chamber*.

The Court adjourned itself till the Morrow at two of the Clock in the Afternoon, to the same Place.

Jovis, 18 Jan. 1648.

THREE Proclamations made.
Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Oliver Cromwell.</i>	<i>John Hufon.</i>
<i>Edward Whalley.</i>	<i>Thomas Pride.</i>
<i>Tho. Ld. Grey of Grooby.</i>	<i>William Cawley.</i>
<i>Sir John Danvers.</i>	<i>Henry Smith.</i>
<i>Sir Tho. Maleverer Bar.</i>	<i>Peter Temple.</i>
<i>Sir Hardress Waller.</i>	<i>Thomas Wegan.</i>
<i>John Berkstead.</i>	<i>George Fleetwood.</i>
<i>John Blackstone.</i>	<i>Francis Lassels.</i>
<i>Sir William Constable.</i>	<i>Adrian Scroope.</i>
<i>John Hutchinson.</i>	<i>Peregrine Pelham.</i>
<i>Robert Tichbourne.</i>	<i>John Fry.</i>
<i>Cornelius Holland.</i>	<i>Sir Gregory Norton.</i>
<i>John Moor.</i>	<i>Humphrey Edwards.</i>
<i>Richard Deane.</i>	<i>John Venn.</i>
<i>John Okey.</i>	<i>William Purefoy.</i>
<i>Thomas Hammond.</i>	<i>Simon Meyne.</i>
<i>John Carew.</i>	<i>John Brown.</i>
<i>William Ld. Mounson.</i>	<i>Herbert Morley.</i>

Here the Court sit private.

Col. Tichbourne, one of the Commissioners of this Court, informeth the Court, That he was with *Mr. Steel*, Attorney of this Court, and found him in his Bed very sick; and by reason thereof not like, as yet, to attend the Service of this Court, according to former Order. And desired him, the said Colonel, to signify, That he, the said *Mr. Steel*, no way declineth the Service of the said Court, out of any Disaffection to it; but professeth himself to be so clear in the Business, that if it should please God to restore him, he should manifest his good Affection to the said Cause; and that it is an Addition to his Affliction, that he cannot attend this Court, to do that Service that they have expected from him, and as he desires to perform.

The Court adjourned itself till To-morrow Two of the Clock in the Afternoon.

Veneris, 19 Jan. 1648.

THREE Proclamations. The Court called openly.

The Commissioners present.

<i>John Bradshaw</i> , Serjeant at Law, Lord President.	
<i>Henry Ireton.</i>	<i>Peregrine Pelham.</i>
<i>Sir Hardress Waller Knt.</i>	<i>Thomas Challoner.</i>
<i>Thomas Harrison.</i>	<i>Algernon Sidney.</i>
<i>Edward Whalley.</i>	<i>William Say.</i>
<i>Isaac Ewers.</i>	<i>Francis Lassels.</i>
<i>William Ld. Mounson.</i>	<i>Henry Smith.</i>
<i>Sir John Danvers.</i>	<i>Humphrey Edwards.</i>
<i>Sir Tho. Maleverer, Bar.</i>	<i>John Fry.</i>
<i>Sir John Bourchier, Kt.</i>	<i>Sir Gregory Norton, Bar.</i>
<i>William Heveningham.</i>	<i>John Dove.</i>
<i>William Purefoy.</i>	<i>Thomas Scot.</i>
<i>John Berkstead.</i>	<i>William Cawley.</i>
<i>John Blackstone.</i>	<i>Thomas Horton.</i>
<i>Gilbert Millington.</i>	<i>John Lisle.</i>
<i>John Hutchinson.</i>	<i>Nicholas Love.</i>
<i>Sir Michael Livesey Kt.</i>	<i>Vincent Potter.</i>
<i>Robert Tichbourne.</i>	<i>John Dixwell.</i>
<i>Owen Rowe.</i>	<i>Simon Meyne.</i>
<i>Robert Lilbourne.</i>	<i>Peter Temple.</i>
<i>Adrian Scroope.</i>	<i>John Brown.</i>
<i>Richard Deane.</i>	<i>John Okey.</i>
<i>John Hufon.</i>	<i>William Goffe.</i>
<i>Cornelius Holland.</i>	<i>John Carew.</i>
<i>John Jones.</i>	

Here the Court sat private.

Col. Hutchinson reporteth from the Committee appointed to consider of the Habits of the Officers; and it is thereupon

Ordered, That three Gowns be provided for three Ushers, and three Clokes for three Messengers of this Court.

Mr. Millington reporteth from the Committee for Advice with the Counsel concerning the Charge against the King, that the Counsel have perfected the Charge, and are ready to present it. He likewise reporteth the Draught of an Order, whereby the Charge may, by the Command of this Court, be exhibited, together with a Form of Words, the Effect whereof the Committee think fit to be pronounced by him that this Court shall appoint to to exhibit the said Charge: which said Order and Form of Words the Court have with some Alterations agreed unto as followeth.

It is ordered, That Mr. Attorney, and in his absence Mr. Solicitor, do, in the behalf of the People of *England*, exhibit and bring into this Court a Charge of High-Treason, and other high Crimes, against *Charles Stuart King of England*, and charge him thereupon in the behalf aforesaid.

The Form of Words are as followeth :

My Lord,

According to an Order of this high Court to me directed for that purpose, I do in the Name and on the Behalf of the People of *England*, exhibit and bring into this Court a Charge of High-Treason, and other High Crimes, whereof I do accuse *Charles Stuart, King of England*, here present. And I do, in the Name and on the Behalf aforesaid, desire the said Charge may be received accordingly, and due Proceedings had thereupon.

The Counsel likewise, according to Mr. *Millington's* Report, present a Draught of the Charge against the King ; which was read the first, and second, and third time, and referred back to the said Counsel, to make some small Amendments as to the Form thereof.

Ordered, That Commissary-General *Ireton*, Col. *Whalley*, Col. *Harrison*, Sir *Hardress Waller*, or any Two of them, do appoint the Thirty Persons that are by Order of the 17th Instant to attend the King, and the Twenty that are to attend the Lord President.

Ordered, That the Serjeant at Arms do secure Mr. *Squibb's* Gallery by such Ways and Means as he shall conceive meet.

The Court adjourned itself till Nine of the Clock To-morrow Morning.

Sabbati, 20 Jan. 1648.

THREE Proclamations, and Attendance commanded.

Ordered, That Sir *Henry Mildmay* be desired to deliver unto *John Humphreys Esq;* the Sword of State in his custody ; which said Sword the said Mr. *Humphreys* is to bear before the Lord President of this Court.

The Court being sat as aforesaid, before they engaged in further Business, the Serjeant at Arms of the House of Commons came thither, and acquainted the Court, that the House wanted their Members that were of that Court ; the Court thereupon adjourned till Twelve of the Clock the same Day.

The Court accordingly met at Twelve of the Clock. Three Proclamations made.

Painted Chamber, 20 Jan. 1648.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Tho. I. d. Grey of Grooby.</i>	<i>Augustine Garland.</i>
<i>Henry Marten.</i>	<i>Thomas Challoner.</i>
<i>Oliver Cromwell.</i>	<i>Nicholas Love.</i>
<i>Henry Ireton.</i>	<i>William Cawley.</i>

John Venn.
William Purefoy.
John Berkstead.
James Challoner.
Peter Temple.
Thomas Harrison.
Robert Tichbourne.
John Hutchinson.
Sir Gregory Norton.
Sir Tho. Maleverer Bar.
Daniel Blagrove.
Owen Roe.
Thomas Wogan.
William Say.
Francis Lassels.
John Jones.
Sir John Bourchier.
John Carew.
John Downes.
John Fry.
Sir Michael Livesey.
Sir John Danvers.
Mr. Millington.
Sir Hardress Waller.
John Blackstone.

John Hufon.
Humphrey Edwards.
Isaac Pennington Ald. of London.
John Brown.
Edward Whalley.
John Okey.
Thomas Pride.
Adrian Scroope.
Valentine Wauton.
Thomas Hammond.
James Temple.
Peregrine Pelham.
Thomas Lister.
Edmond Ludlow.
Simon Meyne.
Thomas Scot.
Edmond Harvey.
William Lord Mounson.
Henry Smith.
Sir William Constable
Isaac Ewers.
Sir Henry Mildmay.
Anthony Stapely.

Here the Court sat private.

Ordered, That the Form and Method of the Court's proceeding unto, and in the reading of the Commission by which they sit, sending for, and bringing in the Prisoner to the Bar, acquainting him in brief with the Cause of his bringing thither, receiving and reading the Charge, and demanding what the Prisoner says thereto, be referred to the Discretion of the Lord President : as also, That in case the Prisoner shall in Language or Carriage towards the Court be insolent, outrageous, or contemptuous, that it be left to the Lord President to reprehend him thereof, and admonish him of his Duty, or to command the taking away of the Prisoner ; and if he see cause, to withdraw or adjourn the Court. But as to the Prisoner's putting off his Hat, the Court will not insist upon it for this Day ; and that if the King desire time to answer, the Lord President is to give him time.

Ordered, upon the Lord President's Desire and Motion, That Mr. *Lisle* and Mr. *Say*, Commissioners of this Court, be Assistants to the Lord President ; and for that purpose, it is ordered, That they sit near the Lord President in Court.

Mr. Solicitor presented the Charge against the King ingrossed in Parchment ; which was read, and being by Mr. Solicitor signed, was returned to him to be exhibited against the King, in his presence in open Court. And thereupon the Court adjourned itself forthwith to the Great Hall in *Westminster*.

The Manner of the Trial of Charles Stuart, King of England.

ON Saturday, being the 20th Day of January, 1648. the Lord President of the High Court of Justice, his two Assistants, and the rest of the Commissioners of the said Court, according to the Adjournment of the said Court from the *Painted Chamber*, came to the Bench, or Place prepared for their Sitting, at the West End of the Great Hall at *Westminster* ; divers Officers of the said Court, one and twenty Gentlemen with Partizans, and a Sword and Mace, marching before them up into the

the Court, where the Lord President in a crimson Velvet Chair fixed in the midst of the Court, placed himself, having a Desk with a crimson Velvet Cushion before him: the rest of the Members placing themselves on each side of him, upon several Seats or Benches prepared, and hung with Scarlet for that purpose. The Lord President's two Assistants sitting next of each side of him, and the two Clerks of the Court placed at a Table somewhat lower, and cover'd with a Turkey Carpet; upon which Table was also laid the Sword and Mace, the said Guard of Partizans dividing themselves on each side of the Court before them.

Three Proclamations are made, for all Persons that were adjourned over thither, to draw near.

The Court being thus sat, and Silence enjoin'd, the great Gate of the Hall was set open, to the intent that all Persons (without exception) desirous to see or hear, might come unto it: upon which the Hall was presently filled, and Silence again ordered and proclaimed.

After Silence proclaimed as aforesaid, the Act of the Commons of *England* assembled in Parliament, for erecting a High Court of Justice for trying and judging of *Charles Stuart* King of *England*, was openly read by one of the Clerks of the Court.

The Act being read, the Court was called, every Commissioner present thereupon rising to his Name.

Westminster-Hall, Jan. 20. 1648.

Commissioners present.

<i>John Bradshaw</i> , Serjeant at Law, Lord President.	<i>Richard Deane</i> .
<i>Oliver Cromwell</i> .	<i>John Okey</i> .
<i>Henry Ireton</i> .	<i>John Hufon</i> .
<i>Sir Hardress Waller</i> .	<i>William Goffe</i> .
<i>Valentine Wauton</i> .	<i>Cornelius Holland</i> .
<i>Thomas Harrison</i> .	<i>John Carew</i> .
<i>Edward Whalley</i> .	<i>John Jones</i> .
<i>Thomas Pride</i> .	<i>Thomas Lister</i> .
<i>Isaac Eder</i> .	<i>Peregrine Pelham</i> .
<i>Tho. Ld. Grey of Grooby</i> ,	<i>Francis Allen</i> .
<i>William Lord Mounson</i> .	<i>Thomas Challoner</i> .
<i>Sir John Danvers</i> .	<i>John Moore</i> .
<i>Sir Tho. Maleverer Bar</i> .	<i>William Say</i> .
<i>Sir John Bourchier Kt</i> .	<i>John Allured</i> .
<i>Isaac Pennington Alderman of London</i> .	<i>Francis Lassels</i> .
<i>Henry Mar'in</i> .	<i>Henry Smith</i> .
<i>William Purefoy</i> .	<i>James Challoner</i> .
<i>John Berkstead</i> .	<i>Humphry Edwards</i> .
<i>John Blackistone</i> .	<i>Gregory Clement</i> .
<i>Gilbert Millington</i> .	<i>John Fry</i> .
<i>Sir William Constable Bar</i> .	<i>Sir Gregory Norton Bar</i> .
<i>Edmond Ludlow</i> .	<i>Edmond Harvey</i> .
<i>John Hutchinson</i> .	<i>John Venn</i> .
<i>Sir Michael Livesey Bar</i> .	<i>Thomas Scot</i> .
<i>Robert Tichbourne</i> .	<i>William Cawley</i> .
<i>Owen Roe</i> .	<i>Anthony Stapeley</i> .
<i>Robert Lilbourne</i> .	<i>John Downs</i> .
<i>Adrian Scroope</i> .	<i>John Dixwell</i> .
<i>Thomas Horton</i> .	<i>Simeon Meyne</i> .
<i>Thomas Hammond</i> .	<i>James Temple</i> .
<i>John Lisle</i> .	<i>Peter Temple</i> .
<i>Nicholas Love</i> .	<i>Daniel Blagrove</i> .
<i>Vincent Potter</i> .	<i>John Brown</i> .
<i>Augustine Garland</i> .	

This done, the Court command the Serjeant at Arms to send for the Prisoner: and thereupon Col. *Tomlinson*, who had the Charge of the Prisoner, within a quarter of an hour's space brought him, attended by Col. *Hacker*, and two and thirty Officers with Partizans, guarding him to the Court, his own Servants immediately attending him.

Being thus brought up in the face of the Court, the Serjeant at Arms with his Mace receives him, and conducts him straight to the Bar, having a crimson Velvet Chair set before him. After a stern looking upon the Court, and the People in the Galleries on each side of him, he places himself in the Chair, not at all moving his Hat, or otherwise shewing the least Respect to the Court; but presently riseth up again, and turns about, looking downwards upon the Guards placed on the left side, and on the Multitude of Spectators on the right side of the said great Hall: the Guard that attended him, in the mean time dividing themselves on each side of the Court, and his own Servants following him to the Bar, stand on the left hand of the Prisoner.

The Prisoner having again placed himself in his Chair, with his Face towards the Court, and Silence being again ordered and proclaimed, the Lord President in the name of the Court addressed himself to the Prisoner, acquainting him, That the Commons of *England* assembled in Parliament being deeply sensible of the Evils and Calamities that had been brought upon this Nation, and of the innocent Blood that had been spilt in it, which was fixed upon him as the principal Author of it, had resolved to make Inquisition for this Blood; and according to the Debt they did owe to God, to Justice, the Kingdom, and themselves, and according to that Fundamental Power that rested, and Trust reposed in them by the People, other Means failing thro' his Default, had resolved to bring him to Trial and Judgment; and had therefore constituted that Court of Justice, before which he was then brought, where he was to hear his Charge, upon which the Court would proceed according to Justice.

Hereupon Mr. *Cook*, Solicitor for the Commonwealth, standing within a Bar, with the rest of the Counsel for the Commonwealth, on the right hand of the Prisoner, offered to speak; but the Prisoner having a Staff in his hand, held it up, and softly laid it upon the said Mr. *Cook*'s shoulder two or three times, bidding him hold. Nevertheless, the Lord President ordering him to go on, Mr. *Cook* did, according to the Order of the Court to him directed, in the name and on the behalf of the People of *England*, exhibit a Charge of High-Treason, and other High Crimes, and did therewith accuse the said *Charles Stuart* King of *England*; praying in the name and on the behalf aforesaid, that the Charge might be accordingly received and read, and due Proceedings had thereupon. And accordingly preferr'd a Charge in writing, which being received by the Court, and delivered to the Clerk of the Court, the Lord President, in the name of the Court, order'd it should be read.

But the King interrupting the reading of it, the Court notwithstanding commanded the Clerk to read it; acquainting the Prisoner, that if he had any thing to say after, the Court would hear him: whereupon the Clerk read the Charge, the Tenour whereof is as followeth: viz.

A Charge of High-Treason, and other High Crimes exhibited to the High Court of Justice by John Cook Esq; Solicitor-General, appointed by the said Court, for and on the behalf of the People of England, against Chales Stuart King of England.

‘ **T**HAT he the said *Charles Stuart* being admitted King of *England*, and therein trusted with a limited Power to govern by and according to the Laws of the Land, and not otherwise; and by his Trust, Oath and Office, being obliged to use the Power committed to him, for the Good and Benefit of the People, and for the Preservation of their Rights and Liberties: yet nevertheless, out of wicked Design to erect and uphold in himself an Unlimited and Tyrannical Power to rule according to his Will, and to overthrow the Rights and Liberties of the People; yea to take away and make void the Foundations thereof, and of all Redress and Remedy of Misgovernment, which by the Fundamental Constitutions of this Kingdom were reserved on the People’s behalf, in the Right and Power of frequent and successive Parliaments or National Meetings in Council; he the said *Charles Stuart*, for accomplishment of such his Designs, and for the protecting of himself and his Adherents in his and their wicked Practices, to the same ends, hath traitorously and maliciously levied War against the present Parliament, and the People therein represented. Particularly, upon or about the thirtieth Day of *June*, in the Year of our Lord 1642, at *Beverly* in the County of *York*; and upon or about the thirtieth Day of *July* in the Year aforesaid, in the County of the City of *York*; and upon or about the four and twentieth Day of *August* in the same Year, at the County of the Town of *Nottingham*, where, and when he set up his Standard of War; and also on or about the twenty-third Day of *October*, in the same Year at *Edge-hill* and *Keynton-field*, in the County of *Warwick*; and upon or about the thirtieth Day of *November* in the same Year, at *Brentford* in the County of *Middlesex*; and upon or about the thirtieth Day of *August*, in the Year of our Lord 1643, at *Caversham-Bridge* near *Reading* in the County of *Berks*; and upon or about the thirtieth Day of *October* in the Year last mentioned, at or near the City of *Gloucester*; and upon or about the thirtieth Day of *November* in the Year last mentioned, at *Newbury* in the County of *Berks*; and upon or about the thirty-first Day of *July* in the Year of our Lord 1644, at *Cropley-Bridge* in the County of *Oxon*; and upon or about the thirtieth Day of *September* in the last Year mentioned, at *Bodmyn* and other Places near adjacent in the County of *Cornwall*; and upon or about the thirteenth Day of *November* in the Year last mentioned, at *Newbury* aforesaid; and upon or about the eighth Day of *June*, in the Year of our Lord 1645, at the Town of *Leicester*; and also upon the fourteenth Day of the same Month in the same Year, at *Naseby-Field* in the County of *Northampton*: At which several Times and Places, or most of them, and at many other Places in this Land, at several other Times within the Years afore-mentioned, and in the Year 1646, he the said *Charles Stuart* hath caused and procured many Thousands of the free People of this

‘ Nation to be slain; and by Divisions, Parties, and Insurrections within this Land, by Invasions from foreign Parts, endeavoured and procured by him, and by many other evil Ways and Means, he the said *Charles Stuart* hath not only maintained and carried on the said War both by Land and Sea, during the Years before mentioned, but also hath renewed or caused to be renewed the said War against the Parliament and good People of this Nation, in this present Year 1648, in the Counties of *Kent*, *Essex*, *Surrey*, *Suffex*, *Middlesex*, and many other Places of *England* and *Wales*; and also by Sea. And particularly, he the said *Charles Stuart* hath for that purpose given Commission to his Son the Prince, and others; whereby, besides Multitudes of other Persons, many such as were by the Parliament intrusted and employ’d for the Safety of the Nation, (being by him or his Agents corrupted to the betraying of their Trust, and revolting from the Parliament) have had Entertainment and Commission for the continuing and renewing of War and Hostility against the said Parliament and People as aforesaid. By which cruel and unnatural Wars by him the said *Charles Stuart* levied, continued and renewed as aforesaid, much innocent Blood of the free People of this Nation hath been spilt, many Families have been undone, the publick Treasury wasted and exhausted, Trade obstructed and miserably decay’d, vast Expence and Damage to the Nation incurred, and many parts of this Land spoiled, some of them even to desolation. And for further Prosecution of his said evil Designs, he the said *Charles Stuart* doth still continue his Commissions to the said Prince and other Rebels and Revolvers both *English* and *Foreigners*, and to the Earl of *Ormond*, and to the *Irish* Rebels and Revolvers associated with him; from whom further Invasions upon this Land are threatned, upon the procurement and on the behalf of the said *Charles Stuart*.

‘ All which wicked Designs, Wars and evil Practices of him the said *Charles Stuart*, have been and are carried on for the advancement and upholding of a personal Interest of Will and Power, and pretended Prerogative to himself and his Family, against the publick Interest, common Right, Liberty, Justice and Peace of the People of this Nation, by and for whom he was intrusted as aforesaid.

‘ By all which it appeareth, that he the said *Charles Stuart* hath been, and is the Occasioner, Author, and Continuer of the said unnatural, cruel and bloody Wars, and therein Guilty of all the Treasons, Murders, Rapines, Burnings, Spoils, Desolations, Damages and Mischiefs to this Nation acted and committed in the said Wars, or occasioned thereby.

‘ And the said *John Cook* by Protestation saving, on the behalf of the said People of *England*, the Liberty of exhibiting at any time hereafter any other Charge against the said *Charles Stuart*, and also of replying to the Answers which the said *Charles Stuart* shall make to the Premises, or any of them, or any other Charge that shall be so exhibited; doth for the said Treasons and Crimes, on the behalf of the said People of *England*, impeach the said *Charles Stuart*, as a Tyrant, Traitor, Murderer, and a publick and implacable Enemy to the Commonwealth of *England*; and pray that the said *Charles Stuart*, King of *England*

‘ *England*, may be put to answer all and every the
 ‘ Premises; and that such Proceedings, Examina-
 ‘ tions, Trials, Sentences and Judgments may
 ‘ be thereupon had, as shall be agreeable to Justice.

Subscribed, *John Cook.*

The Prisoner, while the Charge was reading, sat down in his Chair, looking sometimes on the High Court, and sometimes on the Galleries; and rose again, and turned about to behold the Guard and Spectators, and after sat down, looking very sternly, and with a Countenance not at all moved, till these Words, *viz. Charles Stuart to be a Tyrant, Traitor, &c.* were read; at which he laughed, as he sat, in the face of the Court.

The Charge being read, the Lord President, in the name of the Court, demanded the Prisoner's Answer thereto.

But the Prisoner declining that, fell into a Discourse of the late Treaty in the Isle of *Wight*, and demanded, by what lawful Authority he was brought from the Isle thither? upbraiding the Court with the many unlawful Authorities in the World, instancing in Robbers and Takers of Purfes; pleading his Kingship, and thereby a Trust committed to him by God by Descent, which he should betray, together with the Liberties of the People in case he should answer to an unlawful Power, which he charged the Court to be, and that they were raised by an Usurped Power; and affirmed, that he stood more for the Liberties of the People, than any of the Judges there sitting: and again demanded, by what Authority he was brought thither?

To which it was replied by the Court, That had he been pleased to have observed what was declared to him by the Court at his first coming, and the Charge which he had heard read unto him, he might have informed himself by what Authority he was brought before them; namely, by the Authority of the Commons of *England* assembled in Parliament, on the behalf of the People of *England*: and did therefore again several times advise him to consider of a better Answer; which he refused to do, but persisted in his Contumacy. Whereupon the Court at length told him, That they did expect from him a positive Answer to the Charge; affirming their Authority, and giving him to understand, that they were upon God's and the Kingdom's Errand, and that the Peace stood for, would be better had and kept when Justice was done, and that was their present Work: and advised him seriously to consider what he had to do at his next Appearance; which was declared should be upon *Monday* following, and so remanded him to his former Custody.

The Prisoner all the Time having kept on his Hat, departed, without shewing any the least Respect to the Court: but going out of the Bar, said, *He did not fear that Bill*; pointing to the Table where the Sword and Charge lay.

The Prisoner being withdrawn, three Proclamations were made, and the Court adjourned itself to the *Painted Chamber* on *Monday* Morning then next at Nine of the Clock; declaring, that from thence they intended to adjourn to the same place again.

[But that the Reader may have the intire Relation of this deplorable Tragedy, I have from the most Authentick Prints inserted at large the interlocutory Passages between the King and Bradshaw, of which

Mr. Phelps in his Journal gives only a succinct Account; which take as follows.]

His Majesty with his wonted Patience heard all these Slanders and Reproaches, sitting in the Chair, and looking sometimes on the pretended Court, sometimes up to the Galleries; and rising again, turned about to behold the Guards and Spectators: then he sat down, with a majestick and unmoved Countenance, and sometimes smiling, especially at those Words, *Tyrant, Traitor*, and the like.

Also the silver Head of his Staff happened to fall off, at which he wondered; and seeing none to take it up, he stooped for it himself.

The Charge being read, *Bradshaw* began:

Sir, You have now heard your Charge read, containing such Matters as appear in it; you find, that in the Close of it, it is prayed to the Court, in the behalf of the Commons of *England*, that you answer to your Charge. The Court expects your Answer.

King. I would know by what Power I am called hither; I was not long ago in the Isle of *Wight*; how I came there, is a longer Story than I think is fit at this time for me to speak of; but there I enter'd into a Treaty with both Houses of Parliament, with as much publick Faith as it's possible to be had of any People in the World. I treated there with a number of honourable Lords and Gentlemen, and treated honestly and uprightly; I cannot say but they did very nobly with me, we were upon a conclusion of the Treaty. Now I would know by what Authority, I mean lawful; there are many unlawful Authorities in the World, Thieves and Robbers by the Highways; but I would know by what Authority I was brought from thence, and carried from place to place, and I know not what: and when I know by what lawful Authority, I shall answer. Remember I am your King, your lawful King, and what Sins you bring upon your Heads, and the Judgment of God upon this Land; think well upon it, I say, think well upon it, before you go further from one Sin to a greater: therefore let me know by what lawful Authority I am seated here, and I shall not be unwilling to answer. In the mean time I shall not betray my Trust; I have a Trust committed to me by God, by old and lawful Descent, I will not betray it, to answer to a new unlawful Authority: therefore resolve me that, and you shall hear more of me.

Bradshaw. If you had been pleased to have observed what was hinted to you by the Court, at your first coming hither, you would have known by what Authority; which Authority requires you, in the Name of the People of *England*, of which you are elected King, to answer.

King. No Sir, I deny that.

Bradshaw. If you acknowledge not the Authority of the Court they must proceed.

King. I do tell them so, *England* was never an Elective Kingdom, but an Hereditary Kingdom for near these thousand Years; therefore let me know by what Authority I am called hither: I do stand more for the Liberty of my People, than any here that come to be my pretended Judges; and therefore let me know by what lawful Authority I am seated here, and I will answer it; otherwise I will not answer it.

Bradshaw. Sir, How well you have managed your Trust, is known: your way of Answer is to

interrogate the Court, which befeems not you in this Condition. You have been told of it twice or thrice.

King. Here is a Gentleman, Lieutenant-Colonel *Cobbet*; ask him, if he did not bring me from the Isle of *Wight* by force. I do not come here as submitting to the Court: I will stand as much for the Priviledge of the House of Commons, rightly understood, as any Man here whatsoever. I see no House of Lords here, that may constitute a Parliament; and the King too should have been. Is this the bringing of the King to his Parliament? Is this the bringing an end to the Treaty in the publick Faith of the World? Let me see a legal Authority warranted by the Word of God the Scriptures, or warranted by the Constitutions of the Kingdom, and I will answer.

Bradshaw. Sir, You have propounded a Question, and have been answered. Seeing you will not answer, the Court will consider how to proceed: in the mean time, those that brought you hither, are to take charge of you back again. The Court desires to know, whether this be all the Answer you will give, or no.

King. Sir, I desire that you would give me, and all the World, Satisfaction in this: let me tell you, it is not a slight thing you are about. I am sworn to keep the Peace, by that Duty I owe to God and my Country, and I will do it to the last Breath of my Body; and therefore you shall do well to satisfy first God, and then the Country, by what Authority you do it: if you do it by an usurped Authority, you cannot answer it. There is a God in Heaven, that will call you, and all that give you Power, to account. Satisfy me in that, and I will answer; otherwise I betray my Trust, and the Liberties of the People: and therefore think of that and then I shall be willing. For I do avow, that it is as great a Sin to withstand lawful Authority, as it is to submit to a tyrannical or any other ways unlawful Authority: and therefore satisfy God and me, and all the World in that, and you shall receive my Answer. I am not afraid of that Bill.

Bradshaw. The Court expects you should give them a final Answer, their Purpose is to adjourn to *Monday* next: if you do not satisfy yourself, tho' we do tell you our Authority; we are satisfied with our Authority, and it is upon God's Authority and the Kingdom's, and that Peace you speak of will be kept in the doing of Justice, and that's our present Work.

King. For answer, let me tell you, you have shewn no lawful Authority to satisfy any reasonable Man.

Bradshaw. That is in your Apprehension; we are satisfied that are your Judges.

King. 'Tis not my Apprehension, nor yours neither, that ought to decide it.

Bradshaw. The Court hath heard you, and you are to be disposed of as they have commanded.

So commanding the Guard to take him away, his Majesty only replied, *Well, Sir!*

And at his going down, pointing with his Staff toward the (*) Sword, he said, *I do not fear that.*

As he went down the stairs, the People in the Hall cry'd out, *God save the King!* notwithstanding some were set there by the Faction to lead the Clamour for Justice. [*Nelson.*]

Painted Chamber, 22. Jan. 1648.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>William Say.</i>	<i>William Cawley.</i>
<i>John Downs.</i>	<i>Gilbert Millington.</i>
<i>Edward Whalley.</i>	<i>Sir Hardress Waller.</i>
<i>Francis Allen.</i>	<i>Anthony Stapeley.</i>
<i>Sir Tho. Maleverer Bar.</i>	<i>John Jones.</i>
<i>Valentine Wauton.</i>	<i>Nicholas Love.</i>
<i>Peter Temple.</i>	<i>John Carew.</i>
<i>John Fry.</i>	<i>Tho. Andrews Ald. of Lon.</i>
<i>Thomas Scot.</i>	<i>Isaac Ewer.</i>
<i>Henry Smith.</i>	<i>John Huson.</i>
<i>Thomas Pride.</i>	<i>Cornelius Holland.</i>
<i>Augustine Garland.</i>	<i>Humphrey Edwards.</i>
<i>John Venn.</i>	<i>Vincent Potter.</i>
<i>Sir John Bourchier.</i>	<i>John Okey.</i>
<i>William Purefoy.</i>	<i>John Blackstone.</i>
<i>Sir William Constable Bar.</i>	<i>Thomas Hammond.</i>
<i>Isaac Pennington Alderman of London.</i>	<i>Daniel Blagrave.</i>
<i>Thomas Harrison.</i>	<i>William Heveningham.</i>
<i>Edmond Harvey.</i>	<i>Sir Michael Livesey.</i>
<i>John Hutchinson.</i>	<i>John Berkstead.</i>
<i>Oliver Cromwell.</i>	<i>Peregrine Pelham.</i>
<i>Tho. Ld. Grey of Grooby.</i>	<i>John Downes.</i>
<i>Sir Gregory Norton Bar.</i>	<i>Adrian Scroope.</i>
<i>Robert Wallop.</i>	<i>John Dixwell.</i>
<i>James Temple.</i>	<i>John Moore.</i>
<i>Owen Roe.</i>	<i>Robert Tichbourne.</i>
<i>Richard Deane.</i>	<i>James Challoner.</i>
<i>William Goffe.</i>	<i>Gregory Clement.</i>
<i>Francis Laffels.</i>	<i>William Lord Mounson.</i>
<i>Edmond Ludlow.</i>	<i>Henry Martin.</i>
	<i>Thomas Challoner.</i>

Sixty Two Commissioners present.

Here the Court sit private.

Ordered, that the Committee for nominating the Officers of this Court, together with the Committee for nominating the Guards, do consider of an Allowance for Diet of the Officers, and what other Satisfaction they shall have for their Service.

Col. Harvey informeth the Court, That he was desired to signify unto this Court, in the behalf of *Mr. John Corbet*, Member of this Court, that his Absence is not from any Disaffection to the Proceedings of this Court, but in regard of other especial Employment that he hath in the Service of the State.

Here the Court considered of the King's Carriage on the *Saturday* before, and of all that had then passed on the Court's behalf, and approved thereof, as agreeing to their Sense and Directions. And perceiving what the King aimed at, viz. to bring in question (if he could) the Jurisdiction of the Court, and the Authority whereby they sat; and considering that he had not in the interim acknowledged them in any sort to be a Court, or in any Judicial Capacity to determine of his Demand and Plea, and that thro' their sides he intended to wound (if he might be permitted) the Supreme Authority of the Commons of England, in their Representative, the Commons assembled in Parliament;

(*) It is Bill in Phelps's Journal: which Bill was the Charge, and lay near the Sword of State.

liament; after Advice with their Counsel learned in both Laws, and mature Deliberation had of the Matter,

Resolved, That the Prisoner should not be suffered to bring these things in question which he aimed at, touching that Highest Jurisdiction; whereof they might not make themselves Judges, and from which there was no Appeal. And therefore order and direct, viz.

Ordered, That in case the King shall again offer to fall into that Discourse, the Lord President do let him know, That the Court have taken into consideration his Demands of the last Day, and that he ought to rest satisfied with this Answer, *That the Commons of England assembled in Parliament have constituted this Court, whose Power may not, nor should be permitted to be disputed by him, and that they were resolved he should answer his Charge.*

That in case he shall refuse to answer, or acknowledge the Court, the Lord President do let him know, that the Court will take it as a Contumacy, and that it shall so be recorded.

That in case he shall offer to answer with a *Saving* notwithstanding of his pretended Prerogative, that the Lord President do in the name of the Court refuse his Protest, and require his positive Answer to his Charge.

That in case the King shall demand a Copy of the Charge, that he shall then declare his Intention to answer; and that declaring such his Intention a Copy be granted unto him.

That in case the King shall still persist in his Contempt, the Lord President do give command to the Clerk to demand of the King in the name of the Court, in these Words following, viz.

Charles Stuart, King of England, you are accused in behalf of the People of England of divers High Crimes and Treasons, which Charge hath been read unto you; the Court requires you to give a positive Answer, whether you confess or deny the Charge; having determined, that you ought to answer the same.

Ordered, That the Commissioners shall be called in open Court, at the Court's sitting in the Hall, and that the Names of such as appear shall be recorded.

Hereupon the Court forthwith adjourned itself into *Westminster-Hall*.

Westminster-Hall, 22 Jan. 1648. post Merid.

The Commissioners coming from the *Painted-Chamber*, take their Place in the publick Court in *Westminster-Hall*, as on *Saturday* before; and being sat, and the Hall-Door set open, three Proclamations were made for all Persons that were adjourned over to this time, to give their Attendance, and for all Persons to keep silence, upon pain of Imprisonment: The Court is thereupon called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>William Say,</i>	<i>Isaac Ewers.</i>
<i>John Lisle.</i>	<i>Tho. Ld. Grey of Grooby.</i>
<i>Oliver Cromwell.</i>	<i>William Ld. Mounson.</i>
<i>Henry Ireton.</i>	<i>Sir John Danvers.</i>
<i>Sir Hardress Waller.</i>	<i>Sir Tho. Maleverer Bar.</i>
<i>Valentine Wauton.</i>	<i>Sir John Burchier, Knt.</i>
<i>Thomas Harrison.</i>	<i>Edmond Ludlow.</i>
<i>Edward Whalley.</i>	<i>John Huson.</i>
<i>Thomas Pride.</i>	<i>William Goffe.</i>

Cornelius Holland.

John Carew.

Robert Lilbourne.

John Jones.

Francis Allen.

Peregrine Pelham.

Thomas Challoner.

John Moore.

John Allured.

Francis Lassels.

Henry Smith.

James Challoner.

Gregory Clement.

John Fry.

Thomas Wogan.

Peter Temple.

Robert Wallop.

William Heveningham.

Isaac Pennington Ald. of London.

Henry Martin.

William Purefoy.

John Berkstead.

William Tomlinson.

John Blackstone.

Gilbert Millington.

Seventy Commissioners present.

Sir William Constable Bar.

Sir Michael Livesey, Bar.

Robert Tichbourne,

Owen Roe.

Adrian Scroope,

John Deane.

John Okey.

John Hutchinson.

Sir Gregory Norton Bar.

Edmond Harvey.

John Venn.

Thomas Scot.

Tho. Andrews Ald. of Lon.

William Cawley.

Anthony Stapeley.

John Downs.

Thomas Horton.

Thomas Hammond.

Nicholas Love.

Vincent Potter.

Sir Gilbert Pickering Bar.

Augustine Garland.

John Dixwell.

James Temple.

Daniel Blagrove.

Humphry Edwards.

The Court being called, the Serjeant is commanded to fetch his Prisoner.

The King is again brought Prisoner to the Bar, as on *Saturday* before: Proclamation is made for Silence, whilst Pleas of the Commonwealth were in hand; and Order given to the Captain of the Guard to take into his Custody such as should disturb the Court.

Mr. Solicitor moved the Court, that the Prisoner might give a positive Answer to his Charge, or otherwise that the Court would take the Matter of it *pro confesso*, and proceed thereupon according to Justice. Which being pressed by the Court upon the Prisoner, and their Judgment again made known unto him, That he was to answer his Charge, otherwise his Contumacy would be recorded:

The Prisoner, that notwithstanding, still insisted upon his former Plea, and that the Court had no Power, nor the Commons of *England*, who had constituted it, to proceed against him. Upon which the Clerk of the Court, by command, and according to former Order, required his Answer in the Form prescribed: and the Prisoner still refusing to submit thereto, his Default and Contempt were again recorded, the Prisoner remanded, and the Court adjourned itself to the next Day, being *Tuesday*, at Twelve of the clock, to the *Painted Chamber*; withal, giving notice, That from thence they intended to adjourn to this Place again.

[*Sunday* having been spent in Fasting and seditious Preaching, according to the Mode of these impious Hypocrites, who used to preface Rebellion and Murder with the Appearance of Religion, the illustrious Sufferer was (as is before in *Phelps's* Journal related) placed before the infamous Tribunal, where their mercenary Solicitor *Cook* opened the Tragick Scene thus, displaying his Talents of Impudence and Treason. *Nelson.*]

Cook. May it please your Lordship, my Lord President; I did at the last Court, in the behalf of the Commons of *England*, exhibit and give into this Court a Charge of High-Treason, and other

other High Crimes against the Prisoner at the Bar; whereof I do accuse him in the name of the People of *England*: and the Charge was read unto him, and his Answer required. My Lord, he was not pleased to give an Answer, but instead of answering, did there dispute the Authority of this high Court. My humble Motion to this high Court in the behalf of the Kingdom of *England*, is, That the Prisoner may be directed to make a positive Answer either by way of Confession or Negation; which if he shall refuse to do that then the Matter of Charge may be taken *pro confesso*, and the Court may proceed according to Justice.

Bradshaw. Sir, you may remember at the last Court you were told the Occasion of your being brought hither, and you heard a Charge read against you, containing a Charge of High-Treason and other high Crimes against this Realm of *England*: you heard likewise, that it was prayed in the behalf of the People, that you should give an Answer to that Charge that thereupon such Proceedings might be had, as should be agreeable to Justice. You were then pleased to make some Scruples concerning the Authority of this Court, and knew not by what Authority you were brought hither; you did divers times propound your Questions, and were as often answer'd, That it was by Authority of the Commons of *England* assembled in Parliament, that did think fit to call you to account for those high and capital Misdemeanours wherewith you were then charged. Since that, the Court hath taken into consideration what you then said, they are fully satisfied with their own Authority, and they hold it fit you should stand satisfied with it too; and they do require it, that you do give a positive and particular Answer to this Charge that is exhibited against you: they do expect you should either confess or deny it; if you deny, it is offer'd in the behalf of the Kingdom to be made good against you: their Authority they do avow to the whole World, that the whole Kingdom are to rest satisfied in, and you are to rest satisfied with it. And therefore you are to lose no more time, but to give a positive Answer thereunto.

King. When I was here last, 'tis very true, I made that Question; and if it were only my own particular Case I would have satisfied myself with the Protestation I made the last time I was here against the Legality of this Court, and that a King cannot be try'd by any superior Jurisdiction on Earth: but it is not my Case alone, it is the Freedom and the Liberty of the People of *England*; and do you pretend what you will, I stand more for their Liberties. For if Power without Law may make Laws, may alter the fundamental Laws of the Kingdom, I do not know what Subject he is in *England*, that can be sure of his Life, or anything that he calls his own: therefore when that I came here, I did expect particular Reasons to know by what Law, what Authority you did proceed against me here. And therefore I am a little to seek what to say to you in this particular, because the Affirmative is to be proved, the Negative often is very hard to do: But since I cannot persuade you to do it, I shall tell you my Reasons as short as I can.

My Reasons why in Conscience and the Duty I owe to God first, and my People next, for the Preservation of their Lives, Liberties, and Estates,

I conceive I cannot answer this, till I be satisfied of the Legality of it.

All Proceedings against any Man whatsoever—

Bradshaw. Sir, I must interrupt you, which I would not do, but that what you do is not agreeable to the Proceedings of any Court of Justice: You are about to enter into Argument, and dispute concerning the Authority of this Court, before whom you appear as a Prisoner, and are charged as an high Delinquent; if you take upon you to dispute the Authority of the Court, we may not do it, nor will any Court give way unto it: you are to submit unto it, you are to give a punctual and direct Answer, whether you will answer your Charge or no, and what your Answer is.

King. Sir, By your favour, I do not know the Forms of Law; I do know Law and Reason, tho' I am no Lawyer profess'd, but I know as much Law as any Gentleman in *England*; and therefore (under favour) I do plead for the Liberties of the People of *England* more than you do: And therefore if I should impose a Belief upon any Man, without Reasons given for it, it were unreasonable; but I must tell you, that by that Reason that I have, as thus informed, I cannot yield unto it.

Bradshaw. Sir, I must interrupt you, you may not be permitted: you speak of Law and Reason, it is fit there should be Law and Reason, and there is both against you. Sir, the Vote of the Commons of *England* assembled in Parliament, it is the Reason of the Kingdom, and they are these too that have given that Law, according to which you should have ruled and reign'd. Sir, you are not to dispute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the Court, and your Contempt will be recorded accordingly.

King. I do not know how a King can be a Delinquent; but by any Law that ever I heard of, all Men (Delinquents, or what you will) let me tell you they may put in Demurrers against any Proceeding as legal: and I do demand that, and demand to be heard with my Reasons; if you deny that, you deny Reason.

Bradshaw. Sir, you have offer'd something to the Court; I shall speak something unto you, the Sense of the Court. Sir, neither you nor any Man are permitted to dispute that Point; you are concluded, you may not demur to the Jurisdiction of the Court: if you do, I must let you know, that they over-rule your Demurrer; they sit here by the Authority of the Commons of *England*, and all your Predecessors and you are responsible to them.

King. I deny that, shew me one Precedent.

Bradshaw. Sir, you ought not to interrupt while the Court is speaking to you. The Point is not to be debated by you, neither will the Court permit you to do it; if you offer it by way of Demurrer to the Jurisdiction of the Court, they have considered of their Jurisdiction, they do affirm their own Jurisdiction.

King. I say, Sir, by your favour, that the Commons of *England* was never a Court of Judicature; I would know how they came to be so.

Bradshaw. Sir, you are not to be permitted to go on in that Speech and these Discourses.

Then the Clerk of the Court read,
Charles Stuart, *King of England*, You have been
accused on the behalf of the People of *England* of High-
Treason,

Treason, and other high Crimes; the Court have determined that you ought to answer the same.

King. I will answer the same, so soon as I know by what Authority you do this.

Bradshaw. If this be all that you will say, then Gentlemen you that brought the Prisoner hither, take charge of him back again.

King. I do require that I may give in my Reasons why I do not answer, and give me time for that.

Bradshaw. Sir, 'tis not for Prisoners to require.

King. Prisoners! Sir, I am not an ordinary Prisoner.

Bradshaw. The Court hath considered of their Jurisdiction, and they have already affirmed their Jurisdiction; if you will not answer, we will give order to record your Default.

King. You never heard my Reason yet.

Bradshaw. Sir, your Reasons are not to be heard against the highest Jurisdiction.

King. Shew me that Jurisdiction where Reason is not to be heard.

Bradshaw. Sir, we shew it you here, the Commons of *England*; and the next time you are brought, you will know more of the Pleasure of the Court; and, it may be, their final Determination.

King. Shew me where ever the House of Commons was a Court of Judicature of that kind.

Bradshaw. Serjeant, take away the Prisoner.

King. Well, Sir, remember that the King is not suffer'd to give in his Reasons for the Liberty and Freedom of all his Subjects.

Bradshaw. Sir, you are not to have liberty to use this Language: How great a Friend you have been to the Laws and Liberties of the People, let all *England* and the World judge.

King. Sir, under favour, it was the Liberty, Freedom, and Laws of the Subject, that ever I took — defended myself with Arms; I never took up Arms against the People, but for the Laws.

Bradshaw. The Command of the Court must be obey'd; no Answer will be given to the Charge.

King. Well, Sir!

Then *Bradshaw* ordered the Default to be recorded, and the Contempt of the Court; and that no Answer would be given to the Charge.

The King was guarded forth to Sir Robert Cotton's House.

The Court adjourned to the *Painted Chamber* on *Tuesday* at twelve of the clock, and from thence they intend to adjourn to *Westminster-Hall*; at which times all Persons concerned, are to give their Attendance.

[His Majesty not being suffered to deliver his Reasons against the Jurisdiction of their pretended Court, by word of Mouth, thought fit to leave them in Writing to the more impartial Judgment of Posterity, as followeth:]

HAVING already made my Protections, not only against the Illegality of this pretended Court, but also, *That no earthly Power can justly call Me (who am your King) in question, as a Delinquent*; I would not any more open my Mouth upon this Occasion, more than to refer myself to what I have spoken, were I in this case alone concerned: But the Duty I owe to God in the Preservation of the true Liberty of my Peo-

ple, will not suffer me at this time to be silent. For how can any free-born Subject of *England*, call Life, or any thing he possesseth, his own, if Power without Right, daily make new, and abrogate the old Fundamental Ways of the Land, which I now take to be the present Case? Wherefore, when I came hither, I expected that you would have endeavoured to have satisfied me concerning these Grounds which hinder me to answer to your pretended Impeachment: But since I see that nothing I can say will move you to it (tho' *Negatives* are not so naturally proved as *Affirmatives*) yet I will shew you the Reason why I am confident you cannot judge me, nor indeed the meanest Man in *England*: For I will not (like you) without shewing a Reason, seek to impose a Belief upon my Subjects.

There is no Proceeding just against any Man, but what is warranted either by God's

Laws, or the municipal Laws of the County where he lives. Now I am most confident, this Day's Proceeding cannot be warranted by God's Law; for, on the contrary the Authority of Obedience unto Kings, is clearly warranted, and strictly commanded both in the Old and New Testament; which if denied, I am ready instantly to prove.

And for the Question now in hand, there it is said, *That where the Word of a King is, there is Power; and who may say unto him, What dost thou?* Eccl. viii. 4. Then for the Law of this Land, I am no less confident, that no learned Lawyer will affirm, *That an Impeachment can lie against the King, they all going in his Name*: And one of their Maxims is, *That the King can do no wrong*. Besides the Law upon which you ground your Proceedings, must be either old or new; if old, shew it; if new, tell what Authority, warranted by the Fundamental Laws of the Land, hath made it, and when. But how the House of Commons can erect a Court of Judicature, which was never one itself, (as is well known to all Lawyers) I leave to God and the World to judge. And it were full as strange, that they should pretend to make Laws without King or Lords House, to any that have heard speak of the Laws of *England*.

And admitting, but not granting, That the People of *England's* Commission could grant your pretended Power, I see nothing you can shew for that; for certainly you never asked the Question of the tenth Man in the Kingdom: and in this way you manifestly wrong even the poorest Ploughman, if you demand not his free Consent; nor can you pretend any Colour for this your pretended Commission, without the Consent at least of the major Part of every Man in *England*, of whatsoever Quality or Condition, which I am sure you never went about to seek; so far are you from having it. Thus you see that I speak not for my own Right alone, as I am your King, but also for the true Liberty of all my Subjects; which consists not in the Power of Government, but in living under such Laws, such a Government, as may give themselves the best Assurance of their Lives, and Property of their Goods. Nor in this must or do I forget the Privileges of both Houses of Parliament, which this Day's Proceedings do not only violate, but likewise occasion the greatest

‘ Breach

Hereabout I was stopp'd, and not suffer'd to speak any more concerning Reasons.

Breach of their publick Faith, that (I believe) ever was heard of: with which I am far from charging the two Houses; for all pretended Crimes laid against me, bear date long before this Treaty at *Newport*, in which I have concluded as much as in me lay, and hopefully expecting the Houses Agreement thereunto, I was suddenly surprized and hurried from thence as a Prisoner: upon which Account I am against my Will brought hither; where, since I am come, I cannot but, to my power, defend the antient Laws and Liberties of this Kingdom, together with my own just Right. Then, for any thing I can see, the Higher House is totally excluded. And for the House of Commons, it is too well known that the major Part of them are detained or deterred from sitting; so as, if I had no other, this were sufficient for me to protest against the Lawfulness of your pretended Court. Besides all this, the Peace of the Kingdom is not the least in my Thoughts; and what hopes of Settlement is there, so long as Power reigns without Rule or Law, changing the whole Frame of that Government, under which this Kingdom hath flourished for many hundred Years? (Nor will I say what will fall out, in case this lawless unjust Proceeding against me do go on.) And believe it, the Commons of *England* will not thank you for this Change; for they will remember how happy they have been of late Years under the Reign of Queen *Elizabeth*, the King my Father, and my Self, until the beginning of these unhappy Troubles, and will have cause to doubt that they shall never be so happy under any new. And by this time it will be too sensibly evident, that the Arms I took up, were only to defend the Fundamental Laws of this Kingdom, against those who have supposed my Power hath totally changed the antient Government.

Thus having shewed you briefly the Reasons why I cannot submit to your pretended Authority, without violating the Trust which I have from God for the Welfare and Liberty of my People; I expect from you either clear Reasons to convince my Judgment, shewing me that I am in an Error, (and then I will truly answer) or that you will withdraw your Proceedings.

This I intended to speak in Westminster-Hall on Monday, January the 22d; but, against Reason, was hindered to shew my Reasons.]

Martis, 23 Jan. 1648. Painted Chamber.

THREE Proclamations are made, and all Parties concerned, required to give their Attendance.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>John Lisle.</i>	<i>John Huse.</i>
<i>William Say,</i>	<i>Tho. Ld. Grey of Grooby.</i>
<i>Sir James Harrington Kt,</i>	<i>William Purefoy.</i>
<i>Francis Allen.</i>	<i>Daniel Blagrove.</i>
<i>Henry Martin.</i>	<i>Isaac Pennington Ald. of</i>
<i>Thomas Scot.</i>	<i>London.</i>
<i>Sir Hardress Waller.</i>	<i>Thomas Harrison.</i>
<i>Edmond Whalley.</i>	<i>Adrian Scroope.</i>
<i>John Venn.</i>	<i>Robert Lilbourne.</i>
<i>Richard Deane.</i>	<i>Sir Gregory Norton.</i>

Cornelius Holland.
William Caveley.
Augustine Garland.
Nicholas Love.
Thomas Hammond.
John Moore.
Edmond Harvey.
Thomas Pride.
Henry Smith.
Thomas Challoner.
Miles Corbet.
John Okey.
Sir William Constable Bar.
Gilbert Millington.
Humphrey Edwards.
Anthony Stapley.
Robert Tichbourne.
Sir John Danvers.
Simon Meyne.
Vincent Potter.
Oliver Cromwell.
Edmond Ludlow.

John Blackstone.
Sir Henry Mildmay.
John Hutchinson.
Peter Temple.
Henry Ireton.
Sir Michael Livesy Bar.
John Jones.
James Temple.
Isaac Ewers.
Sir John Bourchier.
John Fry.
Sir Tho. Maleverer Bar.
Gregory Clement.
John Carew.
Thomas Andrews Ald. of
London.
John Dixwell.
Sir Gilbert Pickering Bar.
William Heveningham.
Valentine Wauton.
John Downes.
Owen Roe.

Sixty-three Commissioners present.

Here the Court sat private.

And taking into Consideration the Proceeding of the last Court the last Day, fully approved of what in their behalf had been then said and done; and likewise taking into Consideration the Demeanour of the King at the said Court, have notwithstanding resolved to try him once more, whether he will own the Court; and to that purpose.

Ordered, That the Lord President do acquaint the King, in case he shall continue contumacious, that he is to expect no further time; and that the Lord President do therefore in the Name of the Court require his positive and final Answer; and if he shall still persist in his Obstinacy, that the Lord President give command to the Clerk to read as followeth, viz.

Charles Stuart, King of England, you are accused on the behalf of the People of England of divers high Crimes and Treasons, which Charge hath been read unto you; the Court now requires you to give your final and positive Answer, by way of Confession or Denial of the Charge.

Nevertheless, if the King should submit to answer, and desire a Copy of his Charge, that it be granted him by the Lord President; notwithstanding given him to know, That the Court might in Justice forthwith proceed to Judgment for his former Contumacy and Failure to answer; and that he be required to give his Answer to the said Charge the next day at One of the clock in the Afternoon. Whereupon the Court adjourned to *Westminster-Hall* forthwith.

Westminster-Hall, 23 Jan. 1648. post Merid.

THREE Proclamations being made, and Attendance and Silence commanded, as formerly, the Court is thereupon called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President, of this Court.

<i>Oliver Cromwell.</i>	<i>Valentine Wauton.</i>
<i>Henry Ireton.</i>	<i>Thomas Harrison.</i>
<i>Sir Hardress Waller.</i>	<i>Edward Whalley.</i>
	<i>Thomas</i>

Thomas Pride.
Isaac Ewers.
Henry Martin.
William Purefoy.
John Berkstead.
John Blackstone.
Gilbert Millington.
Sir William Constable Bar.
Edmond Ludlow.
John Hutchinson.
Sir Michael Livesey Bar.
Robert Tichbourne.
Owen Roe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Okey.
John Hufon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.
Miles Corbet.
Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moser.
William Say.
John Dixwell.
Sir Henry Mildmay Knt.
Tho. La. Grey of Grooby.
William Lord Mounson.
Sir John Danvers.

Sir Tho. Maleverer, Bar.
Sir John Bourchier, Knt.
Sir James Harrington Kt.
Robert Wallop.
William Heveningham.
Isaac Pennington, Alderman of London.
John Alured.
Henry Smith.
James Temple.
Peter Temple.
Daniel Blagrove.
Humphrey Edwards.
Gregory Clement.
John Fry.
Thomas Wogan.
Sir Gregory Norton, Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
Thomas Andrews Ald. of London.
William Caveley.
Anthony Stapely.
John Downs.
Thomas Horton.
Thomas Hammond.
John Lisle.
Nicholas Love.
Vincent Potter.
Sir Gilbert Pickering Bar.
Augustine Garland.
Simon Meyne.

Seventy-one Commissioners present.

The Court being called, the Serjeant is required to send for the Prisoner, who was accordingly brought to the Bar, where he took his Seat as formerly. Proclamation is thereupon made for Silence, while the Pleas of the Commonwealth are in Hand, and the Captain of the Guard commanded by Proclamation to take into Custody all that shall disturb the Proceedings of the Court.

Mr. Solicitor Cook addressing himself to the Court, repeated the former Delays and Contempts of the Prisoner, so as that no more needed on his Part, but to demand Judgment; yet offered, notwithstanding the Notoriety of the Facts charged, mentioned in the Common Act appointing the Trial, to prove the Truth of the same by Witnesses, if thereto required: and therefore pray'd, and yet (he said) not so much he, as the innocent Blood that had been shed, the Cry whereof was very great, that a speedy Sentence and Judgment might be pronounced against the Prisoner at the Bar according to Justice.

Hereupon the Court putting the Prisoner in mind of former Proceedings, and that altho' by the Rules of Justice, if advantage were taken of his past Contempts, nothing would remain but to pronounce Judgment against him, they had nevertheless determined to give him leave to answer his Charge; which, as was told him in plain Terms, (for Justice knew no Respect of Persons) was to plead *Guilty* or *Not Guilty* thereto.

To which he made Answer as formerly, That he would not acknowledge the Jurisdiction of the Court, and that it was against the Fundamental Laws of the Kingdom; that there was no Law to make a King a Prisoner; that he had done nothing against his Trust; and issued out into such-like Discourses

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Upon which the Court's Resolution was again remember'd to him, and he told, That he had now the third time publickly disowned and affronted the Court; That how good a Preserver he had been of the Fundamental Laws, and Freedoms of the People, his Actions had spoken; That Mens Intentions were used to be shewed by their Actions, and that he had written his Meaning in bloody Characters throughout the Kingdom; and that he should find at last, tho' at present he would not understand it, that he was before a Court of Justice.

Hereupon, in the manner appointed, the Clerk in the Name of the Court demanding the Prisoner's Answer to his Charge, and the same refused, the Default was recorded, the Prisoner remanded, and the Court adjourned to the *Painted Chamber*.

Painted Chamber.

The Court, according to their former Adjournment from *Westminster-Hall*, come together from thence into the *Painted Chamber*, where they sat privately, and ordered as followeth:

Ordered, That no Commissioner ought, or shall depart from the Court, without the special leave of the said Court.

This Court took into Consideration the managing of the Business of the Court this Day in the Hall, and the King's Refusal to answer, notwithstanding he had been three several times demanded and required thereunto; and have thereupon fully approved of what on the Court's Part had then passed; and resolved,

That notwithstanding the said Contumacy of the King, and Refusal to plead, which in Law amounts to a standing mute, and tacit Confession of the Charge, and notwithstanding the Notoriety of the Fact charged, the Court would nevertheless however examine Witnesses, for the further and clearer Satisfaction of their own Judgments and Consciences; the Manner of whose Examination was referred to further Consideration the next sitting, and Warrants were accordingly issued forth for summoning of Witnesses.

Mr. Peters moveth the Court as a Messenger from the King, viz. That the King desires he might speak with his Chaplains, that came unto him privately: but the House of Commons having taken that into their Consideration, the Court conceived it not proper for them to intermeddle therein.

The Court adjourned itself till nine of the Clock to-morrow Morning, to this Place.

[What passed in the Hall more at large than is related by Phelps in this Day's Transactions, see in the following Discourse.

The King being brought in by the Guard, looks with a majestick Countenance upon his pretended Judges, and sits down.

After the second *O Yes*, and Silence commanded, Cook began more insolently:

Cook. May it please your Lordship, my Lord President; This is now the third Time, that, by the great Grace and Favour of this High Court the Prisoner hath been brought to the Bar, before any Issue joined in the Cause. My Lord, I did at the first Court exhibit a Charge against

against him, containing the highest Treason that ever was wrought upon the Theatre of *England*; That a King of *England* trusted to keep the Law, that had taken an Oath so to do, that had Tribute paid him for that end, should be guilty of a wicked design to subvert and destroy our Laws, and introduce an Arbitrary and Tyrannical Government, in the defiance of the Parliament and their Authority, set up his Standard for War against the Parliament and People: and I did humbly pray, in the behalf of the People of *England*, that he might speedily be required to make an Answer to the Charge.

But, my Lord, instead of making any Answer he did then dispute the Authority of this High Court. Your Lordship was pleased to give him a further Day to consider, and to put in his Answer; which Day being Yesterday I did humbly move, that he might be required to give a direct and positive Answer, either by denying or confession of it: but, my Lord, he was then pleased for to demur to the Jurisdiction of the Court; which the Court did then over-rule, and command him to give a direct and positive Answer. My Lord, Besides this great delay of Justice, I shall now humbly move your Lordship for speedy Judgment against him. My Lord, I might press your Lordship upon the whole, that according to the known Rules of the Law of the Land, That if a Prisoner shall stand as contumacious in contempt, and shall not put in an issuable Plea, Guilty or Not Guilty of the Charge given against him, whereby he may come to a fair Trial; that as by an implicit Confession, it may be taken *pro confesso*, as it hath been done to those who have deserved more Favour than the Prisoner at the Bar has done. But besides, my Lord, I shall humbly press your Lordship upon the whole Fact. The House of Commons, the Supreme Authority and Jurisdiction of the Kingdom, they have declared, That it is notorious, that the Matter of the Charge is true, as it is in truth, my Lord, as clear as Crystal, and as the Sun that shines at Noon-day: which if your Lordship and the Court be not satisfied in, I have notwithstanding, on the People of *England's* behalf, several Witnesses to produce. And therefore I do humbly pray, (and yet I must confess it is not so much I, as the innocent Blood that hath been shed, the Cry whereof is very great for Justice and Judgment; and therefore I do humbly pray) that speedy Judgment be pronounced against the Prisoner at the Bar.

Bradshaw went on in the same strain:

Sir, You have heard what is moved by the Counsel on the behalf of the Kingdom against you. Sir, You may well remember, and if you do not, the Court cannot forget what dilatory Dealings the Court hath found at your Hands. You were pleased to propound some Questions, you have had our Resolution upon them. You were told over and over again, That the Court did affirm their own Jurisdiction; that it was not for you, nor any other Man to dispute the Jurisdiction of the supreme and highest Authority of *England*, from which there is no Appeal, and touching which there must be no Dispute: yet you did persist in such Carriage, as you gave no manner of Obedience, nor did you acknowledge any Authority in them, nor the High Court that constituted this Court of Justice.

Sir, I must let you know from the Court, that they are very sensible of these Delays of yours, and that they ought not, being thus Authorized

by the supreme Court of *England*, to be thus trifled withal; and that they might in Justice, if they pleased, and according to the Rules of Justice, take advantage of these Delays, and proceed to pronounce Judgment against you: yet nevertheless they are pleased to give direction, and on their behalfs I do require you, that you make a positive Answer unto this Charge that is against you, Sir, in plain Terms, (for Justice knows no respect of Persons;) you are to give your positive and final Answer in plain *English*, whether you be guilty or not guilty of these Treasons laid to your Charge.

The King, after a little Pause, said,

When I was here yesterday, I did desire to speak for the Liberties of the People of *England*; I was interrupted: I desire to know yet whether I may speak freely or not.

Bradshaw. Sir, you have had the Resolution of the Court upon the like Question the last Day, and you were told, that having such a Charge of so high a Nature against you, your Work was, that you ought to acknowledge the Jurisdiction of the Court, and to answer to your Charge. Sir, If you answer to your Charge, which the Court gives you leave now to do, tho' they might have taken the advantage of your Contempt; yet if you be able to answer to your Charge, when you have once answered, you shall be heard at large, make the best Defence you can. But, Sir, I must let you know from the Court, as their Commands, that you are not to be permitted to issue out into any other Discourses, till such time as you have given a positive Answer concerning the Matter that is charged upon you.

King. For the Charge, I value it not a rush, it is the Liberty of the People of *England* that I stand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that should be an Example to all the People of *England* for to uphold Justice, to maintain the old Laws; indeed I know not how to do it. You spoke very well the first Day that I came here, (on *Saturday*) of the Obligations that I had laid upon me by God, to the maintenance of the Liberties of my People: the same Obligation you spake of, I do acknowledge to God that I owe to him, and to my People, to defend as much as in me lies the antient Laws of the Kingdom. Therefore until that I may know that this is not against the fundamental Laws of the Kingdom, by your favour I can put in no particular Answer. If you will give me time, I will shew you my Reasons why I cannot do it, and this—

Here being interrupted, he said,

By your favour, you ought not to interrupt me: how I came here I know not, there's no Law for it to make your King your Prisoner. I was in a Treaty upon the publick Faith of the Kingdom, that was the known ——— two Houses of Parliament that was the Representative of the Kingdom; and when that I had almost made an end of the Treaty, then I was hurried away, and brought hither: and therefore—

Bradshaw. Sir, you must know the Pleasure of the Court.

King. By your favour, Sir.

Bradshaw. Nay, Sir, by your favour, you may not be permitted to fall into those Discourses; you appear as a Delinquent, you have not acknowledged the Authority of the Court, the Court craves it not of you: but once more they command you to give your positive Answer ——— Clerk, Do your Duty.

King. Duty, Sir!

The Clerk reads:

Charles Stuart, King of England, you are accused, in the behalf of the Commons of England, of divers High Crimes and Treasons; which Charge hath been read unto you: The Court now requires you to give your positive and final Answer, by way of Confession or Denial of the Charge.

King. Sir, I say again to you, so that I might give Satisfaction to the People of England of the Clearness of my Proceeding, not by way of Answer, not in this way, but to satisfy them that I have done nothing against that Trust that hath been committed to me, I would do it: but to acknowledge a new Court, against their Privileges, to alter the fundamental Laws of the Kingdom, Sir, you must excuse me.

Bradshaw. Sir, this is the third time that you have publickly disown'd this Court, and put an Affront upon it: How far you have preserv'd the Privileges of the People, your Actions have spoke it; but truly, Sir, Mens Intentions ought to be known by their Actions, you have written your Meaning in bloody Characters thro'out the whole Kingdom. But, Sir, you understand the Pleasure of the Court. — Clerk, Record the Default. — And Gentlemen, you that took charge of the Prisoner, take him back again.

King. I will only say this one Word more to you; If it were only my own Particular, I would not say any more, nor interrupt you.

Bradshaw. Sir, you have heard the Pleasure of the Court, and you are (notwithstanding you will not understand it) to find that you are before a Court of Justice.

Then the King went forth with the Guard; and Proclamation was made, That all Persons which had then appeared, and had further to do at the Court, might depart into the Painted Chamber; to which Place the Court did forthwith adjourn, and intended to meet at Westminster-Hall by Ten of the Clock next Morning.

Cryer. God blefs the Kingdom of England.]

Mercurii, 24 Jan. 1648. Painted Chamber.

THREE Proclamations made.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President.	John Moor.
Sir Tho. Maleverer Bar.	Richard Deane.
Thomas Scot.	Vincent Potter.
Edw. Whalley.	Thomas Horton.
John Carew.	Cornelius Holland.
Edmond Harvey.	John Berkstead.
Owen Roe.	Tho. Ld. Grey of Grooby.
John Blackstone.	John Huson.
William Purefoy.	John Okey.
Henry Smith.	Gilbert Millington.
John Fry.	John Jones.
Francis Lassels.	William Goffe.
Daniel Blagrave.	Sir John Bourchier.
Anthony Stapely.	Isaac Pennington, Alderman of London.
Sir Gregory Norton, Bar.	Simon Meyne.
William Cawley.	Adrian Scroope.
Robert Tichbourne.	John Dixwell.
Henry Martin.	Isaac Ewers.
Oliver Cromwell.	
Sir John Danvers.	

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John Alured.
Peter Temple.
Peregrine Pelham.
Edmond Ludlow.
John Hutchinson.

Thomas Pride.
William Heveningham.
Sir William Constable.
Francis Allen.

The Court took into consideration the Manner how the Witnesses should be examined; and in regard the King hath not pleaded to Issue, and that this Examination was *ex abundanti* only, for the further Satisfaction of themselves:

Resolved, That the Witnesses shall be examined to the Charge against the King, in the Painted Chamber, before the Court there.

Ordered, That Mr. Millington and Mr. Tho. Challoner do forthwith repair unto John Brown Esq; Clerk of the House of Peers, for such Papers as are in his Custody, which are conducible for the Business and Service of this Court; and the said Mr. Brown is required to send the said Papers hither accordingly.

Witnesses produced and sworn in Court to give Evidence to the Charge against the King.

Henry Hartford.
Edward Roberts.
William Braynes.
Robert Lacy.
Robert Loades.
Samuel Morgan.
James Williams.
Michael Potts.
Giles Gryce.
William Arnop.
John Vinson.
George Seely.
Tho. Ives.
James Crosby.
Tho. Rawlins.

Richard Blomfield.
John Thomas.
Samuel Lawson.
John Pyneger.
George Cornewall.
Tho. Whittington.
William Jones.
Humphrey Browne.
Arthur Young.
David Evans.
Diogenes Edwards.
Robert Williams.
John Bennet.
Samuel Burden.

Col. Horton, Col. Deane, Col. Okey, Col. Huson, Col. Roe, Col. Tichbourne, Col. Whalley, Col. Thomson, Col. Goffe, Col. Ewers, Col. Scroope, Mr. Love, Mr. Scot, Mr. Tho. Challoner, Mr. Millington, and Sir John Danvers, or any three of them, are a Committee appointed to take the Examination of the said Witnesses now sworn, whom the Clerks are to attend for that Purpose.

The Court granted their Summons for summoning further Witnesses, and adjourned itself till the Morrow at Nine of the Clock in the Morning, to this Place.

Jovis, 25 Jan. 1648. Painted Chamber.

The Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.	Adrian Scroope.
Richard Deane.	Henry Smith.
Sir Hardress Waller.	Thomas Scot.
John Moor.	William Cawley.
Peregrine Pelham.	Gilbert Millington.
John Huson.	Thomas Challoner.
John Berkstead.	John Carew.
Edward Whalley.	Sir John Bourchier, Knt.
John Okey.	Sir Tho. Maleverer, Bar.
Edmond Harvey.	Francis

Francis Allen.
Thomas Harrison.
John Jones.
John Alured.
John Brown.
Isaac Ewers.
Robert Tichbourne.

Augustine Garland.
Francis Lassels.
John Dixwell.
Sir Michael Livesey Bar.
John Venn.
Edmond Wild.
With divers others.

Here the Court sat private.

The Court ordered, That the Marshal-Gen. of this Army, or his Deputy, do bring forthwith Mr. Holder Prisoner at *Whitehall*, to the end that he may testify his Knowledge of all such Matters as shall be propounded unto him concerning the Charge against the King.

Ordered, That the Dean's House in *Westminster-Abbey* be provided and furnished for the Lodging of the Lord President and his Servants, Guards and Attendants; and a Committee are appointed to take care hereof accordingly.

Mr. Henry Gouge and Mr. William Cuthbert, Witnesses produced to the Charge against the King, were sworn and examined.

The Witnesses sworn in open Court, and after examined by the Committee appointed for that purpose the 24th Instant, were now in open Court called, and their respective Depositions were read to them: who did avow their said several Depositions, and affirm what was so read unto them, respectively was true, upon the Oaths they had taken.

The Court being informed, that Major Fox, being of the Guard attending the Lord President, is arrested, and committed to the Keeper of *Ludgate*;

Ordered, That the said Keeper do forthwith bring the said Major before this Court, and attend this Court in Person himself.

Mr. Holder being brought before this Court according to the Order of this Day, and his Oath tender'd unto him, to give Evidence to such Matters as should be propounded unto him concerning the Charge against the King; the said Mr. Holder desired to be spared from giving Evidence against the King.

Whereupon, the Commissioners finding him already a Prisoner, and perceiving that the Questions intended to be asked him, tended to accuse himself, thought fit to wave his Examination, and remanded him (and accordingly did so) to the Prison from whence he was brought.

The Depositions taken *ut supra*, are as followeth, *viz.*

Jan. 25. 1648.

* *Holdernefs is in the County of York.*

William Cuthbert of *Patrington* in *Holdernefs*, Gent. aged 42 Years, or thereabouts, sworn and examined, saith, That he, this Deponent, living at *Hull-Bridge* near *Beverly*, in *July* 1642, did then hear that Forces were raised, about three thousand Foot, for the King's Guard under Sir Robert Strickland.

And this Deponent further saith, That about the second of *July* 1642, he saw a Troop of Horse come to *Beverly*, being the Lord's-Day, about Four or Five of the Clock in the Afternoon, called

the Prince's Troop; Mr. James Nelboryp being then Major of the said Town.

And this Deponent further saith, That he did see that Afternoon the said Troop march from *Beverley* aforesaid into *Holdernefs*, where they received Ammunition brought up by the River *Humber* unto them.

And this Deponent further saith, That the same Night, being *Sunday*, there came about three hundred Foot-Soldiers, (said to be Sir Robert Strickland's Regiment) under the Command of Lieutenant-Col. Duncombe, and called the King's Guard, unto this Deponent's House, call'd *Hull-Bridge*, near *Beverly*, about Midnight, and broke open, entered and possessed themselves of the said House; and that the Earl of *Newport*, the Earl of *Carnarvan*, and divers others came that Night thither to the said Forces: And that the same Night (as this Deponent was then informed) Sir Tho. Gower, then High Sheriff of the said County, came thither, and left there a Warrant for staying all Provisions from going to *Hull* to Sir John Hotham; which said Warrant was then deliver'd to this Deponent, being Constable, by Lieut. Col. Duncombe.

And this Deponent further saith, That he was by the said Forces put out of his House, and did with his Family go to *Beverly*; and that after that, *viz.* the *Thursday* following, to this Deponent's best remembrance, he did see the King come to *Beverly*, to the Lady Gee's House there; where he, this Deponent, did often see the King, with Prince Charles and the Duke of York; and that the Train'd Bands were then raised in *Holdernefs*; who were raised (as was generally reported) by the King's Command.

And this Deponent further saith, That the Night after the said Forces had, as aforesaid, possessed themselves of this Deponent's House, Col. Legard's House was plunder'd by them, being upon a *Monday*; which aforesaid Entry of this Deponent's House, was the first * Act of Hostility that was committed in those Parts.

And this Deponent further saith, That after the said Sir Robert Strickland's said Company was gone from *Hull-Bridge*, having continued there about ten Days, there then came to the said House Col. Wivel, with about seven hundred Foot-Soldiers, who then took up his Quarters at *Hull-Bridge* aforesaid. And this Deponent further saith, That the Warrant he now produceth to this Court, is the same original Warrant aforesaid spoken of.

And this Deponent further saith, That the General's Name of the said Forces that were there, and raised as aforesaid, was the Earl of *Lindsey*; and that this Deponent was brought before him the said General, in the name of the King's Lord General, for holding Intelligence with Sir John Hotham, then Governor of *Hull*; and because it was then informed to the said General, that he this Deponent had Provisions of Corn to send over unto *Ireland*, which he this Deponent was forbidden by the said General to send unto *Ireland*, or any Place else, without his or the King's Direction or Warrant first had in that behalf.

The aforesaid Warrant, mentioned in the Deposition of the said William Cuthbert, is as followeth:

* Sir John Hottham's keeping *Hull* as a Garrison against the King, which was before this was, it seems, no Act of Hostility, in this perjur'd Villain's account. Nall.

‘ IT is his Majesty’s Command, that you do not suffer any Victuals or Provision, of what sort soever, to be carried into the Town of *Hull* without his Majesty’s special Licence first obtained, And of this you are not to fail at your Peril.

Dated at Beverley, 3 Julii, 1642.

Tho. Gower, Vi. Co.

To all Head-Constables and Constables in the East-Riding of the County of York, and to all other his Majesty’s Loyal Subjects.

John Bennet of *Harwood*, in the County of *York*, Glover, sworn and examined, saith, That he being a Soldier under the King’s Command, the first Day that the King’s Standard was set up at *Nottingham*, which was about the middle of Summer last was six Years, he this Examinant did work at *Nottingham*; and that he did see the King within the Castle of *Nottingham*, within two or three days after the said Standard was so set up; and that the said Standard did fly the same day that the King was in the said Castle, as aforesaid: and this Deponent did hear that the King was at *Nottingham* the same day that the said Standard was set up, and before.

And this Deponent further saith, That he this Deponent, and the Regiment of which he then was, had their Colours then given them; and *Sir William Penyman* being the Colonel of the said Regiment, the said *Sir William Penyman* was present with his said Regiment at that Time.

And this Deponent further saith, That there was then there the Earl of *Lindsey*’s Regiment, who had then their Colours given them, and that the said Earl of *Lindsey* was then also proclaimed there the King’s General; and that it was proclaimed then there likewise in the King’s Name, at the Head of every Regiment, that the said Forces should fight against all that came to oppose the King, or any of his Followers; and in particular, against the Earl of *Essex*, the Lord *Brooke*, and divers others: and that they the said Earl of *Essex*, the Lord *Brooke*, and divers others, were then proclaimed Traytors; and that the same Proclamations were printed, and dispersed by the Officers of the Regiments throughout every Regiment.

And this Deponent further saith, That the said Standard was advanced upon the highest Tower of *Nottingham-Castle*; and that he this Deponent did see the King often in *Nottingham* at that Time that the said Forces continued at *Nottingham* as aforesaid, they continuing there for the Space of one Month; and that the Drums for raising Volunteers to fight under the King’s Command, were then beaten all the said County over, and divers other Forces were raised there.

And this Deponent further saith, That he did take up Arms under the King’s Command as aforesaid, for fear of being plundered; *Sir William Penyman* giving out that it were a good deed to fire the said Town, because they would not go forth in the King’s Service: and that this Deponent’s Father did thereupon command him this Deponent to take up Arms as aforesaid, and that divers others (as they did confess) did then also take up Arms for the King for fear of being plundered.

And this Deponent further saith, That in or about the Month of *October*, 1642, he did see the King at *Edge-Hill* in *Warwickshire*; where he sitting on horseback while his Army was drawn up before him*, did speak to the Colonel of every Regiment that passed by him, that he would have them speak to their Soldiers to encourage them to stand it; and to fight against the Lord of *Essex*, the Lord *Brooke*, *Sir William Waller*, and *Sir William Balfour*.

And this Deponent saith, That he did see many slain at the Fight at *Edge-Hill*, and that afterwards he did see a List brought in unto *Oxford*, of the Men which were slain in that Fight; by which it was reported, that there were slain 6559 Men.

And this Deponent further saith, Afterwards, in or about the Month of *November* 1642, he did see the King in the head of his Army at *Hounslow-Heath* in *Middlesex*, *Prince Rupert* then standing by him. And he this Deponent did then hear the King encourage several Regiments of *Welshmen* (then being in the Field) which had run away at *Edge-Hill*, saying unto them, That he did hope they would regain their Honour at *Brentford*, which they had lost at *Edge-Hill*.

William Brayne of *Wixhall* in the County of *Salop*, Gent. being sworn and examined, deposeth, That about *August* in the Year 1642, this Deponent saw the King at *Nottingham*, while the Standard was set up, and the Flag flying; and that he this Deponent much about the same Time marched with the King’s Army from *Nottingham* to *Derby*, the King himself being then in the Army: And about *September* the said Year, he this Deponent was put upon his Trial at *Shrewsbury* as a Spy, before *Sir Robert Heath*, and other Commissioners of *Oyer* and *Terminer*, the King then being in Person in *Shrewsbury*.

Henry Hertford of *Stratford upon Avon*, in *Warwickshire*, sworn and examined, deposeth, That about *Corn-Harvest* in the Year 1642, this Deponent saw the King in *Nottingham-Castle*, while the Standard was set upon one of the Towers of the said Castle, and the Flag flying.

And he further saith and deposeth, That he this Deponent saw the King the same Year about the Month of *November* in *Brentford Town* on horseback, with a great many Commanders about him, on a *Sunday Morning*, when on the *Saturday Night* before there were a great many of the Parliament’s Forces slain by the King’s Forces in the said Town.

Robert Lacy of the Town and County of *Nottingham*, Painter, sworn and examined, deposeth, That he this Deponent, in Summer-time in the Year 1642, by Order from my Lord *Beaumont* did paint the Standard-Pole which was set up on the Top of the old Tower of *Nottingham-Castle*. And he further saith, That he saw the King in the Town of *Nottingham* divers Times while the Standard was up there, and the Flag flying; and the King did lie at the House of my Lord of *Clare* in *Nottingham Town*, and that he this Deponent did then and there see the King many times.

Edward

* How is it possible this Fellow could swear the King spoke this to every Colonel, seeing it was as they passed by? and when his Colonel was passed by, he could hear no more. Nalf.

Edward Roberts of *Bishops-Castle* in the County of *Salop*, Ironmonger, sworn and examined, saith and deposeeth, That he this Deponent saw the King in *Nottingham* Town while the Standard was set upon the High-Tower in *Nottingham-Castle*.

And he further saith, That he saw the King at the Head of the Army at *Shrewsbury*, upon the March towards *Edge-Hill*, and that he likewise saw the King in the Rear of his Army in *Keynton-Field*; and likewise saw the King upon the Sunday Morning at *Brentford*, after the Fight upon the Saturday next before, in the said Town.

Robert Loads of *Cottam* in *Nottinghamshire*, Tiler, sworn and examined, saith, That he this Deponent about *October* in the Year 1642, saw the King in the Rear of his Army in *Keynton-Field* upon a Sunday, where he saw many slain on both Sides.

And he further saith, That he saw the King in *Cornwal* in his Army, near the House of my Lord *Mobun*, about *Lestwithiel*, about Corn-Harvest 1644.

Samuel Morgan of *Wellington* in *Com. Salop*, Felt-maker, sworn and examined, deposeeth, That he this Deponent upon a Sunday Morning in *Keynton-Field* saw the King upon the Top of *Edge-Hill*, in the Head of the Army, some two hours before the Fight, which happened after *Michaelmas* on a Sunday the Year 1642. And he this Deponent saw many Men killed on both Sides in the same Time and Place.

And he further saith, That in the Year 1644, he this Deponent saw the King in his Army near *Cropredy-Bridge*, where he saw the King light of his Horse, and draw up the Body of his Army in Person himself.

James Williams of *Rofs* in *Herefordshire*, Shoemaker, sworn and examined, deposeeth, That he this Deponent, about *October*, the Year 1642, saw the King in *Keynton-Field*, below the Hill in the Field, with his Sword drawn in his Hand; at which Time and Place there was a great Fight, and many killed on both Sides.

And he further deposeeth, That he saw the King at *Brentford* on a Sunday in the Forenoon, in November the Year aforesaid, while the King's Army was in the said Town, and round about it.

John Pyneger of the Parish of *Hainer* in the County of *Derby*, Yeoman, aged 37 Years or thereabout, sworn and examined, saith, That about *August* 1642, he the Deponent saw the King's Standard flying upon one of the Towers of *Nottingham-Castle*; and that upon the same Day he saw the King in *Thurland-House*, being the Earl of *Clare's* House in *Nottingham*, in the Company of Prince *Rupert*, Sir *John Digby*, and other Persons, both Noblemen and others; and that the King had at the same Time in the said Town, a Train of Artillery, and the said Town was then full of the King's Soldiers.

Samuel Lawson of *Nottingham*, Malster, aged thirty Years, or thereabouts, sworn and examined, saith, That about *August* 1642, he this Deponent saw the King's Standard brought forth of *Nottingham-Castle*, borne upon divers Gentlemens Shoulders, who (as the Report was) were Noblemen; and he saw the same by them carried to the Hill close adjoining to the Castle, with a Herald be-

fore it, and there the said Standard was erected with great Shoutings, Acclamations, and Sound of Drums and Trumpets; and that when the said Standard was so erected, there was a Proclamation made: and that he this Deponent saw the King present at the erecting thereof. And this Deponent further saith, That the said Town was then full of the King's Soldiers, of which some quartered in this Deponent's House; and that when the King with his said Forces went from the said Town, the Inhabitants of the said Town were forced to pay a great Sum of Money to the King's Army, being threatned, that in case they should refuse to pay it, the said Town should be plundered.

Arthur Young, Citizen and Barber-Chirurgeon of *London*, being aged twenty-nine Years, or thereabouts, sworn and examined, saith, That he this Deponent was present at the Fight at *Edge-Hill*, between the King's Army and the Parliament's, in *October* 1642, and he did then see the King's Standard advanced, and flying in his Army in the said Fight. And that he this Deponent did then take the King's said Standard in that Battle from the King's Forces, which was afterwards taken from him by one *Middleton*, who was afterwards made a Colonel.

Thomas Whittington of the Town and County of *Nottingham*, Shoemaker, aged twenty-two Years, sworn and examined, saith, That he this Deponent saw the King in the Town of *Nottingham* the same Day that his Standard was first set up in *Nottingham-Castle*, being about the Beginning of *August* 1642, and that the King then went from his Lodgings at *Thurland-House* towards the said Castle; and that he this Deponent saw him several times, about that Time, in *Nottingham*, there being divers Soldiers at that Time in the said Town, who were called by the Name of the King's Soldiers.

And this Deponent further saith, That he saw the King's Standard flying upon the Old Tower in the said Castle.

John Thomas of *Llangollen*, in the County of *Denbigh*, Husbandman, aged twenty-five Years, or thereabouts, sworn and examined, saith, That he saw the King at *Brentford* in the County of *Middlesex*, on a Saturday Night at Twelve of the Clock, soon after *Edge-Hill* Fight, attended with Horse and Foot Soldiers, the King being then on horseback, with his Sword by his Side; and this Deponent then heard the King say to the said Soldiers, as he was riding through the said Town, Gentlemen, you lost your Honour at *Edge-Hill*, I hope you will regain it again here; or Words to that Effect.

And this Deponent further saith, That there were some Skirmishes between the King's Army and the Parliament's Army, at the same Time, both before and after the King spake the said Words; and that many Men were slain on both Sides.

Richard Blensfield, Citizen and Weaver of *London*, aged thirty-five Years, or thereabouts, sworn and examined, saith, That at the Defeat of the Earl of *Essex's* Army in *Cornwall*, he this Deponent was there, it being at the latter End of the Month of *August*, or Beginning of *September* 1644, at which Time, he this Deponent saw the King at the Head of his Army, near *Foy*, on horseback: And further he saith, That he did then see divers of the Lord

Lord of *Essex's* Soldiers plundered, contrary to Articles then lately made, near the Person of the King.

William Jones of *Uske* in the County of *Monmouth*, Husbandman, aged twenty-two Years, or thereabout, sworn and examined, saith, That he this Deponent did see the King within two Miles of *Naseby-Field*, the King then coming fromwards *Harborough*, marching in the Head of his Army, towards *Naseby-Field* where the Fight was; and that he this Deponent did then see the King ride up to the Regiment which was Col. *St. George's*, and there the Deponent did hear the King ask the Regiment, *Whether they were willing to fight for him?* To which the Soldiers made an Acclamation, crying, *All, All*.

And this Deponent further saith, That he saw the King in *Leicester* with his Forces, the same Day that the King's Forces had taken it from the Parliament's Forces.

And this Deponent further saith, That he saw the King in his Army that besieged *Gloucester*, at the Time of the said Siege.

Humphrey Browne of *Whitsondine* in the County of *Rutland*, Husbandman, aged twenty-two Years or thereabouts, sworn and examined, saith, That at such Time as the Town of *Leicester* was taken by the King's Forces, being in or about *June*, 1645, *Newark-Fort* in *Leicester* afore said was surrendered to the King's Forces, upon Composition, that neither Clothes nor Money should be taken away from any of the Soldiers of that Fort, which had so surrendered, nor any Violence offered to them; and that as soon as the said Fort was upon such Composition so surrendered as afore said, the King's Soldiers, contrary to the Articles, fell upon the Soldiers of the said Fort, strip'd, cut and wounded many of them: whereupon one of the King's Officers rebuking some of those that did so abuse the said Parliament's Soldiers, this Deponent did then hear the King reply, *I do not care if they cut them three times more, for they are mine Enemies*, or Words to that Effect: And that the King was then on horseback, in bright Armour, in the said Town of *Leicester*.

David Evans of *Abergenny* in the County of *Monmouth*, Smith, aged about twenty-three Years, sworn and examined, saith, That about half an Hour before the Fight at *Naseby*, about Midsummer in *June* 1645, he saw the King marching up to the Battle in the Head of his Army, being about half a Mile from the Place where the said Battle was fought.

Diogenes Edwards of *Carlton*, in the County of *Salop*, Butcher, aged twenty-one, or thereabouts, sworn and examined, saith, That in *June*, 1645, he this Deponent saw the King in the Head of his Army an Hour and a half before the Fight in *Naseby-Field*, marching up to the Battle, being then a Mile and a half from the said Field: And this Deponent saith, that he did afterwards the same Day, see many slain at the said Battle.

Gyles Gryce of *Wellington*, in *Shropshire*, Gent. sworn and examined, deposes, That he this Deponent saw the King in the Head of his Army at *Cropredy-Bridge*, with his Sword drawn in his Hand that Day, when the Fight was against Sir *William Waller*, on a *Friday*, as this Deponent remem-

breth, in the Year 1644, about the Month of *July*. And he further saith,

That he saw the King in the same Summer, in *Cornwall*, in the Head of his Army, about *Lestwithiel*, as such Time as the Earl of *Essex* was there with his Army. And he further saith,

That he also saw the King in the Head of his Army at the second Fight near *Newbury*. And farther saith,

That he saw the King in the Front of the Army in *Naseby-Field*, having Back and Breast of. And he further saith,

That he saw the King at the Head of the Army, at what time the Town of *Leicester* was stormed, and saw the King ride into the Town of *Leicester*, after the Town was taken; and he saw a great many Men killed on both Sides at *Leicester*, and many Houses plundered.

John Vinson of *Damorbam*, in the County of *Wilts*, Gent. sworn and examined, saith, That he did see the King at the first *Newbury* Fight, about the Month of *September* 1643, in the Head of his Army, where this Deponent did see many slain on both Sides. This Deponent also saith,

That he did see the King at the second Battle at *Newbury*, about the Month of *November* 1644, where the King was at the Head of his Army in complete Armour, with his Sword drawn; and this Deponent did then see the King lead up Col. *Tho. Howard's* Regiment of Horse, and did hear him make a Speech to the Soldiers, in the Head of that Regiment, to this effect; that is to say, *That the said Regiment should stand to him that Day, for that his Crown lay upon the Point of the Sword; and if he lost that Day, he lost his Honour and his Crown for ever*. And that this Deponent did see many slain on both Sides at that Battle. This Deponent further saith,

That he did see the King in the Battle at *Naseby-Field* in *Northamptonshire*, on or about the Month of *June* 1645, where the King was then completely armed with Back, Breast and Helmet, and had his Sword drawn, where the King himself, after his Party was routed, did rally up the Horse, and caused them to stand; and at that Time this Deponent did see many slain on both Sides.

George Seeley of *London*, Cordwainer, sworn and examined, saith, That he did see the King at the Head of a Brigade of Horse, at the Siege of *Gloucester*, and did also see the King at the first Fight at *Newbury*, about the Month of *September* 1643, where the King was at the Head of a Regiment of Horse; and that there were many slain at that Fight on both Sides. This Deponent also saith,

That he did see the King at the second Fight at *Newbury*, which was about *November* 1644, where the King was in the middle of his Army.

John Moore of the City of *Cork* in *Ireland*, Gent. sworn and examined, saith, That at the last Fight at *Newbury*, about the Month of *November* 1644, he this Deponent did see the King in the middle of the Horse, with his Sword drawn; and that he did see abundance of Men at that Fight slain upon the Ground, on both Sides. This Deponent also saith,

That he did see the King ride into *Leicester* before a Party of Horse the same Day that *Leicester* was taken by the King's Forces, which was about the Month of *June* 1645.

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This Deponent further saith, That he did see the King, before the Fight at *Leicester*, at *Cropredy-Bridge*, in the midst of a Regiment of Horse; and that he did see many slain at the same Time, when the King was in the Fight at *Cropredy-Bridge*.

And lastly, this Deponent saith, That he did see the King at the Head of a Regiment of Horse at *Naseby* Fight, about the Month of *June* 1645, where he did see abundance of Men cut, shot, and slain.

Thomas Ives of *Boysset*, in the County of *Northampton*, Husbandman, sworn and examined, saith, That he did see the King in his Army at the first Fight in *Newbury* in *Berkshire*, in the Month of *September* 1643, and that he did see many slain at that Fight; he this Deponent and others, with a Party of Horse, being commanded to face the Parliament's Forces, whilst the Foot did fetch off the Dead.

He saith also, That he did see the King advance with his Army to the Fight at *Naseby* Field in *Northamptonshire*, about *June* 1645, and that he did again at that Fight see the King come off with a Party of Horse after that his Army was routed in the Field; and that there were many Men slain on both Parts, at that Battle at *Naseby*.

Thomas Rawlins of *Hanslop*, in the County of *Bucks*, Gent. sworn and examined, saith, That he did see the King near *Foy* in *Cornwall*, in or about the Month of *July* 1644, at the Head of a Party of Horse; and this Deponent did see some Soldiers plunder after the Articles of Agreement made between the King's Army and the Parliament's Forces; which Soldiers were so plundered by the King's Party not far distant from the Person of the King.

Thomas Read of *Maidstone*, in the County of *Kent*, Gent. sworn and examined, saith, That presently after the laying down of Arms in *Cornwall*, between *Leffwithiel* and *Foy*, in or about the latter End of the Month of *August*, or the Beginning of *September* 1644, he this Deponent did see the King in the Head of a Guard of Horse.

James Crosby of *Dublin* in *Ireland*, Barber, sworn and examined, saith, That at the first Fight at *Newbury*, about the Time of Barley-Harvest 1643, he this Deponent did see the King riding from *Newbury-Town*, accompanied with divers Lords and Gentlemen, towards the Place where his Forces were then fighting with the Parliament's Army.

Samuel Burden of *Lynham*, in the County of *Wilts*, Gent. sworn and examined, saith, That he this Deponent was at *Nottingham* in or about the Month of *August* 1642, at which Time he saw a Flag flying upon the Tower of *Nottingham-Castle*; and that the next Day afterwards he did see the King at *Nottingham*, when the said Flag was still flying; which Flag this Deponent then heard was the King's Standard.

He saith also, That he did afterwards see the King at *Cropredy-Bridge* in the Head of his Army, in a Fallow-Field there; and did see the King in pursuit of Sir *William Waller's* Army, being then routed, which was about the Month of *July* 1644.

and at that Time this Deponent did see many People slain upon the Ground.

And further this Deponent saith, That in or about the Month of *November* 1644, he did see the King at the last Fight at *Newbury*, riding up and down the Field from Regiment to Regiment, whilst his Army was there fighting with the Parliament's Forces; and this Deponent did see many Men slain at that Battle, on both Sides.

Michael Potts of *Sharpereton*, in the County of *Northumberland*, Vintner, sworn and examined, deposes, That he, this Deponent, saw the King in the Head of the Army in the Fields about a Mile and a half from *Newbury-Town*, upon the Heath, the Day before the Fight was, it being about Harvest-tide in the Year 1643.

And he further saith, That he saw the King on the Day after, when the Fight was, standing near a great Piece of Ordnance in the Fields.

And he further saith, That he saw the King in the second *Newbury* Fight in the Head of his Army, being after or about *Michaelsmas* 1644.

And he further saith, That he saw a great many Men slain at both the said Battles.

And he further saith, That he saw the King in the Head of his Army near *Cropredy-Bridge* in the Year 1644.

And he further saith, That he saw the King in the Head of his Army in *Cornwall*, near *Leffwithiel*, while the Earl of *Essex* lay there with his Forces about the middle of Harvest 1644.

George Cornwal of *Aston*, in the County of *Hereford*, Ferry-man, aged fifty Years, or thereabouts, sworn and examined, saith, That he, this Deponent, did see the King near *Cropredy-Bridge*, about the Time of mowing of Corn 1644, in the Van of the Army there, and that he drew up his Army upon a Hill, and faced the Parliament's Army; and that there was thereupon a Skirmish between the King's and the Parliament's Army, where he this Deponent saw divers Persons slain on both Sides.

The Examination of Henry Gooche of Grays-Inn, in the County of Middlesex, Gent. sworn and examined.

This Deponent saith, That upon or about the thirtieth Day of *September* last, he, this Deponent, was in the Isle of *Wight*, and had Access unto and Discourse with the King, by the Means of the Lord Marquis of *Hertford* and Commissary *Morgan*: where this Deponent told the King, That his Majesty had many Friends; and that since his Majesty was pleased to justify the Parliament's first taking up Arms, the most of the *Presbyterian* Party, both Soldiers and others, would stick close to him. To which the King answered thus, That he would have all his old Friends know, that though for the present he was contented to give the Parliament Leave to call their own War what they pleased, yet that he neither did at that Time, nor ever should decline the Justice of his own Cause.

And this Deponent told the King, That his Business was much retarded, and that neither Col. *Thomas*, nor any other, could proceed to Action, through want of Commission.

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The King answered, That he being upon a Treaty, would not dishonour himself; but that if he, this Deponent, would take the Pains to go over to the Prince, his Son, (who had full Authority from him) he the said Deponent, or any for him, should receive whatsoever Commissions should be desired; and to that Purpose he would appoint the Marquis of *Hertford* to write to his Son in his Name: and was pleased to express much Joy and Affection, that his good Subjects would engage themselves for his Restoration.

Robert Williams of the Parish of *St. Martins*, in the County of *Cornwall*, Husbandman, aged twenty three Years, or thereabouts, sworn and examined, saith, That he, this Deponent, did see the King marching in the Head of his Army about *September* 1644, a Mile from *Lestwithiel* in *Cornwall*, in Armour, with a short Coat over it unbuttoned.

And this Deponent further saith, That he saw him after that in *St. Austell Downs*, drawing up his Army.

And this Deponent saith, He did after that see the King in the Head of his Army near *Foy*, and that the Earl of *Essex* and his Army did then lie within one Mile and a Half of the King's Army.

The Witnesses being examined as aforesaid, the Court adjourned for an Hour.

25 Jan. 1648. *post Merid.*

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Daniel Blagrove.</i>	<i>Sir Tho. Maleverer</i> , Bar.
<i>John Okey.</i>	<i>Adrian Scroope.</i>
<i>Henry Martin.</i>	<i>Henry Smith.</i>
<i>John Carew.</i>	<i>Anthony Stapeley.</i>
<i>Thomas Horton.</i>	<i>John Huson.</i>
<i>Sir Michael Livesey</i> , Bar.	<i>Sir William Constable</i> , Bar.
<i>Owen Roe</i>	<i>John Berkstead.</i>
<i>Sir John Bourchier</i> Kt.	<i>Sir John Danvers.</i>
<i>Thomas Scat.</i>	<i>Edward Whalley.</i>
<i>John Moore.</i>	<i>Thomas Waite.</i>
<i>Oliver Cromwell.</i>	<i>William Purefoy.</i>
<i>William Goffe.</i>	<i>Thomas Pride.</i>
<i>Richard Deane.</i>	<i>John Fry.</i>
<i>Cornelius Holland.</i>	<i>John Blackstone.</i>
<i>Thomas Harrison.</i>	<i>Sir Hardress Waller</i> Knt.
<i>Robert Lilbourne.</i>	<i>John Venn.</i>
<i>John Downes.</i>	<i>Robert Tichbourne.</i>
<i>Edmond Ludlow.</i>	<i>Humphrey Edwards.</i>
<i>Peregrine Pelham.</i>	<i>Peter Temple.</i>
<i>Sir Henry Mildmay.</i>	<i>Vincent Potter.</i>
<i>John Jones.</i>	<i>William Caveley.</i>
<i>Valentine Wauton.</i>	<i>Isaac Ewers.</i>
<i>Sir Gregory Norton</i> , Bar.	

Richard Price of *London*, Scrivener, was produced a Witness to the Charge against the King; who being sworn and examined, saith,

That upon Occasion of some tampering by the King's Agents with the *Independents* in and about *London*, to draw them from the Parliament's Cause to the King's Party; and this being discover'd

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by some of those so tamper'd with, unto sundry Members of the Committee of Safety, who directed a carrying on of a seeming Compliance with the King; he, this Deponent, did travel to *Oxford* in *January* 1643. having a safe Conduct under the King's Hand and Seal, which he this Deponent knoweth to be so; for that the King did own it when he was told that this Deponent was the Man that came to *Oxon* with that safe Conduct.

And this Deponent also saith, That after sundry Meetings between him and the Earl of *Bristol*, about the drawing of the *Independents* unto the King's Cause against the Parliament, the Substance of the Discourse at which Meetings, the said Earl told his Deponent, was communicated to the King; he, this Deponent, was by the said Earl brought to the King to confer further about that Business; where the King declared, That he was very sensible that the *Independents* had been the most active Men in the Kingdom for the Parliament against him: And thereupon perswaded this Deponent to use all means to expedite their turning to him and his Cause. And for their better Encouragement, the King promised in the Word of a King, That if they, the *Independents*, would turn to him, and be active for him against the Parliament, as they had been active for them against him, then he would grant them whatsoever Freedom they would desire. And the King did then refer this Deponent unto the Earl of *Bristol*, for the further prosecuting of the said Business.

And the said Earl thereupon (this Deponent being withdrawn from the King) did declare unto this Deponent, and willed him to impart the same unto the *Independents* for their better Encouragement, That the King's Affairs prospered well in *Ireland*; That the *Irish* Subjects had given the Rebels (meaning the Parliament's Forces) a great Defeat; That the King had sent the Lord *Byron* with a small Party towards *Cheshire*, and that he was greatly multiply'd, and had a considerable Army, and was then before *Namptwich*, and would be strengthen'd with more Soldiers out of *Ireland*, which were come and expected daily. And when this Deponent was to depart out of *Oxford*, four safe Conducts with Blanks in them, for the inserting of what Names this Deponent pleased, were deliver'd to him, under the King's Hand and Seal. And one *Ogle* was sent out of *Oxon* with this Deponent, to treat about the delivering up of *Ailbury* to the King, it being then a Garrison for the Parliament, and at the same time *Oxford* was a Garrison for the King.

Several Papers and Letters of the King's, under his own Hand, and of his own Writing, and other Papers are produced, and read in open Court.

Mr. Thomas Challoner also reporteth several Papers and Letters of the King's writing, and under the King's own Hand.

After which the Court sat private.

The Court taking into Consideration the whole Matter in Charge against the King, passed these Votes following, as preparatory to the Sentence against the King, but ordered that they should not be binding finally to conclude the Court, viz.

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Resolved

Resolved, upon the whole Matter, That this Court will proceed to Sentence of Condemnation against *Charles Stuart*, King of *England*.

Resolved, &c. That the Condemnation of the King shall be for a Tyrant, Traytor, and Murderer.

That the Condemnation of a King, shall be likewise for being a publick Enemy to the Commonwealth of *England*.

That this Condemnation shall extend to Death.

Memorandum, *The last fore-mentioned Commissioners were present at these Votes.*

The Court being then moved concerning the Deposition and Deprivation of the King before, and in order to that part of his Sentence which concerned his Execution, thought fit to defer the Consideration thereof to some other time; and order'd the Draught of a Sentence grounded upon the said Votes, to be accordingly prepared by *Mr. Scot*, *Mr. Martin*, *Col. Harrison*, *Mr. Lisle*, *Mr. Say*, *Commissary Gen. Ireton* and *Mr. Love*, or any three of them, with a Blank for the Manner of his Death.

Ordered, That the Members of this Court, who are in or about *London*, and are not now present, be summoned to attend the Service of this Court to-morrow at One of the Clock in the Afternoon: for whom Summons were issued forth accordingly.

The Court adjourned itself till the Morrow at one of the Clock in the Afternoon.

Veneris, 26 Jan. 1648. post Merid.
Painted Chamber.

THREE Proclamations. The Court called.
The Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>Oliver Cromwell.</i>	<i>Cornelius Holland.</i>
<i>Henry Ireton.</i>	<i>Thomas Scot.</i>
<i>Sir Hardress Waller.</i>	<i>Francis Allen.</i>
<i>Valentine Wauton.</i>	<i>Richard Deane.</i>
<i>Thomas Harrison.</i>	<i>John Okey.</i>
<i>Edw. Whalley.</i>	<i>John Hufon.</i>
<i>Thomas Pride.</i>	<i>John Carew.</i>
<i>Isaac Ewers.</i>	<i>John Jones.</i>
<i>Tho. Ld Grey of Grooby.</i>	<i>Miles Corbet.</i>
<i>Sir John Danvers.</i>	<i>William Goffe.</i>
<i>Sir Henry Mildmay Knt.</i>	<i>Peregrine Pelham.</i>
<i>William Heveningham.</i>	<i>John Moore.</i>
<i>Henry Marten.</i>	<i>William Lord Mounson.</i>
<i>William Purefoy.</i>	<i>Humphrey Edwards.</i>
<i>John Blackistone.</i>	<i>Thomas Wogan.</i>
<i>Gilbert Millington.</i>	<i>Sir Gregory Norton.</i>
<i>Sir William Constable Bar.</i>	<i>John Dove.</i>
<i>Edmond Ludlow.</i>	<i>John Venn.</i>
<i>John Hutchinson.</i>	<i>William Cawley.</i>
<i>Sir Michael Livesey Bar.</i>	<i>Anthony Stapely.</i>
<i>Robert Tichbourne.</i>	<i>John Downes.</i>
<i>Owen Rowe.</i>	<i>Thomas Horton.</i>
<i>Adrian Scroope.</i>	<i>Thomas Hammond.</i>
<i>John Dixwell.</i>	<i>John Lisle.</i>
<i>Simon Meyne.</i>	<i>Nicholas Love.</i>
<i>Peter Temple.</i>	<i>Augustine Garland.</i>
<i>Thomas Waite.</i>	<i>George Fleetwood.</i>

James Temple.
Daniel Blagrove.
John Browne.
Henry Smith.

John Berkstead.
Sir Tho. Maleverer Bar.
Vincent Potter.

Sixty-two Commissioners present.

Here the Court sat private.

The Draught of a Sentence against the King, is, according to the Votes of the 25th Instant, prepared; and after several Readings, Debates and Amendments, by the Court thereupon,

Resolved, &c. That this Court do agree to the Sentence now read.

That the said Sentence shall be ingrossed.

That the King be brought to *Westminster* to-morrow to receive his Sentence.

The Court adjourned itself till the morrow at Ten of the Clock in the Morning to this Place; the Court giving notice, That they then intended to adjourn from thence to *Westminster-Hall*.

Sabbati, 27 Jan. 1648. Painted Chamber.

THREE Proclamations being made, the Court is thereupon called.

Commissioners present.

<i>John Bradshaw</i> , Serjeant at Law, Lord President.	<i>John Hufon.</i>
<i>Oliver Cromwell.</i>	<i>William Goffe.</i>
<i>Henry Ireton.</i>	<i>Cornelius Holland.</i>
<i>Sir Hardress Waller.</i>	<i>John Carew.</i>
<i>Valentine Wauton.</i>	<i>John Jones.</i>
<i>Thomas Harrison.</i>	<i>Miles Corbet.</i>
<i>Edward Whalley.</i>	<i>Francis Allen.</i>
<i>Thomas Pride.</i>	<i>Peregrine Pelham.</i>
<i>Isaac Ewers.</i>	<i>Thomas Challoner.</i>
<i>Tho. Ld. Grey of Grooby.</i>	<i>John Moor.</i>
<i>Sir John Danvers.</i>	<i>William Say.</i>
<i>Sir Tho. Maleverer Bar.</i>	<i>John Alured.</i>
<i>Sir John Bourchier, Kt.</i>	<i>Henry Smith.</i>
<i>William Heveningham.</i>	<i>Humphrey Edwards.</i>
<i>Henry Marten.</i>	<i>Gregory Clement.</i>
<i>William Purefoy.</i>	<i>Thomas Wogan.</i>
<i>John Berkstead.</i>	<i>Sir Gregory Norton Bar.</i>
<i>Matthew Tomlinson.</i>	<i>Edmond Harvey.</i>
<i>John Blackistone.</i>	<i>John Venn.</i>
<i>Gilbert Millington.</i>	<i>Thomas Scot.</i>
<i>Sir William Constable Bar.</i>	<i>Thomas Andrews, Ald. of London.</i>
<i>Edmond Ludlow.</i>	<i>William Cawley.</i>
<i>John Hutchinson.</i>	<i>Anthony Stapely.</i>
<i>Sir Michael Livesey Bar.</i>	<i>John Downes.</i>
<i>Robert Tichbourne.</i>	<i>Thomas Horton.</i>
<i>Owen Rowe.</i>	<i>Thomas Hammond.</i>
<i>Robert Lilbourne.</i>	<i>John Lisle.</i>
<i>Adrian Scroope.</i>	<i>Nicholas Love.</i>
<i>Richard Deane.</i>	<i>Vincent Potter.</i>
<i>John Okey.</i>	<i>John Dixwell.</i>
<i>Augustine Garland.</i>	<i>Simon Meyne.</i>
<i>George Fleetwood.</i>	<i>Peter Temple.</i>
<i>James Temple.</i>	<i>Thomas Waite.</i>
<i>Daniel Blagrove.</i>	
<i>John Brown.</i>	

The Sentence agreed on, and ordered by this Court the 26th Instant to be ingrossed, being accordingly ingrossed, was read.

Resolved, that the Sentence now read, shall be the Sentence of this Court for the Condemnation of the

the King, which shall be read and published in *Westminster-Hall* this Day.

The Court hereupon considered of certain Instructions for the Lord President, to manage the Business of this Day in *Westminster-Hall*; and ordered,

That the Lord President do manage what Discourse shall happen between him and the King, according to his Discretion, with the Advice of his two Assistants: and that in case the King shall still persist in excepting against the Court's Jurisdiction, to let him know that the Court do still affirm their Jurisdiction.

That in case the King shall submit to the Jurisdiction of the Court, and pray a Copy of the Charge, that then the Court do withdraw and advise.

That in case the King shall move any thing else worth the Court's Consideration, the Lord President, upon Advice of his said Assistants, do give order for the Court's withdrawing to advise.

That in case the King shall not submit to answer, and there happen no such Cause of withdrawing, that then the Lord President do command the Sentence to be read; but that the Lord President should hear the King say what he would before the Sentence, and not after.

And thereupon it being further moved, Whether the Lord President should use any Discourse or Speeches to the King, as in the case of other Prisoners to be condemned, was usual before the publishing of the Sentence, received general Directions to do therein as he should see cause, and to press what he should conceive most seasonable and suitable to the Occasion. And it was further directed, That after the Reading of the Sentence, the Lord President should declare, That the same was the Sentence, Judgment and Resolution of the whole Court, and that the Commissioners should thereupon signify their Consent by standing up.

The Court forthwith adjourned itself to *Westminster-Hall*.

Westminster-Hall, 27 Jan. 1648. *post Merid.*

The Lord President and the rest of the Commissioners come together from the *Painted Chamber* to *Westminster-Hall*, according to their Adjournment, and take their Seats there, as formerly; and three Proclamations being made for Attendance and Silence, the Court is called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

<i>John Lisle.</i>	<i>John Berkstead.</i>
<i>William Say.</i>	<i>Matthew Tomlinson.</i>
<i>Oliver Cromwell.</i>	<i>John Blackstone.</i>
<i>Henry Ireton.</i>	<i>Gilbert Millington.</i>
<i>Sir Hardress Waller Knt.</i>	<i>Sir William Constable Bar.</i>
<i>Sir John Bourchier Kt.</i>	<i>Edmond Ludlow.</i>
<i>William Heveningham.</i>	<i>John Hutchinson.</i>
<i>Isaac Pennington Ald. of London.</i>	<i>Sir Michael Livesey Bar.</i>
<i>Henry Marten.</i>	<i>Robert Tichbourne.</i>
<i>William Purefoy.</i>	<i>Owen Roe.</i>
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Henry Smith.

Humphrey Edwards.
Gregory Clement.
Thomas Wogan.
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Edmond Harvey.
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Augustine Garland.
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Simon Meyne.
James Temple.
Peter Temple.
Thomas Waite.

Sixty-seven Commissioners present.

The Prisoner is brought to the Bar, and Proclamation is again (as formerly) made for Silence; and the Captain of the Guard ordered to take into his Custody all such as should disturb the Court.

The President stood up with an Intention of Address to the People, and not to the Prisoner, who had so often declined the Jurisdiction of the Court; which the Prisoner observing, moved he might be heard before Judgment given. Whereof he received Assurance from the Court, and that he should be heard after he had heard them first.

Whereupon the Court proceeded, and remember'd the great Assembly then present of what had formerly passed betwixt the Court and the Prisoner; the Charge against him in the Name of the People of *England* exhibited to them, being a Court constituted by the supreme Authority of *England*; his Refusal three several Days and Times to own them as a Court, or to answer to the Matter of his Charge; his thrice recorded Contumacy, and other his Contempts and Defaults in the precedent Courts. Upon which the Court then declared, That they might not be wanting to themselves, or to the Trust reposed in them; and that no Man's Wilfulness ought to serve him to prevent Justice; and that they had therefore thought fit to take the Substance of what had passed into their serious Consideration, to wit, the Charge and the Prisoner's Contumacy, and the Confession which in the Law doth arise upon that Contumacy, the Notoriety of the Fact charged, and other the Circumstances material in the Cause: And upon the whole matter, had resolved and agreed upon a Sentence then ready to be pronounced against the Prisoner. But that in regard of his Desire to be further heard, they were ready to hear him as to any thing material, which he would offer to their Consideration before the Sentence given, relating to the Defence of himself, concerning the Matter charged; and did then signify so much to the Prisoner: Who made use of that Leave given only to protest his Respects to the Peace of the Kingdom, and Liberty of the Subject, and to say, That the same made him at

last to desire, that having somewhat to say that concerned both, he might before the Sentence given be heard in the *Painted Chamber* before the Lords and Commons; saying, It was fit to be heard, if it were Reason which he should offer, whereof they were Judges. And pressing that Point much, he was forthwith answered by the Court, and told,

That that which he moved was a declining of the Jurisdiction of the Court, whereof he had Caution frequently given him.

That it tended to further Delay, of which he had been too much guilty.

That the Court being founded (as often had been said) upon the Authority of the Commons of *England*, in whom rested the supreme Jurisdiction, the Motion tended to set up another, or a co-ordinate Jurisdiction, in Derogation of the Power whereby the Court sat, and to the manifest Delay of their Justice; in which regard, he was told, they might forthwith proceed to Sentence: Yet for his further Satisfaction of the entire Pleasure and Judgment of the Court upon what he had then said, he was told, and accordingly it was declared, That the Court would withdraw half an Hour.

The Prisoner by command being withdrawn, the Court make their Recess into the Room called the *Court of Wards*, considered of the Prisoner's Motion, and gave the President Direction to declare their Dissent thereto, and to proceed to the Sentence.

The Court being again set, and the Prisoner returned, was, according to their Direction, informed, That he had in effect received his Answer before the Court withdrew; and that their Judgment was (as to his Motion) the same to him before declared, That the Court acted, and were Judges, appointed by the highest Authority; and that Judges were not to delay, no more than to deny Justice: That they were good Words in the great old Charter of *England*, *Nulli negabimus, nulli vendemus, nulli differemus Justitiam vel Rectum*: That their Duty called upon them to avoid further Delays, and to proceed to Judgment; which was their unanimous Resolution.

Unto which the Prisoner replied, and insisted upon his former Desires, confessing a Delay; but that it was important for the Peace of the Kingdom: and therefore pressed again with much Earnestness to be heard before the Lords and Commons.

In answer whereto, he was told by the Court, That they had before fully considered of his Proposal, and must give him the same Answer to his renewed Desires; and that they were ready to proceed to Sentence, if he had nothing more to say.

Whereunto he subjoined, He had no more to say; but desired that might be enter'd which he had said.

Hereupon, after some Discourse used by the President, for vindicating the Parliament's Justice, explaining the Nature of the Crimes of which the Prisoner stood charged, and for which he was to be condemned; and by way of Exhortation to the Prisoner, to a serious Repentance for his High Transgressions against God and the People, and to prepare for his eternal Condition.

The Sentence formerly agreed upon, and put down in Parchment-writing, *O Yes* being first made for Silence, was, by the Court's Command,

solemnly pronounced and given. The Tenor whereof followeth:

‘ **W**HEREAS the Commons of *England*,
 ‘ assembled in Parliament, have by their
 ‘ late Act, entitled, *An Act of the Commons of*
 ‘ *England, assembled in Parliament, for erecting of*
 ‘ *an High Court of Justice for the Trying and Judg-*
 ‘ *ing of Charles Stuart, King of England*, autho-
 ‘ rized and constituted us an High Court of Jus-
 ‘ tice for the Trying and Judging of the said
 ‘ *Charles Stuart*, for the Crimes and Treasons in
 ‘ the said Act mentioned: By virtue whereof the
 ‘ said *Charles Stuart* hath been three several times
 ‘ convened before this High Court; where the
 ‘ first Day, being *Saturday* the 20th of *Jan.*
 ‘ instant, in pursuance of the said Act, a Charge
 ‘ of High Treason, and other High Crimes,
 ‘ was, in the behalf of the People of *England*,
 ‘ exhibited against him, and read openly unto
 ‘ him; wherein he was charged, That he the
 ‘ said *Charles Stuart*, being admitted King of
 ‘ *England*, and therein trusted with a limited
 ‘ Power to govern by and according to the Law
 ‘ of the Land, and not otherwise; and by his
 ‘ Trust, Oath, and Office, being obliged to use
 ‘ the Power committed to him, for the Good
 ‘ and Benefit of the People, and for the Prefer-
 ‘ vation of their Rights and Liberties; yet ne-
 ‘ vertheless, out of a wicked Design to erect and
 ‘ uphold in himself an Unlimited and Tyrannical
 ‘ Power to rule according to his Will, and to
 ‘ overthrow the Rights and Liberties of the Peo-
 ‘ ple, and to take away and make void the Foun-
 ‘ dations thereof, and of all Redress and Remedy
 ‘ of Misgovernment, which by the Funda-
 ‘ mental Constitutions of this Kingdom were re-
 ‘ served on the People's behalf, in the Right
 ‘ and Power of frequent and successive Parliam-
 ‘ ents, or national Meetings in Council, he
 ‘ the said *Charles Stuart*, for accomplishment of
 ‘ such his Designs, and for the Protecting of him-
 ‘ self and his Adherents in his and their wicked
 ‘ Practices, to the same End, hath traitorously
 ‘ and maliciously levied War against the present
 ‘ Parliament, and People therein represented, as
 ‘ with the Circumstances of Time and Place, is
 ‘ in the said Charge more particularly set forth:
 ‘ And that he hath thereby caused and procured
 ‘ many Thousands of the free People of this
 ‘ Nation to be slain; and by Divisions, Parties,
 ‘ and Insurrections within this Land, by Inva-
 ‘ sions from foreign Parts, endeavoured and pro-
 ‘ cured by him, and by many other evil Ways
 ‘ and Means, he, the said *Charles Stuart*, hath
 ‘ not only maintained and carried on the said
 ‘ War both by Sea and Land, but also hath re-
 ‘ newed, or caused to be renewed, the said War
 ‘ against the Parliament and good People of
 ‘ this Nation in this present Year 1648. in several
 ‘ Counties and Places in this Kingdom, in the
 ‘ Charge specified; and that he hath for that pur-
 ‘ pose given his Commission to his Son the Prince,
 ‘ and others, whereby, besides Multitudes of o-
 ‘ ther Persons, many, such as were by the Par-
 ‘ liament intrusted and imployed for the Safety
 ‘ of this Nation, being by him or his Agents
 ‘ corrupted, to the betraying of their Trust, and
 ‘ revolting from the Parliament, have had En-
 ‘ tertainment and Commission for the continuing
 ‘ and renewing of the War and Hostility against
 ‘ the

the said Parliament and People: And that by the said cruel and unnatural War so levied, continued and renewed, much innocent Blood of the free People of this Nation hath been spilt, many Families undone, the publick Treasure wasted, Trade obstructed and miserably decayed, vast Expence and Damage to the Nation incurred, and many Parts of the Land spoiled, some of them even to Desolation: And that he still continues his Commission to his said Son, and other Rebels and Revolters, both *English* and Foreigners, and to the Earl of *Ormond*, and to the *Irish* Rebels and Revolters associated with him, from whom further Invasions upon this Land are threaten'd by his Procurement, and on his behalf: And that all the said wicked Designs, Wars and evil Practices, of him, the said *Charles Stuart*, were still carried on for the Advancement and Upholding of the Personal Interest of Will, Power, and pretended Prerogative to himself and his Family, against the publick Interest, common Right, Liberty, Justice, and Peace of the People of this Nation: And that he thereby hath been, and is the Occasioner, Author, and Contriver of the said unnatural, cruel, and bloody Wars, and therein guilty of all the Treasons, Murders, Rapines, Burnings, Spoils, Desolations, Damage, and Mischief to this Nation, acted and committed in the said Wars, or occasioned thereby. Whereupon the Proceedings and Judgment of this Court were prayed against him as a Tyrant, Traytor, and Murderer, and publick Enemy to the Commonwealth, as by the said Charge more fully appeareth. To which Charge, being read unto him as aforesaid, he the said *Charles Stuart* was required to give his Answer; but he refused so to do. And upon *Monday* the 22d Day of *Jan.* instant, being again brought before this Court, and there required to answer directly to the said Charge, he still refused so to do: Whereupon his Default and Contumacy was entered. And the next Day, being the third time brought before the Court, Judgment was then prayed against him on the behalf of the People of *England* for his Contumacy, and for the Matters contained against him in the said Charge, as taking the same for confest, in regard of his refusing to answer thereto: Yet notwithstanding, this Court (not willing to take Advantage of his Contempt) did once more require him to answer to the said Charge; but he again refused so to do. Upon which his several Defaults, this Court might justly have proceeded to Judgment against him, both for his Contumacy and the Matters of the Charge, taking the same for confest, as aforesaid.

Yet nevertheless this Court, for their own clearer Information, and further Satisfaction, thought fit to examine Witnesses upon Oath, and take notice of other Evidences touching the Matters contained in the said Charge, which accordingly they have done.

Now therefore upon serious and mature Deliberation of the Premises, and Consideration had of the Notoriety of the Matters of Fact charged upon him, as aforesaid, this Court is in Judgment and Conscience satisfied that he the said *Charles Stuart* is guilty of levying War against the said Parliament and People, and maintain-

ing and continuing the same; for which in the said Charge he stands accused, and by the general Course of his Government, Counsels, and Practices, before and since this Parliament began (which have been and are notorious and publick, and the Effects whereof remain abundantly upon Record) this Court is fully satisfied in their Judgments and Consciences that he hath been and is guilty of the wicked Designs and Endeavours in the said Charge set forth; and that the said War hath been levied, maintained, and continued by him, as aforesaid, in Prosecution and for Accomplishment of the said Designs: And that he hath been and is the Occasioner, Author, and Continuer of the said unnatural, cruel, and bloody Wars, and therein guilty of High-Treason, and of the Murders, Rapines, Burnings, Spoils, Desolations, Damages, and Mischief to this Nation, acted and committed in the said War, and occasioned thereby. For all which Treasons and Crimes this Court doth adjudge, That he the said *Charles Stuart*, as a Tyrant, Traytor, Murderer, and publick Enemy to the good People of this Nation, shall be put to death by the severing his Head from his Body.

This Sentence being read, the President spake as followeth.

The Sentence now read and published, is the Act, Sentence, Judgment, and Resolution of the whole Court.

Whereupon the whole Court stood up, and owned it.

The Prisoner being withdrawn, the Court adjourned itself forthwith into the *Painted Chamber*.

The Court being sat in the *Painted Chamber*, according to Adjournment from *Westminster-Hall*, aforesaid:

Painted Chamber.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord-President.

John Lisle.

William Say.

Oliver Cromwell.

Henry Ireton.

Sir Hardress Waller.

Thomas Waite.

Thomas Harrison.

Edward Whalley.

Thomas Pride.

Isaac Ewers.

Tho. Ld. Grey of Grooby.

Sir John Danvers.

Sir Tho. Maleverer Bar.

Sir John Bourchier Kt.

William Heveningham.

Isaac Pennington Ald. of London.

John Downes.

Henry Marten.

John Berkstead.

Matthew Tomlinson.

Gilbert Millington.

John Blackstone.

Sir William Constable Bar.

John Hutchinson.

Sir Michael Livesey Bar.

John Dixwell.

James Temple.

Thomas Andrews Ald. of London.

Anthony Stapely.

Thomas Hammond.

Peter Temple.

Edmond Ludlow.

Robert Tichbourne.

Nicholas Love.

Owen Roe.

Robert Lilbourne.

Adrian Scroope.

Richard Deane.

John Okey.

Simon Meyne.

John Hufon.

William Goffe.

Cornelius Holland.

John Carew.

John Jones.

Miles Corbet.

Francis

Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moore.
John Alured.
Henry Smith.
Humphrey Edwards.
Gregory Clement.
Thomas Wogan.

Sir Gregory Norton Bar.
John Venn.
Thomas Scot.
Edmond Harvey.
William Cawley.
Thomas Horton.
Augustine Garland.
Daniel Blagrove.

Sixty-four Commissioners present.

Sir *Hardress Waller*, Colonel *Harrison*, Commissary-General *Ireton*, Colonel *Deane*, and Colonel *Okey*, are appointed to consider of the Time and Place for the Execution of the Sentence against the King.

And then the Court adjourned itself till Monday Morning at Eight of the Clock to this Place.

[The more full Account of this Day's Action, take as follows:

THE King being come in, in his wonted Posture, with his Hat on, some of the Soldiers began to call for *Justice, Justice, and Execution*. But Silence being commanded, his Majesty began:

I desire a Word to be heard a little, and I hope I shall give no Occasion of Interruption.

Bradshaw answered, You may answer in your time, hear the Court first.

His Majesty replied, If it please you, Sir, I desire to be heard, and I shall not give any Occasion of Interruption, and it is only in a Word: A sudden Judgment——

Bradshaw. Sir, you shall be heard in due time, but you are to hear the Court first.

King. Sir, I desire, it will be in order to what I believe the Court will say; and therefore, Sir, an hasty Judgment is not so soon recalled.

Bradshaw. Sir, you shall be heard before the Judgment be given, and in the mean time you may forbear.

King. Well, Sir, shall I be heard before the Judgment be given?

Bradshaw. Gentlemen, it is well known to all, or most of you here present, that the Prisoner at the Bar hath been several times convened and brought before this Court to make answer to a Charge of Treason, and other high Crimes exhibited against him in the Name of the People of * *England*; to which Charge being required to answer, he hath been so far from obeying the Commands of the Court by submitting to their Justice, as he began to take upon him to offer Reasoning and Debate unto the Authority of

* Here a Lady interpos'd, saying, Not half the People; but was silenced with Threats.

the Court, and of the highest Court that constituted them to try and judge him: but being over-ruled in that, and required to make his Answer, he was still pleased to continue contumacious, and to refuse to submit or answer. Hereupon the Court, that they might not be wanting to themselves, to the Trust reposed in them, nor that any Man's Wilfulness prevent Justice, they have thought

fit to take the Matter into their Consideration; they have considered of the Charge, they have considered of the Contumacy, and of that Confession, which in Law doth arise upon that Contumacy: They have likewise consider'd of the Notoriety of the Fact charg'd upon this Prisoner, and upon the whole Matter they are resolv'd, and are agreed upon a Sentence to be pronounc'd against this Prisoner: But in respect he doth desire to be heard, before the Sentence be read and pronounc'd, the Court hath resolv'd that they will hear him. Yet, Sir, thus much I must tell you before-hand, which you have been minded of at other Courts, that if that which you have to say, be to offer any Debate concerning the Jurisdiction, you are not to be heard in it; you have offered it formerly, and you have struck at the Root, that is, the Power and Supreme Authority of the Commons of *England*, which this Court will not admit a Debate of; and which indeed is an irrational Thing in them to do, being a Court that acts upon Authority derived from them. But, Sir, if you have any thing to say in defence of yourself concerning the Matter charged, the Court hath given me in command to let you know they will hear you.

King. Since I see that you will not hear any thing of Debate concerning that which I confess I thought most material for the Peace of the Kingdom, and for the Liberty of the Subject, I shall waive it; I shall speak nothing to it, but only I must tell you, that this many a-day all things have been taken away from me, but that that I call more dear to me than my Life, which is my Conscience and my Honour: And if I had a respect to my Life more than the Peace of the Kingdom and the Liberty of the Subject, certainly I should have made a particular Defence for myself; for by that at leastwise I might have delayed an ugly Sentence, which I believe will pass upon me. Therefore, certainly, Sir, as a Man that hath some Understanding, some Knowledge of the World, if that my true Zeal to my Country had not over-borne the Care that I have for my own Preservation, I should have gone another way to work than that I have done. Now, Sir, I conceive, that an hasty Sentence once pass'd, may sooner be repented of than recalled; and truly, the self-same Desire that I have for the Peace of the Kingdom, and the Liberty of the Subject, more than my own particular Ends, makes me now at last desire, that I have something * to say that concerns both, before Sentence be given, that I may be heard in the Painted-Chamber before the Lords and Commons. This Delay cannot be prejudicial to you, whatsoever I say; if that I say no Reason, those that hear me must be Judges; I cannot be judge of that that I have: if it be Reason, and really for the Welfare of the Kingdom, and the Liberty of the Subject, I am sure on't, 'tis very well worth the hearing; therefore I do conjure you, as you love that that you pretend, I hope it's real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me this hearing before any Sentence be pass'd. I only desire this, that you will take this into your Consideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this Liberty,

* Some have thought this was a Proposal of renouncing the Crown in favour of his eldest Son.

Liberty, I do protest, that these fair Shews of Liberty and Peace, are pure Shews, and that you will not hear your King.

Bradshaw. Sir, you have now spoken.

King. Yes, Sir.

Bradshaw. And this that you have said is a further declining of the Jurisdiction of this Court, which was the thing wherein you were limited before.

King. Pray excuse me, Sir, for my Interruption, because you mistake me; it is not a declining of it, you do judge me before you hear me speak: I say it will not, I do not decline it, tho' I cannot acknowledge the Jurisdiction of the Court; yet, Sir, in this give me leave to say, I would do it, tho' I did not acknowledge it: in this I do protest it is not the declining of it, since I say, if that I do say any thing, but that that is for the Peace of the Kingdom, and the Liberty of the Subject, then the Shame is mine. Now I desire that you will take this into your Consideration; if you will, I'll withdraw.

Bradshaw. Sir, this is not altogether new that you have moved to us, not altogether new to us, tho' the first time in person you have offered it to the Court. Sir, you say you do not decline the Jurisdiction of the Court.

King. Not in this that I have said.

Bradshaw. I understand you well, Sir, but nevertheless that which you have offered, seems to be contrary to that Saying of yours; for the Court are ready to give a Sentence: It is not as you say, That they will not hear their King; for they have been ready to hear you, they have patiently waited your Pleasure for three Courts together, to hear what you would say to the People's Charge against you, to which you have not vouchsafed to give any Answer at all. Sir, this tends to a further Delay; truly, Sir, such Delays as these, neither may the Kingdom, nor Justice well bear; you have had three several Days to have offered in this kind what you would have pleased. This Court is founded upon that Authority of the Commons of *England*, in whom rests the supreme Jurisdiction; that which you now tender, is to have another Jurisdiction, and a co-ordinate Jurisdiction. I know very well you express yourself, Sir, that notwithstanding that you would offer to the Lords and Commons in the Painted-Chamber, yet nevertheless you would proceed on here, I did hear you say so. But, Sir, that you would offer there, whatever it is, must needs be in delay of the Justice here; so as if this Court be resolved, and prepared for the Sentence, this that you offer they are not bound to grant. But, Sir, according to that you seem to desire, and because you shall know the further Pleasure of the Court upon that which you have moved, the Court will withdraw for a time

[This he did to prevent the Disturbance of their Scene by one of their own Members, Col. *John Downes*, who could not stifle the Reluctance of his Conscience, when he saw his Majesty press so earnestly for a short Hearing: But declaring himself unsatisfied, forced them to yield to the King's Request. *Nalson.*]

King. Shall I withdraw?

Bradshaw. Sir, you shall know the Pleasure of the Court presently.

The Court withdraws for half an Hour into the Court of Wards.

Serjeant at Arms, The Court gives Command, that the Prisoner be withdrawn; and they give order for his Return again.

[Then withdrawing into the Chamber of the Court of Wards, their Business was not to consider of his Majesty's Desire, but to chide *Downes*, and with Reproaches and Threats to harden him to go thro' the Remainder of their Villany with them. *Nalson.*]

Which done, they return: and being sat, *Bradshaw* commanded;

Serjeant at Arms, Send for your Prisoner.

Who being come, *Bradshaw* proceeded:

Sir, you were pleased to make a motion here to the Court to offer a Desire of yours, touching the propounding of somewhat to the Lords and Commons in the Painted Chamber, for the Peace of the Kingdom: Sir, you did, in effect, receive an Answer before the Court adjourned; truly, Sir, their Withdrawing and Adjournment was *pro forma tantum*; for it did not seem to them that there was any Difficulty in the thing: they have considered of what you have moved, and have considered of their own Authority, which is founded, as hath been often said, upon the supreme Authority of the Commons of *England*, assembled in Parliament: The Court acts according to their Commission. Sir, the Return I have to you from the Court, is this; That they have been too much delayed by you already, and this that you now offer, hath occasioned some little further Delay; and they are Judges appointed by the highest Authority; and Judges are no more to delay, than they are to deny Justice: they are good Words in the great old Charter of *England*; *Nulli negabimus, nulli vendemus, nulli differemus Justitiam*. There must be no Delay; but the truth is, Sir, and so every Man here observes it, that you have much delayed them in your Contempt and Default, for which they might long since have proceeded to Judgment against you; and notwithstanding what you have offered, they are resolved to proceed to Punishment, and to Judgment, and that is their unanimous Resolution.

King. Sir, I know it is in vain for me to dispute, I am no Sceptick for to deny the Power that you have; I know that you have Power enough: Sir, I must confess, I think it would have been for the Kingdom's Peace, if you would have taken the pains to have shewn the Lawfulness of your Power; for this Delay that I have desired, I confess it is a Delay, but it is a Delay very important for the Peace of the Kingdom; for it is not my Person that I look at alone, it is the Kingdom's Welfare, and the Kingdom's Peace; it is an old Sentence, That we should think on long before we resolve of great Matters suddenly. Therefore, Sir, I do say again, that I do put at your Doors all the Inconveniency of a hasty Sentence. I confess I have been here now, I think, this Week; this Day eight Days was the Day I came here first, but a little Delay of a Day or two farther may give Peace; whereas a hasty Judgment may bring on that Trouble and perpetual Inconveniency to the Kingdom, that the Child that is unborn may repent it: and therefore again, out of the Duty I owe

to

to God, and to my Country, I do desire that I may be heard by the Lords and Commons in the Painted-Chamber, or any other Chamber that you will appoint me.

Bradshaw. Sir, you have been already answered to what you even now moved, being the same you moved before, since the Resolution and the Judgment of the Court in it: and the Court now requires to know whether you have any more to say for yourself, than you have said, before they proceed to Sentence.

King. I say this, Sir, That if you hear me, if you will give me but this Delay, I doubt not but I shall give some Satisfaction to you all here, and to my People after that; and therefore I do require you, as you will answer it at the dreadful Day of Judgment, that you will consider it once again.

Bradshaw. Sir, I have received Direction from the Court.

King. Well, Sir.

Bradshaw. If this must be re-enforced, or any thing of this Nature, your Answer must be the same; and they will proceed to Sentence, if you have nothing more to say.

King. Sir, I have nothing more to say, but I shall desire, that this may be entered what I have said.

Bradshaw. The Court then, Sir, hath something to say unto you; which, altho' I know it will be very unacceptable, yet notwithstanding they are willing, and are resolved to discharge their Duty.

[Then *Bradshaw* went on in a long Harangue, endeavouring to justify their Proceedings, misapplying Law and History, and raking up and wresting whatsoever he thought fit for his Purpose, alledging the Examples of former Treasons and Rebellions, both at Home and Abroad, as authentick Proofs; and concluding, That the King was a Tyrant, Traitor, Murderer, and publick Enemy to the Commonwealth of England.

His Majesty, having with his wonted Patience heard all these Reproaches, answered; *Nelson.*]

King. I would desire only one Word before you give Sentence; and that is, That you would hear me concerning those great Imputations that you have laid to my Charge.

Bradshaw. Sir, You must give me now leave to go on; for I am not far from your Sentence, and your Time is now past.

King. But I shall desire you will hear me a few Words to you: For truly, whatever Sentence you will put upon me in Respect of those heavy Imputations, that I see by your Speech you have put upon me; Sir, It is very true, that—

Bradshaw. Sir, I must put you in mind: Truly, Sir, I would not willingly, at this time especially, interrupt you in any thing you have to say, that is proper for us to admit of; but, Sir, you have not owned us as a Court, and you look upon us as a Sort of People met together; and we know what Language we receive from your Party.

King. I know nothing of that.

Bradshaw. You disavow us as a Court; and therefore for you to address yourself to us, not to

acknowledge us as a Court to judge of what you say, it is not to be permitted. And the Truth is, all along, from the first time you were pleased to disavow and disown us, the Court needed not to have heard you one Word: For unless they be acknowledged a Court, and engaged, it is not proper for you to speak. Sir, we have given you too much Liberty already, and admitted of too much Delay, and we may not admit of any farther. Were it proper for us to do, we should hear you freely, and we should not have declined to have heard you at large, what you could have said or proved on your Behalf, whether for totally excusing, or for in part excusing those great and heinous Charges that in whole or in part are laid upon you. But, Sir, I shall trouble you no longer, your Sins are of so large a Dimension, that if you do but seriously think of them, they will drive you to a sad Consideration, and they may improve in you a sad and serious Repentance: And that the Court doth heartily wish that you may be so penitent for what you have done amiss, that God may have Mercy, at least wise, upon your better Part: Truly, Sir, for the other, it is our Parts and Duties to do that that the Law prescribes. We are here not *jus dare*, but *jus dicere*. We cannot be unmindful of what the Scripture tells us, *For to acquit the Guilty is of equal Abomination, as to condemn the Innocent*: We may not acquit the Guilty. What Sentence the Law affirms to a Traitor, Tyrant, a Murderer, and a publick Enemy to the Country, that Sentence you are now to hear read unto you; and that is the Sentence of the Court.

Make an O yes, and command Silence while the Sentence is read.

Which done, the Clerk read the Sentence, drawn up in Parchment:

W *Hereas the Commons of England in Parliament had appointed them an High Court of Justice, for the Trial of Charles Stuart, King of England, before whom he had been three times convened; and at the first time a Charge of High Treason, and other Crimes and Misdemeanours, was read in the behalf of the Kingdom of England, &c.*

Here the Charge was repeated.

Which Charge being read unto him, as aforesaid, he the said *Charles Stuart* was required to give his Answer; but he refused so to do: Expressing the several Passages of his refusing, in the former Proceedings.

For all which Treasons and Crimes, this Court doth adjudge, That he the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a publick Enemy, shall be put to Death, by the severing of his Head from his Body.

Which being read, *Bradshaw* added;

The Sentence now read and published, is the Act, Sentence, Judgment, and Resolution of the whole Court.

To which they all expressed their Assent by standing up, as was before agreed and ordered.

His Majesty then said, Will you hear me a Word, Sir?

Bradshaw. Sir, you are not to be heard after the Sentence.

King. No, Sir?

Bradshaw. No, Sir; by your Favour, Sir. Guard, withdraw your Prisoner.

King. I may speak after Sentence, by your Favour, Sir: I may speak after Sentence, ever.

By your Favour, (Hold!) the Sentence, Sir—I say, Sir, I do——

I am not suffered to speak: Expect what Justice other People will have.]

[His Majesty being taken away by the Guard, as he passed down the Stairs, the insolent Soldiers scoffed at him, casting the Smoke of their Tobacco (a Thing very distasteful unto him) in his Face, and throwing their Pipes in his way; and one more insolent than the rest, spitting in his Face, his Majesty, according to his wonted heroic Patience, took no more notice of so strange and barbarous an Indignity, than to wipe it off with his Handkerchief.

As he passed along, hearing the Rabble of Soldiers crying out *Justice! Justice!* he said, *Poor Souls, for a Piece of Money they would do so for their Commanders.*

Being brought first to Sir Robert Cotton's, and thence to *Whiteball*, the Soldiers continued their brutish Carriage toward him, abusing all that seemed to shew any Respect, or any Pity to him; not suffering him to rest in his Chamber, but thrusting in and smoking their Tobacco, and disturbing his Privacy.

But thro' all these Trials (unusual to Princes) he passed with such a calm and even Temper, that he let fall nothing unbeseeming his former Majesty and Magnanimity.

In the Evening, a Member of the Army acquainted the Committee with his Majesty's Desire, *That seeing they had passed a Sentence of Death upon him, and his Time might be nigh, he might see his Children; and Dr. Juxon, Bishop of London, might be admitted to assist him in his private Devotions, and receiving the Sacrament.* Both which at length were granted.

And the next Day, being Sunday, he was attended by the Guard to *St. James's*; where the Bishop preached before him upon these Words, *In the Day when God shall judge the Secrets of all Men by Jesus Christ according to my Gospel.* Nalson.]

Lunæ, 29 Jan. 1648. Painted Chamber.

THREE Proclamations made. The Court is called.

Commissioners present.

John Bradshaw, Serjeant at Law, Lord President of this Court.

Oliver Cromwell.
Henry Ireton.
Sir Hardress Waller Knt.
Valentine Wauton.
Tho. Harrison.
Edward Whalley.

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Thomas Pride.
Isaac Ewers.
Richard Ingoldby.
Tho. Ld. Grey of Grooby.
Sir John Bourchier Knt.
Henry Martin.

William Purefoy.
John Berkstead.
John Blackstone.
Gilbert Millington.
Sir William Constable Bar.
Edmond Ludlow.
John Hutchinson.
Sir Michael Livesey Bar.
James Temple.
John Dixwell.
Peter Temple.
Robert Tichbourne.
Owen Roe.
Adrian Scroope.
Richard Deane.
John Okey.
John Hufon.
William Goffe.

John Jones.
Francis Allen.
Peregrine Pelham.
John Anlaby.
William Say.
Henry Smith.
Humphrey Edwards.
John Venn.
Thomas Scot.
William Cawley.
Thomas Horton.
John Lisle.
Nicholas Love.
Vincent Potter.
Augustine Garland.
Simon Meyne.
Daniel Blagrave.

Forty Eight Commissioners present.

Upon Report made from the Committee for considering the Time and Place of the executing of the Judgment against the King, that the said Committee have resolved, That the open Street before *Whiteball* is a fit Place, and that the said Committee conceive it fit that the King be there executed the Morrow, the King having already notice thereof: the Court approved thereof, and ordered a Warrant to be drawn for that Purpose. Which said Warrant was accordingly drawn and agreed unto, and ordered to be engrossed; which was done, and signed and sealed accordingly, as followeth, viz.

At the High Court of Justice for the Trying and Judging of Charles Stuart, King of England, Jan. 29. 1648.

‘ **W** Hereas Charles Stuart, King of England, is and standeth convicted, attainted and condemned of High-Treason, and other High Crimes; and Sentence upon Saturday last was pronounced against him by this Court, to be put to death, by the severing of his Head from his Body, of which Sentence, Execution yet remaineth to be done: These are therefore to will and require you to see the said Sentence executed in the open Street before *Whiteball*, upon the Morrow, being the thirtieth Day of this instant Month of *January*, between the Hours of Ten in the Morning, and Five in the Afternoon of the same Day, with full Effect, And for so doing, this shall be your sufficient Warrant. And these are to require all Officers, Soldiers and others, the good People of this Nation of *England*, to be assisting unto you in this Service.’

Given under our Hands and Seals,

To Col. Francis Hacker, Col. Hunks, and Lieutenant-Col. Phray, and to every of them.

Sealed and Subscribed by

John Bradshaw.
Tho. Grey.
Oliver Cromwell.
Edward Whalley.
Michael Livesey.
John Okey.
John Danvers.
John Bourchier.

6 R

Henry

Henry Ireton.
 Thomas Maleverer.
 John Blackstone.
 John Hutchinson.
 William Goffe.
 Thomas Pride.
 Peter Temple.
 Thomas Harrison.
 John Huson.
 Henry Smith.
 Peregrine Pelham.
 Simon Meyne.
 Thomas Horton.
 John Jones.
 John Moor.
 Hardress Waller.
 Gilbert Millington.
 George Fleetwood.
 John Alured.
 Robert Lilbourne.
 William Say.
 Anthony Stapely.
 Richard Deane.
 Robert Tichbourne.
 Humphrey Edwards.
 Daniel Blagrove.

Owen Rowe.
 William Purefoy.
 Adrian Scroope.
 James Temple.
 Augustine Garland.
 Edmond Ludlow.
 Henry Martin.
 Vincent Potter.
 William Constable.
 Richard Ingoldsby.
 William Cawley.
 John Berkstead.
 Isaac Ewers.
 John Dixwell.
 Valentine Wauton.
 Gregory Norton.
 Thomas Challoner.
 Thomas Wogan.
 John Venn.
 Gregory Clement.
 John Downes.
 Thomas Waite.
 Thomas Scot.
 John Carew.
 Miles Corbet.

It was Ordered, That the Officers of the Ordnance within the Tower of *London*, or any other Officer or Officers of the Store within the said Tower, in whose Hands or Custody the bright Execution-Ax, for the executing Malefactors, is, do forthwith deliver unto *Edward Dendy Esq;* Serjeant at Arms attending this Court, or his Deputy or Deputies, the said Ax. And for their or either of their so doing, this shall be their Warrant.

To Col. John White, or any other
 Officer within the Tower of
London; whom it concerneth.

The Court adjourned till to-morrow Morning
 at Nine of the Clock.

Martis, 30 Jan. 1648.

Painted Chamber.

Commissioners meet.

Ordered, That Mr. *Marshall*, Mr. *Nye*, Mr. *Caryl* Mr. *Salway*, and Mr. *Dell*, be desired to attend the King, to administer to him those Spiritual Helps as should be suitable to his present Condition. And Lieutenant-Colonel *Goffe* is desired forthwith to repair unto them for that Purpose.

Who did so, but after informed the Court, That the King being acquainted therewith, refused to confer with them; expressing, that he would not be troubled with them.

Ordered, That the Scaffold upon which the King is to be executed, be covered with Black.

THE Bishop of *London* read Divine Service before his Majesty, and the 27th of *St. Matthew*, the History of our Saviour's Passion, being appointed by the Church for that Day, he gave the Bishop Thanks for his seasonable Choice of the Lesson; but the Bishop acquainting him that it was the Service of the Day, it comforted him exceedingly; then he proceeded to receive the Holy Sacrament. His Devotions being ended, he was brought from *St. James's* to *Whitehall*, by a Regiment of Foot, besides his private Guard of *Partisans*; the Bishop of *London* on the one Hand, and Colonel *Tomlinson*, who had the Charge of him, on the other, bareheaded. The Guards marching a slow Pace, the King bid them go faster, saying, that he now went before them to strive for an heavenly Crown. Being come to the End of the Park, he went up the Stairs leading to the Long-Gallery in *Whitehall*, where formerly he used to lodge, and there finding an unexpected Delay, the Scaffold being not ready, he past most of the Time in Prayer. About twelve a-Clock, (his Majesty having eat a bit of Bread, and drank a Glas of Claret) Colonel *Hacker*, with other Officers and Soldiers, brought the King, with the Bishop, and Colonel *Tomlinson*, thro' the Banqueting-house to the Scaffold. A strong Guard of several Regiments of Horse and Foot were planted on all Sides, which hinder'd the near Approach of the People, and the King from being heard, and therefore he chiefly directed his Speech to the Bishop and Colonel *Tomlinson*, as follows,

I shall be very little heard of any Body else; I shall therefore speak a Word to you here: Indeed, I could hold my Peace very well, if I did not think that holding my Peace would make some Men think that I did submit to the Guilt, as well as the Punishment: But I think it is my Duty to God and my Country to clear myself, both as an honest Man, a good King, and a good Christian. I shall begin first with my Innocency; in Troth, I think it not very needful to insist long upon this; for all the World knows that I did never begin a War with the two Houses of Parliament; and I call God to Witness, to whom I must shortly make an Account, that I did never intend to incroach upon their Privileges; they began upon me. It is the Militia they began upon; they confess'd the Militia was mine, but they thought fit to have it from me: And, to be short, if any body will look to the Dates of Commissions, of their Commissions and mine, and likewise to the Declarations, he will see clearly that they began these Troubles, not I. So that as for the Guilt of these enormous Crimes that are laid against me, I hope in God that God will clear me of. I will not, I am in Charity, and God forbid I should lay it upon the two Houses of Parliament, there is no Necessity of either: I hope they are free of this Guilt; for I believe, that ill Instruments between them and me have been the Cause of all this Bloodshed; so that as I find myself clear of this, I hope, and pray God that they may too: Yet, for all this, God forbid I should be so ill a Christian, as not to say God's Judgments are just upon me. Many times he doth pay Justice

tice by an unjust Sentence, that is ordinary. I will only say this, that an unjust Sentence that I suffer'd to take Effect, is punished now by an unjust Sentence upon me: So far I have said to shew you that I am an innocent Man.

Now, to shew you that I am a good Christian, I hope there is a good Man [*Pointing to Bishop Juxon*] that will bear me Witness, that I have forgiven all the World, and even those in particular that have been the chief Causes of my Death; who they are, God knows; I do not desire to know: I pray God forgive them. But this is not all, my Charity must go further; I wish that they may repent. For, indeed, they have committed a great Sin in that Particular. I pray God, with St. Stephen, that it be not laid to their Charge; nay, not only so, but that they may take the right Way to the Peace of the Kingdom; for my Charity commands me not only to forgive particular Men, but to endeavour, to the last Gasps, the Peace of the Kindom. So, Sirs, I do wish, with all my Soul (*I hope there are some here that will carry it farther*) and endeavour the Peace of the Kingdom. Now, Sirs, I must shew you both how you are out of the Way, and will put you in the Way. First, you are out of the Way; for certainly all the Ways you ever had yet, as I could find by any thing, is in the way of Conquest; certainly this is an ill Way; for Conquest, Sirs, in my Opinion, is never just, except there be a good and just Cause, either for Matter of Wrong, or a just Title; and then, if you go beyond the first Quarrel, that makes that unjust at the End that was just at first; if there be only Matter of Conquest, then it is a great Robbery, as a Pirate said to Alexander, that he was a great Robber, he was but a petty Robber. And so, Sirs, I think the Way you are in is much out of the Way. Now, Sirs, to put you in the Way, believe it, you shall never go right, nor God will never prosper you, until you give God his Due, the King his Due (that is, my Successor) and the People their Due: I am as much for them as any of you. You must give God his Due, by regulating rightly his Church (according to the Scripture) which is now out of Order; to set you in a way particularly now, I cannot; but only this, *A National Synod freely called, freely debated among themselves, must settle this* when every Opinion is freely heard. For the King [*Then turning to a Gentleman that touch'd the Ax*, he said, *Hurt not the Ax, that may hurt me.*] Indeed I will not — the Laws of the Land will clearly instruct you for that; therefore, because it concerns my own Particular, I shall only give you a touch of it. For the People, truly I desire their Liberty and Freedom as much as any body whatsoever; but I must tell you, that their Liberty and Freedom consist in having Government, those Laws by which their Lives and their Goods may be most their own. It is not their having a Share in the Government, that is nothing appertaining to them: A Subject and a Sovereign are clean different things; and therefore until you do that, I mean, that you put the People in that Liberty, as I say, certainly they will never enjoy themselves.

Sirs, it was for this that now I am come here, if I would have given way to an Arbitrary Way, to have all Laws changed according to the Power

of the Sword, I needed not to have come here; and therefore I tell you (and I pray God it be not laid to your Charge) that I am the Martyr of the People. In Troth, Sirs, I shall not hold you much longer: I will only say this to you, That I could have desired a little time longer, because I would have a little better digested this I have said, and therefore I hope you will excuse me; I have deliver'd my Conscience, I pray God you take those Courses that are the best for the Good of the Kingdom and your own Salvation.

Bishop. Tho' your Majesty's Affections may be very well known as to Religion; yet it may be expected that you should say something thereof for the World's Satisfaction.

King. I thank you heartily, my Lord, for that I had almost forgotten it. In Troth, Sirs, my Conscience in Religion, I think, is very well known to all the World; and therefore I declare before you all, that I die a Christian, according to the Profession of the Church of England, as I found it left me by my Father; and this honest Man I think will witness it.

Then turning to the Officers, he said, Sirs, excuse me for this fame: I have a good Cause, and I have a gracious God, I will say no more.

Then to Colonel Hacker, he said, Take care that they do not put me to Pain: And, Sir, this and it please you. —

But a Gentleman coming near the Ax, the King said, Take heed of the Ax, pray take heed of the Ax.

Then speaking unto the Executioner, he said, I shall say but very short Prayers, and when I thrust out my Hands —

Then he called to the Bishop for his Night-Cap, and having put it on, he said to the Executioner, *Does my Hair trouble you?* who desired him, to put it all under his Cap, which the King did accordingly, by the Help of the Executioner and the Bishop. Then turning to Dr. Juxon, he said, *I have a good Cause and a gracious God on my Side.*

Bishop. There is but one Stage more, this Stage is turbulent and troublesome, it is a short one; but you may consider it will soon carry you a very great way, it will carry you from Earth to Heaven; and there you will find a great deal of cordial Joy and Comfort.

King. I go from a corruptible to an incorruptible Crown, where no Disturbance can be, no Disturbance in the World.

Bishop. You are exchanged from a Temporary to an Eternal Crown, a good Exchange.

Then the King said to the Executioner, *Is my Hair well?* And took off his Cloke and his George, giving his George to the Bishop, saying, *Remember.* Then he put off his Doublet, and being in his Wastecoate, he put on his Cloke again; then looking upon the Block, he said to the Executioner, *You must set it fast.*

Executioner. It is fast, Sir.

King. When I put out my Hands this way (stretching them out) then — After that, having said two or three Words to himself, as he stood with his Hands and Eyes lift up, immediately stooping down, he laid his Neck upon the Block*. And then the Executioner again putting his Hair under his Cap, the King thinking he had been going to strike, said, *Stay for the Sign.*

Exe-

* The Powers which then ruled, apprehending that the King would not submit his Head to the Block, had prepared Hooks and Staples to bring him down to it by Violence; but he patiently submitting, they had no need of them.

Executioner, Yes, I will, an't please your Majesty. After a little Pause, the King stretching forth his Hands, the Executioner, at one Blow, sever'd his Head from his Body, and held it up and shew'd it to the People, saying, *Behold the Head of a Traitor*. At the Instant when the Blow was given, there was a dismal Universal Groan among the People; and as soon as the Execution was over, one Troop of Horse march'd immediately from *Charing-Cross* to *King-street*, and another from *King-street* to *Charing-Cross*, on purpose to disperse and scatter the People. The Corps was put into a Coffin, and the Bishop and Mr. *Herbert* went with it to the Back-stairs to have it embalmed; after embalming, his Head was sewed on, and the Corps was wrapt in Lead, and the Coffin cover'd with a Velvet Pall, and then remov'd to *St. James's*. Mr. *Herbert* then made Application to such as were in Power, that it might be interr'd in *Henry VII.'s* Chapel; but 'twas denied, for that his Burying there would attract infinite Numbers of all Sorts thither; which, as the Times then were, was judged unsafe and incon-

venient. Mr. *Herbert* acquainting the Bishop with this, they then resolv'd to bury the King's Body in the Royal Chapel of *St. George*, within the Castle of *Windsor*, both in regard that his Majesty was Sovereign of the most noble Order of the Garter, and that several Kings had been there interred; namely, King *Henry VI.* *Edward IV.* and *Henry VIII.* upon which Consideration, the Committee of Parliament was address'd to the second time, who, after some Deliberation, gave Orders, bearing date *February 6, 1648*, authorizing Mr. *Herbert* and Mr. *Anthony Mildmay* to bury the King's Body there. Accordingly the Corps was carried thither from *St. James's*, *Feb. 7.* in a Hearse cover'd with black Velvet, drawn by six Horses cover'd with black Cloth, and attended by about a dozen Gentleman.

The King's Statue was afterwards taken down from the *Royal Exchange* in *London*, where it was set up again by the City in the Year 1682. to curry Favour with King *Charles II.* when their Charter was threatned.

4/30/29

The END of the First VOLUME.

